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Introduction
By Elena Butti

The past year has been an eventful one for children's rights. April 2014 saw the entrance into force of the Third Optional Protocol (3OP) to the Convention on the Rights of the Child (CRC) on a Communications Procedure. In October 2014 the Nobel Peace Prize was awarded to two child rights activists (one of them, Malala Yousafzai 17-years-old) fighting for the right to education. Finally, on 20th November 2014 we marked the 25th anniversary of the CRC.

The OxHRH Blog posts that accompanied these developments and collected in this chapter are, however, far from celebratory. The 25th Anniversary constituted an opportunity to look back and reflect on what has been achieved and what is still to be done. Many posts refer to the paradoxically stark contrast between the expectations raised by the almost-universally-ratified CRC and the reality in which many children live. The question is, then, for academics to find out why this gap exists, and for policy-makers to determine how to reduce it.

Many posts comment on the difficult situation of children living in austerity. Rebecca Carr's piece ('The Uncertain Status of Child Rights in the UK' p 196) shows how economic cuts due to the financial crisis in the UK disproportionately affect children from poorer backgrounds. The vulnerability of children in poverty is also at the centre of Haleema Wahid's post ('Children in an Age of Austerity': The Impact of Welfare Reform on Children in Nottingham' p 200) on the impact of welfare reform on children in Nottingham. These contributions invite us to reflect on the too often disregarded issue of how poverty impacts the wellbeing of children in first world countries, a theme also addressed by a recent comparative quantitative study conducted by the UNICEF Innocenti Office of Research (Y Chzhen, Y, Mde Milliano, C De Neubourg, and I Plavgo, 'Understanding Child Deprivation in the European Union: The Multiple Overlapping Deprivation Analysis (EU-Moda) Approach' Innocenti Working Papers 2014-18 (2014)).

Poverty and inequality do not only affect children within a country, but also those who, for a reason or another, move across countries. Mariela Neagu's piece ('The Uncomfortable Place of Inter-Country Adoption in the Human Rights' p 195) sheds light on the problematic issue of inter-country adoption, where rich countries' demand for children generates interpretations of the CRC which are often to the detriment of the best interest of children in third world countries. Migrant children are similarly vulnerable. They are often forced by structural factors in their countries of origin, such as poverty or political persecution, to migrate to richer countries. When they arrive, they are subject to strict immigration laws, as outlined in Isabelle Kadish's piece ('"British Schindler" and a History of Neglect of Refugee Children' p 202), and may even face detention as Holly Buick's contribution ('Towards the abolition of the detention of immigrant children?' p 199) explains. These are all examples whereby the CRC is not altogether ignored by first world countries, but rather its provisions are strategically interpreted. As a result, policies and practices serve interests other than those of the child, such as providing children for adoption or limiting immigration.

Indeed, law is important but it can only be effective if its spirit is understood and interpreted in the social and cultural context of every country. It has to be read and used in conjunction with other social factors that determine the wellbeing of children. In this light, Mariya Ali's piece ('Practices Harmful to Women and Girls – Joint CEDAW and CRC General Recommendation/ Comment' p 194) invites us to reflect on the ever-lasting tension between (children's) rights and culture. She notes how loose, culturally determined interpretations of 'best interest' may allow for practices such as female genital cutting, early marriage and plastic surgery which are considered important in some cultures but harmful in others. Yet, the top-down imposition of western cultural standards through law is not the solution. For example, in my own research in Tanzania (E Butti, 'What Made These Women so Mad at Me? Arguing for a "Soft" Approach in Addressing the Issue of Female Circumcision' (2013) Culture and Human Rights at http://culture-human-rights.blogspot.fr/#!) I have found that the legal prohibition of female genital cutting only contributes to driving the practice underground rather than discouraging it. As Paul Bornan argues ('Reflecting on 2014: 14 things we've learned' The Child Poverty and Development Blog (2015) at http://blog.younglives.org.uk), effectively addressing harmful practices requires a deep understanding of the root causes and cross-cultural dialogue which remains sensitive to local interpretations of 'best interest'.

