



NORWEGIAN
REFUGEE COUNCIL



Save the Children

LEGAL PROTECTION OF CHILDREN GUIDANCE NOTE





Mosul, Iraq, (Photo: Alan Ayoubi/NRC)

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This Guidance Note sets out key principles and procedures for ICLA staff when dealing with issues involving the **legal protection of children**. It summarises relevant aspects of the Legal Protection of Children Toolkit (Toolkit)¹ which acts as a detailed handbook with checklists for identifying protection risks and guidance for working on cases involving the legal protection of children. **The ultimate goal is to better protect children and reduce the protection risks they face.**

The Guidance Note covers the following issues:

- legal framework for children's rights in human rights and humanitarian law
- understanding and identifying protection risks for children
- considerations for caseworkers when dealing with children's issues
- effective referrals to child protection actors

Whilst ICLA is not a child protection actor, ICLA staff should understand the potential protection risks affecting children as well as their impact on the legal work that ICLA programmes provide if they are not addressed properly. A key consideration is the complementary role that legal and non-legal protection actors play in **ensuring the best possible protection for the child.**

¹ The Toolkit is a joint project between NRC and Save the Children



1. ICLA PROGRAMMATIC WORK ON LEGAL PROTECTION OF CHILDREN



ICLA programmes can play a niche role on child protection issues as a **specialist legal service provider** in certain thematic areas including legal and civil documentation and residency. Programmes can help children obtain birth certificates, gain residency status in host countries and avoid becoming stateless. Access to documentation can facilitate access to basic entitlements such as education, health or social support. Proper documentation can also protect children from being detained on account of a lack of identification papers or residency status. ICLA programmes may also come across legal issues related to protection of family unity, child marriage, child labour or guardianship issues.

NRC ICLA staff must understand the key human rights and protection principles relevant to children in order to act in the best interests of children during their ICLA work and to be able to respect the principle of Do No Harm.

Staff should also take account of the other NRC and ICLA resources relevant to the protection of children including the NRC Protection Policy, Protection against Sexual Exploitation and Abuse (PSEA) Guidelines, NRC Child Safeguarding Policy, ICLA Protection Guidance Note and ICLA Safe Programming Standards.

2. CHILD RIGHTS UNDER INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW



➤ Human Rights Law and the Convention on the Rights of the Child

Specific child rights are set out in the Convention on the Rights of the Child (CRC) as well as in other human rights instruments. **Under the terms of the CRC, governments are required to meet the basic needs of children and help them reach their full potential.** They are also obliged to ensure that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. The guiding principles under CRC are that children are the **subject of a special protective regime** on account of their age and vulnerability and that **the best interests of the child shall be the primary consideration in all actions concerning children.** Not only must the **basic rights and needs of children be respected** but children should **receive information and be consulted about decisions affecting them** in accordance with their capacity to understand.

➤ International Humanitarian Law

As ICLA programmes very often work in situations of war and armed conflict the provisions of International Humanitarian Law (IHL) are highly relevant. In addition to the general protections owed to all civilians, IHL includes a number of special protections for children. Obligations are owed by parties to the conflict for civilians in the areas under their effective control. In relation to situations of both **international and non-international armed conflict**, the Fourth Geneva Convention requires parties to the conflict to provide children with **the care and aid they require.**

Other human rights treaties, frameworks and guidance documents also contain specific provisions relevant to the legal protection of children.

See Annex 1 of the Toolkit for further details of human rights and humanitarian law obligations owed to children.



West Bank, Palestine (Photo: Ahmad Al-Bazz/NRC).

3. PROTECTION ISSUES FOR CHILDREN

3.1 Protection Risks



Children suffer from a wide range of protection risks in situations of conflict and displacement.

These risks may impact on the type of advice provided by ICLA staff or the decision that a parent or child takes not to pursue a legal option on account of protection risks. The ultimate aim is to reduce the protection risks faced by children through the legal work conducted by ICLA programmes.

