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Unaccompanied Minor Refugees and Identity
Rights
Improving Human Rights for Refugees in Africa

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Summary

Unaccompanied minor (UAM) refugees are amongst the most vulnerable persons within the refugee population. International human rights law, under refugee conventions and children's rights instruments, provides protection for this category of children, both at the international and regional levels in Africa.

Even though the refugee conventions do not define who is an UAM refugee, and his/her protection, it is acknowledged by the children conventions under the principle of non-discrimination, as a refugee child and as a child deprived of his/her family environment.

The development of 'identity rights' in international law is pushing for the enforcement of the human rights protection for UAM refugees. This category of rights has been falling under the scope of the State sovereignty before being integrated within civil and political rights. However, there is nowadays a need to develop 'identity rights' as a separated category due to the constant globalization of societies and the nature of the relation between States and individuals, especially for refugees.

The thesis aims to demonstrate that the implementation of identity rights of UAM refugees will put into place the human rights framework they are entitled to. Indeed, recognizing the person's identity and providing identity papers will support the development of policies for the protection of unaccompanied children.

The implementation of the protection remains limited in African States, as demonstrated in the thesis through the examples of Cameroon, Chad and Kenya. However, the role that identity rights are currently having and their future impact is acknowledged, as well as the effective tool they represent.

The protection of UAM refugees is an international obligation for States that ratified international human rights law conventions, and shall become a priority.

Preface

From March to August 2010, I worked as an intern at the United Nations High Commissioner for Refugees office in Rabat, Morocco. In all the cases I worked with, the ones of unaccompanied minor refugees were very sensitive. It involved extreme cases, both in the past events the child went through (former child soldiers, sexual slaves, victims of human trafficking, survivor of tortures or massive killings) and in the present time because of the need of protection from abuses and exploitation in the country of refuge. It has been a very difficult but great experience that is a landmark in my life.

I first would like to thank my wonderful supervisor, Gregor Noll, not only for his helpful and bright support but also his understanding of what this study meant to me.

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Lone, thanks for making Sweden being my new home.

To my grandmother Madeleine,

To my beloved parents,
Merci pour tout

Abbreviations

UNICEF	United Nations Children's Fund
UNHCR	United Nations High Commissioner for Refugees
UAM	Unaccompanied Minor
UNCRC	United Nations Convention on the Rights of the Child
ACRWC	African Charter on the Rights and Welfare of the Child
UN	United Nations
NGO	Non-Governmental Organization
ICRC	International Committee of the Red Cross
ICCPR	International Covenant on Civil and Political Rights
UDHR	Universal Declaration of Human Rights
ACHPR	African Charter on Human and People's Rights
OAU	Organization of African Unity
SGBV	Sexual and Gender Based Violence
OCHA	Office for the Coordination of Humanitarian Affairs

1 Introduction

1.1 Background

The experience with victims, survivors and perpetrators turns any legal knowledge into new perspectives. The meaning of protection, the meaning of implementation and the meaning of law itself are a daily issue when dealing with extreme situations.

Working with asylum seekers and refugees pushes limits: torture, rape, human trafficking, conflicts, pain, violence, struggle and death.

Death is often referred by refugees as a solution that is better than a traumatic and destroyed life. The living conditions of refugees, as well as the trauma of the flight, create a very complicated situation for those persons. The lack of a recognized status by the authorities in some African countries is problematic. Giving protection is not only about determining that a person is a refugee. It is much more than that. A refugee does deserve to live in dignity and see his/her human rights respected under international law. The refugee is not only under a '*régime de tolérance*'¹ in the country of refuge. The 1951 Convention relating to the Status of Refugees (1951 Convention) aims to give an international protection for refugees not *vis-à-vis* their country of origin but the country where they are².

The meaning of protection is broad as it includes all the provisions which secure the rights of the refugees as an individual, according to international human rights law and the relevant treaties and conventions³, and identity rights, including the preservation of the identity itself, are part of it. Indeed, issuing identity document for a refugee may develop a better access to other rights such as education, housing, health, securities and work. This central idea of the thesis can be summarized as followed:

Within refugees, children are part of the most vulnerable persons. As stated by United Nations Children's Fund (UNICEF):

1 Translation: Regime of tolerance. Antonio Fortin uses the French words in his article 'The meaning of 'protection' in the refugee definition', 12:4 *International Journal of Refugee Law* (2001).

2 Antonio Fortin, 'The meaning of 'protection' in the refugee definition', 12:4 *International Journal of Refugee Law* (2001).

3" UNHCR, Evaluation and policy analysis Unit, *Meeting the rights and protection needs of refugee children* (May 2002), pp.63-64.

“Refugee children are amongst the most vulnerable groups in the world – for example, UNHCR points out that they are disproportionately likely to be victims of sexual abuse or military recruitment (...).⁴ Many refugee children will carry no document.”⁵

Unaccompanied minor (UAM) refugees are more vulnerable because of the absence of family members acting for their protection; they are confronted to obstacles such as loneliness, traumas, exploitation, poverty, violence, abuses, mistreatments, forced recruitment, child labour; denial of rights, diseases, discrimination and death.⁶

The report of the Secretary General on ‘assistance to unaccompanied refugee minors’⁷ released in 2005 acknowledges the risks UAM refugees are confronted to and the need of protection against:

“[m]ilitary recruitment, sexual exploitation, abuse and violence, forced labor, irregular adoption, trafficking, discrimination, and lack of access to education and recreational activities.”

Representing two to five per cent of the worldwide refugee population⁸ and being amongst the most vulnerable persons in the refugee population, UAM refugees have human rights under international law and their rights must be respected and enforced.⁹

1.2 Scope of the Study

Only UAM refugees are integrated within the study. It means that asylum seekers or migrants will not be considered.

The thesis is only focusing on refugees, as persons who have a recognized status under international law, and that this status is calling for protection. Migrants and asylum seekers do not meet the same legal definition than refugees; consequently, they are not integrated.¹⁰

⁴ UNICEF, *Implementation Handbook for the Convention for the Rights of the Child*, fully revised edition (2002), p.309.

⁵ UNICEF, *ibid.*, p.312.

⁶ The preamble of the United Nations (UN) General Assembly Resolution 58/150 *assistance to unaccompanied minor refugees*, adopted by the General Assembly of the United Nations under the fifty-eight session of the Assembly states that: ‘*Unaccompanied refugee minors are amongst the more vulnerable persons and the most at risk of neglect, violence, forced military recruitment, sexual assault, abuse and vulnerability to infectious disease (...) and therefore require special assistance and care.*’

⁷ Report of the Secretary General on unaccompanied refugee minor UN GA resolution 58/150.

⁸ UNHCR, *Guidelines on Protection and Care of Refugee Children* (1994), p.124.

⁹ Ressler *et al.*, *Unaccompanied Children* (Oxford University Press, New York, 1988), p.282.

¹⁰ However, it shall be noted that the protection of UAM asylum seekers was emphasized by the Report of the UN Secretary General, *assistance to unaccompanied and refugee minors* (2005): “*The high number of unaccompanied (...) children who disappear from reception facilities or during the asylum procedure. (...) Up to 30 per cent of these disappearances could be related to human trafficking.*”, para. 49.

The thesis is focusing on the legal protection of UAM refugees. A multidisciplinary approach (social, psychological and medical aspects) is not launched because it would require an extensive study of those factors, the involvement of professionals and a long-term study that is not possible to put into place at this level of research.

The choice to focus on children, and especially on UAM, is due to the fact that this category of persons is more vulnerable to harmful practices. Childhood is the time when physical and mental developments occur and when the identity is built.¹¹ Hence, a proper environment and structure is needed for the well-being of the child, including food, health, security, education, love and securities. The lack of involvement for the protection of UAM refugees may lead to serious damages for the children, his/her current situation and future, both on a short-term and long-term period. Their needs are important and involve daily issues.

Moreover, the United Nations High Commissioner for Refugees (UNHCR) has stated in June 2010 that ‘topics such as the situation of unaccompanied minor children (...) have been placed at the top of the humanitarian response agenda.’¹²

The central idea of the thesis is that identity rights are the new scope of ‘the right to have rights’. Indeed, a legal and recognized status allows a refugee to access services such as education, health, housing or work. This is one of the best means to protect a person from abuses and assess his/her security in the country of refugee.

Africa is the regional limitation. Today, 22 percent of the world refugee population is living on this continent, and their situation is precarious. 6 out of 10 refugees in Sub-Saharan Africa do live in refugee camps¹³, and the protection of UAM refugees, in refugee camps or urban areas, is generally not set as a priority.¹⁴

1.3 *Legal Perspective*

The thesis is looking into the international legal instruments for the protection of UAM refugees and using reliable sources of information.

The concerned international law instruments are the 1951 Refugee Convention relating to the Status of refugees, the 1969 OAU Convention governing the specific aspects of refugee problems in Africa, the 1989 Convention on the Rights of the Child and the 1990 African Charter on the rights and welfare of the child.

¹¹ Eva Segerström, *Focus on refugee children: a handbook for training field refugee workers in social and community work*, (Rädda Barnen, Växjö, 1995), p.16.

¹² UNHCR, 2009 *Global Trend: refugees, asylum seekers, returnees, internally displaced and stateless persons* (June 2010) available at: <<http://www.unhcr.org/4c11f0be9.html>>, visited on 6 May 2011.

¹³ UNHCR, *supra* note 12.

¹⁴ For further information, see Chapter four of the thesis.

Choice was made to focus on the documents exposed in the paragraph *supra* because of their relevance for the study. Moreover, they are *lex specialis*, providing key-elements for the protection of UAM refugees.

1.4 Research Question and Methodology

The research question to be discussed is how can the effectiveness of the protection of UAM refugees present on the territory of any African Union member State be improved through the recognition and enforcement of identity rights as provided by the international conventions? Are identity rights a means to enforce other human rights protecting UAM refugees?

The methodology includes a legal analysis and an empirical method.

The applicable norms are identified and analyzed. Legal instruments at the regional and international level are used.

Legal literature, books, reports and available electronic sources do constitute the core of the research tools.

The research of field situations and practices involves contacts (emails) with UNHCR staff in field offices and with NGOs. It also includes readings of international organizations and NGOs' published reports.

1.5 Structure

The thesis is structured in three chapters.

The first chapter focuses on international provisions for the protection of UAM refugees. The second chapter looks into the existence of identity rights under international law. The third chapter is about case studies of the central role of identity rights in countries of refuge.

1.6 Note on terminology

According to the international recognized definition provided by legal norms and the doctrine, an UAM refugee is a child who is separated from both parents and is not being cared by an adult who, by law or custom, is responsible to do so.¹⁵ However, it shall be added that an UAM refugee is not inevitably an orphan; consequently, the word "unaccompanied" is preferable, as it does not include any implications regarding the causes of the separation and the existence of parents.¹⁶

An UAM child is different from a separated child. A separated child is also separated from both parents and legal or customary care giver, but is still accompanied by an adult relative.

International law acknowledges that a child is a human being below the age of eighteen years.¹⁷

¹⁵ UNHCR, *supra* note 8, Chapter 10 *Unaccompanied Children*, p.121 and Report of the Secretary General of the United Nations on the resolution 58/150 *assistance to unaccompanied refugee minors*, para.1.

¹⁶ Ressler, *et al.*, *supra* note 9.

Identity papers refer to any document that is giving a legal and recognized status to the person. It can be an identity card, a passport, a birth certificate or a residence permit. A refugee card may be an identity document in some countries, if guaranteed by the State authorities. However, identity rights are not limited to this narrow aspect.¹⁸

¹⁷ Convention on the Rights of the Child (1989), article one and African Charter on the Rights and Welfare of the Child (1990), article two.

¹⁸ For further information, see Chapter three of the thesis.

2 International Law and Unaccompanied Minor Refugees

The chapter two aims to introduce the international norms for the protection of unaccompanied minor refugees, namely international refugee law and international law for the protection of the child. It determines the normative framework for the protection of UAM refugees through a presentation and analysis of the provisions.

2.1 *Unaccompanied Minor Refugees and International Refugee Law: the Refugee Definition*

The definition of a refugee under international and regional law is provided by legal instruments. The following sub-chapters will answer questions such as who is a refugee? Are refugee children included within those definitions? What about UAM refugees?

