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# A COMMENTARY ON THE COMMITTEE ON THE RIGHTS OF THE CHILD'S DEFINITION OF NON-REFOULEMENT FOR CHILDREN: BROAD PROTECTION FOR FUNDAMENTAL RIGHTS

Alice Farmer\*

## INTRODUCTION

Non-refoulement—the doctrine that prohibits return of an individual to a country in which he or she may face serious abuses<sup>1</sup>—is a powerful tool in human rights implementation. Non-refoulement effectively acts as a guardian for individuals, protecting them from serious rights abuses at a point in the migration cycle where their home States cannot or will not provide protection. Non-refoulement also acts as a guardian for the underlying human rights norms themselves, providing a mechanism to ensure that those norms are not violated.<sup>2</sup>

Non-refoulement has taken on an increasingly binding character in recent decades, with scholars and practitioners considering it customary international law or even *jus cogens*.<sup>3</sup> In its binding forms, without exceptions, States can find themselves obliged to retain within their territory non-nationals who they consider a threat to national security.<sup>4</sup> Vijay Padmanabhan—whose article entitled *To Transfer or Not to Transfer: Identifying and Protecting Human Rights Interests in Non-Refoulement*

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1. GUY S. GOODWIN-GILL & JANE MCADAM, *THE REFUGEE IN INTERNATIONAL LAW* 201 (2007); see also Elihu Lauterpacht & Daniel Bethlehem, *The Scope and Content of the Principle of Non-refoulement: Opinion*, in *REFUGEE PROTECTION IN INTERNATIONAL LAW: UNHCR GLOBAL CONSULTATIONS ON INTERNATIONAL PROTECTION* 87, 89 (Erika Feller et al. eds., 2003) (“*Non-refoulement* is a concept which prohibits States from returning a refugee or asylum seeker to territories where there is a risk that his or her life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion.”).

2. See, e.g., Alice Farmer, *Non-refoulement and Jus Cogens: Limiting Anti-terror Measures that Threaten Refugee Protection*, 23 *GEO. IMMIGR. L.J.* 1, 18–22 (2008) (discussing the manner in which various articulations of non-refoulement protect the underlying human rights norms such as freedom from persecution and freedom from torture).

3. See *id.* at 23–28 (reviewing arguments from UNHCR, Lauterpacht, Allain, and others that non-refoulement is customary international law or *jus cogens*).

4. See *id.* at 18–19 (discussing articulations of non-refoulement with no exceptions, that bind States from returning individuals regardless of the threat to national security).

recently appeared in the *Fordham Law Review*—raises very valid questions about the breadth of non-refoulement, noting that in many definitions of the norm, no exceptions for national security concerns are permitted.<sup>5</sup> Padmanabhan argues that a balancing of State security interests and individual human rights concerns would be appropriate for non-refoulement as applied in certain human rights contexts, to give the State further leeway.<sup>6</sup> Padmanabhan's framework does not, however, acknowledge the breadth of protection offered by non-refoulement and the fundamental nature of the human rights norms protected by this guardian. Padmanabhan looks at the *Naseer* case,<sup>7</sup> in which the U.K. government was unable to deport to Pakistan a Pakistani national thought to be involved in planning acts of terrorism (but who they were unable to prosecute in criminal court).<sup>8</sup> He argues that the U.K.'s interests in providing security to its population should weigh against Naseer's interests in protection from return.<sup>9</sup> The problem with this argument is that non-refoulement in the human rights context permits no exceptions, barring States from trading away individuals' fundamental rights.<sup>10</sup>

Looking at non-refoulement in one of its broadest forms—that of non-refoulement for children—we see both the immense protective power of the norm, and its capacity to bind States' actions. This brief commentary examines non-refoulement standards for children as defined by the Committee on the Rights of the Child. It next looks at the limited commentary and application by scholars and practitioners of the Committee's definition. By applying these standards to the example of Afghan children in the U.K., this paper demonstrates the breadth of non-refoulement, and its non-compromising nature. Finally, this paper concludes that international law does not permit balancing or other exceptions to non-refoulement in this context, regardless of State security interests.