As the 'Education' sub-chapter of the Socio-Economic Rights chapter of this anthology highlights, education could play an important role in addressing the issues outlined above. As Prof. Fredman noted in the first OxHRH webinar on the Right to Education this year (see: http://ohrh.law.ox.ac.uk/right-to-education-prof-sandra-fredman-oxford-university/), the right to education is a 'multiplier right' because it allows children to better enjoy all the other rights. Education can counter poverty and migration by providing better livelihood options for children, and can help to address delicate cultural issues through more informed dialogue. However, it is a long-term investment. It requires the perseverance shown by Malala Yousafzai and Kailash Satyarthiand. But not all politicians are so long-sighted. Sad evidence of this is the recent issue of the Guidelines for Protecting Schools and Universities from Military Use During Armed Conflict by the Global Coalition to Protect Education from Attack. The initial idea behind this project was to create a binding convention, but the governments' lack of willingness to seriously commit to protecting schools in conflict determined a resort to an instrument of soft law devoid of any binding power. Why? The answer is simple: schools are a very convenient base for government armies, too.

To go back to the original question, then, why is there such a big gap between the promises of the CRC and the reality experienced by so many children across the world? Why are children still so invisible, as Sarah M. Field's piece ('Geneva II, politicking and possibility for Syria's invisible 43%' p 198) illustrates, in contexts where important policy decisions are taken? While 'children's

rights' are advertised by many of those in power as a priority, the expression is often rhetoric devoid of actual meaning and commitment. As the posts in this chapter show, overriding considerations such as alternative financial priorities and the desire to control immigration flow, or a tendency to put in place short-sighted and culturally insensitive solutions, too often come at the expense of children's wellbeing.

Increasing children's own ability to report about violations of their rights, as the CRC Optional Protocol 3 allows (commented upon by Sara Austin in 'Children Gain Access to International Justice' p 197) can be a step forward. But it cannot be the only way. Those in power must stop using a children's rights rhetoric merely to create a good self-image at little cost. Children's lives will not be improved through tokenistic interventions. Full commitment to put other interests aside to protect children is needed. For academics, this means that the time has arrived to stop looking at children's rights as a stand-alone issue, but rather, as the work of the OxHRH Blog demonstrates, to look at them in context. Urgent politically charged issues such as the changing nature of conflict, growing migration flows and climate change need to be looked at *through the lenses* of children's rights, and to ask what those rights, often formulated in abstract terms, mean to children themselves. In other words, it is about looking at apparently disconnected world problems through the eyes of the next generations and asking: what would I want for my tomorrow?

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Practices Harmful to Women and Girls – Joint CEDAW and CRC General Recommendation/Comment

By Mariya Ali | 19th December 2014

Coinciding with the 25th anniversary of the United Nations Convention on the Rights of Child (CRC) and the 35thanniversary of the Convention on the Elimination of Discrimination Against Women (CEDAW), the two UN human rights committees have jointly issued a General Recommendation/General Comment (GR/GC) outlining State obligations in preventing and eliminating harmful practices inflicted on women and girls. These practices are maintained and perpetuated through societal attitudes and passed down through generations. This GR/GC attempts to break the generational transmission by those who have undergone procedures such as Female Genital Mutilation (FGM). Such practices are celebrated, often masked in a festive mood, and believed to bring respect to the girl and family.

Among the other issues addressed by both the committees are widowhood practices, infanticide, binding and body modifications, including fattening, neck elongation and breast ironing. They also highlight plastic surgery undergone by women and girls to conform to social norms of beauty. Social norms are internalised in childhood and early adolescence through the socialisation process.

The GR/GC explicitly addresses the importance of facilitating discussions among children and those that are in their early adolescence "on social norms, attitudes and expectations that are associated with traditional femininity and masculinity and sex- and gender-linked stereotypical roles; and, working in partnership with them, to support personal and social change aimed at eliminating gender inequality and promoting the importance of valuing education, especially girls' education, in the effort to eliminate harmful practices that specifically affect pre-adolescent and adolescent girls."

The committees highlight that harmful practices are "grounded in discrimination" and describe the causes of harmful practices as "multidimensional," which "include stereotyped sex and gender-based roles, the presumed superiority or inferiority of either of the sexes, the attempt to exert control over the bodies and sexuality of women and girls, social inequalities and the prevalence of male-dominated power structures." Although the concept of honour applies to all these practices at varying levels, the GR/GC does not make this explicit.