2.1.1 The 1951 Convention and its 1967 Additional Protocol relating to the Status of Refugees

At the international level, article 1 A (2) of the 1951 Convention relating to the Status of Refugees (1951 Convention) defines a refugee.¹⁹ The definition gives five criteria for the application of the refugee status to a person who seek asylum. If the person has a well-founded fear of persecution and fall under the scope of one of the five grounds of persecution as the State cannot or will not provide a protection, he or is she obtaining the refugee status. The definition does not make a difference by gender, between women and men²⁰, neither has a geographical approach.²¹ The geographical scope of application is only limited to the will of the States to ratify the instrument.

¹⁹ Article 1A(2) of the 1951 Refugee Convention (English version) : “the term refugee shall apply to any person who : (...) as a result of events occurring before 1 January 1951 and owing a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular special group or political opinion, is outside the country of his nationality and is unable or, owing such a fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside of the country of his former habitual residence as a result of such events, is unable or, owing such fear, is unwilling to return to it.”

²⁰ The lack of references to the feminine gender in the definition of the English version of the 1951 Convention was criticized by Heaven Crawley, *Refugee and Gender : Law and Process* (Jordan Editions 2001), pp.4-6. But it shall be added that the French version of the 1951 Convention relating to the Status of Refugee states that a refugee is “une personne” (feminine word).

²¹ Before the 1951 Convention relating to the Status of Refugee was adopted, legal documents sui generis for the protection of persons from a specific nationality or origin were adopted, such as the 1938 Convention concerning the Status of Refugees coming from Germany. See Guy S. Goodwin-Gill, *The refugee in international law* (Oxford University Press, New York, 2nd Edition, 1996), p.4.

The temporal limit is included in the definition of what is a refugee in the 1951 Convention. By stating that only events that happened before 1 January 1951 are concerned, the legal instrument looks into the past events but does not take into consideration the future refugees. However, the 1967 Protocol relating to the Status of Refugees states in its article 1(2) that “the term refugee shall (...) mean any person within the definition of the Convention as if the words “as a result of events occurring before 1 January 1951 and...” and the words “...as a result of such events”, in article 1 A (2) were omitted”. It suppressed the temporal limit.

It also has to be noticed that neither the definition of the 1951 Convention nor the text of the 1967 Additional Protocol do make a differentiation between adults and children. There is no special definition applying for children refugees, neither for UAM children.

The United Nations Conference that adopted the Refugee Convention had stated that “the protection of refugees who are minors, in particular unaccompanied children and girls”²² is important. Even though the difference is not integrated within the definition, it was taken into consideration from the beginning of the international concern that there should be a specific and appropriate approach for children because of their need for protection. However, this has no legal effect.

To conclude, the 1951 Convention and its 1967 Additional Protocol state that an UAM refugee is a person who has a well-founded fear of persecution based on recognized ground(s), and is not in a situation where he/she can get the protection of the State of origin. Therefore, he/she is in need of protection in the country of refuge.

2.1.2 The OAU Convention governing the Specific Aspects of Refugee Problems in Africa

At the regional level of the African continent, article 1(1) of the Organization of African Unity²³ Convention (OAU Convention) gives the definition of a refugee.²⁴ This definition is similar to the one given by the 1951 Refugee Convention.

However, article 1(2) of the OAU Convention does extend the definition by stating that:

“The term 'refugee' shall also apply 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.”

²² UN Treaty Series, Vol.189, p.37 *Excerpts from the final act of the united nations conference of plenipotentiaries on the status of refugees and stateless persons* in Wendy Ayotte, *Separated Children coming to Europe* (Save the Children, London, 2000), p.27.

²³ The Organization of the African Unity was replaced by the African Union in 2002.

²⁴ Article 1(1) of the OAU Convention governing the specific aspects of refugee problems in Africa : « the term “refugee” shall mean every person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country, or, who, not having a nationality and being outside the country of his former habitual residence as a result of such events is unable or, owing such fear, is unwilling to return to it.”

This is what is called the principle of the “*mandat élargi*” (extended mandate) as it extends the “traditional” definition of a refugee to a broader scope. A person shall be a refugee when falling under the scope of the *mandat élargi*, which creates a change compared to the 1951 Convention. The OAU Convention acknowledges that a person left his or her country because of a general factor, a conflict or a *coup d'état*, even though no personal harm exists and that the persons have no direct fear of persecution. The situation of the country has a 'priority' on the status of fear of the refugee.²⁵

If compared to the 1951 Convention and its 1967 Additional Protocol, the OAU Convention does also not make a difference by gender, age, geographical or historical scope of application. It has a regional aim regarding the situations that occurred and are still occurring in Africa. Indeed, one third of African States have been confronted to large-scale political violence or war since their independence, without counting the military coups and other assassinations.²⁶ Therefore there is a special need of protection for persons who left their country of origin because of those events.

The OAU Convention does not differentiate, in the definition, an adult refugee from a child refugee even though it aims to take into consideration the specific needs of African refugees. The existence of multiple refugee children on the continent and their vulnerable situations is not addressed.²⁷

To conclude, the 1969 OAU Convention defines a UAM refugee as a person who has a well-founded fear of persecution on given ground(s) and cannot benefit from the protection of his/her State of origin, or as a person who had to leave his/her place of residence because of serious disturbances. Therefore, protection shall be offered in the country of refuge.

2.2 Unaccompanied Minor Refugees and International Children Law

Even if UAM refugees do not benefit from a separate definition under refugee law, international children law acknowledges their existence and needs. Consequently, this sub-chapter aims to determine what are the relevant articles under the children's conventions and what do they provide?

25 Joe Oloka-Onyango, 'Human Rights, the OAU Convention and the Refugee Crisis in Africa : forty years after Geneva', 3:3 *International Journal of Refugee Law* (1991)

26 Alfred Nhema and Paul Tiyambe Zeleza, *The roots of African conflicts - the causes and costs* (Ossrea Edition, Addis Ababa, 2008), p.36

27 Julia Sloth-Nielsen (ed.), *Children's rights in Africa: a legal perspective* (Ashgate Publishing Limited, Hampshire, 2008), p.184.

2.2.1 Unaccompanied Minor refugees and the Convention on the Rights of the Child (1989)

2.2.1.1 Articles of the CRC

There are two articles that are especially relevant for the protection of UAM refugees in the Convention in the rights of the child (CRC). article 22 refers to the refugee child, while the article 20 refers to unaccompanied children regardless of their status.

2.2.1.1.1 Article 20 of the CRC: Refugee Child

Article 22(1) of the CRC states that:

“States Parties shall take appropriate measures to ensure that a child (...) who is considered as a refugee (...), whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.”

This provision represents a specification of article two of the CRC that prohibits discrimination.²⁸ The fact that the principle of non-discrimination is repeated in the first paragraph of the article 22 is emphasizing the specific sensitivity of refugee children to be subjected to discriminatory treatment in the country of refuge. Indeed, refugee children may be limited in the opportunities they should meet in the host country, such as the access to education, healthcare and proper housing.

UAM refugees are integrated within the article, as well as accompanied minors, but the provision does not take into consideration the needs of UAM refugees as persons without support from family members and who may be exploited by any person. UAM refugees are very sensitive to abuses, mistreatments and violence in the country of refuge, because of the lack of protection coming from a safe environment. The issue of discriminatory treatment in the protection and assistance is different whether a child is accompanied or unaccompanied, and this aspect has not been taken into account by article 22(2).

Article 22(2) of the CRC adds that:

“States Parties shall provide cooperation in any efforts by the United Nations and Non-Governmental organizations (...) to protect and assist such a child and trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In case where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the Convention”

²⁸ Article two of the CRC: 1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. 2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members. (for further information, see sub-paragraph 2.3.2 of the thesis)

It refers to the cooperation of the State with the UN and non governmental organizations (NGOs) to ensure that the child may be reunified with his or her family. The cooperation of the State with other agencies aims to have a transnational action when necessary, especially for the Tracing procedure²⁹. Indeed, this procedure needs to be launched from the country of refuge, but includes researches in the country of origin in order to determine where the family of the child is located. Furthermore, the family members may also be displaced within the country or even may have moved to another country. Therefore the Tracing process requires a network that is crossing borders and has the tools to start an effective research. State Parties need the support of the UN and NGOs to implement this obligation.

However, the article does not include a reference to the issue that family reunification may not be a solution preferable for the refugee children, including UAM refugees. The Tracing procedure means that the person is known to be in a specific country of refuge and that this information will be spread. It can be dangerous if the child is still looked for by the agents of persecution, e.g. victims of human trafficking who obtained the refugee status may be at risk to be caught by the trafficking network.³⁰ Furthermore, family members may be the agent of persecution of the child, or they may be linked to the persecution and it could represent a danger for the child to be reunified with any of them. In those cases, the provision of article 22(2) on the Tracing procedure is not applicable.

As emphasized by the UNICEF:

“Family reunification should not be used as a justification for acting against the child's best interest (...) even action to trace the family members may inadvertently endanger children or their families by inappropriately breaching confidentiality.”³¹

2.2.1.1.2 Article 20 of the CRC: Child Deprived of his/her Family Environment

The Convention ensures that the dignity of the refugee child is ensured through a minimum standard if no parents or other members of the family are found through the Tracing procedure, or if, as already stated *supra* but not provided by the article 22(2) of the CRC, this procedure does represent a danger for the refugee child.

Article 20 of the CRC provides that:

1. *“A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.*
2. *States Parties shall in accordance with their national laws ensure alternative care for such a child.*

²⁹ For more information on the family reunification process and the role of the ICRC (as an example of an organization dealing with this issue), check: <http://www.icrc.org/eng/what-we-do/reuniting-families/index.jsp> (accessed 20 May 2011).

³⁰ Information obtained when being an UNHCR intern from 1 March 2010 to 31 August 2010 in Rabat (Morocco).

³¹ UNICEF, *supra* note 4, p.312.

3. *Such care should include, inter alia, foster placement, kafalah or Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solution, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background."*

The responsibility remains on the State to provide a proper protection and assistance to any child who has been deprived from his/her family environment. This provision is regardless of the status of the child; the principle of non-discrimination applies.

However, finding an alternative care for the child is creating problems when dealing with refugee children. Indeed, the need to protect the child's background is more complicated. Since the child is a refugee, the only possibility to enforce this provision is to put the child within his/her community. As stated earlier, the community may represent a danger if the child is exploited as a domestic servant, he/she may be selling illegal products and engaged in illegal activities or he/she may be sexually abused³².

To conclude, the provisions of the CRC for the protection of UAM refugees meet limits in their implementation because of the child history, needs and situation. However, it offers a general framework for the development of effective policies by the State parties.

2.2.1.2 General Comment of the Committee on the Rights of the Child (2005)

The Committee on the rights of the child published a General Comment no. 6 on "the treatment of unaccompanied and separated children outside their country of origin" in 2005.³³

The General Comment is a soft law norm but as it is a complementary document to the CRC it was integrated in this part of the thesis to facilitate the understanding of the link between the Convention and the protection of UAM refugees.

General Comment no.6 presents what provisions shall be applied for the protection of this category of children. It bases its analysis on the principle of non discrimination.³⁴ It only includes the principle of the best interest of the child (article three), the right to life (article six) and the right to participation (article 12). It emphasizes the need to appoint a legal guardian or representative for the child, the issue of care and accommodation arrangement, the access to education, the right to an adequate standard of living and the right to health. It takes into consideration the prevention of exploitation. Finally, it considers the durable solutions that are available for the child.

General Comment no.6 does not specifically concern children refugees but unaccompanied children in general. It gives a better approach of the content of the Convention for this category of children and the implementation of the provisions for the States parties.

³²" Information obtained when being an UNHCR intern from 1 March 2010 to 31 August 2010 in Rabat (Morocco).

³³" General Comment no.6 on *the treatment of unaccompanied and separated children outside their country of origin* (2005), <<http://www2.ohchr.org/english/bodies/crc/comments.htm>>, visited on 13 April 2011.

³⁴ For further information, see sub-chapter 2.3.2 of the thesis.

General Comment has no binding effect but pushes for States to have a focus on the protection of unaccompanied and separated children outside of their country of origin, including UAM refugees, outside of the provisions of articles 20 and 22 of the CRC.

2.2.2 Unaccompanied Minor Refugees and the African Charter on the Rights and Welfare of the Child (1990)

At the regional level, the African Charter on the Rights and Welfare of the Child (African Charter or ACRWC) do provide articles for the protection of UAM refugees. The ACRWC adopts the same approach than the CRC by having an article on refugee child and one article on children deprived of their family environment. A comparative analysis is done between the CRC and the ACRWC as it is interesting to determine what impacts the differences have for the protection of UAM refugees.