### I. NON-REFOULEMENT FOR CHILDREN

The Committee on the Rights of the Child states, in General Comment No. 6, that

in fulfilling obligations under the Convention [on the Rights of the Child], States shall not return a child to a country where there are substantial

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5. Vijay M. Padmanabhan, *To Transfer or Not to Transfer: Identifying and Protecting Relevant Human Rights Interests in Non-refoulement*, 80 FORDHAM L. REV. 73, 85–89 (2011).

6. *Id.* at 112–21.

7. *Naseer v. Sec'y of State for the Home Dep't*, [May 18, 2010] No. SC77/80/21/82/83/09 (Special Immigration Appeals Comm'n [S.I.A.C.]), slip op. (U.K.), available at [http://www.siac.tribunals.gov.uk/Documents/outcomes/1\\_OpenJudgment.pdf](http://www.siac.tribunals.gov.uk/Documents/outcomes/1_OpenJudgment.pdf).

8. Padmanabhan, *supra* note 5, at 75–76.

9. *Id.* at 76–79.

10. See *infra* notes 21–34, 38–42 and accompanying text.

grounds for believing that there is a real risk of irreparable harm to the child<sup>11</sup>

This is one of the most expansive definitions of non-refoulement in international law, given that “irreparable harm” refers to a particularly broad set of rights.<sup>12</sup>

This definition of non-refoulement is, according to the Committee, based on obligations deriving from international human rights, humanitarian law, and refugee law, including the 1951 Refugee Convention, the Convention Against Torture, the Convention on the Rights of the Child (CRC), and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.<sup>13</sup> While the definition of non-refoulement as it applies to children is not explicitly stated in the body of the CRC, the Committee’s General Comments are considered authoritative interpretations of the treaty.<sup>14</sup>

The Committee specifies Articles 6 (rights to life and survival) and 37 (rights to liberty and freedom from torture) as examples of issues that might rise to the level of “irreparable harm” referred to in their definition of non-refoulement.<sup>15</sup> The protection given for the right to life<sup>16</sup> and the right to freedom from torture and other cruel, inhuman, and degrading treatment or punishment<sup>17</sup> is similar to the protection seen in non-refoulement as articulated in the Refugee Convention<sup>18</sup> and the Convention Against Torture.<sup>19</sup> However, the CRC, unlike the Convention Against Torture, does not require State perpetration for an action to be torture or cruel, inhuman, or degrading treatment,<sup>20</sup> and so the non-refoulement protection offered by the CRC is broader.

The definition of non-refoulement for children also covers a more expansive set of rights than other definitions of non-refoulement when considering deprivation of liberty and detention practices. For instance, the Committee refers to the broad range of harms contemplated under Article 37 of the CRC.<sup>21</sup> Article 37 includes prohibitions on the sentence of life without parole for children, unlawful or arbitrary deprivation of liberty, and

11. U.N. Comm. on the Rights of the Child, General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, ¶ 27, U.N. Doc. CRC/GC/2005/6 (Sept. 1, 2005).

12. *Id.* ¶¶ 26–30.

13. *Id.* ¶¶ 26–28.

14. General comments are considered authoritative interpretations of a treaty. *Cf.* Nigel D. White, *The United Nations System: Towards International Justice* 178 (2002) (noting that “the decisions and views of the HRC are the most authoritative interpretation of [CRC] provisions”).

15. U.N. Comm. on the Rights of the Child, *supra* note 11, ¶ 27.

16. Convention on the Rights of the Child, art. 6(1), Nov. 20, 1989, 1577 U.N.T.S. 3.

17. *Id.* art. 37(a).

18. Convention Relating to the Status of Refugees arts. 1(a), 33, July 28, 1951, 189 U.N.T.S. 150 [hereinafter Refugee Convention].

19. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment arts. 1, 3, Dec. 10, 1984, 1465 U.N.T.S. 85 [hereinafter CAT].

20. Compare CAT, *supra* note 19, art. 1, with Convention on the Rights of the Child, *supra* note 16, art. 37.

21. U.N. Comm. on the Rights of the Child, *supra* note 11, ¶ 27.

inappropriate detention practices, and requires the provision of legitimate legal proceedings.<sup>22</sup> Whereas in the context of the Refugee Convention or the Convention Against Torture, violations of similar rights would need to rise to the level of persecution, torture, or cruel, inhuman, or degrading treatment to trigger non-refoulement provisions,<sup>23</sup> under the CRC the violations on their face are sufficient.