Protection risks faced by children include the following:

- Family separation
- Lack of appropriate care and risks of being placed in harmful institutions
- Harassment, violence and abuse
- Security issues and ongoing conflict
- Sexual and Gender Based Violence
- Exploitation and vulnerability to the worst forms of child labour
- Detention
- Refoulment, deportation and forced return
- Psychological stress
- Neglect by parents or the State
- Social exclusion including discrimination and lack of access to basic services and social care
- Recruitment by armed forces and groups

There is a **strong gender dimension** to the protection of children. Girls and boys have different protection needs. ICLA programming should address these different needs, seek advice as necessary and tailor interventions according to relevant gender considerations.

For further information on assessing and mitigating protection risks, see Annex 2 of the Toolkit.



3.2 Identifying and Assessing Protection Issues

Protection in this context refers to the need to ensure the safety, dignity and rights of people affected by disaster or armed conflict. **Child protection** refers to the prevention and response to the abuse, neglect, violence and exploitation of children. **Legal protection** refers to the legal or administrative actions by which ICLA programmes and legal aid providers protect of the rights of child beneficiaries. **Non-legal assistance** refers to the other types of social and welfare support, access to government services, humanitarian assistance, healthcare, psychosocial, educational or community support that can help protect children from the risk of abuse, neglect, exploitation and violence or respond to those who have suffered such violations.

However within this broad categorisation, **protection services should be distinguished from social assistance. Protection activities** are designed to address specific protection risks and can include family tracing, psycho-social counselling or temporary care arrangements. **Social assistance or financial support services** include access to health, education or social support payments.

Non-legal assistance provided by child protection and other welfare actors can be critical to the legal work provided by ICLA in maximising the best protection outcome for the child. For example a child with a complex birth certificate case will still need access to social, health and education services whilst ICLA teams are helping obtain that birth certificate.

In order to respect **Do No Harm principles** and give advice on available legal options, ICLA staff need to understand and identify the protection risks that children and their families may face which are relevant to the ICLA case. Protection issues unrelated to the legal case should be referred to protection actors through the usual referral pathways.

Sometimes ICLA staff may see children who show signs of distress, abuse or neglect. This is a complex and sensitive area best suited to child protection experts. ICLA staff should follow the NRC Child Safeguarding Policy in such situations and may need to refer such issues to specialised child protection actors

Other non-legal assistance needs may also arise during ICLA consultations such as requests for support with physical or mental health needs, psychosocial counseling, educational support, shelter needs, family tracing services or family welfare support including cash payments for families. Such issues should be referred to the appropriate protection or social assistance actors.

In the course of an initial consultation with beneficiaries, ICLA staff should be able to identify:

- any protection risks connected with the **legal aspects of the case**
- any **mitigating measures** that can be taken to minimise the protection risks
- the need for referrals on protection or social assistance issues **not related to the legal case** (such as health issues)



4. CASEWORK CONSIDERATIONS



4.1 Acting in the Best Interest of the Child

Agencies working with children have special obligations to **act in the best interests of the child in all actions concerning children**. This obligation applies not only to government authorities but also to **private social welfare institutions** and thus covers humanitarian agencies dealing with children. Parents typically have legal guardianship and an obligation to act in the best interests of their children and ICLA programmes will normally be acting in the best interests of the child when acting on parents' instructions. However this will not always be the case where child protection issues are involved. Acting in the best interests of the child will sometimes involve referral and close cooperation with other specialist child protection actors.

