

REFUGEE AND ASYLUM-SEEKING CHILDREN: AUSTRALIA'S OBLIGATIONS UNDER INTERNATIONAL LAW

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Thursday, 5 May 2022



CRC and CMW Committees' guidance on ending immigration detention of children

01

“Every child, at all times, has a fundamental right to liberty and freedom from immigration detention”

02

“Any kind of child immigration detention should be forbidden by law and such prohibition should be fully implemented in practice”

03

“States should adopt solutions that fulfil the best interests of the child, along with their rights to liberty and family life, through legislation, policy and practices that allow children to remain with their family members and/or guardians in non-custodial, community-based contexts while their immigration status is being resolved and the children’s best interests are assessed, as well as before return.”

04

“Resources dedicated to detention should be diverted to non-custodial solutions carried out by competent child protection actors engaging with the child and, where applicable, his or her family.”

Unaccompanied children

Immigration detention cannot be justified on the basis of "protection" because a child is unaccompanied or separated.

An unaccompanied or separated child should be accorded the same protection, support and care that any national child deprived of parental care would be offered.

Unaccompanied or separated children should be integrated in alternative care systems that are developed in accordance with the [UN Guidelines for the Alternative Care of Children](#).

To avoid the risk of detention for unaccompanied or separated children, the key mechanism is swift identification, referral to national child protection authorities and provision of a guardian.



Non-refoulement – considerations for children

- No return to a place where a child's life or freedom would be threatened – receiving government must have capacity to provide protection
- Child-specific human rights violations and child-specific drivers of migration – include:
 - domestic violence
 - threat of child marriage and other forms of Gender-Based Violence
 - forcible recruitment into state and non-state armed groups
 - trafficking and other forms of exploitation and abuse, including the worst forms of child labour
- The profound consequences for children of the insufficient provision of food or health services should also be taken into account
- Right to life, survival and development (Art 6, CRC)

“The Committees have already pointed out that States shall not reject a child at a border or return him or her to a country where there are substantial grounds for believing that he or she is at real risk of irreparable harm”

Committees on the Rights of the Child and on the Rights of Migrant Workers Joint General Comment 22/3, 2017



Examples of negative impacts of non-child-sensitive returns

([From Europe to Afghanistan: Experiences of Child Returnees, Save the Children, 2018](#))

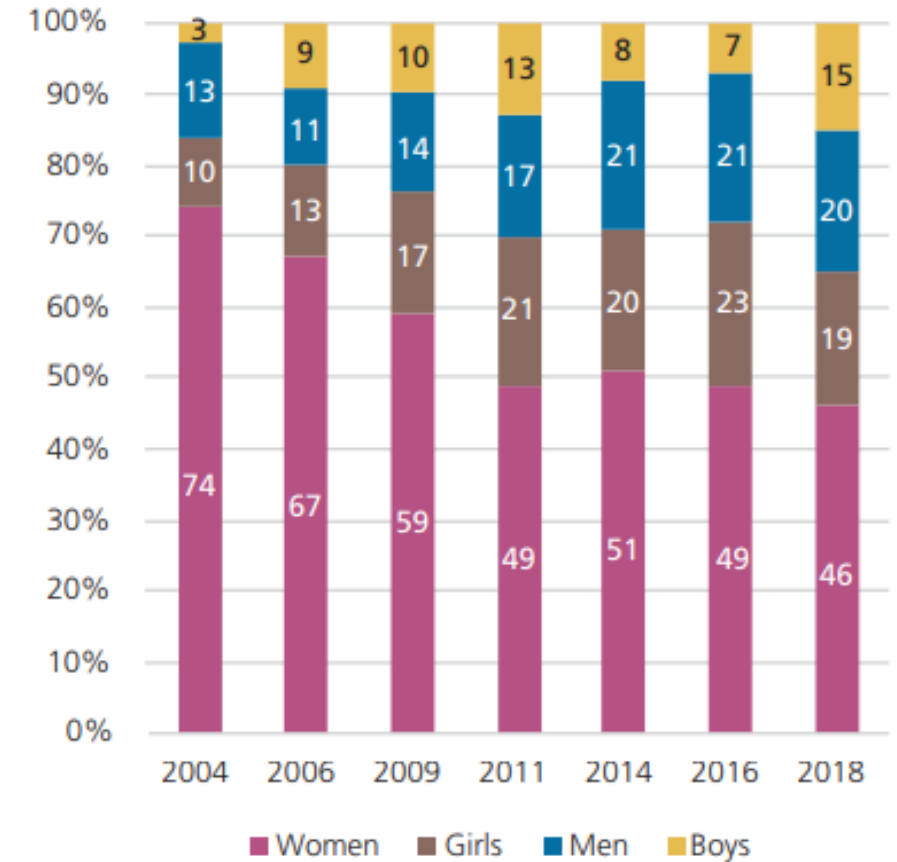
- 3 in 4 children said they did not feel safe during the return process, with more than half reporting instances of coercion or violence, including some who reported having returned voluntarily
- Nearly half arrived in Afghanistan alone or accompanied by police
- Only 3 out of the 53 children had received a specific reintegration plan
- Three quarters could not rule out migrating again the following year
- Whereas 45 of the 53 children had attended school in Europe, only 16 had since returning to Afghanistan; three quarters cited education as their greatest need
- Almost 1 in 5 children said someone had tried to recruit them to fight in combat, commit acts of violence or engage with an armed group after returning



Child trafficking – key facts

- About **one third** of the overall detected trafficking victims are children
- Trends show child trafficking is **not decreasing**
- **Migrant, refugee, and internally displaced children** are at particular risk of trafficking and exploitation
- States have **additional obligations to protect children** through special measures (e.g. CRC and Optional Protocol, UNICEF Guidelines/Reference Guide, Palermo Protocol)
- Majority of girls are trafficked for **sexual exploitation**, while majority of boys are trafficked for **forced labor**
- Children induced into exploitation are victims of human trafficking regardless of whether **force, fraud or coercion** is present

FIG. 3 Trends in age and sex profiles of detected trafficking victims, selected years



UNICEF Guidelines on the Protection of Child Victims of Trafficking

- Proactive identification measures and presumption of age
- Appointment of a guardian
- Child-friendly procedures for initial questioning, initial action and interviewing
- Referral and coordination/cooperation
- Interim care, protection and accommodation in a safe place
- Regularization of status
- Individual case assessment and identification of a durable solution
- Implementation of a durable solution: local integration, voluntary repatriation, resettlement
- Access to justice
- Victim/witness security and protection

Reimagine Justice for Children Agenda (UNICEF, 2021)

- 1) Every child knows and can claim their rights;
- 2) Every child can access free legal aid, representation and services;
- 3) Every child in conflict with the law can be diverted;
- 4) Every child is protected from detention;
- 5) Every child survivor of sexual violence, abuse or exploitation receives justice;
- 6) Every child can access alternative dispute resolution mechanisms and child-friendly courts.



Thank you!

For every child
Health, Education, Equality, Protection
ADVANCE HUMANITY