The breadth of the definition of non-refoulement for children is even more striking in the area of economic and social rights. The Committee specifies that “irreparable harm to the child” can encompass risks to the child’s “survival and development” as articulated in Article 6 of the CRC.<sup>24</sup> The Committee notes that “the assessment of the risk . . . should, for example, take into account the particularly serious consequences for children of the insufficient provision of food or health services.”<sup>25</sup> When compared to other treaties, this establishes a much lower threshold at which failure to fulfill economic and social rights can play a factor in triggering protection through non-refoulement provisions.

In a further broadening of the concept, the Committee’s definition of non-refoulement draws on laws preventing military recruitment of children.<sup>26</sup> The Committee states that

[a]s underage recruitment and participation in hostilities entails a high risk of irreparable harm . . . State obligations . . . entail extraterritorial effects and States shall refrain from returning a child in any manner whatsoever to the borders of a State where there is a real risk of underage recruitment . . . or . . . direct or indirect participation in hostilities<sup>27</sup>

Here, the Committee is basing the non-refoulement obligation not on the 1951 Refugee Convention or the Convention Against Torture, but on international law governing children and armed conflict, including Article 38 of the CRC and Articles 3 and 4 of the Optional Protocol to the CRC on the involvement of children in armed conflict. By arguing that States are bound extraterritorially by these provisions, the Committee has defined non-refoulement to include a body of law not usually considered as a basis for this norm, and by doing so, has expanded the protection offered to children through non-refoulement.

In defining non-refoulement, the Committee takes care to delineate broad operational parameters. For instance, the definition encompasses risks to the child in “the country to which removal is to be effected or in any country to which the child may subsequently be removed.”<sup>28</sup> The Committee instructs State parties to protect confidentiality, and take care

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22. Convention on the Rights of the Child, *supra* note 16, art. 37.

23. See Refugee Convention, *supra* note 18, arts. 1(a), 33; CAT, *supra* note 19, arts. 1, 3.

24. U.N. Comm. on the Rights of the Child, *supra* note 11, ¶ 27; Convention on the Rights of the Child, *supra* note 16, art. 6.

25. U.N. Comm. on the Rights of the Child, *supra* note 11, ¶ 27.

26. *Id.* ¶ 28.

27. *Id.*

28. *Id.* ¶ 27.

not to endanger the well-being of family members or others in the child's country of origin.<sup>29</sup> Furthermore, the Committee directs States to conduct assessments "in an age and gender-sensitive manner."<sup>30</sup>

The Committee's discussion of related issues in General Comment No. 6 also bolsters its broad definition of non-refoulement. For instance, the Committee considers the return of children who have been a victim of trafficking; it directs States to refrain from returning children if they face a risk of being re-trafficked, and to consider complementary forms of protection for trafficked children when return is not in their best interests.<sup>31</sup> Likewise, while the Committee indicates that family reunification can be pursued in many cases, it notes that it should not be undertaken "where there is a 'reasonable risk' that such a return would lead to the violation of fundamental human rights of the child."<sup>32</sup> This applies even where the risk to the child is at a "lower level" than might be seen in refugee status, as where a child is "affected by the indiscriminate effects of generalized violence."<sup>33</sup> Throughout General Comment No. 6, the Committee articulates a broad approach to non-refoulement and related concepts, emphasizing that the protection of children's fundamental human rights—including economic and social rights—cannot be suspended.<sup>34</sup>

## II. APPLICATION OF THE COMMITTEE'S DEFINITION OF NON-REFOULEMENT

### A. *Scholars' and Practitioners' Approaches to General Comment No. 6*

The Committee on the Rights of the Child articulated the standard for non-refoulement for children in General Comment No. 6 in 2005. Since then, various practitioners and academics<sup>35</sup> have referred to this definition, albeit infrequently. The definition has not been questioned in any substantial way, and there is clear potential for it to be used more widely.

The U.N. High Commissioner for Refugees (UNHCR) is one example of an international actor that has embraced the Committee's definition of non-refoulement. For instance, in its 2007 Advisory Opinion on the Extraterritorial Application of Non-refoulement Obligations, UNHCR

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29. *Id.* ¶¶ 29–30.

30. *Id.* ¶ 27.

31. *Id.* ¶ 53.

32. *Id.* ¶ 82.