4.2 General considerations in dealing with cases involving children

When dealing with children's issues caseworkers should take into account the following considerations:

- ▶ **Interacting with children.** Different casework approaches are necessary when dealing with children. Children often need information to be provided in a more straightforward and interactive way than adults. Check that the child has understood the information provided, such as by asking them to confirm or repeat the information. Children are extremely perceptive and absorb a lot more information than they get credit for.
- ▶ **Creating a child-friendly space.** When parents and guardians are not worried about the whereabouts or safety of children or are not continuously distracted by them, they can concentrate and give better information.
- ▶ **Identification of legal and associated protection issues.** At the beginning of counselling or legal assistance services identify whether there are any protection or social assistance issues involving the child relevant to the ICLA issue. This could include, for example, protection risks for children without legal stay in the country or health needs for children without any form of legal documentation. Inform beneficiaries that everything disclosed to ICLA is treated confidentially.
- ▶ **Checking authorisation when children are accompanied by adults that are not their parents.** In most cases children will be accompanied by their parent. In cases in which children are accompanied by a family member or family friend who is NOT the parent, clarify who the legal guardian is and why the parent is not present. When there is a dispute between the parents, make sure that the person you are assisting (father or mother) has the guardianship or authorisation to act for the child.
- ▶ **Taking account of the views of children.** Include children in any discussions concerning them subject to their capacity to understand and the sensitivity of the issues involved. Whilst this may not be relevant in situations of very young children, from the age of 12 onwards, children should be included in discussions if possible to ensure they understand decisions that are being made which may affect them.
- ▶ **Handling sensitive issues.** Sensitive or difficult issues affecting children can involve issues of child abuse or other protection issues. Make sure that children are not present in the room when their parents are talking about difficult situations or traumatic experiences that the children may not know about. See if the children can be looked after separately whilst the parent discusses their situation. Sometimes it will be important to speak to children separately, depending on the issue involved and the maturity and capacity of the child. Seeing children without their parents or guardian should normally only be done by specialised child protection workers or appropriately qualified protection staff and with a good reason such as a need for the child to express their views independently and freely.



Migrant Girls School, Libya (Photo: Waed Altireeki/NRC)

4.3 Case management procedures for dealing with legal and/or protection issues for children

Procedures for dealing with legal and/or protection issues for children may vary between Countries Offices but basic procedures are as follows:

1. During intake or first consultation, ICLA staff will identify whether there is any relevant ICLA issue involving the child or children in accordance with the ICLA thematic mandate. If **there is no ICLA issue, but a protection risk is identified** through safe programming/child safeguarding procedures staff should follow the relevant country procedures and NRC child safeguarding policies, including referral to the relevant Protection Focal Point or through the external referral pathways.
2. If **there is an ICLA issue**, staff will clarify whether there are any protection risks. In straightforward cases, such as routine birth registration cases, there may be no protection risks. If there is no protection risk, the case is dealt with through the usual procedures.
3. If **there is a protection risk related to the ICLA case**, ICLA staff should assess the risks and discuss it with the beneficiary and/or their parent/guardian. This could be the case for children without legal residency in the country or in cases of child marriage, detention of children for lack of legal status, guardianship issues involving children, child labour or other issues. In many cases there will be a need to refer such issues to specialised child protection actors.
4. ICLA will then **seek advice about how to deal with the protection issues relevant to the legal issues** from the specialised child protection actor. It may sometimes be important to hold a case conference about the case with the child protection actor to decide the best way forward. This will include a Do No Harm assessment of risks and consequences. The agreed approach should take account of the best interests of the child and minimise any protection risk.

See Annex 3 of the Toolkit for further casework guidelines on issues involving children.



Syrian girls, Lebanon (Photo: Zaynab Mayladan/NRC)