These practices result from a combination of factors including misinterpretation of religious rulings, customs, tradition and cultural influences giving rise to honour cultures that prescribe strict codes of sexual morality and general behaviour. Honour values can be termed an ideology giving power to men and oppressing women and children, based on gender and sexuality. Men are seen as the custodians of women's chastity, and any loss or damage to their honour is damage to the male kin and collectively to her family. These practices are shown as protection rather than abuse for women and girls when viewed through the honour lens.

Sometimes girls and women are killed or driven to suicide because of the perceived dishonour their suspected or actual sexual activity, or even rape, is supposed to have brought on their family. The GR/GC acknowledges that the perpetrators of sexual violence avoid punishment altogether or receive a reduced sanction. The committees also acknowledge the pressure on young girls to conform to practices such as FGM in order to avoid being isolated, stigmatised and rejected.

The term "honour" is gender-neutral and can carry many meanings such as respect, dignity and reputation. Therefore, what constitutes the "best interest of the child" in communities that observe strict codes of sexual morality and general behaviour can be overshadowed when viewed through the honour lens. Harmful practices that are enmeshed in honour ideology can be eliminated gradually, allowing changes to occur organically and to achieve sustainability.

The GR/GC has therefore emphasised the importance of adopting a rights-based approach to transforming social and cultural norms, through cross-cultural and internal dialogue in order to "collectively explore and agree on alternative ways to fulfil their values and honour/celebrate traditions without causing harm and violating human rights of women and children…"

The CEDAW and CRC Committees place importance on legislative prohibitions on harmful practices and emphasise that capacity building must include front-line professionals, including health and education professionals and social workers, traditional and religious leaders, the police, immigration authorities, public prosecutors, judges and politicians at all levels. Along with these efforts at raising awareness through the dissemination of the GR/GC, protection services must be strengthened to ensure the sustainability of new social norms. A paradigm shift can be effectively achieved only through holistic approaches, as the Committees have proposed.

Furthermore, the GR/GC also links practices of forced and childhood marriages and polygamy with poverty and the principle of supply and demand. These factors are relevant in a globalised world where people move from country to country and take their customary laws with them.

Country reports have shown that, although children's rights have been respected in many State parties, the rights afforded by the CRC are not carried through by those enshrined in the CEDAW with the attainment of adulthood. This GR/GC, therefore, brings the

life cycle perspective to the forefront, as well as the importance of working together on women's rights and children's rights to tackle the various forms of violation committed against women and children in the name of protecting honour and sexuality.

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The Uncomfortable Place of Inter-Country Adoption in the Human Rights Arena

By Mariela Neagu | 12th December 2014

While November marks the anniversary of the UN Convention on the Rights of the Child (UNCRC), the United States (one of the two countries yet to ratify the UNCRC) celebrates 'adoption month'.

Inter-country adoption (ICA) occupies a very marginal place within the UNCRC. According to article 21, 'inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin.' Moreover, article 21 only applies to countries that 'recognize and/or permit adoption.'

Although adoption was initially included in the text of the draft UNCRC, Bangladesh took the position that adoption is not recognised under the Muslim law and requested 'a form of words … be found to protect Islamic conceptions on the subject' (Detrick, 1999, 346). Muslim countries do not recognise adoption, rather protecting children in need using *kafalah*, a form of permanent foster care in which the child maintains his or her identity. The other reason why the UNCRC almost entirely excludes ICA, leaving it as an option of last resort, is the fact that during the drafting process, a high number of gross abuses were brought to the attention of the drafting group (UNICEF, Innocenti, 1998). ICA has long been characterised by widespread abuses and corrupt practices, and this why it was barely accepted as an option of last resort in the text of the UNCRC.

But despite wide ratification of the UNCRC, what little protection that is offered in article 21 is not followed in practice. Basic features of domestic adoption, such as placement with the prospective parents before adoption is finalised, are legally difficult in ICA. If bonding does not occur, children will end up in care in a completely estranged environment.

In ICA, children are often transported by middlemen to their adoptive parents – taken by people she/he does not know to people

she/he does not know, while many thousands or tens of thousands of euro change hands. In that sense, adoption resembles sale of children, (Article 2a, Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography), or 'child laundering' as David Smolin, one of the academics critical of ICA calls it (Gibbon and Rotabi, 2012, 243).