33. *Id.*

34. *See, e.g., id.* ¶ 26 ("States must fully respect non-refoulement obligations deriving from international human rights, humanitarian and refugee law . . ."); *id.* ¶ 58 ("As under-age recruitment and participation in hostilities entails a high risk of irreparable harm involving fundamental human rights, . . . States shall refrain from returning a child in any manner whatsoever to the borders of a State where there is a real risk of under-age recruitment . . ."); *id.* ¶ 84 ("Return to the country of origin is not an option if it would lead to a 'reasonable risk' that such return would result in the violation of fundamental human rights of the child, and in particular, if the principle of non-refoulement applies.").

35. *See, e.g.,* David Weissbrodt, Joseph C. Hansen, & Nathaniel H. Nesbitt, *The Role of the Committee on the Rights of the Child in Interpreting and Developing International Humanitarian Law*, 24 HARV. HUM. RTS. J. 115, 118–23 (2011).

referred to the Committee's definition of non-refoulement among its discussion of articulations of the norm within international human rights law.<sup>36</sup> Refugee law and human rights law are considered complementary, and the understanding of a legal concept such as non-refoulement in one area can inform its interpretation in the other.<sup>37</sup>

UNHCR's analysis of both the definition of non-refoulement for children and those articulated elsewhere in human rights law emphasizes the norm's non-negotiable nature.<sup>38</sup> Under refugee law, States can avail themselves of two exceptions to non-refoulement (danger to the community and national security);<sup>39</sup> these exceptions have been used in terrorism cases.<sup>40</sup> Under the CRC, however, as with other human rights treaties, no exceptions to non-refoulement are permitted.<sup>41</sup> Non-refoulement in the human rights context is "non-derogable and applies in all circumstances, including in the context of measures to combat terrorism."<sup>42</sup> Essentially, UNHCR's analysis emphasizes that non-refoulement for children is non-negotiable.

There are, of course, practical concerns in the implementation of the Committee's definition, especially with respect to the breadth of rights covered. Various agencies, both at international and State levels, have referred to the Committee's definition in establishing tools and policy standards.<sup>43</sup> States establishing immigration procedures appropriate for children, while maintaining their obligation to respect non-refoulement, must also provide for timely processing.<sup>44</sup> One Swedish Red Cross staff member notes that in Sweden, this can lead to questions on how and when to determine prevailing conditions in the home country, and how individualized those determinations should be.<sup>45</sup>

#### *B. Protection in Practice: Non-refoulement for Afghan Minors in the U.K.*

The definition of non-refoulement articulated by the Committee on the Rights of the Child is broad and non-negotiable. When looking at

36. U.N. High Comm'r for Refugees, Advisory Opinion on the Extraterritorial Application of Non-refoulement Obligations Under the 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol, ¶ 19 & n.41 (Jan. 26, 2007), available at <http://www.unhcr.org/refworld/docid/45f17a1a4.html>.

37. See, e.g., *id.* ¶ 15; see also Farmer, *supra* note 2, at 21 (discussing complementarity of bodies of law in interpretation of non-refoulement).

38. U.N. High Comm'r for Refugees, *supra* note 36, ¶¶ 11–20.

39. Refugee Convention, *supra* note 18, art. 33; U.N. High Comm'r for Refugees, *supra* note 36, ¶ 10.

40. Farmer, *supra* note 2, at 13–18.

41. U.N. High Comm'r for Refugees, *supra* note 36, ¶ 11.

42. *Id.* ¶ 20.

43. See, e.g., U.N. OFFICE ON DRUGS & CRIME, TOOLKIT TO COMBAT TRAFFICKING IN PERSONS, at 365–66, U.N. Sales No. E.08.V.14 (2008), available at [http://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296\\_tool\\_7-10.pdf](http://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296_tool_7-10.pdf).

44. U.N. Comm. on the Rights of the Child, *supra* note 11, ¶ 70 ("Refugee status applications filed by unaccompanied and separated children shall be given priority and every effort should be made to render a decision promptly and fairly.")

45. Anki Carlsson, *Return of Unaccompanied Minors from a Children's Rights Perspective*, SWEDISH RED CROSS, 7 (May 2011), <http://www.diis.dk/graphics/Events/2011/Anki%20Carlsson%20Paper%20Asylseminar.pdf>.

unaccompanied Afghan minors in the U.K., for example, we can see that the definition provides substantial protection for these children. Individual determinations might show “substantial grounds for believing that there is a real risk of irreparable harm to the child,”<sup>46</sup> especially in cases where the child’s family cannot be traced and he would be returned without their support. That protection cannot be subject to a balancing of human rights and security concerns, as Padmanabhan suggests; non-refoulement in human rights contexts has no exceptions.