5. REFERRALS AND WORKING TOGETHER WITH SPECIALISED CHILD PROTECTION ACTORS



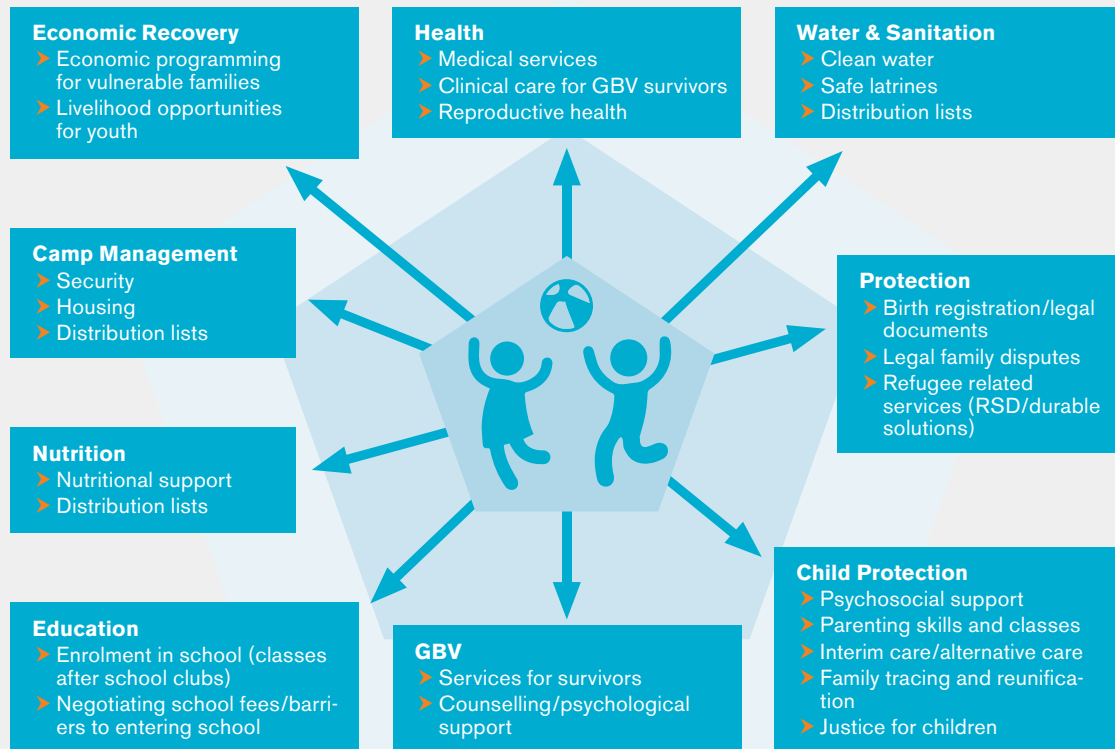
Effective referrals to child protection actors are one of the most useful services ICLA can provide when dealing with children's issues.

To maximise effective referrals and follow up, ICLA teams should ensure they:

1. have identified specialized child protection actors with suitable expertise and capacity
2. have established referral pathways
3. understand the types of issues child protection actors can deal with and what services they offer
4. are able to identify protection issues for children and make appropriate referrals
5. understand how to follow up with child protection actors, especially on ongoing ICLA cases

Referrals on children's issues are normally only done with the consent of the child's parent or legal guardian, and/or the consent of the child subject to their age and capacity. The age at which parental consent is needed for referral depends upon the laws of the country. In the absence of any clear laws, children under 15 generally require caregiver consent. Between the ages of 12–14 children's consent should ideally be obtained but is not mandatory.

Following up referrals is important to establish if the referral agency has accepted the referral and taken action on the case. In a direct referral in which no further action is necessary from ICLA it may be enough to check that the referral agency has accepted the case, but without any need for follow-up. In cases in which further action is necessary from ICLA both agencies should coordinate any follow-up measures to be taken by either party.



6. PROGRAMME MANAGEMENT CONSIDERATIONS

ICLA programmes working on issues related to the legal protection of children must meet **safe programming standards** and legal and professional obligations relevant to working on children's issues. These include **acting in the best interests of the child** and respecting **Do No Harm principles**. The following considerations should be taken into account in good programme management and design.



6.1. Understanding relevant laws and policies affecting children

In order to provide proper legal advice ICLA programmes should be fully aware of laws and procedures relevant to the legal protection of children within ICLA's thematic areas, such as requirements for obtaining birth certificates, proving paternity or accessing health care. Such information must be up to date and accurate. On occasions programmes may also need to understand the impact of other legal issues outside ICLA's thematic areas, such as issues of guardianship or other family law issues, in order to give complete and accurate advice.