ICA is largely the response to a demand for children in developed countries, rather than the absence of care in the countries of origin. Taking children away does not lead to any improvement of the protection of children in those countries, but rather the contrary (Chou and Browne, 2008).

According to human rights conventions, such as the UDHR and the ICESCR, motherhood should be protected, and parents have a right to social protection and assistance. Enforcement of these rights would, in many cases, prevent the separation of children from their families. And if they don't, the state has a duty to provide a suitable form of care. According to article 20 of the UNCRC, 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, cultural and linguistic background.' From a human rights perspective, sending children in ICA can be regarded as the result of a country's failure to fulfill its international human rights law obligations.

The last years have brought new insights from an institution shielded by secrecy. A recent book, *Adoptionland: from Orphans to Activists*, gives the perspective of the adoptees. Movies like Philomena disclose a very unfortunate episode in the recent history of Ireland. *Mercy, Mercy – A Portrait of True Adoption* is a documentary filmed over four years, which follows the route from a country of origin to a European country, shows the subtleties of everyday life in ICA. Although different in style, they encapsulate fifty years of ICA history, showing the features of ICA and the complexities that lie behind it. They represent an important step in revealing the bleak shades of a rosy picture and could serve as a source of inspiration for scholars in different fields.

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The Uncertain Status of Child Rights in the UK

By Rebecca Carr | 26th November 2014

This November marks the 25th Anniversary of the Convention on the Rights of the Child (CRC). An atypical fusion of both civil and political, and economic, social and cultural rights, the CRC is the most widely ratified international human rights treaty in history, with all but two of the worlds states signing on. While impressive gains have been made to protect children's rights over the years, the current UK Government's commitment to truly upholding the CRC can be called into question and indeed must be held to a higher account.

At its essence, the CRC seeks to promote the "inherent dignity and equal and inalienable rights" of all children. Since 2010, however, austerity measures have been used to justify a series of government policies that have led to the erosion of many children's socio-economic rights, including their rights to health, food and an adequate standard of living.

Still, almost a third of all children in the UK live in poverty; over 330,000 children were reliant on emergency food banks in 2013/2014, and Shelter reports that over 90,000 children will be homeless this Christmas.

Civil and political rights have taken a hit too. For example, children as young as 10 will soon be able to receive 'IPNA's' (injunctions to prevent nuisance and annoyance), under a new government system to regulate anti-social behaviour, and the police's use of Taser guns on children increased by 139% between 2009 and 2011 alone.

Not all children in the UK experience such rights violations to the same degree; children from poorer backgrounds face a higher risk. Those living in poverty often lack the means to live with the basic dignity that a State's observance of the CRC would enable, and critically, they have less access to the power structures that serve to shape the social conditions dictating their lives.

The links to be found between poverty and rights violations is well documented; however, the government's response to this nexus appears short sighted.

While the government has taken some steps to address child poverty in the UK, such as implementing the Child Poverty Act 2010 and appointing a Children's Commissioner and Social Mobility and Child Poverty Commission, it has failed to offer a clear or effective method for children's human rights enforcement.

The government has failed to ratify the third optional protocol to the CRC that would, for example, enable children raise their individual complaints with the CRC's monitoring committee themselves. Further, it has failed to directly incorporate the provisions of the CRC domestically, as the European Convention on Human Rights has been domesticated through the Human Rights Act 1998, which would enable children invoke its provisions before UK courts and allowing those provisions to be applied by national authorities.

Drastic cuts to the legal aid budget, resulting from the Legal Aid, Sentencing and Punishment of Offenders Act 2012, removing funding for entire categories of law, such as family law (whereby only those cases in which there is evidence of domestic violence, forced marriage or abduction can attract funding), will affect up to 68,000 children a year, according to the Bar Council. Further, proposals to limit the ability of third party interveners seeking to bring judicial review cases before the courts, as outlined in the Criminal Justice and Courts Bill, by requiring them to pay any costs incurred by the other side as a result of their involvement (except in exceptional circumstances), will further undermine the abilities of those seeking to enforce children's rights.

If rights are to be effective, children must be able to access and rely on the courts, and other rights enforcement bodies' protection, when violations of their rights occur.