2.2.2.1 Article 23 of the ACRWC: Refugee Child

The African Charter contains a provision on refugee children. Article 23 of the OAU Convention concerns refugee children and is almost similar to article 22 of the CRC.

However, some differences can be found. Indeed, the CRC defines an unaccompanied refugee as a child who is not accompanied by “any parent or any other person”³⁵ while the ACRWC defines him or her as being unaccompanied by “parents, legal guardians or close relatives.”³⁶ The ACRWC has a narrow view of what person should be with the child in order to determine if he or she is an unaccompanied refugee.

As stated in the introduction of the thesis, the UNHCR refers to an UAM refugee as a child who is separated from both parents and is not being cared by an adult who, by law or custom, is responsible to do so.³⁷ The main problem is the definition and attribution of the status of UAM refugee to a child.

In my opinion, article 22(1) of the CRC is not realistic because migrants and/or other refugees usually accompany a child who travelled from his/her country of origin to the country of refuge during the journeys. On most of the migration routes, it is not possible to travel alone without a smuggler and/or a group of persons because of securities issues, border controls, or crossing difficult areas such as deserts.³⁸ Being accompanied by ‘any other person’ will happen in almost all cases.

The ACRWC approach is closer to the UNHCR definition and does put limits to persons known by the child and who correspond to a usual living environment; consequently if none of those persons is accompanying the child, there is vulnerability and a need for protection.

³⁵ Article 22(1) of the CRC.

³⁶ Article 23 of the ACRWC.

³⁷ UNHCR, *supra* note 8, Chapter 10 *Unaccompanied Children*, p.121

³⁸ Information obtained when being an UNHCR intern from 1 March 2010 to 31 August 2010 in Rabat (Morocco).

Furthermore, the ACRWC in the article 23(2) establishes the obligation for States to cooperate with “international organizations” while the CRC describes that States shall cooperate with “the United Nations and other competent intergovernmental organizations or nongovernmental organizations cooperating with the United Nations”. Hence the CRC has a broader approach regarding the actors that would be concerned by the protection of the refugee children, but the ACRWC is very precise and limited.

The consequences of the ACRWC approach are the limitations to certain actors, while the protection of UAM refugees may require the involvement of different partnerships with NGOs or associations having relevant and efficient policies and projects.

Finally, article 23(3) of the ACRWC does states that if “no parents, legal guardians or close relatives are found” a specific protection shall be afforded to the child. The CRC in its article 22(2) does have the same conclusion but only if “no parents or other members of the family can be found”. The two articles do not refer to the same persons that would need to be found for the child to be afforded a subsidiary long term protection.

This difference shows that in the international law instrument, the CRC, the reference to family members is extensive. The perception that any family member is entitled to be a possible caretaker of the child is provided. Consequently, the child may end up with persons he never met before in a new environment. The principle of the best interest of the child³⁹ is a key-element in determining if the reunification shall be done in that context.

However, the ACRWC limits the scope to close persons who know the child, namely the parents, close relatives and legal guardians. This approach is restrictive but is, in my opinion, more respectful for the child because of the purpose of the Tracing procedure itself that is to reunify families, and not creating new ones.

Article 23 of the ACRWC seems to be similar to article 22 of the CRC but details show that their scope of application and impact is different on UAM refugees. Those differences shall be taken into account when determining the protective frame of the UAM refugee in order to apply the most favorable norm.

2.2.2.2 Article 25 of the ACRWC: Child Deprived of his/her Family Environment

Article 25 of the ACRWC does consider the issue of the separation with parents in the same aspect than the article 20 of the CRC. Nevertheless, there are once again differences that shall be noticed.

Article 25 of the ACRWC states that the best interest of the child shall be taken into account in the paragraph two (a) and that, in the paragraph two (b), once again, “all necessary measures to trace and re-unite children with parents or relatives where separation is caused by internal and external displacement arising from armed conflict (...)”, what the CRC does not precise.⁴⁰

³⁹ For further information, see sub-chapter 2.3.2 of the thesis.

⁴⁰ Nigel Cantwell and Anna Holzscheiter, *A commentary on the United Nations Convention on the Rights of the Child, article 20: Children deprived of their family environment* (Martinus Nijhoff Publishers, Leiden, 2008), p.23.

The CRC does not include the Tracing procedure as a tool for a child deprived of his/her family environment; it only provides this process for refugee children. However the ACRWC is taking into account the need for the child to be reunified with his/her family if deprived of it, regardless of his/her status.

Moreover, the ACRWC does not present adoption as an appropriate protection for the child⁴¹ but includes an “alternative family care” while the CRC does talk about adoption and “alternative care” in general.⁴²

As a consequence, the child meets a different standard of solutions according to the two children rights’ conventions. The ACRWC insists on the need to maintain a familial environment in the alternative care, while the CRC does not acknowledge this need for the child.

The differences between the CRC and the ACRWC, as just pointed out, demonstrate that various approaches are taken for the protection of UAM refugees at the international and regional level. However, as for the differences found between the provisions on refugee child⁴³, the rule of the most favorable provision applies; consequently the UAM child is not supposed to directly suffer from those differences.

2.3 Defining International Unaccompanied Minor Refugee Law

As demonstrated by the previous sub-chapter, UAM refugees are protected by specific provisions of international children law. However, their rights are not limited to those provisions since the principle of non-discrimination opens the content of the international instruments to every child, regardless of his/her status.

It is important and interesting to briefly go through the different categories of rights UAM refugees are entitled to. The access to identity rights shall lead to the implementation of this framework, completing the provisions already stated *supra*.⁴⁴

The analysis was launched from the international instruments used in the thesis, namely the 1951 Refugee Convention and its 1967 Additional Protocol, the 1969 OAU Convention, the CRC and the ACRWC.

⁴¹ Article 25(2)(a) of the ACRWC.

⁴² Article 20(2) and 20(3) of the CRC.

⁴³ For further information, see Chapter two, sub-chapter 2.2.2.1 of the thesis.

⁴⁴ For further information, see Chapter two, sub-chapter 2.2.

2.3.1 Categorizing Human Rights and Obligations

The legal provisions for the protection of UAM refugees can be analyzed in five different parts: the economic and social rights, the civil and political rights, the prohibition of inhuman and degrading treatment, the identity rights and the obligations of the child.

Economic and social rights include articles⁴⁵ protecting the right to education, the right to housing, the right to an adequate standard of living, the right to health and social security and the right to leisure and play.

However, article 39 of the CRC resumes what all those provisions are about: the social integration of the child. This provision is only present in the CRC but shall be seen as an outline of what the economic and social rights of the child are about when it comes to the inclusion of the UAM refugee into the society of the country of refuge.

The role of economic and social rights for UAM refugees is central. Indeed, they generally correspond to the basic needs that refugees meet after leaving the country of origin. Finding an accommodation and having access to healthcare are usually their first needs.⁴⁶

*Civil and political rights*⁴⁷ contain provisions such as the freedom of religion, the right to privacy, the freedom of expression, the access to Court and the freedom of movement.

The civil and political rights have a limited scope of application for UAM refugees. Their presence in the international instruments is not very much developed regarding the protection of UAM.

One may argue that it is mainly due to the fact that civil and political rights are related to citizenship. However, this perception is wrong and refugees, who are not citizens of the State of refuge, are entitled to those fundamental rights in order to ensure their security and well-being.

The *prohibition of inhuman and degrading treatments* shall be studied from an independent approach as it is a very strong body of norms under the four international instruments. Indeed, every single document does have provisions that fall under the scope of this prohibition.

The refugee instruments, the 1951 Convention and the OAU Convention, do focus on the conditions of stay in the territory of the country of refuge. They both prohibit the expulsion of the refugee (article 32 of the 1951 Convention and article two of the OAU Convention). The 1951 Convention furthermore provides the principle of *non refoulement*⁴⁸ and the non imposition of

45" NB: the 1969 OAU Convention does not contain provisions on economic and social rights.

46" Information obtained when being an UNHCR intern from 1 March 2010 to 31 August 2010 in Rabat (Morocco).

47" NB: the 1969 OAU Convention does not contain provisions on civil and political rights.

48" Article 33 of the 1951 Convention.

penalty for the unlawful entry into the host country.⁴⁹ The OAU Convention provides protection from any repatriation against the will of the person.⁵⁰

The children instruments focus on welfare. Indeed, the prohibition of exploitation under any form is provided, as well as trafficking and the prohibition of torture, abuse and harmful social and cultural practices. The protection from the use of drugs is also developed.

However, all the provisions fall under the scope of the prohibition of inhuman and degrading treatments. They are a protection from a breach of the person's dignity that goes against fundamental rights.

Identity rights of the UAM refugees are in the center of the problematic of this thesis. As introduced in the first Chapter, the access to identity documents and the preservation of the identity itself are key-elements that are provided by international instruments. Even if identity rights are today limited, they shall be regarded as essential. They represent 'the right to have right' as without any document, there is a limited access or no possible access to other rights such as education, housing and health.

The content and impact of identity rights are developed in the chapter three of this thesis.

UAM refugees also have *obligations* under international law.⁵¹ The obligations are not very much developed and do focus on the respect for the law and the responsibilities of the child. But they do impose a limit to the UAM refugee who is not only under a protective approach but has responsibilities and obligations in the country of refuge.

The human framework for UAM refugees is broad and includes provisions on different categories of rights that are fulfilling the needs and protection of this category of children.

2.3.2 The *essence* of the law

Without establishing a hierarchy within children rights and considering that a priority shall be given, some rights appeared as a representation of the *essence* of the protection.

The *principle of non-discrimination* is a main tool. It does represent the importance of treating a person in an equal way as any other, independently of his/her status. The meaning of discrimination is not given by the international instruments but according to the Human Rights Committee it is "any distinction, exclusion, restriction or preference which is based on any ground."⁵²

⁴⁹ Article 31 of the 1951 Convention.

⁵⁰ Article 5 of the OAU Convention.

⁵¹ NB: except the CRC which does not contain any provision on obligations.

⁵² UNICEF, *supra* note 4, p.21.

As resumed by Bruce Abramson in his Commentary on the CRC, it is “the right not to be treated in a discriminatory way”⁵³ as a protection of the equality and dignity of every person.

Indeed, the status of refugee may represent a barrier for a person to access his/her rights as a human being. Especially regarding children rights, the human rights obligations under international law are clear that rights provided by the Convention do apply for any child. Without this provision, a difference of treatment could be established and be lawful, and the UAM refugees rights be strictly limited to the two precise relevant provisions of the CRC and the ACWRC.⁵⁴

States parties are obliged to ensure that every child is protected by the provisions of the child's conventions, but also to prevent the discrimination in order to establish equality between individuals.⁵⁵

The *principle of the best interest of the child*⁵⁶ and the *right to participation* are the second main tool. They represent the mean of reaching the best protection of the child by including the child's wishes.

The principle of the best interest of the child was not discussed when the CRC was adopted⁵⁷. The interpretation of the content of this principle is left to the person or the organization that is responsible for the child and shall apply this standard regarding the specific needs of the child.⁵⁸

UNICEF added that:

*“The wording of the principle indicates that its scope is very wide, beyond state-initiated actions to cover private bodies too, and embracing all actions concerning children as a group (...) and that the best interest will not always be the single, overriding factor to be considered ; there may be competing or conflicting human rights interests.”*⁵⁹

UNICEF furthermore stated that the principle of the best interest of the child:

53 Bruce Abramson, “Article 2 the right of non discrimination”, in: A. Alen, J. Vande Lanotte, E. Verhellen, F. Ang, E. Berghmans and M. Verheyde (Eds.) *A commentary on the United Nations Convention on the Rights of the Child* (Martinus Nijhoff Publishers, Leiden, 2008).

54^a Articles 20 and 22 of CRC and articles 23 and 25 of ACWRC.

55^a Julia Sloth-Nielsen, *supra* note 27, p.185.

56^a The principle of the best interest of the child is provided by the article three of the CRC and the article four of the ACRWC.

57^a UNICEF, *supra* note 4, p.42.

58^a Sharon Detrick, *A commentary on the United Nations Convention on the Rights of the Child* (Kluwer Law International, The Hague, 1999), p. 89.

59^a UNICEF, *supra* note, pp.41-42.