For a list of laws and policies that may be relevant to children's issues see Annex 4 of the Toolkit.



6.2. Due Diligence and Programme Design Considerations

The following considerations can be used to assess compliance with basic due diligence/safe programming standards when working on issues related to the legal protection of children.

6.2.1 Base the programme on child rights principles

Programmes designed to promote the legal protection of children should:

- contribute to the **protection of children**
- take account of the **best interests of the child** as a primary consideration in all actions affecting children
- promote some of the **basic child rights contained in the CRC**, such as the right to an identity, nationality, the right to education and health
- take account of the **views of children**, subject to age and capacity, and give children a voice in any actions or programme responses affecting them

Legal issues should not be considered in isolation but together with relevant protection factors.

6.2.2 Conduct a needs and risk assessment looking at issues relevant to children

Needs assessments should look at the particular needs of children, different needs for children of different ages, gender and cultural context, differences for children in different parts of the country, and protection risks.

6.2.3 Take account of gender, diversity and age issues

Programmes should consider how to take account of different gender considerations and/or types of discrimination affecting both groups. For example, boys may be more susceptible to child labour whilst girls might be more susceptible to child marriage. Certain groups might be at increased risk of discrimination, abuse and exploitation, such as children with disabilities or those from minority backgrounds.

6.2.4 Plan the intervention

Projects that increase the legal protection of children should be relevant, responsive, child-focused and coordinated with other actors. Questions to be asked during project planning and design should include the following: What types of activities will ICLA conduct, on what topics and in which locations? Which groups of children will the project work with? How will these activities lead to the better protection of children?

See Annex 5 of the Toolkit for a further list of relevant considerations.

6.2.5 Train staff in working with children

Staff working with children must be properly trained on how to identify protection issues, how to deal with child beneficiaries and how to properly manage cases and referrals. Ideally all staff coming into contact with children should be trained in Psychological First Aid (PFA).

7. WORKING WITH OTHER NRC CORE COMPETENCIES



There are many synergies between the work of ICLA and other NRC Core Competencies on children's issues, particularly with Education/Youth. When designing an intervention involving children or youth, ICLA should discuss with Education and consider the advantages of joint work with other CCs.

Section 9 of the Toolkit contains further information about working with other CCs.



Nahle School, Lebanon (Photo: Zaynab Mayladan/NRC)

8. COORDINATION MECHANISMS AND COALITIONS

NRC participates in coordination forums on issues relevant to the rights of children at the local, national, regional and global level. These include the Protection Cluster, often led by UNHCR, the Education Cluster, Child Protection Working Groups and many others. Knowing which coordination mechanism are working on child rights issues helps in understanding to whom ICLA programmes can refer child protection cases. ICLA programmes can provide legal analysis and recommendations to such forums as part of a broader package of support.



9. Legal Advocacy and Policy Change Approaches

Where beneficiaries face obstacles in protecting their rights but legal options are limited or unavailable ICLA programmes often propose recommendations for changes to laws, policy or practice. This can result in changed procedures or practices at the local or national level which better protect children's rights.



In order to effectively engage in policy change work ICLA programmes need to have:

- **access to credible data and information** to show the size and nature of the problem
- **familiarity with the problems faced by beneficiaries** so that programmes can speak from direct experience
- good understanding of the **legal situation**
- **practical recommendations** for changes in laws, policies or practice

For further information please consult the Legal Protection of Children Toolkit or the Annexes to the Toolkit which provide checklists of casework and programme design considerations as well as information about human rights obligations and legal and policy mapping.

Front cover: Syrian girls, Azraq, Jordan (Photo: Hassan Hijazi/NRC)

Back cover: Syrian boys, Damascus, Syria (Photo: Tarek Mnadli/NRC)



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