As the CRC's momentous 25th anniversary is reflected on, the government must now take the requisite steps to address ongoing child rights violations in the UK, by affording children and their representatives with the opportunities to enforce their rights, and to ultimately hold it to a higher account.

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Children Gain Access to International Justice

By Sara Austin | 16th April 2014

This week marks a major breakthrough in international justice for children. It is a turning point in a deeply personal battle of justice for children that I have fought for the past 15 years. I have dedicated my life to defending the rights of children around the world, particularly the most vulnerable children. Through my work at World Vision, I have had the opportunity to travel extensively to do research, programs, and policy work to empower children affected by extreme poverty and exploitation. I have advocated for the implementation of the UN Convention on the Rights of the Child (CRC) and have worked hand in hand with children, NGOs and governments to help realize the rights the CRC contains.

Through my experiences, I was struck over and over again by the fact that so many of the children I met were living lives that were starkly different from those promised to them by their governments. The CRC was a shining beacon of hope for all of the possibilities that life could hold for children. And yet, day in and day out, I met children who were fighting to survive, let alone thrive.

As an advocate, I was using all of the tools available to me to bring about change, and yet even the United Nations was struggling to hold governments accountable. Year after year, children and NGOs have submitted reports to the UN Committee on the

Rights of the Child concerning the gaps in progress. And year after year, the UN Committee has issued stern conclusions and recommendations to governments. But the pace of change has been painfully slow.

When the opportunity arose during my graduate studies at Oxford to develop a dissertation on the rights of children, I wrestled with what I could contribute that would make a meaningful change in the lives of the children I had met. The biggest gap that I saw was that while 193 States had ratified the CRC, nothing tangible could be done to ensure that children received justice when their rights were systematically denied.

Through that process, I developed a proposal for the creation of the 3rd Optional Protocol to the CRC (OP3 CRC) and went on to launch and lead the global campaign that helped bring this law into force on April 14, 2014. It was a tangible contribution that I could make towards protecting the rights of children and to helping ensure that they receive the justice they so urgently need.

The OP3 CRC allows children, groups of children or their representatives, who claim that their rights have been violated by their State, to bring a communication/complaint to the UN Committee on the Rights of the Child. It also allows any interested party to provide information about grave or systematic violations of children's rights to the UN Committee on the Rights of the Child through an inquiry procedure.

The challenge is that this procedure is only available to children if their State has ratified the OP3 CRC. Children have waited too long for this moment, and many more will continue to wait for their governments to take tangible action to bring their rights into reality. As the international community prepares to mark the CRC's 25th anniversary this November, I urge the members of the UN to refrain from delaying justice any longer. I commend the ten Member States that took swift action to ratify the OP3 to ensure its entry into force, and I am encouraged by the 45 States that have signed the protocol and are taking steps towards ratification. I urge the remaining 138 States that have ratified the CRC to also ratify the OP3 without delay.

We simply cannot afford to let more precious lives slip away while rationalizing delays in providing timely justice. In the spirit of the promises made to children when the CRC was first created 25 years ago, UN Member States should show children that their rights really do have meaning by immediately ratifying the OP3 CRC.

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Geneva II, Politicking and Possibility for Syria's Invisible 43%

By Sarah M. Field | 8th January 2014

The possibility of peace in Syria may seem more like an international force (pun intended) than a beacon of hope. History though tells us to 'believe….'* The form of the conflict's resolution is simply unimagined – as yet. A dig deeper though and history also tells

us another story: the transformation of conflict is likely to be partial – children, particularly, are likely to be invisible within decision-making towards peace agreements. To date, the Syrian peace process substantiates this: there is no reference to children, who make up 43% of the population, within Geneva Communiqué I and just one reference within the Communiqué of the London 11.

And herein lies the paradox. From the Central African Republic to Syria (and beyond), no one can be unaware of the impact of conflict on children. Though politicians recurrently invoke them – the children hurt and harmed by conflict – as a call to action (whether towards military action or advancing peace), they seldom raise the subject of children and their rights within decision-making towards agreements. A cynic might reason the confluence of interests is missing; without any broader political gain, principled commitments to children are insufficient to ensure *the* child question is raised and prioritised. Certainly there is some truth to this reasoning. However, it is also likely that the politicking towards – and subsequently within – the peace trajectory subsumes consideration of children.