*“Emphasizes that governments and public and private bodies must ascertain the impact on children of their actions, in order to ensure that the best interests of the child are a primary consideration.”*⁶⁰

However, the ACRWC and the CRC give a different scope to the principle of the best interest of the child. The ACRWC states that the best interest of the child should act as an umbrella for all the actions taken regarding the child, while the CRC does only states that it is a primary consideration. Hence the ACRWC goes further than the CRC when considering the scope of the best interest of the child.⁶¹

The principle of the best interest of the child shall be applied by taking into account the child's right to participation to decision-making. Indeed, the Committee on the Rights of the Child, stating on the CRC, published a General Comment on the right of the child to be heard which states that:

*“There is no tension between the articles 3 and 12, only a complementary role of the two general principles: one establishes the objective of achieving the best interests of the child and the other provides the methodology for reaching the goal of hearing either the child or the children (...) article 2 reinforces the functionality of article 12.”*⁶²

The right to participation does not include a self-determination approach but does make the child be an active subject of rights. As stated by the UNHCR:

*“Although vulnerable, children are also a resource with much to offer. The potential contributions of children must not be overlooked. They are people in their own rights, with suggestions, opinions and abilities to participate in decisions and activities that affect their lives.”*⁶³

The principles represent the *essence* of the protection as they shall always be taken into consideration in the decision-making process for the protection of UAM refugees.

2.4 Remarks on International Law and Unaccompanied Minor Refugees

To conclude on international law and unaccompanied minor refugees and end chapter two, it shall be noted that even though UAM refugees do not meet any specific definition under international refugee law, it is clear that their needs are taken into account by the international instruments.

⁶⁰ UNICEF, *supra* note 4, p.41.

⁶¹ Julia Sloth-Nielsen, *supra* note 27, pp.36-37.

⁶² Committee on the Rights of the Child, *General Comment no.12, the right of the child to be heard* (2009), para.74.

⁶³ UNHCR, *supra* note 8, p.171.

However, none shall be under the perception that UAM refugees are only subject of rights. They are also actors of human rights. They are not only passive, but also active.⁶⁴ Consequently, the provisions acknowledge their specificities and call for enforcement by States.

UAM refugees are vulnerable but strong children. They survived traumatic events and a journey to the country of refuge that may be very hard to undertake. They are confronted to many risks, different forms of exploitation and degrading treatments in the country of refuge, but their capacity to adapt and be part of a new society shall not be forgotten. More than adults, children are easily getting adapted to situations they never met before. However, that may also constitute vulnerability because of naïveté.⁶⁵

International law protects UAM refugees; the scope of the protection is broadened by the principle of non-discrimination. However, the enforcement of UAM refugees' rights is not following an easy path. Indeed, States are generally not considering their needs because of different factors that will be exposed in Chapter four of the thesis.

The thesis, after having introduced the human right framework for the protection of UAM refugee, will move on to the international provisions on identity rights in order to describe them and determine their impact on the protection of UAM refugees.

⁶⁴ *Ibid.*

⁶⁵ Information obtained when being an UNHCR intern from 1 March 2010 to 31 August 2010 in Rabat (Morocco).

3 International Law and Identity Rights

The chapter three aims to introduce identity rights. It will first provide the relevant international norms falling under that scope before determining that those provisions are building up an independent category of rights under international law. The thesis is supporting the concept that identity rights are a mean to achieve the enforcement of the human right framework presented in the chapter two. Arguments and analysis will then be given to support this approach.

3.1 *International Refugee Law and Identity Rights*

International refuge law is providing identity rights for the protection of refugees, including UAM refugees. The following sub-chapters will provide the relevant articles and their scope of application.

3.1.1 The 1951 Convention and its 1967 Additional Protocol relating to the Status of Refugees

Two articles of the 1951 Convention are relevant for identity rights.

Article 27 of the 1951 Convention states that:

“The contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document”.

Every refugee who does not have a valid travel document is entitled to get an identity paper in the country of refuge.

The type of identity document is not specified, neither its value; it is left to the discretion of the State. However, the meaning of the article is not creating any doubt about the right to access this document for any refuge who is missing a travel document, i.e. a document from the country of origin.

Article 28 of the 1951 Convention does provide for refugees an access to travel documents:

“The contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory unless compelling reasons of national security or public order otherwise require (...). The contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain travel document from the country of their lawful residence.”

Travel document is an identity paper since it assesses the identity of the person; prove a registration and a legal existence of the person in the country of refuge.

However, the article 28 concerns the situation where the refugee is moving from one country to another. In practice, this possibility is limited for refugees because of economic reasons and the

difficult access to visas. ⁶⁶ The access to travel document is part of identity rights but for the purpose of this thesis, focus is on the situation of UAM refugees in the country of refuge, and not on the possibility to travel to another State that is not the one of refuge.

The provisions of articles 27 and 28 do impose an obligation on the State to issue identity and travel documents for refugees. The access to identity document is a way to restore the link between the State and the individual who is not a citizen of this State.

Furthermore, the facilitation of naturalization is also included in the 1951 Convention. Article 34 states that:

“The contracting States shall as far as possible facilitate the assimilation and naturalization of refugees (...).”

James C Hathaway, as a durable solution, presents naturalization for the refugee. According to the UNHCR policy, the three durable solutions existing are voluntary repatriation, integration in the country of refuge and resettlement. Hathaway argues that naturalization includes all the rights set forth and the 1951 Convention, completed by an equal access to the political life of the country.⁶⁷

However, a refugee is not a stateless person. He/she lacks protection and has a well-founded fear of persecution in the country of origin but there is no denial of the citizenship. In the case of unaccompanied minor refugees, naturalization may also create a breach of the provision on the preservation of the child's identity⁶⁸ and background. However, the procedure is possible in some countries like Cameroon where the naturalisation process is not easy but may be started if the unaccompanied minor refugee is willing to⁶⁹.

However, Guy Goodwin-Gill makes clear that:

“A refugee movement necessarily has an international dimension, but neither general international law nor treaty obliges any State to accord durable solutions. Some consider such a development undesirable, as tending to relieve the country of origin of its responsibility to establish the conditions permitting return, while also 'institutionalizing' exile at the expense of human rights.”⁷⁰

The 1951 Convention and its 1967 Additional Protocol provide an access to identity document, travel papers and naturalization for the refugee. Those elements are obligations for States which

⁶⁶ Information obtained when being an UNHCR intern from 1 March 2010 to 31 August 2010 in Rabat (Morocco).

⁶⁷ James C. Hathaway, *The rights of refugees under international law* (Cambridge University Press, Cambridge, 2005), p.977.

⁶⁸ See article eight of the CRC, exposed in 3.2.1

⁶⁹ Information given by a staff of the UNHCR office in Yaoundé, Cameroon (Protection Unit).

⁷⁰ Guy S. Goodwin-Gill, *The refugee in international law* (Oxford University Press, New York, 2nd Edition, 1996), p.268.

ratified the convention, and shall be regarded as essential elements for the protection of the refugee.

3.1.2 The 1969 OAU Convention governing the Specific Aspects of Refugee Problems in Africa

Article six of the OAU Convention provides in its paragraph one that:

“The contracting States shall issue to refugees lawfully staying in their territory travel documents (...) for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require. Member States may issue such a travel document to any other refugee in their territory.”

The wording is almost similar to the article 28 of the 1951 Convention.

The issuing of travel document in case of resettlement from one African State to another (paragraph two) and in case of international agreement (paragraph three) is also integrated in the OAU Convention.

The same comments that have been made for the article 28 of the 1951 Convention are applicable for the article six of the OAU Convention. The lack of money and the difficult access to visas are in practice being prejudicial for refugees.

Moreover, article 2(1) of the OAU Convention states that:

“Members States of the OAU shall use their best endeavours consistent with their respective legislations to receive refugees and to secure the settlement of those refugees (...).”

The limit is found in the words “best endeavours” as this standard is not imposing any minimum for States. The State obligation under the 1969 OAU Convention is not as important as under the 1951 Convention because of this provision that puts the possibilities into the hands of States rather than imposing an international human rights standard.

The OAU Convention has a limited scope of application on identity rights since it only provides the access to travel documents, and does not focus on the conditions of stay in the country of origin through identity papers, contrary to the 1951 Convention.

3.2 *International Children Law and Identity Rights*

International children law is also providing identity rights for the protection of UAM refugees. The following sub-chapters will present and analyse the relevant articles and their scope of application.

3.2.1 The Convention on the Rights of the Child (1989)

The Convention on the Rights of the Child does include two provisions on identity rights.

3.2.1.1 Article 7(1) of the CRC: birth registration, name, nationality and family life

Article 7(1) is relative to the registration of the child by stating that:

“The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared by his or her parents.”

The provision first concerns the registration of the child when he/she was born. In the case of refugees, it may be useful in case of birth in the country of refuge. Indeed, the birth registration will permit a proper identification of the child who hence has a recognized existence. It furthermore protects and preserves the different elements constituting the identity of the child.⁷¹

The meaning of the immediate registration does not refer to any time limit but shall be interpreted as a ‘reasonable time’ since the registration aims to prevent prejudices and provide protection by the State.⁷²

Ineta Ziemele states that:

“In view of the vulnerability of children and the special protection that they are entitled to as a result, the State not only has the obligation to establish a legal framework that allows for the registration of a child after the birth, but it also has to actively ensure that children are registered, since it helps to provide their security and guarantees the enjoyment of other rights.”⁷³

However, birth registration in the country of refuge is not an issue that is central because of the pre-existence of the acquisition of the registration in the country of origin, except if the child was born in the country of refuge and ends up as an UAM after the parents died. Somebody may only be registered once. The main problem will be the identity proof if no birth certificate was issued in the country of origin or if the child does not possess this document anymore.

Furthermore, the right to a name and a nationality are provided by the article 7(1) of the CRC.

The right to a name permits the identification of the child within the society⁷⁴ and is described by Ineta Ziemele as being:

71 Ineta Ziemele, “Article 7: the right to birth registration, name and nationality, and the right to know and being cared for by parents”, in: A. Alen, J. Vande Lanotte, E. Verhellen, F. Ang, E. Berghmans and M. Verheyde (Eds.) *A commentary on the United Nations Convention on the Rights of the Child* (Martinus Nijhoff Publishers, Leiden, 2007), p.21.

72" *Ibid.*, p.8.

73" *Ibid.*, p.9

74" *Ibid.*, p.23.

“Not simply an attribute of the registration of the child. It is an autonomous right that is closely linked to the identity and culture of the person concerned”⁷⁵

The right to acquire a nationality in the CRC leaves to States the ruling of the attribution of it as long as it respects the international convention⁷⁶ since ‘the granting of nationality to children is not a matter that falls exclusively within the domestic affairs of States.’⁷⁷

The right to know and being cared by his or her parents defends the idea that the ‘family is the best environment for children’.⁷⁸ In that sense, the impact on UAM refugee is that family reunification should legally be the best effective solution. However, as stated in Chapter two, this may not be in the best interest of the child.⁷⁹

It shall be noted that the provisions of the article 7(1) of the CRC have been integrated within soft law instruments developed by international organizations for the protection of UAM refugees.

The UNHCR Guidelines on protection and care of refugee children states that:

“Birth registration is essential to enable date and place of birth to be conclusively established, thereby activating certain rights, including those rights which are dependent upon nationality and personal status. Those basic human rights can be violated in refugee situations unless particular attention is given to ensuring the proper documentation of children.”⁸⁰

Similarly, the Inter-Agency Guiding Principles on unaccompanied and separated children also contain a reference to birth registration by noting that:

“Many children are registered later in life, such as when they enroll in school. This leaves many children without proper birth registration at the time they are separated from their family. The implications are serious, since a birth certificate is needed for a number of services and offers a degree of legal protection”.⁸¹

To conclude on article 7(1) of the CRC, it shall be noted that this provision is very similar to the article 24(2) and 24(3) of the International Covenant on Civil and Political Rights (ICCPR). The ICCPR provides a right to birth registration, to a name and to acquire a nationality. Therefore, the article 7(1) of the CRC shall not be seen as an exception or particularity in the body of human rights’ norms.

⁷⁵ *Ibid*, p.11.

⁷⁶ The article 7(2) of the CRC states that ‘States parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.’

⁷⁷ Ineta Ziemele, *supra* note 71, p.25.

⁷⁸ *Ibid*, p.26.

⁷⁹ For further information, see *supra* Chapter two, 2.2.1.1

⁸⁰ UNHCR, *supra* note 8, pp.103-104.

⁸¹ Inter Agency Guiding Principles on Unaccompanied and Separated Children (January 2004), p.27.

