

Child refugees



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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.

“ We come to a country we heard has human rights and freedoms. We can't believe what's happening to us.... We haven't any human rights. We are just like animals. We do not have a normal life like a human. Our feeling is dead. Our thinking is dead. We are very sad about everything. We can't smile.”

(Ibrahim Ishreti-refugee living on a bridging visa)

Australia is a signatory to the 1951 Refugee Convention and its 1967 Protocol and has a proud tradition of sheltering refugees but the current mandatory detention (an essential component) for on-shore arrivals including the children of asylum seekers and unaccompanied minors has enormously damaged its international reputation. Whilst these might be legitimate policy concerns they have led to an approach to asylum seekers that has caused wide community debate and division in Australia.

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 major policy objectives of mandatory detention have been to have “ordered” approach to immigration and to ensure that Australian borders 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 the children of particular social group;
- Locks up, behind razor wire, children who have committed no crime;
- And fails to recognise the vulnerability and special needs of these children.

The fundamental purpose of children's rights is to identify children as human beings who because of their vulnerability and special needs require special protection. To address this special status the UN Convention on the Rights of the Child (UNCRC) was developed. The UNCRC to which Australia is a party (1990), decrees that a child seeking refugee status is to receive appropriate protection and humanitarian assistance. Refugee children share certain universal rights with all other people; have additional rights as children and particular rights as refugees. It provides a comprehensive framework to guide the development of policy and practices that relate to children.

Irrespective of where people stand on the Australian Government's broad asylum seekers policy it is an undeniable fact that any form of detention applying to children is a breach of their rights. In the terms of UNCRC the imprisonment of these children is either “cruel and inhuman treatment” or

at the very least “harsh treatment”. Both of which are unacceptable under the terms of the convention. Detention compounds the effect of previous trauma and exacerbates the grief and loss that these children have already suffered whether they are accompanied or unaccompanied in their flight to Australia.

UNCRC

The UNCRC articulate that holding children in detention shall be used as a measure of last resort and only for the shortest possible time. But in Australia, detention is the first and only resort and for an indefinite period of time. We are letting these children down by neglecting this provision of the UNCRC. The difficult lives these children have suffered at the hands of their own governments or fellow beings are beyond the comprehension of most Australians. Yet we compound that damage by allowing children to spend their formative years in detention .

Keeping children in mandatory detention is denial of their internationally recognised basic human rights. Children's developmental needs which are a fundamental reality often not considered in relief efforts. In order to grow and develop normally, a child has certain age-specific requirements that must be satisfied. Basic health care, nutrition and education are generally recognised as necessary for the physical and intellectual developmental of children. Beyond these, however, 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. For refugee children, healthy psychosocial development also requires coping effectively with the multiple trauma of loss, uprooting

and often more damaging experiences. Hence, tragic long-term consequences may result where children's developmental needs are not adequately met.

Challenges and/or Controversies

The Australian public is not generally informed about international obligations towards refugees and the many false perceptions that migrants are a major cause of economic and social problems remain largely unchallenged. In many instances, the government has demonized asylum seekers in emotive language and as a result many people consider that refugees are lairs, criminals, 'forum shoppers', welfare cheats and queue jumpers. The terminology of 'queue jumper' does not exist in international law nor does it exist in other countries. Australia has adopted it simply because it prefers to offer refugee status to a carefully selected number of people from overseas countries and it does not like being forced to consider applications from those it had not already selected.

Australia, in comparison with most other western societies, has a small number of children arriving, nevertheless, in relation to the total number of asylum seekers arriving, children remain a significant percentage. Some travel with parents or guardians and other often travel alone (identified as unaccompanied). Regardless of the motive, children have no choice in the decision that has led them to be vulnerable to the notions of a new authority. The overriding principle, contained in Article 3 of UNCRC - the Best Interests of the Child:

In all actions concerning children, whether 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.

Various laws in Australia mention the Best Interest of the Child and propose to support this principle. The law that relates to onshore asylum seekers is not one of these laws. The Migration Amendment Act of 1992 identifies asylum seekers as designated persons. Section 189 states that a designated person must be detained during the processing of their refugee status and Section 192 goes on to identify two options for release - obtaining a Temporary Protection Visa or being deported. Under this section everyone is detained until they are either accepted or rejected as refugees, regardless of age or infirmity. This is where politics becomes involved in children's rights and immigration detention of children - where the Act does not make any distinction between the immigration status of adults and children and therefore there is no legal status between adults and their children and no difference in their treatment. This is of course dismisses the idea of the 'best interests of the child'.

Children's needs cannot be met in isolation. They are normally met most effectively within the context of family and community. Moreover a child's welfare is closely linked to the health and security of the primary caregiver. 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, thereby contributing 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 all children
- To achieve durable solutions which are appropriate to the immediate and long term developmental needs of children.

While there is no one definition of what will be in the best interests of each and every child, a child's ability to enjoy all of his or her rights in a given environment is a good indication of whether the child's best interests are being met. Furthermore, the UNCRC also doesn't explicitly define 'best interest' it is clear that in the case of 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. It needs to be demonstrated that children's interests have been explored and taken into account as a primary consideration.

The 'best interests' principle is 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 or 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

The idea of children's participation gained currency due to UNCRC. This legal instrument grants children civil, political, social, economic and cultural rights. Articles 12-15 are interpreted as conferring on children the right to participate in their societies. This includes the right to have their views heard in matters affecting them; the right to freedom of expression, information, religion and conscience; and the right to form associations. The UNCRC marks a change from understanding children as objects of adult interventions designed to meet their developmental needs, towards a construction of children as rights holders with the ability to participate in defining their own requirements for well being .

Refugees' children being most vulnerable members of Australian society, they should have the right to have their fundamental need for shelter, food, physical and emotional care and education met, and to live freely and

securely within a society that values and protects them. It is the responsibility of Government and communities 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 spoken loud and clear. The welfare of kids in immigration detention is jeopardized because the three agencies supposedly caring for them - the federal government, the private correctional firm that runs the detention centres and the state government - won't consider children's interests before their own. Where are the kids in this picture while the adults are fighting with each other over jurisdictional and policy issues? They are unheard and ignored. It proves that these children have worries, distress and concern for their unresolved legal situation and their inability to move towards an 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 was 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

Refugee children, just like our own children, need access to education and health care, and have the right to live with their families and be reunited with them when separated. They are entitled to a safe environment, free from fear and intimidation. Why do we recognize this for our own children but deny it for Iraqi, Afghan and Iranian children? We must take them into the community where they can play, learn and grow. At least when our children look back on this time and ask us what we did to stand up for refugee kids, we can say we gave them their childhood .