

Children's Rights as Human Rights

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Child Migration & Human Rights in a Global Age, Jacqueline Bhabha (Princeton, N.J.: Princeton University Press), 2014.

Human Rights and Adolescence, Jacqueline Bhabha, ed. (Philadelphia: University of Pennsylvania Press, 2014).

The image of Aylan Kurdi, a three-year-old Syrian boy who drowned on September 2, 2015, as he tried to cross the Mediterranean with his family to seek safety in Europe, may finally shock Europe and the world into offering greater protection to refugees fleeing from war and persecution in Syria and elsewhere.¹ Aylan's death was a tragedy of a kind that has become all too familiar. In 2015 alone, thousands of people have died trying to reach European shores in unseaworthy, overcrowded boats.² Many of those who drowned were children—including in a single instance an estimated one hundred children (out of a total of some eight hundred fatalities) lost in a shipwreck off the coast of Libya in April.

In Asia, thousands of Rohingya Muslims, children as well as adults, were stranded at sea in May 2015 without adequate food or water, after Indonesia, Malaysia, and Thailand repeatedly turned their boats away.³ Indonesia and Malaysia eventually, and begrudgingly, bowed to international pressure, announcing that they would offer temporary shelter to these refugees—but only under the condition that they would be resettled elsewhere within a year.⁴

The Americas have seen their own humanitarian crises involving children. In 2014, Central American children crossed into the United States from Mexico in large numbers, prompting U.S. immigration authorities to detain for lengthy periods both unaccompanied migrant children and those traveling with their families.⁵ In Mexico, stepped-up immigration enforcement led to over 23,000 apprehensions of migrant children in 2014, an increase of 140 percent over the previous

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year.⁶ Unofficial preliminary statistics for the first half of 2015 suggest that Mexico has arrested and deported nearly twice as many migrant children coming from the Central American countries of El Salvador, Guatemala, and Honduras as it did in the same period in 2014.

Child migration is nothing new, as Jacqueline Bhabha reminds us in *Child Migration and Human Rights in a Global Age*. But her book is particularly timely in helping us understand why children move across borders, with family members or alone, despite the obvious risks. Bhabha also helps us to get a better grasp on policymakers' uneven, sometimes incoherent, responses to child migration—responses that she suggests are best understood as expressions of “official ambivalence” toward the problem.

Almost all migrant children are seeking a better life, in one sense or another. But many are not simply migrants: they are fleeing war, recruitment by or violence at the hands of organized crime, abusive families, or entrenched discrimination—all circumstances that arguably warrant their protection as refugees. For example, most of the asylum seekers or migrants who have entered the European Union in 2015 have come from Afghanistan, Eritrea, Iraq, Somalia, or Syria, all countries where children face extraordinary levels of violence and exploitation.⁷

In Afghanistan the Taliban and other groups attack schools with improvised explosive devices, landmines, rockets, grenades, and suicide bombers. Schools have been burned, looted, and forced to close. In 2013 at least 73 schools were attacked and 539 were temporarily or permanently closed due to insecurity, affecting at least 115,000 children; in some regions more than 80 percent of schools are closed.⁸ And the Taliban continue to threaten girls' education, warning communities not to send their girls to school, including through the use of “night letters”—threatening notes that are hand-delivered to homes under cover of darkness.⁹

In Somalia the ongoing conflict between the government and the insurgent al-Shabaab has been characterized by horrific abuses. Al-Shabaab has targeted children for recruitment as soldiers, forced marriage, and rape, abducting them wherever they congregate—including at schools, playgrounds, football fields, and in their homes.¹⁰

In Syria more than 13,000 children are estimated to have been killed since the beginning of the conflict, including some 3,500 in 2014. The use of barrel bombs by the government has killed hundreds of children in Aleppo alone, and government forces continue to indiscriminately shell civilian-populated areas.

In addition, numerous armed groups recruit children for use as soldiers, sending boys aged fifteen and even younger into battle.¹¹

For children in Central America, the dangers are no less serious. Gang violence has plagued El Salvador, Guatemala, and Honduras for more than a decade.¹² The murder rates in El Salvador and Guatemala are in the range of 40 per 100,000, making them the fourth and fifth most violent countries in the world in 2012.¹³ Honduras, with a rate of 90 murders per 100,000, has been one of the world's most violent countries for several years running.¹⁴