3.2.1.2 Article 8 of the CRC: preservation of identity

Contrary to article 7(1) of the CRC, article 8 of the CRC is a unique international human rights provision.⁸²

Article 8 of the CRC states that:

“1. States Parties undertake to respect the rights of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, State Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.”

The former Chairperson of the UN Committee on the Rights of the Child, Jaap Doek, after having referred to provisions on the right to birth registration, notes that:

“None of these articles mentions the identity as such nor do they indicate what important components of a person’s identity are. A birth certificate may be an important tool for somebody’s identification but the concept of identity does beyond the (non)issuance of a birth certificate.”⁸³

Article 8 of the CRC was drafted by the representants of Argentina. The historical reasons behind the proposal are linked to the disappearances, kidnappings and identity modifications of children by the Argentinean authorities under the dictatorship regime (1970’s-1980) in order to resettle them in a childless family.⁸⁴

However, the *travaux préparatoires* of the CRC state that the article 8 of the Convention does not concern the deprivation of family environment due to the crossing of a border.⁸⁵ This indication would exclude UAM refugee from the scope of the provision.

Jaap Doek in its commentary of the article 8 of the CRC stated that ‘the Convention is a living instrument and its interpretation should reflect new developments that may arise in the area of children’s rights.’⁸⁶ Consequently and according to this sentence, article 8 of the CRC should not be strictly interpreted by only having regards for the *travaux préparatoires*, but as an international instrument for children in need of protection that may be adapted and extended to necessary measures.

Therefore, the preservation of the identity of UAM refugees shall be integrated within the scope of the article 8 of the CRC, and implemented by States because of the need for this category of

82 Jaap Doek, “Article 8: The Right to Preservation of Identity, and Article 9: The Right Not to Be Separated from His or Her Parents”, in: A. Alen, J. Vande Lanotte, E. Verhellen, F. Ang, E. Berghmans and M. Verheyde (Eds.) *A commentary on the United Nations Convention on the Rights of the Child* (Martinus Nijhoff Publishers, Leiden, 2007), p.5.

83” *Ibid*, p.5.

84” *Ibid*, pp.7-8.

85” *Ibid*, p.9.

86” *Ibid*, p.3.

children to see their identity preserved. It definitely corresponds to a need of protection since crossing border and leaving a family environment may damage the identity of the UAM refugee.

The preservation of the identity of a refugee child is important in order to ensure that a proper protection is implemented. The right to preserve his/her nationality, name and family relations for an UAM refugee focuses on the origin of the child, his/her background and history. The identity of the UAM refugee was given when he/she was born and in order to ensure continuity in the person's life, it is necessary to enforce this provision in the country of refuge. The issue of proving the identity, aiming to preserve it, shall be more flexible for children as they may not know some information. Birth location and address, full names of the parents, or even birth dates are data they may not have. The burden of proof on the identity of the child remains on the individual but credibility shall be given to the statements of the child, and ensure that every policy put into practice for his/her protection is taking into account the preservation of the identity of the UAM child.

International soft law norms integrate the preservation of identity for UAM refugee under the Inter-Agency Guiding Principles on unaccompanied and separated children. The Inter-Agency Guiding Principles state that:

“There is a risk of the child losing his/her identity and being given a new name. (...) The child identity, including nationality as well as the identity of his or her family must be recorded and preserved. (...) A new identity should be established only as a last resort.”⁸⁷

The soft law norm integrates the content of the article 8 of the CRC and is extending the limit of the establishment of a new identity for the UAM child as a last possibility.

3.2.2 The African Charter on the Rights and Welfare of the Child (1990)

The ACRWC does include one provision on identity rights.

Article 6 of the ACRWC states that:

*“1. Every child shall have the right from his birth to a name.
2. Every child shall be registered immediately after birth.
3. Every child has the right to acquire a nationality.
4. States Parties to the present Chapter shall undertake to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.”*

The content of the article is also similar to the article 7(1) of the CRC; consequently the same interpretation and scope of application can be applied.

⁸⁷Inter Agency Guiding Principles, *supra* note 81, p.27.

However, the ACRWC does not include a provision for the protection of the identity of the child that is, already presented as being a specificity of the CRC.

3.3 *Defining Identity Rights as an Independent Category of Rights*

The thesis is taking the position that the enforcement of identity rights, as an independent category of rights under international human rights law, will lead to the implementation of the human rights framework protecting UAM refugees.⁸⁸

Identity can briefly be defined as:

“the subject feeling of continuously being the same person and there seems to be a consensus that identity is a concept that develops in the course of the child’s development and that there are different age-related stages in that development.”⁸⁹

According to this definition, childhood is the time when the identity is built through different stages of evolution. Therefore the development of identity rights is corresponding to the need to protect the child as an ‘adult under construction’, vulnerable to the destruction of this element of the human being.

Identity rights may easily be falling under the scope of civil and political rights. It is true that under the international human rights law conventions, identity rights are usually not specified as an independent category.

The right to acquire a nationality is provided by the Universal Declaration of Human Rights⁹⁰ and the International Covenant on Civil and Political Rights includes the right to birth registration, name and nationality.⁹¹

However, at the regional level in Africa, the African Charter on Human and People's Rights does not integrate a single provision on identity.

International human rights law seems to be reluctant to provide norms on identity rights even if the right to a nationality has been taking more and more importance in the last years. However, it is still generally considered that issues such as nationality and citizenship are not a concern for

⁸⁸ The human rights framework for the protection of UAM refugees was presented in Chapter two of the thesis.

⁸⁹ Jaap Doek, *supra* note 82, pp.10-11.

⁹⁰ Article 15 of the UDHR (1948):

'1. Everyone has a right to nationality.

2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.'

⁹¹ Article 24 of the ICCPR (1966) :

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right

to acquire a nationality.

international law since it is a part of the State sovereignty.⁹² Furthermore, if a treaty is integrating a provision on nationality, there is still no obligation for the State to grant a nationality to a child⁹³.

Citizenship has been referred as being the right to have rights⁹⁴ but this concept is today seen as narrow. The link between the enforcement of human rights and a presence on any State's territory is not only limited to citizenship. Indeed, there is an increasing importance given to the status of residence⁹⁵. The access to any type of identity document (e.g. in the country of refuge) is a way to restore a link between the State and the individual who is not a citizen of this State.

One of the reasons is the process of globalization.⁹⁶ Another one is the growing infiltration of human rights in various legal issues. Human rights are including every person but the right to nationality and citizenship involves a dynamic of inclusion and exclusion.⁹⁷ Indeed, identity papers based on citizenship are given to some persons and not others, issued on criteria delimited by the State, leads to this dynamic. This dynamic is breaking down through the access to other types of document as part of identity right and the increasing inclusion of persons, even if States still try to limit it through different policies, especially on migration.

For refugees, there is a need for securities, such as the protection from *refoulement* and abuses, and for work, healthcare, education and housing. Identity rights may be ensuring this protection, especially for vulnerable persons such as UAM refugees. Identity rights are the new scope of the 'right to have right' for them, not only limited to the right to nationality.

To resume the content of identity rights for UAM refugees, it includes the access to identity documents (and travel documents) in the country of refuge, the right to be naturalized, the right to birth registration, a name and acquire a nationality, and the right to preserve his/her identity. This last provision is not limited by the elements given by article 8 of the CRC as it is a non-exhaustive list.⁹⁸

Going back to the content of identity rights, provisions in international refugee law and international children law presented *supra* can be analyzed by chronological steps to give an overview of this independent category of rights.

As already stated travel documents are part of identity rights but are not integrated here⁹⁹ because the study focuses on the living conditions of UAM refugees in the country of refuge and the improvement of the enforcement of the human rights framework they are entitled to.

92" Yaffa Zilbershats, *The Human Right to Citizenship* (Transnational Publishers, New York, 2002), p.8

93" *Ibid.*, p.18.

94" *Ibid.*, p.63.

95" Paulina Tambakaki, *Human rights or citizenship?* (Birkbeck Law Press, New York, 2010), p.22.

96" Yaffa Zilbershats, *supra* note 92, p.167.

97" Paulina Tambakaki, *supra* note 95, p.6.

98" Jaap Doek, *supra* note 82, p.11.

99" For further information, see Chapter three, 3.1.1

The first step is the right to birth registration, right to a name and right to a nationality. This is the beginning of the protection of the identity of the person by ensuring that this identity is properly given to the child. Birth registration is not only an administrative process¹⁰⁰, it also secures the children's rights in the country of origin and gives him/her a legal existence and prevent abuses. This provision is generally enforced in the country of origin but may be valid in the country of refugee if also the country of birth of the child and that the parent(s) die(s) after this event.

The second step comes in the country of refugee. There is an obligation for the hosting State to issue identity documents to any refugee. This provision ensures that refugees will be given identity papers, but the form and role of this document is not acknowledged, the State sovereignty having here a central position in the decision-making on that aspect.

The third step is the naturalization of the refugee. The access to a new nationality in the country of refuge is also a part of identity rights.

Furthermore, the right for the refugee child to preserve his/her identity is a key-element. From the moment that the identity is given to the child, it shall be preserved because it is a tool for his/her protection. Indeed, if any change is made in the identity of the child, it leads to a significant risk of abuses and exploitation. Changing a child's identity may be a way to subject him/her to trafficking, to domestic work or forced prostitution.

Arguing for identity rights as a specific category of rights is valid for the protection of UAM refugees but their scope shall not be limited to it. Identity rights are an independent category of human right because they correspond to a need of protection; they fill a gap in the international human rights framework, not only for UAM refugees, not only for refugees in general but for every human being.

The thesis is focusing on the enforcement of identity rights, leading to the enforcement of the human rights framework. Indeed, if States do enforce their obligations on identity documents, the implementation of the protection shall follow. The recognition of a status, through birth registration, the issue of documents and the respect for the child's identity, would facilitate the protection of refugees, and decrease the vulnerability of UAM refugees in a context that is today very difficult in almost, if not all, the African States.

100" UNICEF, *Child protection information sheets* (May 2006), p.13, <http://www.unicef.org/publications/files/Child_Protection_Information_Sheets.pdf>, visited on 19 May 2011.

4 African States, Unaccompanied Minor Refugees and Identity Rights

After having introduced the human rights framework for the protection of UAM refugees in the Chapter two and demonstrates the existence of identity rights under international law in Chapter three, Chapter four is focusing on practices. The aim of Chapter four is to check if the theory of the thesis is valid; that identity rights lead to the implementation of the whole human rights body UAM refugees are entitled to.

The role of identity rights is analyzed before presenting case studies on three African countries, Cameroon, Chad and Kenya (Nairobi).

4.1 *Identity Rights in the Country of Origin, on the Migration route and in the Country of Refuge*

55 percent of children under five years old are not registered in Sub-Saharan Africa.¹⁰¹ Birth registration is generally not properly enforced. The UNHCR Guidelines on protection and care of refugee children do state that:

*“A refugee's birth might never have been registered, or identity documents never issued. Identity papers are sometimes lost, forged, or destroyed. Even when the papers are in order, authorities might question their validity.”*¹⁰²

If the child has an identity document in the country of origin, it is also very possible that this document is not possessed by the minor once in the country of refuge. It can be because the reasons of the flight did not let the child take his/her personal belongings, because the document was lost during the migration journey or even sold, if not taken away by force by smugglers or other agents. Indeed, it is common that migrants and refugees exchange their identity document against money or pay for identity paper that do not belong to them to cross border or assess their own security. There is a huge 'paper traffic' on the migration roads.¹⁰³

James C. Hathaway notes that:

“Refugees often arrive without a passport from their country of origin, either because they were incapable of (safely) securing that document before departure, or because its destruction was effectively compelled to avoid visa controls, carrier sanctions, or other impediments to their escape and entry into an asylum State. Even once in the asylum country, refugees are not free to apply for a passport from the

101" *Ibid.*

102" UNHCR, *supra* note 8, p.102.

103" Information obtained when being an UNHCR intern from 1 March 2010 to 31 August 2010 in Rabat (Morocco).

consular authorities of their country of origin, since they do risks the cessation of their refugee status in accordance with Art. 1(C)(1) of the Convention."¹⁰⁴

It is rare that children do have an identification document when arriving in the country of refuge. In Cameroon, some unaccompanied minor refugees do come with a school registration card or a baptism certificate.¹⁰⁵ The border control may not be as strict for children as it is for adults like it seems to be the situation in Chad, so the child can cross borders without any identification document.¹⁰⁶

States of refuge are the entities responsible to frame a legal status and safeguard a protection for refugees, including UAM. However, as stated by Guy S. Goodwin-Gill:

*"Today many States want the United Nations to assume responsibilities for a broad category of persons obliged to flee their countries for a variety of reasons."*¹⁰⁷

The implementation of identity rights calls for an active action of States of refuge. However the role of the UNHCR is generally supplanting the State's failure to protect refugees and offer protection, as described in the next sub-chapter.

