



Children in Jeopardy

UK, US & SA Policies on Unaccompanied Minors & Migrant Youth

1. Introduction

Over the past few weeks, two events have underlined the extreme vulnerability of migrant children as well as the noticeable lack of political will by governments to act in their best interests. Statistics earlier this year estimated that migrants under the age of 18 constituted 12% of the global population of people on the move – around 33m or 1.5% of the world's total number of children. In Africa, children and young adults constitute 16% of all mobile people.¹ The statistics make the point that children and young adults are particularly at risk in the world of mobile people, for many obvious reasons. It is also increasingly clear that they face obstacles of a political and administrative nature that impede their being absorbed into and protected by family support.

In this paper we take a brief look at the situation in three jurisdictions, each of which faces a considerable influx of young people on the move, and each of which claims to approach the question from a human rights perspective.

2. The United Kingdom

On 19th October 2020, UK MPs voted by a majority of 327 to 264 to reverse an amendment to Brexit legislation, crafted in the House of Lords, which amendment sought to ensure that unaccompanied refugee children currently in the 27 EU member states would have the right to be re-united with

family already in the UK. The amendment would have mirrored EU protocols which the UK government was seemingly attempting to water down.² This reversal has left unaccompanied minors without solid protection, and with reduced legal assistance, and has rendered them vulnerable to the nefarious activities of traffickers and unscrupulous cross border operators. Unaccompanied minors will be forced to look for alternative ways if good, safe, legal pathways to their families are shut down.³

In 2019, 312 children applied for entry to the UK for reunification with their families under the Dublin Regulation. This Regulation, which sets out the criteria for asylum processes, gives priority to family considerations in determining whether people can be fast-tracked in the asylum process and ultimately given asylum status. The UK government averred that in the decade starting 2010 it had acceded to requests for 41 000 children to be reunited with families in the UK. Under the new legislation the UK would no longer be obliged to accede to such requests.⁴ An EU official said that the EU felt that a core part of the UK's proposals for co-operation with the EU on such matters post-Brexit was about ways of sending children back to the countries from which they had come. The UK government has held for a long time that the legitimate process of returning people who enter the country illegally is unnecessarily frustrated by "rigid EU return policies."⁵

The Catholic Bishops of England and Wales responded to these legislative processes by offering a different analysis and expressing their strong support for the “establishment of an ongoing safe route for unaccompanied child refugees without family in the UK, as well as steps to ensure that those with family members in the UK can continue to reunite with them after the end of the Brexit transition agreement.”⁶ The Bishops also said that “extending resettlement schemes and opening new programmes for groups such as unaccompanied children should therefore be the focus of any long-term policy response.” The bishops concluded that “while the UK has previously taken some positive steps in this area, its current commitments fall short of the contribution that we can and should be making as a country.”⁷

Experts in the field have long held that at least four underlying problems complicate policy in this area in the EU, often leading to anti-migrant prejudices being intensified and resulting in exclusionary legislation. The four problem areas are:

- the culture of disbelief and suspicion towards unaccompanied migrant children;
- the reluctance of member states to accept responsibility, share burdens and show solidarity;
- the poor implementation of existing law and policy; and
- the loss of trust experienced by unaccompanied migrant children.⁸

Finally, the bishops also warn that it is wrong to falsely accuse refugees of posing a threat to the UK, and stress that “it is important to end such political rhetoric that consistently overstates the scale of Channel crossings and creates a false impression that refugees are threat to the UK’s economy, public safety or national security.”⁹

3. The United States of America

On 20th October 2020, in Washington DC, a group of court-appointed lawyers tasked with establishing the circumstances of children separated from their parents at the US/Mexico border reported that there were presently 545 children who had not been reunited with their parents and who continued to live in detention centres.¹⁰ In 2017 the Trump administration began the practice of separating detained parents from their children at border posts. In May 2018 the administration introduced a zero-tolerance

policy with regard to anyone crossing the border irregularly. In the month immediately following, 2 700 children were separated from their parents.¹¹ Then, in June 2018, a District Judge ordered an end to the practice.¹² The 545 children identified by the lawyers are ‘remnants’ of that period.