Children are particularly targeted by gangs. In Honduras, for example, over four hundred youths under eighteen were killed in the first half of 2014, most thought to be the victims of gang violence.¹⁵ It is not uncommon to hear reports of thirteen-year-olds, or even younger children, being shot in the head, having their throats slit, or being tortured and left to die.¹⁶ It comes as no surprise, then, that a recent study by the UN High Commissioner for Refugees (UNHCR) of children in transit through Mexico found that some 48 percent had plausible claims to international protection—not meaning necessarily that all were refugees, but rather that their cases would warrant in-depth review.¹⁷ Another UNHCR study—of children who had reached the United States from El Salvador, Guatemala, Honduras, and Mexico—concluded that nearly 60 percent suffered or faced the risk of harms that indicated an actual or potential need for international protection.¹⁸

As Bhabha notes, however, hostility toward immigration and inattention to children's specific protection needs often means that they are “not considered ‘real’ refugees in their own right.” For many years, she writes, “children traveling without an accompanying family member or caretaker were treated on an ad hoc basis, in a policy-free zone where discretion and arbitrary decision untrammelled by formal procedures drove outcomes” (p. 206). But over the last fifteen years, unaccompanied children have become increasingly more visible. It is no longer possible to ignore the reality that many children travel on their own, so invisibility does not explain the failure of states to afford them the protection they need. Instead, Bhabha concludes, ambivalence is the main cause of inconsistent policy responses (p. 207).

Her analysis is borne out by recent events. In Europe, officials increasingly speak as if smuggling, rather than protection, is the main challenge posed by refugee flows. After the Mediterranean deaths, the Council of the European Union moved to create a naval operation to capture and destroy boats used by

smugglers.¹⁹ Human smuggling is a crime, to be sure, but as states restrict movement across borders, it is logical that asylum seekers will increasingly turn to smugglers in the hope of securing safety. It might even be said that receiving states are creating a market for the smuggling operations they deplore as a matter of policy. More generally, inconsistency in approach, suspicion of children's accounts and of their motives, condescending and paternalistic attitudes, and procedures that are often inaccessible even for adults frequently characterize state responses to children who seek asylum. "No other group of children with comparable needs, except perhaps convicted juvenile offenders, is expected to fend for themselves in the face of such overwhelming legal and personal complexities," Bhabha concludes (p. 215).

She also examines reasons other than violence that prompt children to move or be moved across borders, such as to be with family members or to seek better educational and employment opportunities, and frequently for a combination of reasons. Some move to a new country and a new family in the context of international adoption. Some are the victims of trafficking. Many children are brought at young ages to countries that, as they reach their teenage years, become the only homes they have really ever known, but do not offer the stability of regular immigration status. Some children are not migrants at all, but have the misfortune to be born in countries that do not extend citizenship to the children of migrants or that take steps to strip them of their nationality arbitrarily.

As Bhabha notes, immigration policies became stricter in much of Europe and North America after the 1960s, with adverse consequences for family unity. Discredited tests for estimating age are regularly used in some countries, resulting in denials of visas on the basis that children have aged out of immigration eligibility when the test returns results that are at odds with birth certificates or other documents (p. 44). Means tests that fail to take into account an extended family's total resources, restrictive criteria through which family members can sponsor admission, and language requirements for immigration present other obstacles to family unification (pp. 45–50).

Requirements aimed at ensuring a certain measure of "cultural assimilation" are problematic in two related ways when they result in the denial of children's right to family life. First, a child's ability to exercise a fundamental right should not reasonably be conditioned on arbitrary grounds. Assessing one such requirement, from the Netherlands, Bhabha asks, "Why should a teenager seeking to join a parent have to learn, *before* being granted admission, about customs such as leaving

house curtains undrawn or bringing gifts to birthday parties?” (p. 47). Second, such measures are often thinly veiled means of restricting immigration of those whose religious beliefs and cultural practices diverge too sharply from the societal norm—that is, they are discriminatory in effect and perhaps in intent.

Such animus often affects a state’s treatment of its own citizens as well. The Dominican Republic has for years denied the rights of citizenship to tens of thousands of Dominicans of Haitian descent.²⁰ In 2015 its efforts created a humanitarian crisis when this minority was threatened with expulsion. These Dominicans faced formidable bureaucratic hurdles and a strict deadline to register as “foreigners” and then seek naturalization—all to be allowed to remain in the only country they, and in many cases their parents and grandparents, have ever known. In the meantime, children from this community have dropped out of school, and many now work on the streets. Further, they and their families continue to be at risk of expulsion to Haiti. The Bahamas has taken similar steps to strip citizenship from persons of Haitian descent, leaving thousands stateless.²¹

