

# Refugees, children in detention and rights



## Refugees, Children in detention

### Backdrop

Half of the world's refugees are children but their voices are amongst the least heard. Amidst the debate and conflict around refugees and border protection, the rights of refugee children have been neglected.

The vulnerable condition of refugee children is evident from the statement of Ibrahim Ishreti, a refugee child living on bridging visa, he says: *before coming to Australia we heard that everyone's human rights and freedoms are respected here but nobody would believe what is happening to us... We don't have any human rights and are treating like animals. Like other human beings our lives are not normal and our feelings and thinking are dead. We are depressed and can not smile[1].*

Australia is signatory of significant number of human rights treaties including the 1951 Refugee Convention and its 1967 Protocol and own affluent custom of providing shelter to refugees, however the current policy of mandatory detention for on-shore arrival including children (whether accompanied or unaccompanied) has acutely damaged its international reputation. The mandatory detention might be justifiable policy concerns but it advanced wide community pro and contra debate and discussion in the country.

The writer is a Pakistani origin immigrant in Australia. Pakistan considers a poorest country of the world host over a million Afghan refugees enjoying ample freedoms, however in Australia - where the number of unauthorized arrivals has never been much more than 4000 in any one year are placed

indefinitely in detention camps with limited access to services, hence the motive for selecting this topic.

### Key Aspects of the Policy

The inherent intentions for implementing the mandatory detention policy are to have an “ordered” approach to immigration and to make certain that the country's boundaries are secure. But little or no consideration has been given to the impact of these policies on the children who are caught up in them. That policy

- Denies internationally recognised fundamental human rights to all children of

particular social group;

- Children without committing any crime are put behind razor wire and are locked up.

- And fails to recognise the vulnerability and special needs of these children.

United Nations being representative body of the international community has undertaken the responsibility for the promotion and protection of human rights of all human beings including children. Therefore the UN has adopted separate legislation i. e. “UN Convention on the Rights of the Child (UNCRC)” in 1989 for the protection of child rights to which Australia became party in 1990. The UNCRC is an exhaustive code of guidance and management for policy development and practices relating to children. This specific child

rights legislation emphasizes that a child seeking refugee status is entitled for appropriate protection and humanitarian assistance. The various human rights treaties grant universal rights to refugee children like all other people and additional rights as children and particular rights as refugees. Therefore refugee children are entitled for special treatment and care and not to be treated discriminately.

Nevertheless many Australians might support or oppose the government's policy of dealing with asylum seekers but the indisputable reality is that subjecting children to any form of detention is a breach of their guaranteed rights. Imprisoning these children in the context of UNCRC is either "cruel and inhuman treatment" or in soft words is "harsh treatment", which are undesirable under the convention. The concerns due to which these children fled from their countries, detention adds to their sorrows and concerns. Therefore if we can't recompense their grievances and concerns then we don't have the right to add to it.

The UNCRC articulates<sup>[2]</sup> that "holding children in detention shall be used as a measure of last resort and only for the shortest possible time". But the Australian practice seems to be the denial of this vested right since here refugee children are detained at the outset of their unauthorized arrival. Without going into the facts finding of their flight for a known country putting these children in detention is like closing eyes from their dilapidated conditions they suffered from in their home countries. Being national of this country our happiest lives can never comprehend the worse situations they passed through and pushing into confinement compels them to spend formative

years of their lives in detention, which will obviously damage their future personality traits[3].

Keeping children in mandatory detention is denial of their internationally recognised basic human rights. Oftenly it has been experienced that during relief activities the children needs are not properly taking care of which are of vital importance for their normal development and growth. Every child has certain age-specific requirements that must be satisfied, for instance basic health care, nutrition and education are necessary for physical and mental development. Healthy psychosocial development depends in large measure on the nurturing and stimulation that children receive as they grow, and on the opportunities that they have to learn and master new skills. The healthy psychosocial development in refugee children should involve counseling and skills for coping effectively the multiple trauma of loss, uprooting and often more damaging experiences. Hence where the children's developmental needs are not sufficiently met it results in long-term tragic consequences.

### Challenges and/or Controversies

The Australia international obligations relating to refugees and children are not adequately publicised amongst public at large therefore everyone has their own perception about refugees. Majority believe that refugees are lairs, criminals, ' forum shoppers', welfare cheats and queue jumpers[4]. It is interesting to note neither international law recognizes the terminology of ' queue jumper' nor other civilized nations use this terminology. The obvious reason for using this terminology could be that Australia is not willing to grant refugee status every individual opted for such status instead it has the

intention to allow a carefully selected populace of pre-chosen countries to live as refugees in the country. A significant number of Australians also consider refugees a threat to economy and social services sector of the country.

The arrival of children seeking refuge in Australia is comparatively less than the other developed countries, however still children remain a significant percentage of the total number of arrivals. Sometimes children flee alongwith their parents and/or guardians and sometimes alone (usually known as unaccompanied minors). The flight from homeland to the country of refuge subjects all including children to the notions of a new authority though a child neither has any motive nor has any voice in the decision of flight.