There are increasing numbers of unaccompanied migrant children in Europe; for instance, recent Eurostat figures indicate that there were almost 14,000 unaccompanied asylum-seeking children in Europe in 2009, of whom 42 percent were Afghan.<sup>47</sup> Many are vulnerable to human rights abuses during their migration and even in their countries of refuge, with European governments giving inadequate attention to their needs and vulnerabilities as children.<sup>48</sup> Children are removed, both to their countries of origin and to countries they merely transited through on their way to Europe.<sup>49</sup> Human Rights Watch argues that European States all too often favor return (i.e., repatriation) above other solutions to migrant children’s needs, without adequate consideration of whether return is in the child’s best interests.<sup>50</sup>

As in some other European countries, the number of unaccompanied Afghan children seeking asylum in the U.K. grew steadily in the late 2000s; in 2009, 1,525 asylum requests were received from this group.<sup>51</sup> Barely 5 percent are recognized as refugees, with the remainder given some form of subsidiary protection that allows them to remain until age 18.<sup>52</sup> However, the British government, like some other European governments, is exploring policies that would allow these children to be deported back to Afghanistan, with or without successful tracing of their families.<sup>53</sup>

There is a clear possibility that returning Afghan minors from the U.K. to Afghanistan would violate non-refoulement as defined by the Committee. While individual determinations would depend on the specific facts of a child’s case, evidence more generally suggests that conditions for children’s rights in Afghanistan are sufficiently adverse that there may be a “real risk of irreparable harm.” As discussed above, the Committee identifies two articles of the CRC that list issues that can demonstrate irreparable harm.<sup>54</sup>

46. U.N. Comm. on the Rights of the Child, *supra* note 11, ¶ 27.

47. U.N. High Comm’r for Refugees, *Trees Only Move in the Wind: A Study of Unaccompanied Afghan Children in Europe*, ¶ 28 n.9, U.N. Doc. PDES/2010/05 (June 2010), available at <http://www.unhcr.org/refworld/publisher,UNHCR,THEMREPORT,,4c21ae2a2,0.html>.

48. Simone Troller, *In the Migration Trap: Unaccompanied Migrant Children in Europe*, in *WORLD REPORT, HUMAN RIGHTS WATCH* 60, 60 (2010).

49. *Id.* at 61 (giving examples, for instance, of French authorities deporting a Chadian boy to Egypt and an Egyptian boy to Madagascar).

50. *Id.* at 65.

51. U.N. High Comm’r for Refugees, *supra* note 47, ¶ 195.

52. *Id.* ¶ 197.

53. *Id.* ¶ 196.

54. See *supra* note 15 and accompanying text.

With respect to each of these issues, there are serious concerns in Afghanistan.

Rights outlined in Article 37 of the CRC, including juvenile justice issues and freedom from torture, are at issue for children in Afghanistan and could be factors in non-refoulement determinations. The U.N. Assistance Mission in Afghanistan found that children were among those who were tortured by the National Directorate of Security,<sup>55</sup> and an independent nationwide study found that 45 percent of juveniles who were interviewed reported being physically abused by police and prosecutors.<sup>56</sup> The Committee on the Rights of the Child specifically raised concerns over the high rates of police abuse during arrest, and virginity testing imposed on girls in judicial proceedings.<sup>57</sup> The children's aid non-governmental organization, Terre des Hommes, identified serious problems with the implementation of due process rights for juveniles, including lack of representation, lack of a presumption of innocence, and coerced confessions.<sup>58</sup> Likewise, they identified serious flaws in detention practices, including severe overcrowding, lack of access to education, and lack of food.<sup>59</sup>

The Committee's inclusion of economic and social rights in the definition of non-refoulement is striking when applied to Afghanistan, and provides further evidence that the standard for non-refoulement might easily be met in these cases. The Committee urges States to "take into account the particularly serious consequences for children of the insufficient provision of food or health services."<sup>60</sup> UNICEF's statistics for Afghanistan show dire nutrition indicators: 59 percent of children under five are stunted—that is, with significantly delayed growth for their age—and more than a third of children under five are moderately or severely underweight for their age group.<sup>61</sup> Health indicators are also strikingly bad for children: in rural areas, only 30 percent of the population has access to adequate sanitation facilities,<sup>62</sup> just 39 percent has access to safe drinking water,<sup>63</sup> and nine out of ten mothers do not give birth in a health facility.<sup>64</sup>