As Bhabha notes, in some cases in the United States children of Mexican descent born at home with the aid of midwives have had difficulty getting passports because the validity of their birth certificates has been questioned (p. 73). In 2015, undocumented Mexican parents sued the state of Texas for its refusal to issue birth certificates to their U.S.-born children when the parents could not provide a passport with a current U.S. visa or other forms of identification deemed acceptable to the state Department of Health.²²

There is a real question whether practices such as these are meant to encourage children and their parents to leave. They certainly make everyday life—enrolling in school; getting a driver’s license; holding a job; traveling for work, leisure, or to see family abroad; and so on—much more difficult. The situation for children and their parents is even more difficult when undocumented parents are ordered deported. Families in such cases must choose between separation and relocating their children to a country they may not know. The United States, for example, offers scant regard for children’s rights and interests in such situations. This is particularly so after 1996, when successive changes to immigration laws set a very high bar for avoiding deportation because of its effects on a spouse, parent, or child—raising the standard to require a showing of “exceptional and extremely unusual hardship.”²³ On its face, European human rights law, with its explicit protection of the right to family life, offers more promise, but in fact that protection is qualified in a way that “translates into judicial ambivalence,” Bhabha concludes (p. 49).

Children who are the victims of trafficking appear, in principle, to be in a better position than other child migrants. Most states have accepted international obligations to protect trafficked children. The U.S. Department of State publishes an annual report on trafficking in persons.²⁴ State delegations to UN and other international meetings routinely make reference to their efforts to combat trafficking. But policy frameworks are frequently incomplete or incoherent. Bhabha notes that efforts to track and respond to trafficking are frequently made more difficult by “the unfortunate tendency to group women and children together, as if they are one entity, ‘women-and-children’” (p. 146). She also points out the tendency to conflate trafficking with slavery, with problematic consequences. Slavery and trafficking are conceptually distinct—the former characterized by ownership of another person, while the latter includes situations where individuals are recruited, transported, or harbored for the purpose of exploitation. As Bhabha observes, “the equation [of slavery with trafficking] obscures a highly significant and distinctive element of many trafficking but no slavery situations: they are initiated by the trafficked person” (p. 148). One consequence of such confusion is that victims of trafficking are not accurately identified. Moreover, “even when victims are identified, and are granted protection, the facilities and services to which they are entitled are so hard to access that in practice they are illusory” (p. 161).

A further failing is that most of the influential anti-trafficking models take an approach that is largely, or even exclusively, viewed as a law enforcement exercise. Protection for children who have been trafficked may be short-term and conditioned on their cooperation with investigations (pp. 150–54). The law enforcement approach fails to take into account that a root cause of trafficking is that “impoverished and disenfranchised communities themselves” are searching for an exit from “endemic poverty and lack of local opportunity” (p. 165). In Bhabha’s analysis:

The single-vector theory of trafficking as fueled by demand from exploiters, delivery by traffickers, and supply of victims is inadequate. It leaves out a second equally crucial demand-delivery-supply chain in which the demand comes from victims of structural inequality who have no choice but to seek opportunity, escape, income, security, and hope elsewhere (p. 164).

She continues:

If there are not one but two primary vectors of demand for the services of traffickers—one from would-be exploiters and one from communities seeking exit from poverty and

violence—then it makes little sense for anti-trafficking strategies to be overwhelmingly targeted at only one source—traffickers—and for the vast majority of resources to be allocated in only one direction: criminalization. Yet, this is where we are at the moment (p. 166).

Bhabha urges that, in addition to law enforcement initiatives, we should aim to “reduce the lure of abusive ‘exit’ for exploitable children,” including through “income generation, educational access, and other root-cause projects targeted at communities known to supply large numbers of people for the trafficking industry” (p. 166). Development efforts should reflect what we know about the root causes of trafficking; for its part, “antitrafficking work should refocus its priorities so that work within at-risk communities is not solely focused on educational campaigns and warnings, but rather includes concrete alternatives to migration and exploitation in the areas of education, social support, work, and future aspirations” (p. 174).

In her analysis of the issues faced by children who move in search of safety, for family reasons, or into exploitation, Bhabha offers an expert grasp of the complexity of child migration, with a nuanced analysis of each of these situations. As she assesses each of the several contexts in which children migrate, she returns to and develops her thesis that an unresolved ambivalence—the contradiction between the state’s role to protect children from harm and society’s expectation that the state should “protect us from threatening, unruly, and uncontrolled outsiders, even if they are children” (p. 11)—is at the heart of the current impasse.