The refugee card is generally playing the role of identity document for many refugees.¹⁰⁸ In Cameroon and Chad, the refugee card is given by the UNHCR and is an identity document.¹⁰⁹ In this context, is the refugee card a main part of identity rights? And if so, does it fill all the requirements that international law provides on identity rights?

The UAM refugee gets a refugee card when obtaining his/her status in the country of refuge. The card assesses the registration of the person as stated by the refugee to the authorities, and aims to protect this given identity through the refugee card. In that sense, the refugee card is part of identity rights; it aims to provide an identity document and preserve the identity of the child.

Nevertheless, the impact of the refugee card may be limited because handled by the UNHCR offices and not the State authorities. In that case, it is generally happening that refugees should access a residence permit in the country of refuge in order to see their rights fulfilled.

As an illustration, in Cameroon, the procedure for a residence permit is accessible to any foreigners resident in the country, but only few refugees have a residence card as it is generally not given to them because the domestic law on refugees is not enforced and their status lacks recognition by the

104" James C. Hathaway, *supra* note 67, p.841.

105 Information given by a staff of the UNHCR office in Yaoundé, Cameroon (Protection Unit).

106" Information given by the UNHCR Child Protection Officer in Chad.

107" Guy S. Goodwin-Gill, *supra* note 70, p.213.

108" Information obtained when being an UNHCR intern from 1 March 2010 to 31 August 2010 in Rabat (Morocco).

109" Information given by the indicators *supra*.

authorities.¹¹⁰ But in Chad, there is no access to a residence permit as there is no efficient procedure before the authorities for obtaining the document.¹¹¹ National legislations are various on that aspect.

Therefore, in this context, it is necessary to determine whether this card is enough for the refugee to live in dignity in the country of refuge and what is the role of the State to ensure the enforcement of identity rights.

The consequences of the findings on the protection of UAM may be multiple. The unaccompanied minor refugee may be arrested by the authorities and be under a threat of *refoulement*, which can have important impact, both physically but also psychologically for the person under 18-year-old. It also limits the access to other facilities such as schools or health centres. It would mean that the UAM child does have to access informal services that are not enough for his/her development and represent a risk for abuses and exploitation. Indeed, if an unaccompanied child is noticed to be lacking protection, smugglers, traffickers or the child's own community may try to make use of this situation.¹¹²

The informality of access to services also means that informal sources of income are existing. For unaccompanied girls, being involved in survival sex is a common way to get incomes to pay a rent and/or food; e.g., the access to school may be a way to protect the child since it involves both an education and integration in the country of refuge.

The situations differ according to the country of refuge and illustrations shall be done in order to assess the importance and impact in African States.

4.2 Case studies on Country of Refuge

Taking the examples of Cameroon, Chad and Kenya (Nairobi), the situation of refugees is analyzed. The three countries were chosen because they all have a different systems and various legislations for the protection of UAM refugees, even though they are all State parties to the 1951 Convention, the OAU Convention, the CRC and the ACRWC.

This presentation does not aim to generalize the situations in the African States but is an illustration of the current situation and gives key-elements for the study.

4.2.1 Cameroon

The country is hosting 104 000 refugees mainly from Central African Republic.

The law 2005/006 on the status of refugees in Cameroon was adopted by the *Assemblée Nationale* on 27 July 2005. This law states that every person who obtains the refugee status shall get a refugee

¹¹⁰ Information given by a staff of the UNHCR office in Yaoundé, Cameroon (Protection Unit).

¹¹¹ Information given by the UNHCR Child Protection Officer in Chad.

¹¹² Information obtained when being an UNHCR intern from 1 March 2010 to 31 August 2010 in Rabat (Morocco).

card, the validity of which is determined by decree, and that the persons who obtained the refugee status through the UNHCR before the entry into force of the law will keep this status.

But the decree was not been published and the law has not entered into force yet. Therefore the UNHCR is still in charge of the refugee status determination, handling refugee cards and protecting refugees present on the Cameroonian territory. The UNHCR office is located in Yaoundé, the capital of the country. The refugee card delivered by the UNHCR is valid for five years.¹¹³

The present data concerns urban refugees (there is only one refugee camp in the country). The percentage of UAM refugees within them is very small, around 0.4 percent.¹¹⁴ Most of the refugees obtained the status under the extended mandate.¹¹⁵ Many children refugees ran away from the situation of generalized violence in Central African Republic and lost contact with their parents in these circumstances. It seems that sometimes parents asked the children to leave the country for their own safety.¹¹⁶

The access to residence permit is possible in Cameroon, as stated by the law 2005/006. But since the law is not enforced the access to this document is in practice limited for refugees. In consequence, companies close their doors to refugees because of the non possession of the document and banks do refuse to open bank accounts. Refugees usually work in the informal sector. Men are employed as cobblers or tailors but non-educated men can only beg for money as a source of income. Women are more vulnerable, especially when coming alone to Cameroon. Many of them do recourse to prostitution, and are confronted to violence.¹¹⁷

The refugee card gives access to health services through the partners of the UNHCR. But refugees state that nurses and doctors do not take into consideration their needs and give priority to Cameroonians when the refugee card is showed; some doctors also added that they are not working for refugees.¹¹⁸ Malnutrition is common for children under-five and pregnant women, and health services for urban refugees too limited.¹¹⁹

Children can access school but it was noticed that many refugees have a problem of being included within schools because of the level of languages. Indeed, children may have been studying in their

113 Information given by the Association des réfugiés sans frontières.

114 Information given by a staff of the UNHCR office in Yaounde, Cameroon (Protection Unit).

115 *Ibid.*

116 *Ibid.*

117 C. Kouétcha, 'L'univers précaire des réfugiés au Cameroun', *Le quotidien du jour*, 29 July 2010, <<http://www.quotidienlejour.com/pointe-du-jour-2911-lunivers-precaire-des-refugies-au-cameroun?showall=1>>, visited on 17 May 2011.

118 *Ibid.*

119 UNHCR website- Cameroon, <<http://www.unhcr.fr/cgi-bin/texis/vtx/page?page=4aae621d54d>>, visited on 17 May 2011.

mother tongue in the country of origin, and they do not have the required level of French and/or English to be able to follow classes; Cameroon being a bilingual country.¹²⁰ It limits the access to knowledge.

Finding an accommodation is not a problem, even though it can be insalubrious; as long as the refugee has money to pay the rent, no document is asked by the landlord¹²¹. But the access to drinking water is generally not ensured in those rooms. As stated by the UNHCR office, most of the refugees do need a housing assistance¹²².

Nevertheless, the refugee card protects from *refoulement* when showed to the authorities. The phenomenon of abused arrests of refugees decreased through the development of information for police officers¹²³.

Regarding the protection of UAM refugees in Cameroon,¹²⁴ the UNHCR office in Yaoundé has started to develop projects. The majority of those children are hosted by their community and do not go to school after the primary level of education. The UNHCR office does not have a person who is responsible to determine the best interest of the children and UAM refugees are generally not consulted about the choice of their living place. Moreover it is impossible to check if they do benefit from the UNHCR financial assistance since it is directly given to the hosting family.

For each UAM refugee, a Tracing procedure is launched if possible, in order to facilitate family reunification¹²⁵. But the information on the child is not always used properly because of the absence of a reference person to ensure the protection and best interest of the child. Voluntary repatriation is commonly accepted as the best durable solution for the UAM refugee.¹²⁶

UAM refugees do obtain the refugee status through an accelerate process and benefit from a financial assistance given by the UNHCR. But this assistance is not enough to cover all their needs and UAM refugees are exposed to exploitation and abuses in order to get an income.¹²⁷

120 Honoré Mimche, Dorothée Kom, Félicien Fomekon, Vivien Meli Meli, *Le droit à l'éducation : quelles effectivités pour les réfugiés au Cameroun?* (Mars 2006), <<http://www.rocare.org/Mimche.pdf>>, visited on 17 May 2011.

121" Information given by a staff of the UNHCR office in Yaounde, Cameroon (Protection Unit).

122" UNHCR, *supra* note 119.

123" *Ibid.*

124 UNHCR, *Renforcement des capacités locales dans le cadre de la protection de l'enfant*, <<http://www.unhcr.fr/4b30f7f0f.pdf>>, visited on 17 May 2011.

125" *Ibid.*

126" Information given by a staff of the UNHCR office in Yaounde, Cameroon (Protection Unit).

127" UNHCR, *supra* note 124.

The UNHCR has noticed that many UAM refugees are used by the hosting family as a mean to get more financial assistance and benefit from resettlement¹²⁸ if this durable solution was chosen for the child. Moreover, some children are hosted without any gender distinction, which exposed them to gender based violence.¹²⁹

The UNHCR refugee card as an identity document does not provide a proper protection for UAM refugees. The access to the human rights protection is limited and the needs of the children are not met nor their rights. The living conditions of refugees in Cameroon are not meeting a minimum standard respecting the dignity of the person and offering some protection. Furthermore, as stated by the Association des réfugiés sans frontière there is no specific protection policy for children refugees, neither UAM refugees in the country, and no identity document delivered by the State authorities¹³⁰.

The UNHCR refugee card is not a document giving a valid status to refugees in the host country. The non-enforcement of the law 2005/006 by the Cameroonian authorities leads to a lack of status for the refugees. There is no identity rights implemented in the country; the State does not fill its obligation under international human rights law.

4.2.2 Chad

The country is hosting 338 500 refugees in majority coming from Sudan. Less than one per cent of the total of refugees does live in an urban area, Ndjama, and more than 99 percent of refugees are in camps. Most of the refugees obtained the status under the extended mandate even if many persons coming from Darfur also have a well-founded fear of persecution on grounds of race and nationality¹³¹.

The protection of children living in the refugee camps is difficult to implement. The risks include military recruitment and sexual and gender based violence.

There are more than 20 refugee camps in Chad. In 2007, the Secretary General published a Report on children and armed conflict in Chad¹³². The Report includes preoccupations on recruitment of children by armed forces. It can be a forced recruitment if the armed forces are using torture for the child to join the forces, or a 'voluntary' decision as the forces call for revenge.

The Armée soudanaise de Libération (ASL) and the Mouvement pour la Justice et l'Égalité (MJE) are the two main entities recruiting children. The Report emphasizes that some refugees and local authorities are a party to those acts. The authorities of the refugee camps, the police and the

128" *Ibid.*

129" *Ibid.*

130 Information given by the Association des réfugiés sans frontières

131" Information given by the UNHCR Child Protection Officer in Chad.

132 Conseil de sécurité (S/2007/400), *Rapport du Secrétaire Général sur les enfants et les conflits armés au Tchad*, 3 juillet 2007.

international organizations, are not able to support the families in finding their children. Neither are generally the leaders of the refugee camps, mainly men¹³³.

Sexual and gender based violence is another issue regarding the protection of children living in a refugee camp. In 2010, 1020 cases of sexual violence were reported in the whole refugee camps, 45 percent of them were domestic violence, 19 percent were inflicted because of a pregnancy contracted outside of an official union or to girls having a non-socially accepted behavior, 13 percent were physical violence cases, 10 percent female genital mutilations, five percent were rapes and four percent were early marriages. The rest of the cases includes tentative of rape, forced unions and sexual slavery¹³⁴. But the number of reported cases is lower than the real number of violence cases because of stigmatization. In each camp, there is a procedure for the prevention of sexual and gender based violence, including a medical and psychological support for victims. However, stigmatization of victims is a recurrent problem.

Moreover girls may be forced to marry and get pregnant while they are very young. If they do not die when giving birth, it is not possible for them to go to school since they have to take care of their child¹³⁵.

Between October and December 2010, the UNHCR has analyzed the situations of refugees living in camps in Chad. It was determined that 10.6 percent of refugees are malnourished¹³⁶. Education and healthcare are accessible in the camps but the living conditions are very difficult. Resettlement of children refugees is generally the durable solution that is implemented.¹³⁷

UAM refugees are very exposed to forced recruitment and sexual gender based violence. Since the identification of those children is currently done by the UNHCR¹³⁸, as well as their registration, it is complicated to assess how their situation looks alike. Indeed, it is difficult to assess their needs and fulfill their rights if the children are not registered as unaccompanied. The development of policies is useless in that context.