Simply, there is nobody to raise and prioritise the subject of children and their rights. There is nothing new about this; all it does is re-affirm why rights are important, and in particular, the right to be heard. Or in other words, an intimate connection to the right – such as that of the right holder – is key to asking *the* child question, influencing the process and impacting on the outcomes (the peace agreements). The question then is how: how to ensure children's rights 'in' and 'through' the process.

To an extent, the answer to this is simple: fulfilling those promises our representatives made to children over twenty-four years ago – legal obligations to which almost all jurisdictions have committed by virtue of ratification of the Convention on the Rights of the Child, including the Syrian Arab Republic. Two are of particular relevance: ensuring the best interests of the child and assuring respect for children's views within decision-making affecting them.

Of course, applying these legal obligations to peace processes is complicated. However, contrary to our imaginings, peace processes also present possibilities. First, the staged and elongated character provides space for asking *the* child question. Second, the hybrid legal form ensures engagement with international law, including within decision-making about how to constitute the space. Third, there is often an interface between political commitments to international human rights law and political imperatives; asking the human rights question (transforming inequalities within the process and outcomes) contributes towards advancing the peace momentum. Fourth, the creativity that propels peace processes forward as they fracture and stall opens space for dreaming '…things that never were….'*

Framed by over 1,000 days of conflict in Syria, the political challenges of securing a peaceful solution are immense. History tells us, though, within (and between) these challenges there are possibilities for securing a peace inclusive of children. A possible beginning is to appoint a legal representative to the space with a mandate to ask *the* child question – to raise the subject of children and their rights. Without such a structural response, there is no certainty *the* child question will be asked as the peace trajectory edges falteringly forward. *If* the child question remains unasked, the possibility of outcomes for the children of Syria is reduced – now and into the future.

Fourteen days until Geneva II, now is the time to ensure children are part of the conversation.

*These are quotations from respectively Seamus Heaney ('The Cure at Troy') and George Bernard Shaw ('Back to Methuselah').

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Towards the Abolition of the Detention of Immigrant Children?

By Holly Buick | 13th February 2015

In its recent Advisory Opinion 21/14, the Inter-American Court of Human Rights (IACtHR) adopts a firm position against the detention of children during immigration proceedings, employing a novel approach to the legality of depriving children of their of liberty in this context. Once again, the Court has used its advisory jurisdiction to advance the protection of migrant rights beyond existing interpretations of international law.

Among other issues, the court was invited to provide its opinion on the interpretation of the "last resort" principle in this context. The principle originates from article 37 (b) of the Convention on the Rights of the Child, which provides that detention "shall be used only as a measure of last resort and for the shortest appropriate period of time."

The IACtHR reviews its case law and other sources on deprivation of liberty in a criminal context and notes the exceptional nature of detention on remand used as a precautionary measure. The suggestion is that the deprivation of liberty in immigration proceedings, which involve no suggestion of criminality, requires an even higher standard of exceptionality.

This reasoning can be seen as part of a more general attempt in the Court's jurisprudence to distinguish administrative immigration proceedings from the sphere of criminality, challenging what the Court has termed "the phenomenon of the criminalization of irregular migration." Based on the argument that administrative offences relating to immigration status may not have the same consequences as criminal offences, the court rejects the application of the "last resort" principle in this context (Para. 150).

Having thrown out the "last resort" test, the Court proceeds to formulate its decisive statement that detention of children in immigration proceedings exceeds the requirement of necessity and is contrary to the best interests principle, and that therefore: *'States may not resort to the deprivation of liberty of children who are with their parents, or those who are unaccompanied… as a precautionary measure in immigration proceedings'* (Para. 160, emphasis added).

It should be noted that the IACtHR's interpretation of article 37 (b) is not in line with that of other human rights bodies. The standard position, found in decisions of the ECHR and UN Human Rights Committee, as well as being enshrined in European immigration legislation, is that article 37 (b) does apply to the detention of children for immigration purposes. This also appears to be the position of the Committee on the Rights of the Child in its General Comment 10 on the juvenile justice system.