Adolescence is nothing if not unruly, and it is the subject both of the last chapter of Bhabha’s *Child Migration and Human Rights* and of a companion volume, *Human Rights and Adolescence*—the latter being a collection of essays for which she served as editor. To start with, it is not obvious who counts as an adolescent. Adolescence is often assumed to begin at the onset of puberty, but as Jean Zermatten, a former juvenile court judge and member of the Committee on the Rights of the Child, notes in his chapter, psychological change is even more important in providing a definition (p. 24). These changes include emerging awareness of sexuality, the desire to acquire independence from parents or other guardians, and consequent conflicts over the limits imposed by caregivers, schools, and society. As Zermatten observes, adolescence is “the age of high idealism and illusions, cruel disappointment, and tremendous hope and despair. Such

paradoxical emotional states can lead to eccentric behavior toward others, or in some instances, self-aggressive behavior that culminates in suicide” (p. 26).

As the transitional stage between childhood and adulthood, adolescence can refer to many different mileposts: the period after reaching puberty but before the completion of one’s education; the age one begins working; the departure from one’s family of origin; the establishing of a new family; or even some combination of these events. Admittedly, these imprecise boundaries vary across societies and between individuals and so make measurement difficult, which is why so many UN agencies define adolescence as the second decade of life, ages ten through nineteen. But collecting data for this age range without further disaggregation hampers efforts to distinguish children (all persons under eighteen, under the definition set forth in international law) from adults, and to afford them the protections they are entitled to under international standards.

Elena Rozzi’s chapter in *Human Rights and Adolescence* describes the typically prolonged transition to adulthood in traditional Italian society, and contrasts that model with the state’s approaches to unaccompanied Albanian children and Roma teenagers. Italy’s approach to unaccompanied children is to presume that their return to their families is in their best interest as long as no risk of abuse or persecution emerged in the course of tracing a child’s family background. The authority charged with making this determination was influenced, Rozzi suggests, by the fact that:

In Italy youth are economically supported by their parents well after adolescence and leave the family of origin very late. The point of view of the Committee [for Foreign Minors] members was restricted to a model of transition to adulthood where adolescents are fully maintained by their parents and do not have economic responsibilities; they just go to school and have leisure, and—most important—they live with their parents. . . . That adolescents should live separated from their parents, work, and send money home was simply considered unacceptable (pp. 46–47).

In contrast, Italian authorities often accept decisions by Roma children and their families to drop out of school, Rozzi says. As she observes, “The widespread idea is that not attending school, early marriage, and child labor are all part of the ‘Gypsies’ culture’: therefore any intervention to promote the right to education of Roma teenagers is considered useless or, worse still, disrespectful of their culture” (p. 50). It is not surprising that different state institutions approach adolescence in ways that are contradictory when examined side by side. If nothing else,

these two examples reveal the imprecise boundaries of adolescence, and the lack of consensus about what adolescence implies.

Whatever its parameters, all contributors to this volume agree that adolescence is a social fact that is characterized by rapid, and uneven, changes in physical and emotional maturity. One consequence of this time of upheaval may be increased involvement in delinquency. In fact, for boys and young men in particular, involvement in crime rises sharply after age sixteen, peaks in their early twenties, and then drops off sharply after age twenty-four. Advances in our understanding of adolescent brain development, which is the focus of Laurence Steinberg's chapter, help explain why that is so.

The chapter by Clea McNeely and Krishna Bose provides further information on adolescent social and emotional development. For instance, we now know that adolescence is a time of enormous change in the brain's structure as well as its functioning. These advances in our understanding of neuroscience have confirmed that teenagers have limited comprehension of risk and consequences, and they are unable, generally speaking, to act with adult-like volition (p. 71). In particular, both common experience and developmental science teach that teens tend to act in concert with and be influenced by others. Teens are not only more susceptible to peer influence, they are also much more likely to engage in risky behavior with peers. In short, youths do things in the presence of peers they would never do alone. The power of peer influence decreases with age, and what an individual at age sixteen or seventeen will do in a group may be very different than the choice he or she will make when older (p. 65). It is not surprising, then, that crime peaks during middle and late adolescence. What *is* surprising, in light of these findings, is the way policymakers often respond to this fact.