Pope Francis, in an interview released on 20th October 2020, spoke of the US policy of separating children from their parents “as the highest form of cruelty.” He went on to say: “And to build walls as if that were a defence. To defend what? Territory? The country’s economy? Or who knows what? [...] He who builds walls becomes a prisoner of the walls he builds.”¹³

Commenting on the lawyers’ finding Dylan Corbett, the Director of the Hope Border Initiative, said: “We know that the separation of children was a wilful and calculated strategy to weaponize against vulnerable migrants at the border the most sacred thing they had—their family.”¹⁴ The US Catholic Bishops’ Conference said that the separation of children from their parents was “large-scale, strategic and intentional.”¹⁵

Professionals in many fields, and especially in paediatrics and mental health, have warned about the dire effects that such separation causes in young people. This particular kind of separation has been identified as child abuse.¹⁶ Studies have shown that such separation results in high levels of stress and traumatic bereavement, and that in many cases tantrum behaviour is replaced by profound anxiety and depression. In the long-term this post-traumatic stress disorder and separation anxiety can result in chronic medical conditions such as diabetes and heart disease. They warn that it can also lead, in some cases, to anti-social behaviour and extreme disregard or indifference to the feelings of others. This will exact a high cost emotionally, relationally, socially and psychologically. It seems to be a very high price to pay for making a political point.¹⁷

4. South Africa

It is noted that there are some 642 000 migrant and displaced children in South Africa.¹⁸ This is arguably the largest such demographic anywhere on the continent. A survey of migrant and refugee children in the provinces of the Western Cape, Limpopo and Gauteng, released in 2019, showed some important statistics with regard to the vulnerability of children. It revealed that only 23% of children were documented and most of them

were described as ‘dependants on a principal applicant.’ By the time of the study, 64% had lost all contact with that principal. Thus, the profile of refugee and migrant children is one of high risk and great vulnerability. In such circumstances, the duty to protect and to provide family support is highly necessary and anything that would hinder this is to be condemned. The practical difficulties in accessing the most basic documentation, the pervasiveness of corruption in the administration, and the shifting political will, all make the business of easing the obstacles and enhancing protection a formidable challenge.

There is, possibly as a result of this burgeoning number, a growing concern in some circles in South Africa that the creeping lack of political will to assist migrant children to re-unite with their families and to benefit from the support of stable family life is mimicking the policies being pursued in countries like the USA and UK. It is worth noting that, in January 2020, the UNHCR and the Red Cross entered into an agreement to co-operate with the Department of Social Development to ensure that such vulnerable children have access to the basic necessities of life, but also to appropriate child protection services and to assistance in the process of re-unification with their families, if this is deemed to be a desirable. This would indicate that, unlike the two countries mentioned above, there is still an encouraging, even if slim, pathway open for family re-unification in South Africa.¹⁹ However, if one listens attentively to the political narratives that frame refugee and migrant concerns, then it is clear that this pathway must be zealously guarded and normalised as a practice, otherwise it could be overtaken by narrow political and xenophobic considerations.

5. Conclusion

Pope Francis has given a very clear direction for countering the approach underlying the policy regimes outlined above. In responding to what seems now to be a normal political response to child migrants, we need to place these sentiments squarely in the contemporary public narrative. In his January 2018 message for the 104th World Day of Refugees, he said:

“The *International Convention on the Rights of the Child* provides a universal legal basis for the protection of underage migrants. They must be spared any form of detention related to migratory status, and must be guaranteed regular access to primary and secondary education. Equally, when they come of age they must be guaranteed the right to remain and to enjoy the possibility of continuing their studies. Temporary custody or foster programmes should be provided for unaccompanied minors and minors separated from their families. The universal right to a nationality should be recognised and duly certified for all children at birth. The statelessness which migrants and refugees sometimes fall into can easily be avoided with the adoption of nationality legislation that is in conformity with the fundamental principles of international law.”²⁰

This is a sound basis for pro-children, pro-justice advocacy.

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¹ <https://migrationdataportal.org/themes/child-and-young-migrants>

² <https://www.independent.co.uk/news/uk/politics/brexit-vote-result-child-refugees-dubs-amendment-eu-bill-commons-a9297056>

³ <https://www.dw.com/en/uk-parliament-votes-against-reuniting-child-refugees-with-families/a-52113864>

⁴ <https://www.independent.co.uk/news/uk/politics/brexit-vote-result-child-refugees-dubs-amendment-eu-bill-commons-a9297056.html>

⁵ <https://www.theguardian.com/uk-news/2020/sep/03/brexit-eu-rejects-british-proposal-reuniting-child-asylum-seekers>

⁶ <https://thecatholicuniverse.com/bishops-safe-and-legal-routes-only-way-to-prevent-dangerous-crossings/>

⁷ <https://thecatholicuniverse.com/bishops-safe-and-legal-routes-only-way-to-prevent-dangerous-crossings/>

⁸ <https://publications.parliament.uk/pa/ld201617/ldselect/ldeduc/34/3406.htm>

⁹ <https://www.indcatholicnews.com/news/40650>

¹⁰ <https://www.bbc.com/news/world-us-canada-54636223>

¹¹ <https://www.usatoday.com/story/news/nation/2020/10/21/parents-545-children-separated-us-mexico-border/6002622002/>

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- 20 http://www.vatican.va/content/francesco/en/messages/migration/documents/papa-francesco_20170815_world-migrants-day-2018.html

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