However, the IACtHR finds textual support for its position in the Committee's General Comment 6: *'Detention cannot be justified solely on the basis [of migratory status]. Where detention is exceptionally justified for other reasons, it shall be conducted in accordance with article 37(b) of the Convention that requires detention to… only to be used as a measure of last resort.'* (Para. 61, emphasis added).

It remains to be seen whether the Court's interpretation of the Convention will be more widely accepted. Leaving aside this issue and that of the status of the advisory opinion, what is the potential impact of rejecting the last resort principle?

The Court is right to be wary of the principle in this context. It has been unhelpful in allowing states to sidestep their obligations even in the face of a critical mass of voices calling for abolition, based on evidence of the serious and unnecessary harm caused to children who are detained. Research has shown that in applying the principle some states does little more than design tick-box exercises for immigration officials to make "justifiable" decisions to detain children or even defend their mandatory detention policies as a "legislative last resort" in the face of perceived crises, in a blatant misinterpretation of the Convention. American states such as Mexico are following European governments in making slow progress towards "alternatives," paying lip service to the "last resort" principle while, in fact, making widespread use of detention.

Rejecting the last resort principle in favour of a general prohibition has important implications for the "alternatives" debate in which policy makers and campaigners are increasingly engaged. The IACtHR's interpretation would immediately force states to design and implement policies that exclude the detention of children.

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'Children in an Age of Austerity': The Impact of Welfare Reform on Children in Nottingham

By Haleema Wahid | 7th July 2014 OXHRH

In its recent Advisory Opinion 21/14, the Inter-American Court of Human Rights (IACtHR) adopts a firm position against the detention of children during immigration proceedings, employing a novel approach to the legality of depriving children of their of liberty in this context. Once again, the Court has used its advisory jurisdiction to advance the protection of migrant rights beyond existing interpretations of international law.

The Welfare Reform Act 2012 has introduced the biggest changes to state welfare since the establishment of the Welfare State. Many of the changes have had a direct impact on children in families, and child poverty is also expected to rise. By 2020, it is anticipated that a fifth of all working age parents and their children will be living in poverty.

The Campaign to End Child Poverty estimates that, in Nottingham City, almost a third (32%) of children are living in poverty and ranks Nottingham in the top 20 of local authorities with regard to child poverty. Their 2013 figures indicate the level of child poverty in Nottingham North is 37%, 33% in Nottingham East and 24% in Nottingham South.

The Advice Nottingham Policy & Campaigns team has produced a report to evaluate these figures and examine just *how* welfare reform policies are affecting children in Nottingham. 'Children in an Age of Austerity' brings to light the real-life cases and stories of children in Nottingham, who are experiencing adversity as a direct result of the benefit changes. Evidential conclusions are presented, which were derived using information received from Advice Nottingham's clients, local schools and key commentators in the area of social policy, children's rights and child poverty.

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The severe impact of welfare reform is starkly realised in our findings. We found that families deemed to be 'under-occupying' their home are experiencing financial hardship and face either increased costs or the possibility of moving home; children may have to change schools or travel further to get to school if their families are forced to move as a result of under-occupancy. Non-resident parents/carers face financial penalties for under-occupancy or losing the room their children use, potentially reducing parent-child contact.

Families with children who are reliant on benefits are struggling to meet their requirement to contribute to council tax, resulting in financial hardship and debt. Families with children who are in rent arrears face losing their homes due to possession orders. Outside of London, Nottingham currently has one of the highest number of possession claims, where one in 63 homes is at risk of being repossessed. Disabled parents and parents of disabled children are facing financial hardship due to changes to the awarding of disability benefits.

Every single school that was surveyed for its perspective on welfare reform reported that welfare reform had had a negative impact on children in schools, with four of the six indicating that the negative impact was likely to be 'large.' Parents subject to benefit sanctions are relying almost entirely on food banks to feed their children.

With the above in mind, we recommend that non-resident parents who have a room designated for their children should not be subject to under-occupancy rules. Families rehoused as a result of domestic violence should not be penalised if they have 'surplus' rooms. Benefit sanctions should be applied more fairly. Help should be offered to all parents whose benefits have been sanctioned. Department for Work and Pensions (DWP) staff should aim to accommodate requests to expedite decisions for clients with dependent children. All families with children should be able to access hardship funds. And, finally, schools should be given additional support when they identify pupils experiencing social, behavioural or emotional problems as a result of welfare reform.