If, in his contribution to this volume, Christian Salazar Volkmann is correct in saying that Colombia's approach is to distinguish between "kids that are really children" and those "dangerous criminals and professional murderers age 16 and 17 that cannot be dealt with softly" (p. 129), this can be viewed in part as a response to that particular country's history of armed conflict. At the same time, it is typical of the popular discourse on the matter. Indeed, all over the world it has become common to hear proposals to reduce the age of criminal responsibility (the age at which offences by children are heard in the juvenile courts) and/or criminal majority (the age at which people are treated as adults for trial and sentencing). In the United States, for example, individuals can be tried as adults in most states beginning at age fourteen—and at even younger ages in

some states, depending on the crime of which they are accused. Once tried and convicted, these youthful offenders can receive a very long sentence or even life without parole.²⁵ The U.S. approach is largely an anachronism, globally speaking, but Brazil and India are now considering proposals to try all sixteen- and seventeen-year-olds as adults.²⁶

It is true that sixteen-year-olds are more likely to be involved in lawbreaking than are sixty-year-olds. It is also the case that teenagers make easy targets; they usually cannot vote, as Salazar Volkmann points out, and they are easily demonized. Politicians rarely suffer at the polls for appearing to be tough on crime. But if these policies are premised on the notion that they will actually reduce crime—on the theory that kids will be deterred from committing acts of delinquency because they will be punished more severely—research by Steinberg and others strongly suggests that such experiments in harsh, obdurate approaches to youthful offenders will not achieve that aim. “Violent crimes are usually committed by adolescents when they are emotionally aroused and with their friends—two conditions that increase the likelihood of impulsivity and sensation-seeking, and that exacerbate adolescent immaturity,” writes Steinberg (p. 66). In other words, adolescent lawbreakers are even less likely than adult criminals to plan ahead and calculate risks (and may in fact be less capable of making such assessments), all of which is to say that deterrence is an unlikely proposition. Moreover, because adolescents are still developing, young offenders are particularly amenable to change and rehabilitation. For most adolescents, risk-taking and criminal behavior is fleeting; they cease with maturity.

As Steinberg points out, it is not inconsistent to argue that adolescents might be mature enough for some decisions but not others (p. 66). It makes more sense, for example, to have a lower age for making autonomous decisions about whether to have an abortion or receive other health services than for adolescents to be subject to adult treatment by the justice system. The decision to seek medical treatment can be a guided and informed one, while youthful involvement in criminality almost never involves a deliberative process. And while we should be cautious of the “seductive allure of neuroscience explanation” (p. 62), these findings are helpful in assessing the efficacy and wisdom of policy responses to juvenile crime, and in identifying alternative models.

In particular, Steinberg’s suggestion of “treating adolescent offenders as an intermediate category” (p. 72) is a potentially useful one; other criminologists have advanced similar proposals. Such a policy framework would have to adhere to the human rights principle that everyone under the age of eighteen must benefit from

the protections set forth in the UN Convention on the Rights of the Child. As long as that standard is observed, there is no barrier to treating older children differently from younger ones—in fact, such an approach may well be most consistent with the principle that children should be treated in a way that reflects their age and maturity. Nor is there any international prohibition on extending the protections of the convention to young adults—say, those up to the age of twenty-four. Indeed, the convention explicitly notes that states may do just that.

The research discussed by Steinberg is also helpful in understanding the reality faced by youths who join armed groups. In Sierra Leone, as Theresa S. Betancourt, Katrina Hann, and Moses Zombo observe, “as a result of their involvement with armed forces and groups, many youths witnessed and even perpetrated acts of intense physical and sexual violence, including executions, death squad killings, torture, rape, detention, bombings, forced displacement, destruction of homes, and massacres” (p. 139). War in Guatemala, as elsewhere, “left a large number of children orphaned and abandoned . . . and the possibility of living a normal childhood within the norms of their culture, lost” (p. 149). In such contexts, just as other writers have observed with respect to youth participation in gangs, joining armed groups can be a survival strategy.

For all that is helpful in this volume, there were a few points at which I thought the authors hit false notes. For instance, Katie Naeve’s chapter explores what she describes as children’s “voluntary involvement” in armed conflict. That is an unsatisfactory term, although she is careful to say that she does not mean to transfer blame from leaders of armed groups or to suggest that this form of illegal recruitment is less harmful than recruitment effected by abduction, threat, or other forms of violence. But the words we use matter, and terms like “voluntary involvement” contribute to misconceptions that are best avoided. The Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups emphasize that joining an armed group as a “volunteer” (a term the Paris Principles use just once in this sense, and do so in quotation marks) is best understood as a reflection of severely limited options.²⁷ The principles call on states to prevent and otherwise address all recruitment or use of children in armed conflict, however they have become associated with armed forces or groups.