Article 3 of the UNCRC gives overriding effect to the principle of ' Best Interests' of the child in these wording;

*“ In all actions concerning children, weather undertaken*

*by public or private social welfare institutions, courts*

*of law, administrative authorities or legislative bodies,*

*the best interest of the child shall be a primary consideration”.*

The principle of ' Best Interests' of the child has been enunciated in different Australian laws however the law relating to onshore management of asylum seekers does not contain this principle. The Migration Amendment Act of 1992 identifies asylum seekers as designated persons.[5] Section 189 states

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that “ *a designated person must be detained during the processing of their refugee status*”. Section 192 goes further giving two options for release - obtaining a Temporary Protection Visa or being deported.[6] This section spells for mandatory detention of everyone including children till the decision of his/her status.[7] Here at this junction the lacking of distinction between immigration status of adults and children confuse the internationally accepted principle of ‘ Best Interests’ of the child and same standard treatment is in contravention of the UNCRC.

The policy of mandatory detention can not be justified on the plea that since children's needs cannot be met in isolation, therefore they are kept with their caregiver in detention. As it is believed that children needs are normally meet most effectively within the context of family and community. It is therefore, necessary to strengthen the capacities of refugee families to meet their own needs and improve the participation and situation of adult refugees particularly women, in their child related activities and in this way they will contribute significantly to the welfare of their children.

Selection of one challenge and its reflection on policy based solution

### *Best Interest*

In relation to the refugee children whether accompanied or unaccompanied the primary goals of any action or program must be:

- To ensure the protection and healthy development of these children
- To achieve durable solutions appropriate to the immediate and long term developmental needs of these children.

In absence of any uniform definition of ' best interests' for every child, a good indicator to judge whether a child best interests are being achieved, would be a child's aptitude that how much s/he enjoys his or her rights in a available environment.[8] Since the UNCRC also doesn't clearly define child's ' best interest' therefore in all actions and decisions affecting a child; “ it is the best interests of that individual child which must be taken into account rather than children generally. The child's best interests..... must be the subject of active consideration”[9]. It necessitates to be established that children's interests are of primary concerns and have adequately been conferred.

The principle of ' best interests' reiterated in article 9(1) of the UNCRC states that children should never be separated from their parents against their will except when ' necessary' for the best interests of the child'. The interaction between the ' best interests' principle, family unity and immigration can be enlightened by referring preamble of the UNCRC providing a reference point by recognizing that:

“[T]he child, for the full and harmonious development of his of her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding”.

In order to support the best interests of the refugee children many of the obligations under the UNCRC are relevant for instance, protection from violence, the highest attainable standards of physical and mental health, special care for children with disabilities, education, keeping confidentiality



of their personal information, non-discrimination, recreation and the right to full cultural life (including language) are all factors that create a nurturing environment.

### Incorporating Children voices into policy debate

UNCRC believes 'voiced code' for children's participation in the programs affecting them. This legal instrument marks a change by respecting them as human being capable of full understandings and has power to decision and disregarded that they are being objects of adult intervention. The children's right to participate in fellow societies has been accepted in articles 12-15 of the UNCRC. This convention has offered in addition to civil, political, social, economic and cultural rights, the right to freedom of opinion & expression, information, religion and conscience; and the right to form associations[10].

Refugees' children being most vulnerable members of Australian society, they should have the right to have their fundamental needs for shelter, food, physical and emotional care and education have been met, and to live freely and securely within our society. Our society should value and protect them. We are equally responsible alongwith the government to ensure these needs are met if a child's family/caregiver cannot or will not protect their rights.

But due to their protracted legal status refugee children have concerns. They are not part of policy decision impacting their lives, hence condemned unheard and ignored. Purportedly three agencies - the federal government, the private reformative firms and the state government are in charge of the management of detention centres. There is strong likelihood that these agencies would not consider children's interests before their own. When the <https://assignbuster.com/refugees-children-in-detention-and-rights/>

managers of such agencies are in chase of jurisdictional and policy issues - where would children placed?[11] This management attitude proves the genuine worries, distress and concern of refugee children regarding their unresolved legal situation and their inability to move towards integration into the Australian community. Many children describe themselves as happy, good, but detailed their depression and distress that accompanied being in a limbo situation. The non-resolution of their migration or refugee situation is their paramount concern.

The current manifestations of distress, while particularly concerning are equalled by the knowledge of the long term impact of 'not belonging'; to a community; to a state and to a nation. If a child cannot access normal citizenship, then their ability to grow emotionally and integrate themselves into their new country is diminished. These children have the possibility of becoming adults with a sense of frustration and anger that will impact on their lives and will impact on our lives in the Australian community in the forthcoming years. [ *NOTE: the writer considers the points of this paragraph as specifics impacting her local area of residence surrounded by refugee children* ]

## Conclusion

If we step into the shoes of refugees and realize their sorrows and grieves then we will never deny the rights of refugee children to live with their families and reunite them when separated, having access to all basic necessities of life. If everyone of us recognize and struggle to make available all such rights to our children then why deny it for Iraqi, Afghan and Iranian

children? We should provide them such harmonize environment where they can play, grow and learn. “ We should keep ready ourselves to answer our children when they will look back on this time and ask what we did for refugee kids, at least we can say we gave them their childhood”[12].