In Chad the UNHCR is working for the protection of refugees in the camps. The Chadian government is not involved in the process and does not offer the possibility to access a residence

133 Refugee International, *Chad: protecting children from rebel recruitment* (24 June 2009), <<http://www.refugeesinternational.org/blog/chad-protect-children-rebel-recruitment>>, visited on 18 May 2011.

134" OCHA, *Tchad, bulletin d'information humanitaire*, February-March 2011, <<http://ochaonline.un.org/Default.aspx?alias=ochaonline.un.org/chad>>, visited on 17 May 2011.

135" UNICEF, *Ensuring a right to special protection for vulnerable child refugees in Chad*, <http://www.unicef.org/infobycountry/chad_50047.html>, visited on 18 May 2011.

136" OCHA, *supra* note 134.

137" Information given by the UNHCR Child Protection Officer in Chad.

138" Information given by the UNHCR Child Protection Officer in Chad.

permit in the country of refuge¹³⁹. Identity rights are not enforced by the authorities and the needs of refugees are not fulfilled.

The UNHCR refugee card is giving an access to the refugee camps but the living conditions are very hard in this type of environment. The Chadian State is not offering a proper recognition of the refugee status in the country even though it ratified international human rights law instruments.

4.2.3 Kenya: Nairobi

Kenya is hosting 359 000 refugees, mainly from Somalia, Ethiopia, Sudan and the Democratic Republic of Congo. The UNHCR is in charge of the refugee status determination in the country and is handling refugee cards.

Most of the refugees do live in refugee camps but some are staying in Nairobi,¹⁴⁰ due to factors such as security threats, lack of adequate education and medical services, limited livelihood opportunities and harsh climatic conditions¹⁴¹ in the camps. Women do argue that sexual violence and killings in the camps are reasons for moving to the Kenyan capital while men argue that economic reasons lead their choice¹⁴². Indeed, refugees living in the camps are not allowed to earn money and shall rely on the aid give by NGOs and international organizations¹⁴³.

Refugees are confronted to arbitrary arrests by the police and shall give money in order not to be detained, even when showing their refugee cards. Corruption is endemic in Kenya¹⁴⁴. Kenyans are also subjected to the payment of bribes but the amount of money is lower¹⁴⁵.

Refugees are usually employed in the capital, 21 percent are employed and 43 percent are self-employed, and earn enough money to survive, even if the salary they get is lower than what the work worths.¹⁴⁶ Refugees who are not able to earn a living in Nairobi quickly go back to the refugee

139" Information given by the UNHCR Child Protection Officer in Chad.

140" No official Information given by the UNHCR Child Protection Officer in Chad. or unofficial number of urban refugees living in Nairobi has been found.

141 Sara Pavanello *et al.*, *Hidden and exposed : Urban refugees in Nairobi, Kenya* (Working Paper, March 2010), <<http://www.rescue.org/urbanrefugees>>, visited on 19 May 2011.

142" *Ibid.*

143" *Ibid.*

144" See Transparency International Kenya, <<http://www.tikenya.org/>>, visited on 20 May 2011.

145" Sara Pavanello *et al.*, *supra* note 141.

146" *Ibid.*

camps¹⁴⁷. But 36 percent of refugees living in Nairobi depend on remittances from relatives living abroad¹⁴⁸.

Healthcare¹⁴⁹ is ensured in Nairobi but the services are limited. Indeed, refugees are generally asked to pay for the service as any foreigner, e.g. the price is doubled for medical care and treatments at the hospital. It seems that the UNHCR has stopped providing healthcare for pregnant women, except in one center so many refugees do give birth at home, and no birth certificate is issued¹⁵⁰.

Access to primary education is free for every child in Kenya, but it can happen that a bribe is asked to register the refugee child in the school. The cost of transport, books and clothes is a barrier for many refugees. Moreover, official documents are asked to access primary school, mainly a birth certificate¹⁵¹. However, secondary school is not free in Kenya; consequently, very few refugee children do attend it.

According to a report published by the UNHCR in January 2011¹⁵², the number of unaccompanied minor refugees is growing in Nairobi, traveling in trucks and working in private houses, restaurants and hotels in the Kenyan capital.

There is a hosting house for unaccompanied minor in Nairobi but the capacity of this place is very limited and only for girls. But generally, UAM refugees do ask for support from house to house and do count on the support of his/her community, which may be a problem for children from a minority group or having a mixed ethnicity¹⁵³.

Many girls are employed as domestic workers in houses and do live in slave-like conditions¹⁵⁴. They are very vulnerable and have often being trafficked from their country of origin or a refugee camp where they lived. They may be subjected to physical, mental and sexual abuses.

possibilities of integration', 19:3 *Journal of refugee studies* (2006).

148" Sara Pavanello *et al.*, *supra* note 141.

149" Sara Pavanello *et al.*, *supra* note 141.

150" Sara Pavanello *et al.*, *supra* note 141.

151" Sara Pavanello *et al.*, *supra* note 141.

152" UNHCR, Elizabeth H. Campbell *et al.*, *Navigating Nairobi: a review of the implementation of UNHCR's urban refugee policy in Kenya's capital city* (January 2011), <<http://www.unhcr.org/4d5511209.html>>, visited on 5 May 2011.

153" Sara Pavanello *et al.*, *supra* note 141.

154" Sara Pavanello *et al.*, *supra* note 141.

The NGO 'Heshima Kenya'¹⁵⁵ is supporting UAM refugees in Nairobi and works on their protection. It emphasizes that UAM refugees have a limited access to assistance in the capital and are generally confronted to extreme poverty. The quality of the existing foster care arrangement is very low and children are confronted to abusing situation in the institutions. The NGO states that there is negligence in the protection of UAM refugees in Nairobi even though the vulnerability of those children is important and that the high rate of illiteracy leads to limited possibility to achieve self-sufficiency. According to this NGO, there would 5 000 UAM refugees in Nairobi¹⁵⁶, which represent five percent of the refugee population of the Kenyan capital.

The report of the UNHCR from January 2011 acknowledges the need for identity document in Nairobi:

*“Documentation is often the foundation of protection for refugees residing in urban areas, and Nairobi is no exception in that respect. Refugees in the city who are able to demonstrate their identity and legal status are generally best placed to avoid arrest, detention, abuse and exploitation, and to gain access to schools, clinics and livelihoods opportunities.”*¹⁵⁷

In summer 2010, after the vote of the new constitution and the recognition of rights of persons protected under the UNHCR mandate, the Kenyan authorities have announced that official documents will be provided to all the refugees in Nairobi who are registered with the UNHCR. The aim was to provide documents to 85 percent of the refugee population within 90 days, but in October 2010, the result reached 35 percent¹⁵⁸.

The report adds that results are limited because:

*“Many refugees were sceptical of the government’s capacity and motivations in launching this initiative and consequently chose not to register. Some said that they did not see the value in having a government-issued identity card, given the ease with which such documents can be bought or counterfeited. According to these refugees, the police and other officials have more respect for a UNHCR document than one issued by the authorities. Some refugees stated that they were unwilling to wait in long queues and waste time when they could be working, while others feared that the exercise might be linked to relocation or repatriation.”*¹⁵⁹

The protection offered by the UNHCR for urban refugees living in Nairobi meets a minimum standard with difficulties. The Kenyan authorities took a step to enforce identity rights by giving to urban refugees the opportunity to get identity documents. But the lack of trust in the State's capacity to ensure the protection of those persons has led to a failed situation.

155"NGO Heshima Kenya: <<http://www.heshimakkenya.org/index.html>>, visited on 19 May 2011.

156" NGO Heshima Kenya, *Life as an unaccompanied young refugee in Nairobi*, <http://www.heshimakkenya.org/OtherDocuments/take-action_documents/Fact%20Sheet_UAM%20in%20Nairobi.pdf>, visited on 19 May 2011.

157" *Supra* note 152.

158" *Ibid.*

159" *Ibid.*

The enforcement of the State's obligation for the protection of refugees, including UAM refugees, starts in Kenya by identity rights but the importance and consequences of the implementation of this category of rights requires a mutual trust between the State and the refugees that was not met in Nairobi.

4.3 Countries of Refuge Analysis

Cameroon, Chad and Kenya ratified the 1951 Convention, the OAU Convention, the CRC and the ACRWC. However the study reveals that the situations are different in the countries but that the lack of policies for the protection of UAM refugees is very present in the three countries. They do face similar risks: exploitation, sexual and gender based violence, violence, poverty, discrimination.

In Chad, refugees do meet a very limited access to services and face important threats. The high number of refugees in the country compared to the whole Chadian population,¹⁶⁰ added to the political problems and the impact of the extract of oil in the country¹⁶¹ create a situation where refugees are very vulnerable. Refugee camps are not offering a proper protection to refugees. However the State did not take any step further to start implementing policies on refugees in Chad. The political instability of the country may be a reason, as well as the high number of refugees. UAM refugees are not registered as such and the lack of policies is important.

In Kenya, the recent political instability led to a change in the State policies on refugees living in Nairobi. Refugees usually live in the 'densely-popular low-income area of Nairobi'¹⁶² called Eastleigh. This area was developed by refugees, mainly from Somalia, through the opening of businesses and enterprises. Eastleigh was transformed in a competitive marketplace for communities.¹⁶³ This element may have influenced the decision of the Kenyan government to give identity documents to urban refugees since they proved their self-sufficiency. However the living costs remain important for refugees. Even if the situation of UAM refugees is acknowledged, the existing policies are very limited.

In Cameroon, the law 2005/006 was adopted but never enforced. Furthermore, refugees legally have the right to get a residence permit but the implementation of this right is very limited in practice. The daily opportunities are only dealt informally. It proves that the authorities tolerate the presence of refugees but do not want to acknowledge their rights, and the same situation applies to UAM refugees.

160 338 500 refugees for 10 million inhabitants in Chad.

161 Daniela Krosiak, 'Le gouvernement tchadien est tombé dans le piège pétrolier', *Rue 89*, 5 September 2009, <<http://www.rue89.com/2009/09/05/le-gouvernement-tchadien-est-tombe-dans-le-piege-petrolier>>, visited on 6 June 2011.

162" Elizabeth H. Campbell, *supra* note 147 .

163" *Ibid*.

The main similarity is that in the three countries, the UNHCR is in charge of the refugee status determination, and not the State authorities. It all goes back to the political willingness of the States to offer a proper protection to refugees and implement its legal obligations. There is a lack of involvement of the State to take in charge the protection of refugees and the enforcement of their rights. The fear of a magnet effect that would lead to increase the presence of refugees in the host country is very present.

4.4 Responding to the Needs of Unaccompanied Minor Refugees through Identity Rights

Unaccompanied minor refugees are vulnerable children. They do not have the protection that family members provide and are more sensitive to insecurities. When arriving in the country of refuge they need to develop methods of survival. It means that, very often, they need to work to earn money to pay an accommodation and some food. Solidarity within the community may be non-existent.

UAM refugees are being found in jails, prisons, public places, markets, on streets¹⁶⁴ or with a hosting family. It is necessary to ensure that they are properly registered to understand their needs and fulfill their rights and develop proper policies. It shall not be presumed that because a child is apparently staying with a family that it is a part of it, and not an UAM; he/she may be in a situation of exploitation.

Identity rights is a protection since the existence of UAM refugees is acknowledged in the country of refuge by the State authorities.

However, as demonstrate in the country analyses *supra*, the country of refuge is reluctant to provide that document. As the examples of Cameroon, Chad and Kenya demonstrate, three situations occur. The refugee cases are left the UNHCR competency (1) or the State can be on the way to implement a protection that may take years before enforcing a law /2) or the State is willing to handle the cases but the refugees are not confident into the State's capacity to provide a protection (3).

However, one can guess that other situations may occur in African States and those elements are only an illustration of the possible situations.

Accessing identity rights is not a simple process. However, if identity rights are properly enforced by States, the access to the human rights framework shall follow.

States generally argue that giving identity rights would create a 'pull-factor': more refugees will show up in order to access facilities. This is a magnet effect that will lead to create a burden for the State of refuge which does not have the financial and practical means to ensure the protection for a high number of refugees.

UAM refugees have medical and physical needs due the traumatic events they went through, and shall be protected in the country of refuge. But the State where refugee children are present may easily argue that since it is not in capacity to ensure the basic needs of its own population, including children, there is no possibility to enforce refugee rights and the protection of unaccompanied minor

164" Ressler *et al. supra* note 9, p.121.

refugees, and that if specific policies are implemented for refugees and not nationals, it would eventually breach the principle of non-discrimination that will not be balanced anymore.