It is worth noting that, while *Human Rights and Adolescence* addresses many important issues related to young people, the contributors have not looked at

some of the very significant ways that adolescence challenges parents, policymakers, and the public. For example, the book discusses the prevalence of early marriage and the childbirth-related complications that result from early pregnancy, but it does not address the consequences of laws that restrict access to abortion. As we have seen recently in El Salvador, Ireland, Nicaragua, Paraguay, and Poland, to name just a few countries, the criminalization of abortion and barriers in access even in countries where abortion is legal have serious health consequences for girls as well as women.²⁸

More generally, adolescents face a range of obstacles in access to sexual and reproductive health information and care. These include community stigma relating to sexuality, requirements for parental consent for access to contraceptives or legal abortions, and negative attitudes and abusive behavior on the part of health providers. Girls in particular often do not receive comprehensive, evidence-based sexuality education and information.

Youth participation in protest is another omission from the collection, with the exception of passing references to the role of young people in the Arab uprisings in the chapter by Jocelyn DeJong and Mary Kawar (pp. 188, 207). It is a striking absence, given that the right to be heard is one of the foundational rights of the Convention on the Rights of the Child. It is also surprising because youth involvement in and leadership of protest has a long pedigree. Teenagers and younger children who took part in the 1963 Birmingham Children's Crusade were sprayed with fire hoses, beaten with batons, had dogs set on them, and were arrested and detained in large numbers.²⁹ Five years later a group of high school students wore black armbands to protest the Vietnam War; when they were sent home from school, they sued for the violation of their right to free expression, winning in the U.S. Supreme Court.³⁰

The tradition of youth leadership has carried on to this day. The face of the Occupy Movement in Hong Kong was a seventeen-year-old, Joshua Wong. Another seventeen-year-old, Amos Yee, faced criminal charges in Singapore for a YouTube video that vociferously criticized the country's first prime minister, Lee Kuan Yew, shortly after his death in March 2015.³¹ Malala Yousafzai, the youngest-ever Nobel laureate and arguably the best-known youth activist today, was attacked by a gunman in 2012, when she was fifteen, in an apparent response to her outspoken views on the right of girls to education. Most young protesters and their causes, however, are not as well known. In Angola, to give just one example, teenagers have periodically gathered in the streets in Luanda, risking beatings, arrest, and detention to protest the continued rule of President José Eduardo dos Santos, who has held power since 1979.³²

Also missing in these essays is a discussion of the many issues that young people must deal with regarding their own sexuality, including lesbian, gay, bisexual, and transgender (LGBT) issues. If teenage expression and, even more so, adolescent sexuality can make adults uncomfortable, youths speaking out to affirm their sexuality or gender identity are often perceived as an outright threat. A generation ago in the United States students struggled to secure recognition for gay-straight alliances and similar groups. Today, a seismic shift in attitudes—with youth at the forefront of these changes—has reached the point where U.S. states are now constitutionally required to recognize same-sex marriage. Even so, Lambda Legal and the Gay, Lesbian, and Straight Education Network still have to offer support to students in the United States who face disciplinary action for taking part in the Day of Silence, an annual event designed to call attention to anti-gay harassment in schools.³³

In Russia, authorities recently moved to close the website of the only national group that provides information to queer and questioning kids. Russian legislation bans the communication to children of any information that constitutes “propaganda of nontraditional sexual relationships”—essentially a prohibition on the dissemination of any positive information about LGBT issues to adolescents.³⁴ Elsewhere in the world, adolescents’ right to seek and exchange information about LGBT issues is routinely restricted under the guise of protecting them.³⁵ Transgender children, in particular, frequently face significant, and sometimes insurmountable, obstacles to formal recognition of their gender identity. As a consequence, ordinary daily activities often become an ordeal.



Giving adolescents appropriate support and protection while encouraging their independence is a tricky balancing act, one that legal and policy frameworks often do not get quite right. It is comparatively straightforward to give states a list of things they may not do: no sentences of death or life without parole for children, and no corporal punishment for anybody of any age. No criminalization of acts by children that would not be crimes if committed by an adult. No detention, of any length of time, of children or their families for immigration control purposes. What is harder is identifying and prioritizing among the range of policy responses that are needed to fulfill children’s rights. It does not help that some of the foundational children’s rights principles can be difficult to apply in practice.

Working in the best interests of the child is one such challenge. How do we determine what is in a child’s best interests, and how do we appropriately balance

those interests against other rights? Even in the context of child custody proceedings, where domestic courts have long employed the best-interest standard or something akin to it, it was only relatively recently that legal systems began to depart from the presumption that placement with the mother was always in a child's best interests. In some contexts, the "best interest" principle is flatly ignored, such as in immigration detention. It would be difficult to make the case that the detention of children for weeks or even months as a means of immigration control is in their best interest. In fact, states do not usually bother to suggest that the children's best interests are part of the rationale for their detention, even though the requirement in international law is that children's best interest "shall be a primary consideration" in all matters that affect them.