It is hoped that the messages coming out of this report resonate strongly with policy-makers and members of the public. We cannot look at welfare reform in a simplistic way; rather, we must look beneath the tip of the iceberg and anticipate the true potential for damage to our children and young people, as well as acknowledge the damage already caused. We owe our children a childhood free from fear and poverty. We hope that this report, at least in some part, can motivate a collective effort to achieve this.

The full report can be downloaded from the Advice Nottingham website: http://www.advicenottingham.org.uk/news.

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Children
Chapter 10

"British Schindler" and a History of Neglect of Refugee Children
By Isabelle Kadish | 20th June 2014

Sir Nicholas Winton celebrated his 105th birthday at the Czech embassy in London this past May. Guests included members of the Winton family, friends, and members of his other family, affectionately coined "Nicky's Family." This family, originally composed of 669 members, has now expanded to well over 6,000 – and each and every one of these individuals quite literally owes his or her life to Winton.

In late 1938, Winton, a 29-year-old British stockbroker, travelled to Nazi-occupied Prague with a friend. Winton spent his three-week vacation volunteering in Czech refugee camps. By the time of his departure, he had devised a rescue plan for the thousands of Czech children affected by the Nazi occupation.

After setting up a makeshift office in the dining room of a hotel in Prague, Winton contacted the governments of nations he thought might harbor these children. In fact, Winton's letter about the matter to President Franklin Delano Roosevelt was recently discovered in the U.S. Department of State Records. Dated May 16, 1939, Winton wrote to President Roosevelt: "In Bohemia and Slovakia today, there are thousands of children, some homeless and starving, mostly without nationality, but they certainly all have one thing in common: there is no future, if they are forced to remain where they are."

Winton never received a reply from President Roosevelt, nor any member of the White House or State Department. Rather, he eventually received a letter from a mid-level political officer at the American Embassy in London stating that there was nothing to be done.

What Winton may not have realized were the serious obstacles to any sort of relaxation of United States immigration quotas before and during the Second World War. While some Jews were admitted into the U.S. from 1938-1941 under the preexisting German-

Austrian quota, the U.S. did not pursue an organized and specific rescue policy for Jewish victims of Nazi Germany until early 1944.

In the end, only Britain and Sweden granted permission for the children to be transported to their countries (though ultimately, they were only transported to Britain). Winton, however, was forced to work under very strict conditions. In order to transport just one Czech child to safety, he needed a British family willing and able to adopt and £50 – many Czech refugee families could not even afford a single meal – to be paid to the Home Office on account of each child. Nonetheless, Winton intended the rescue of thousands of children – a mass evacuation from Czechoslovakia to Great Britain.

Permission in hand, the rescue of these Czech children was then entirely up to Winton and his made-up organization, "The British Committee for Refugees from Czechoslovakia, Children's Section," consisting of his mother, his secretary and a few volunteers. Eight trains of "Nicky's children" successfully reached Britain through Germany and France. The final, ninth train containing 250 children never reached Britain, as the war broke out on the eve of its departure. Winton still managed to save 669 children. The vast majority of their parents perished in the Holocaust.

Winton was knighted by Queen Elizabeth in 2002, and today there is a growing movement to award him the Nobel Peace Prize, with already over 250,000 signatures worldwide.

While Sir Winton proves an inspiring figure of Holocaust resistance, his story and the recent discovery of his plea to President Roosevelt reveals a history of all-too-static immigration and refugee laws in first world countries. Since the Second World War, and especially in the 1990s, refugee asylum has emerged as a major political 'problem' throughout nations in Western Europe, including the UK. There are over 60,000 'refugee' children residing in the UK and, while offered a safer future, by the time they reach secondary school, there is a substantial learning gap between UK schoolchildren and refugee children.

Today, President Obama has continued Roosevelt's harsh legacy, deporting more immigrants than any other president in the history of the U.S. – amounting to nearly 2 million individuals. This carries a high price for families across the U.S.: one quarter of all deportees are separated from their U.S. citizen children, and unlike "Nicky's Family," these children are rendered absolutely parentless.

Please learn more about Sir Nicholas Winton's fight for refugee children and the documentary, "Nicky's Family," at http://www.menemshafilms.com/nickys-family.

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