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4th World Congress on Family Law and Children's Rights

“CHILD MIGRANTS AND HUMAN RIGHTS IN OUR TIME”



Global movement of separated children – four pillars:

- size and character of movement**
- domestic laws are failing these children**
- punitive responses are ineffective**
- UN co-ordinated response needed**



'Separated' Children - Definition

Separated minors are children and young people under 18 outside their country of origin and separated voluntarily or involuntarily from their parents or care givers.



Global Movement of Children

- **This is not a new problem**
 - **Old Testament – Joseph of Canaan**
 - **Shipment of boy ‘vagrants’ to Virginia**
 - **Many current examples**

- **Conditions as bad as ever despite existence of HR law**



Categories of Child Movement

- **State sponsored migration**
- **Refugee**
- **Humanitarian**
- **Trafficking**



State Sponsored Migration

Examples:

- **1618 – 1967 - “Orphans of the Empire”**
- **1869 – 1948 - Canada Home Child Scheme**
- **1947 – 1967 - British/Maltese to Australia**

Negative effects outweigh alleged positives



Child Refugee Movement

- **Those who fulfil the classical definition of “refugee” under the Refugee Convention**
- **Seek asylum because fear of persecution or lack of protection due to human rights violations**



Child Humanitarian Movement

- **Separated children who travel internationally, seeking to escape conditions of serious hardship for a better life who would qualify for humanitarian protection**
- **But outside refugee definition**
- **There exist official resettlement programs, but this paper concentrates on individuals**



Child Humanitarian Movement

- **Examples:**
 - **Polish children from Stalin's labour camps**
 - **Holocaust survivors**

- **But this paper concentrates on separated children crossing boundaries without State/UN sponsorship**



Trafficking

- **The US government definition:**
‘all acts involved in the transport, harbouring, or sale of persons within national or across national borders through coercion, force, kidnapping, deception or fraud for purposes of placing persons in situations of forced labour or services, such as forced prostitution, domestic servitude, debt bondage or other slavery-like practices’



Smuggling

- **Smuggling – child or parent knowingly buy the service of a people smuggler to move them illegally to another country**
- **Unaccompanied smuggled children may be either sex, usually boys**



Current Trends: Child Refugees

- **Significant Numbers**

Examples:

- 2003, UNHCR says 13,000 children from industrialised countries
- 2000, Sandy Ruxton's work estimates 100,000 in Europe
- 2004, Margaret Tebo in ABA Journal approximates 5,000 in US

- **Majority go to Western Europe, USA, Canada, a small number to Australia & New Zealand**



Current Trends: Trafficked Children

Very high numbers, for example:

- 245,000 – 700,000 trafficked each year through international borders**
- 300,000 women & girls into Thailand**
- 5,000 – 7,000 Nepali girls to India**
- 400,000 women & girls from Ukraine to international commercial sex markets**
- 6,000 – 8,000 abducted from Uganda and sent to Sudan**



Current Trends: Trafficked Children

- **Mainly sent to Western Europe, the Middle East, Thailand and India – and also to the US**
- **Mainly girls trapped in debt bondage and forced to work as unpaid prostitutes**



The Differences – Then and Now

- **State sponsorship -v- criminal**
- **Heavy costs**
- **Dangerous transport methods**
- **Different ‘push-factor’ motives**
- **Poverty**
- **Care on arrival**
- **International HR laws**



1989 UN Convention on the Rights of the Child

- **Most ratified human rights treaty**
- **Covers a child's civil, political, economic, social and cultural rights**
- **Covers separated children**



1989 UN Convention on the Rights of the Child

Article 20(1) states:

“ 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.”



1989 UN Convention on the Rights of the Child

Article 20(3) states:

“ ... When considering solutions, due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious and linguistic background.”



Other Legal Instruments

- In addition, the UNHCR has developed a set of *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*
- Ongoing work of the **Committee on the Rights of the Child**



Government Reactions to Unlawful Child Arrivals

The UNHCR points out that:

western governments “... vacillate between stringent control measures, including locking children up in jail, x-raying them to assess their age or shipping them back to ‘safe’ third countries, and serious efforts to care for the youngsters in the spirit of ... the Convention on the Rights of the Child which requires signatories to provide adequate protection and assistance to children, whether alone or with their families.”



Government Reactions to Unlawful Child Arrivals

For example Australia

- **Domestic laws very harsh**
 - mandatory detention
- **Court Decisions**
 - 1995 – Teoh
 - 2002 – Odhiambo and Martizi
 - Re Wooley;
 - B and B



HREOC's Inquiry into Children in Immigration Detention (CIDI)

Findings:

- **Mandatory detention breaches CRC**
- **Long periods of detention**
- **High risk of mental illness**
- **Conditions in centres inadequate**



HREOC's Inquiry into Children in Immigration Detention (CIDI)

Recommendations:

- **Release children out of detention centres as quickly as possible**
- **Change the law – primary consideration is best interests of children**



Other developed countries:

- **Many immediately deport children, some are detained while investigated.**

- **Some are more supportive:**
 - **Canada – unaccompanied minors in care of provincial social services**
 - **Denmark – stay at Red Cross children's centres while claim processed**
 - **UK – authorities have power to grant temporary admission**
 - **US – children in a placement that reflects needs and circumstances**



Need for Best Practice Model

- **Do not turn asylum seeking children back**
- **Do not detain them for longer than absolutely necessary**
- **Appoint a guardian for each child**
- **Provide a lawyer for each child**
- **Processing should occur in child-friendly accommodation**



For more about principles see:

2004 “*Separated children in Europe program – Statement of good Practice*” developed jointly by UNHCR and International Save the Children Alliance.



What about Trafficking?

- **Major systematic failure**
- **Current attempts to improve the problem:
2000 UN Convention on Transnational
Organized Crime (CTOC)**
- **However, neither Convention nor
protocols are in force as not enough
countries have ratified them**



Looking at States Responses:

- **International systems cannot be legally enforced and are largely ineffective unless countries submit to jurisdiction of external court or enforce it via domestic laws and policies**
- **Government responses ranges from humanitarian to highly inappropriate**



States Responses

However, whatever the response

- **Most are not able to control borders effectively**
- **Victims of trafficking are often criminalised**



Where Do We Go From Here?

Long term strategy:

- **Reduce “push” factors**
- **Further international co-ordinated action under UNHCR/UNICEF mandate**



Where Do We Go From Here?

Develop country specific short-term strategies that:

- **Acknowledge the reality**
- **Show leadership and**
- **Stop trying to shift the problem to other countries**



**I call on the United Nations
to establish an**

**“International Child
Migrants Day”**



**For more information about the
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www.humanrights.gov.au