It is also a challenge to apply the children's rights framework in a way that does not abruptly cut kids loose at age eighteen. Part of the purpose of the framework is to prepare children to lead fulfilling lives as adults. That purpose is undermined if children do not receive the skills and support they need to prepare them for the future. Foster care is a particular concern in this regard: children too often leave foster-care settings at age eighteen without the life skills to find and hold a job and manage their finances, placing them at high risk of homelessness.³⁶ Those who spend part or all of their adolescent years behind bars face similar hurdles.

Fundamental state failures—to recognize and act in children's best interest; to afford them the right to be heard; and to respect, protect, and fulfill their other rights—are at the heart of both *Child Migration and Human Rights in a Global Age* and *Human Rights and Adolescence*. And the topics these books address—child migration, responses to adolescent lawbreaking, the protection of all children from exploitation—remain urgent ones. It is tempting for states to cut corners when it comes to children, whether in immigration control, juvenile justice, protecting and encouraging the expression of ideas and opinions, or preparation for adulthood. But we can, and must, demand more from individual states, and the international community more broadly. These two new informative and thought-provoking volumes help us to understand just how crucial this task remains.

NOTES

¹ Anne Barnard and Karam Shoumali, "Image of Drowned Syrian, Aylan Kurdi, 3, Brings Migrant Crisis Into Focus," *New York Times*, September 3, 2015.

² Judith Sunderland, "Brussels' Personae Non Gratae," Human Rights Watch and *Foreign Policy* online, April 29, 2015.

³ John Sifton, "Asia's Watery Graveyard for Asylum Seekers," *The Diplomat* online, May 16, 2015.

⁴ "Southeast Asia: Accounts from Rohingya Boat People," Human Rights Watch online, May 27, 2015.