However this argument is not valid since human rights shall be enforced for every individual with a minimum standard. I believe that if a State is willing to develop structures for the implementation of human rights, it will get support from the international community.

Responding to the needs of unaccompanied minor refugees is a difficult task in Africa. The access to identity document as a tool to improve the protection of unaccompanied minor refugees would have an important impact on the daily life of refugees in the hosting country.

Losing the track of a child's identity is endangering him/her. Provisions on identity rights are central and taking the approach of their implementation as a first step of the enforcement of a human rights framework for UAM refugees seem realistic. However, the capacity remains on the State of refuge. Therefore, as long as the State will be reluctant to put into place identity rights, the needs of UAM refugees will not be fulfilled.

5 Conclusion and Recommendations

5.1 Conclusion

States have obligations under international human rights law to protect UAM refugees from abuses, exploitation, diseases, discrimination and xenophobia. It is provided not only by the refugee conventions, but also the children conventions. Even though the provisions are binding, the lack of implementation remains very present.

The Report of the UN Secretary General on the General Assembly Resolution 58/150 on 'assistance to unaccompanied refugee minors' states that the remaining challenges include:

*“the lack of accountability for protection, security concerns for both refugees and staff, insufficient human and financial resources, discrimination towards girls, and in some instances lack of political will by States to implement or comply with international norms and standards”*¹⁶⁵

The research question on 'how can the effectiveness of the protection of UAM refugees present on the territory of any African State be improved through the recognition and enforcement of identity rights as provided by the international conventions' can be not answered by a single sentence. It involves not only the State's obligations, but also the State's capacity to ensure that the protection needs of UAM refugees are fulfilled.

The development of identity rights is not following an easy path. The international obligations do interfere with a competence of the State of refuge, and barriers are built by it to maintain a control on what is considered as being one of its three components, the population, and avoid a breach of another element, its sovereignty, by persons living on the third piece of the State, its territory.

In 1988, it was already noticed that:

*'Left on their own, unaccompanied children have usually survived by taking advantage of new opportunities. (...) they have often been taken into homes or services. Many, however, were not so fortunate as to find circumstances which met their needs and protected their rights as individuals.'*¹⁶⁶

23 years later, it is time for leaving the protection of UAM refugees outside of elements such as fortune and chance and move to the effective implementation of their rights.

On the year of the 60th anniversary of the 1951 Convention relating to the status of refugees, the vulnerability and needs of UAM refugees must become a priority that is not only set on paper.

¹⁶⁵ Report of the UN Secretary General on the General Assembly Resolution 58/150 *assistance to unaccompanied refugee minors* (2005), para. 73.

¹⁶⁶ Ressler, *et al.*, *supra* note 9, p.122.

5.2 *Recommendations*

1. UAM refugee shall be registered as soon as possible in the country of refuge and their identity rights shall be implemented. It includes the protection of the given identity in the country of origin (name and nationality). The preservation of the identity shall be regarded as an essential element in the issuing of identity document in the country of refuge. Even though the child may not be able to give detailed information, the authorities must give the benefice of the doubt and credibility to the statements of the child.
2. UNHCR plays a central role in advocating for refugees' rights. Therefore, it must keep its efforts to push for the implementation of the 1951 Convention and its 1967 Additional Protocol, especially about the provision on the access to identity documents.
3. African States that are parties to the CRC and the ACRWC shall monitor the effective implementation of the convention and apply the principle of non-discrimination.

Bibliography

International instruments

African Charter on the Rights and Welfare of the Child (1990)

Convention governing the specific aspects of refugee problems in Africa (1969)

International Covenant on Civil and Political Rights (1966)

United Nations Convention on the Rights of the Child (1989)

United Nations Convention relating to the Status of Refugees (1951) and Protocol relating to the Status of Refugees (1967)

Universal Declaration of Human Rights (1948)

Books

Alfred Nhema and Paul Tiyambe Zeleza, *The Roots of African Conflicts - the Causes and Costs* (Ossrea Edition, Addis Ababa, 2008)

Bronwen Manby, *Struggles for Citizenship in Africa* (Zed Books Ltd, New York-London, 2009)

Bruce Abramson, "Article 2: the Right of Non Discrimination", in: A. Alen, J. Vande Lanotte, E. Verhellen, F. Ang, E. Berghmans and M. Verheyde (Eds.) *A Commentary on the United Nations Convention on the Rights of the Child* (Martinus Nijhoff Publishers, Leiden, 2008)

Claire Breen, *The Standard of the Best Interest of the Child – A Western Tradition in International and Comparative Law* (Kluwer Law International, The Hague, 2002).

Eva Segerström, *Focus on Refugee Children: a Handbook for Training Field Refugee Workers in Social and Community Work*, (Rädda Barnen, Växjö, 1995)

Geraldine Van Bueren, *The International Law on the Rights of the Child* (Kluwer Law International, The Hague, 1998)

Gil Loescher *et al.*, *The United Nations High Commissioner for Refugees (UNHCR) - the Politics and Practice of Refugee Protection into the Twenty-first Century* (Routledge Global Institutions (2008)

Guy S. Goodwin-Gill, *The Refugee in International Law* (Oxford University Press, New York, 2nd Edition, 1996)

Heaven Crawley, *Refugee and Gender: Law and Process* (Jordan Editions 2001)

Howard Adelman and John Sorenson, *African Refugees: Development Aid and Repatriation* (Westview Press, Boulder-Oxford, 1994)

Ineta Ziemele, “Article 7: the Right to Birth Registration, Name and Nationality, and the Right to Know and Being Cared for by Parents”, in: A. Alen, J. Vande Lanotte, E. Verhellen, F. Ang, E. Berghmans and M. Verheyde (Eds.) *A Commentary on the United Nations Convention on the Rights of the Child* (Martinus Nijhoff Publishers, Leiden, 2007)

Jaap Doek, “Article 8: The Right to Preservation of Identity, and Article 9: The Right Not to Be Separated from His or Her Parents”, in: A. Alen, J. Vande Lanotte, E. Verhellen, F. Ang, E. Berghmans and M. Verheyde (Eds.) *A commentary on the United Nations Convention on the Rights of the Child* (Martinus Nijhoff Publishers, Leiden, 2007)

Jaap Doek *et al.*, *Children on the move – How to Implement their Right to Family Life* (Kluwer Law International, The Hague, 1996).

James C. Hathaway, *The Rights of Refugees under International Law* (Cambridge University Press, Cambridge, 2005)

Julia Sloth-Nielsen (ed.), *Children's rights in Africa: a Legal Perspective* (Ashgate Publishing Limited, Hampshire, 2008)

Manfred Nowak, *U.N. Covenant on Civil and Political Rights -CCPR Commentary* (N.P. Engel Publisher, Kehl, 2nd revised edition, 2005)

Nigel Cantwell and Anna Holzscheiter, “Article 20: Children Deprived of their Family Environment”, in: A. Alen, J. Vande Lanotte, E. Verhellen, F. Ang, E. Berghmans and M. Verheyde (Eds.) *A Commentary on the United Nations Convention on the Rights of the Child* (Martinus Nijhoff Publishers, Leiden, 2007)

Paulina Tambakaki, *Human rights or citizenship?* (Birkbeck Law Press, New York, 2010)

Ressler *et al.*, *Unaccompanied Children* (Oxford University Press, New York, 1988)

Sharon Detrick, *A Commentary on the United Nations Convention on the Rights of the Child* (Kluwer Law International, The Hague, 1999)

Stephen Castles and Alastair Davidson, *Citizenship and Migration – Globalization and the Politics of Belonging* (Palgrave, New York, 2000)

Wendy Ayotte, *Separated Children coming to Europe* (Save the Children, London, 2000)

Yaffa Zilbershats, *The Human Right to Citizenship* (Transnational Publishers, New York, 2002), p.8

United Nations Documents

Documents from the United Nations Headquarters

United Nations (UN) General Assembly Resolution 58/150 *assistance to unaccompanied minor refugees*, adopted by the General Assembly of the United Nations under the fifty-eight session of the Assembly

Report of the UN Secretary General on the General Assembly Resolution 58/150 *assistance to unaccompanied refugee minors* (2005)

Conseil de sécurité (S/2007/400), *Rapport du Secrétaire Général sur les enfants et les conflits armés au Tchad*, 3 juillet 2007

Documents from the United Nations High Commissioner for Refugees

UNHCR Resettlement Handbook (November 2004)

UNHCR website, webpage on Cameroon

UNHCR, *2009 Global Trend: refugees, asylum seekers, returnees, internally displaced and stateless persons* (June 2010)

UNHCR, Elizabeth H. Campbell *et al.*, *Navigating Nairobi: a review of the implementation of UNHCR's urban refugee policy in Kenya's capital city* (January 2011)

UNHCR, Evaluation and policy analysis Unit, *Meeting the rights and protection needs of refugee children* (May 2002)

UNHCR, *Guidelines on Protection and Care of Refugee Children* (1994)

UNHCR, *Refugee Children in Africa: trends and patterns in the refugee population in Africa below the age of 18* (2000)

UNHCR, *Renforcement des capacités locales dans le cadre de la protection de l'enfant*

Documents from the Office for the Coordination of Humanitarian Affairs

OCHA, *Tchad, bulletin d'information humanitaire*, February-March 2011

Documents from the United Nations Children's Fund

UNICEF, *Child protection information sheets* (May 2006)

UNICEF, *Ensuring a right to special protection for vulnerable child refugees in Chad* (19 June 2009)

UNICEF, *Implementation Handbook for the Convention for the Rights of the Child*, fully revised edition (2002)

Documents from the Committee on the Rights of the Child

Committee on the Rights of the Child, *General Comment no.12: the right of the child to be heard* (2009)

Committee on the Rights of the Child, *General Comment no.6: the treatment of unaccompanied and separated children outside their country of origin* (2005)

Documents from the United Nations in collaboration with other agencies

Inter Agency Guiding Principles on Unaccompanied and Separated Children (January 2004)

Articles

Antonio Fortin, 'The meaning of 'protection' in the refugee definition', 12:4 *International Journal of Refugee Law* (2001)

Elizabeth H. Campbell, 'Urban refugees in Nairobi: problems of protection, mechanisms of survival, and possibilities of integration', 19:3 *Journal of refugee studies* (2006)

Jacques Rancière, 'Who Is the Subject of the Rights of Man?' 103:2/3 *The South Atlantic Quarterly* (Spring/Summer 2004)

Joe Oloka-Onyango, 'Human Rights, the OAU Convention and the Refugee Crisis in Africa : forty years after Geneva', 3:3 *International Journal of Refugee Law* (1991)

Sarah Swart, 'Unaccompanied minor refugees and the protection of their socio-economic rights under human rights law', 9:1 *African Human Rights Law Journal* (2009)

Thoko Kaime, 'From lofty jargon to durable solutions: unaccompanied refugee children and the African Charter on the Rights and Welfare of the Child', 16:3 *International Journal of Refugee Law* (2004)

Reports

Heshima Kenya (NGO), *Life as an unaccompanied young refugee in Nairobi* (2008)

Honoré Mimche *et al.*, *Le droit à l'éducation : quelles effectivités pour les réfugiés au Cameroun?* (Mars 2006)

League of Red Cross and Red Crescent Societies, *Handbook: working with refugees and asylum seekers* (1991)

Refugee International, *Chad: protecting children from rebel recruitment* (24 June 2009)

Working Paper

Barbara Harrell-Bond, *Are refugee camps good for children?* (August 2010), New Issues in Refugee Research, Working Paper no.29.

Sara Pavanello *et al.*, *Hidden and exposed: Urban refugees in Nairobi, Kenya* (March 2010)

Newspaper Articles

C. Kouétcha, 'L'univers précaire des réfugiés au Cameroun', *Le quotidien du jour*, 29 July 2010

Daniela Krosiak, 'Le gouvernement tchadien est tombé dans le piège pétrolier', *Rue 89*, 5 September 2009

Websites

Family reunification process and the role of the ICRC, <<http://www.icrc.org/eng/what-we-do/reuniting-families/index.jsp>>, visited on 20 May 2011

NGO Heshima Kenya, <<http://www.heshimakenya.org/index.html>>, visited on 19 May 2011

Transparency International Kenya, <<http://www.tikenya.org/>>, visited on 20 May 2011.