- ⁵ “US: Surge in Detention of Child Migrants,” Human Rights Watch online, June 25, 2014; and Wil S. Hylton, “The Shame of America’s Family Detention Camps,” *New York Times Magazine* online, February 4, 2015.
- ⁶ Animal Político, CIDE, “Programa Frontera Sur: Cacería de Migrantes en México,” Centro de Investigación Periodística (CIPER), April 28, 2015.
- ⁷ Kenneth Roth, “The Refugee Crisis That Isn’t,” *Huffington Post* online, September 3, 2015.
- ⁸ “Children and Armed Conflict,” Report of the UN Secretary-General to the General Assembly and Security Council, May 15, 2014, UN document A/68/878-S/2014/339.
- ⁹ Immigration and Refugee Board of Canada, “Afghanistan: Night letters [Shab Nameha, Shabnamah, Shabnameh], including appearance (2010–2015),” February 10, 2015, document AFG105047.E.
- ¹⁰ “Somalia: UPR Submission,” Human Rights Watch online, June 22, 2015.
- ¹¹ “‘Maybe We Live and Maybe We Die’: Recruitment and Use of Children by Armed Groups in Syria,” Human Rights Watch, June 22, 2014.
- ¹² Ana Arana, “How the Street Gangs Took Central America,” *Foreign Affairs* 84, no. 3 (2005).
- ¹³ United Nations Office on Drugs and Crime (UNODC), *Global Study on Homicide 2013: Trends, Context, Data* (Vienna, UNODC, March 2014).
- ¹⁴ “Intentional Homicides (per 100,000 People),” The World Bank online. See <http://data.worldbank.org/indicator/VC.IHR.PSRC.P5>.
- ¹⁵ Frances Robles, “Fleeing Gangs, Children Head to U.S. Border,” *New York Times*, July 9, 2014.
- ¹⁶ Oscar Martínez, “Why the Children Fleeing Central America Will Not Stop Coming,” *Nation* online (July 30, 2014) and in print (August 18–25, 2014 issue).
- ¹⁷ United Nations High Commissioner for Refugees (UNHCR)/Oficina del Alto Comisionado de las Naciones Unidas para los Refugiados (ACNUR), *Arrancados de Raíz* (Mexico City: UNHCR/ACNUR, 2014).
- ¹⁸ UNHCR Regional Office for the United States and the Caribbean, *Children on the Run* (Washington, D.C.: UNHCR, March 2014).
- ¹⁹ “Council Decision (CFSP) 2015/778 of 18 May 2015 on a European Union Military Operation in the Southern Central Mediterranean (EUNAVFOR MED),” *Official Journal of the European Union*, May 19, 2015, document L 122/31.
- ²⁰ “Dominican Republic: Thousands at Risk of Expulsion to Haiti,” Human Rights Watch, June 30, 2015.
- ²¹ Diana Damschroder, “Without a Legal Home: Statelessness in the Bahamas,” *Human Rights Brief*, Center for Human Rights & Humanitarian Law, February 27, 2013.
- ²² The lawsuit was still ongoing as of this writing, although the federal court denied a request for a preliminary injunction against the state in late October. See Molly Hennessy-Fiske, “Judge: State Can Deny Birth Certificates for U.S.-Born Children of Some Immigrants,” *Los Angeles Times*, October 20, 2015, <http://www.latimes.com/nation/nationnow/la-na-nn-texas-immigrant-birth-certificate-20151016-story.html>; Manny Fernandez, “Immigrants Fight Texas’ Birth Certificate Rules,” *The New York Times*, September 17, 2015, www.nytimes.com/2015/09/18/us/illegal-immigrant-birth-certificates.html; and Molly Hennessy-Fiske, “Immigrants Sue Texas over State’s Denial of Birth Certificates for U.S.-Born Children,” *Los Angeles Times*, July 18, 2015, www.latimes.com/nation/immigration/la-na-texas-immigrant-birth-20150718-story.html.
- ²³ “8 U.S. Code § 1229b - Cancellation of removal; adjustment of status,” Legal Information Institute of the Cornell University Law School, www.law.cornell.edu/uscode/text/8/1229b.
- ²⁴ U.S. Department of State, “2015 Trafficking in Persons Report,” www.state.gov/j/tip/rls/tiprpt/2015/index.htm.
- ²⁵ Alba Morales, *Branded for Life: Florida’s Prosecution of Children as Adults Under Its “Direct File” Statute* (New York: Human Rights Watch, 2014), pp. 14–18; Ian Kysel, *Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States* (New York: Human Rights Watch and American Civil Liberties Union, 2012), pp. 11–14.
- ²⁶ Márcio Falcão, “Comissão da Câmara aprova proposta de redução da maioridade penal,” *Folha de S. Paulo*, March 31, 2015; Aditi Malhotra, “Indian Cabinet Gives Nod to Change in Juvenile Age for Serious Crimes,” *Wall Street Journal*, April 23, 2015.
- ²⁷ For More on the Paris Principles, see <https://childrenandarmedconflict.un.org/our-work/paris-principles/>.
- ²⁸ *On the Brink of Death: Violence against Women and the Abortion Ban in El Salvador* (London: Amnesty International, 2014); *She Is Not a Criminal: The Impact of Ireland’s Abortion Law* (London: Amnesty International, 2015); *The Total Abortion Ban in Nicaragua: Women’s Lives and Health Endangered, Medical Professionals Criminalized* (London: Amnesty International, 2009); “Paraguay: Raped 10-Year-Old Girl Continues to Be Denied the Option of an Abortion Despite National and Global

- Outrage,” Amnesty International online, May 8, 2015; “Poland Must Implement Landmark European Court Ruling on Abortion,” Amnesty International online, October 31, 2012.
- ²⁹ Kim Gilmore, “The Birmingham Children’s Crusade of 1963,” *Biography.com*, February 14, 2014.
- ³⁰ “Tinker v. Des Moines Independent Community School District,” Oyez Project at Chicago-Kent College of Law, www.oyez.org/cases/1960-1969/1968/1968_21.
- ³¹ Nathan Heller, “Amos Yee: YouTube Star, Teen-Ager, Dissident,” *New Yorker* online, April 10, 2015.
- ³² Rafael Marques de Morais and Susana A. Moreira, “Angola’s Youth Lead the Way to Unseat President Dos Santos,” *Guardian*, September 29, 2011.
- ³³ “National Day of Silence: The Freedom to Speak (or Not),” Lambda Legal online, http://www.lambda-legal.org/publications/fs_2015_day-of-silence-faq.
- ³⁴ “Russia: Court Hearing Against LGBT Group,” Human Rights Watch online, April 2, 2015.
- ³⁵ Ryan Thoreson, “From Child Protection to Children’s Rights: Rethinking Homosexual Propaganda Bans in Human Rights Law,” *Yale Law Journal*, vol. 124 (2014–2015), pp. 1327–1344.
- ³⁶ Elizabeth Calvin, *My So-Called Emancipation: From Foster Care to Homelessness for California Youth* (New York: Human Rights Watch, 2010).