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55. U.N. Assistance Mission in Afg. & U.N. High Comm'r for Human Rights, *Treatment of Conflict-Related Detainees in Afghan Custody*, 2 & n.16 (Oct. 2011), [http://unama.unmissions.org/Portals/UNAMA/Documents/October10\\_%202011\\_UNAMA\\_Detention\\_Full-Report\\_ENG.pdf](http://unama.unmissions.org/Portals/UNAMA/Documents/October10_%202011_UNAMA_Detention_Full-Report_ENG.pdf).

56. Kimberley Cy. Motley, *An Assessment of Juvenile Justice in Afghanistan*, TERRE DES HOMMES 36 (Jan. 2010), [http://s3.amazonaws.com/webdix/media\\_files/903\\_Tdh\\_Juvenile\\_justice\\_web\\_original.pdf](http://s3.amazonaws.com/webdix/media_files/903_Tdh_Juvenile_justice_web_original.pdf).

57. U.N. Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Concluding Observations: Afghanistan*, ¶ 35, U.N. Doc. CRC/C/AFG/CO/1 (Apr. 8, 2011).

58. Motley, *supra* note 56, at 34–38.

59. *Id.* at 42.

60. U.N. Comm. on the Rights of the Child, *supra* note 11, ¶ 27.

61. *Info by Country: Afghanistan*, UNICEF (Mar. 2, 2010), [http://www.unicef.org/infobycountry/afghanistan\\_statistics.html](http://www.unicef.org/infobycountry/afghanistan_statistics.html).

62. *Id.*

63. *Id.*

It is no surprise that Afghanistan ranks near the bottom of the United Nations Development Programme's Human Development Index, featuring at 155th place out of 169 countries ranked.<sup>65</sup>

Military recruitment of children in Afghanistan is a significant problem, and one which could, as stated by the Committee, trigger non-refoulement obligations.<sup>66</sup> The U.N. Secretary General's Special Representative on Children and Armed Conflict found that "recruitment and use of children by parties to the conflict was observed throughout the country during the two year reporting period" in her 2011 country report to the Security Council.<sup>67</sup> Children were recruited in diverse districts, including Kandahar, Ghazni, and Badakshan provinces and across the border in Pakistan, as messengers, tea boys, drivers, combatants, and suicide bombers.<sup>68</sup> There is no question that these violations are covered by the Committee's clear language on non-refoulement, and that the widespread nature of these violations raises the risk of recruitment faced by children in Afghanistan.

Given this situation, it is not hard to imagine that a child refouled to Afghanistan might be at real risk of irreparable harm. Many of the children in the U.K. cannot trace families at home, despite the efforts of the U.K. and Afghanistan authorities, and are therefore even more vulnerable than normal. That child, sent back to Afghanistan without family, might conceivably face torture or be exposed to other abusive juvenile justice practices. He faces a real risk of involvement in armed conflict. And he very well might struggle to survive, lacking access to decent food or healthcare. Any one of these risks would be sufficient to prevent his return from the U.K. to Afghanistan.

#### CONCLUSION

Non-refoulement for children guards their fundamental rights. The broad definition protects children vulnerable to many forms of harm, including deprivation of social and economic rights. As seen with unaccompanied Afghan minors in the U.K., non-refoulement could protect them from risk of torture, bad juvenile justice practices, lack of nutrition and healthcare, and military recruitment.

Non-refoulement is a powerful guardian, protecting children from a broad range of human rights abuses. However, non-refoulement in human rights contexts binds States, as no exceptions are permitted. Padmanabhan rightly argues that non-refoulement places a heavy burden on States looking

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64. Press Release, UNICEF, UNICEF Aims to Reduce Rates of Infant and Maternal Mortality in Afghanistan, (Sept. 26, 2011), [http://www.unicef.org/infobycountry/afghanistan\\_59870.html](http://www.unicef.org/infobycountry/afghanistan_59870.html).

65. U.N. Dev. Programme, *Human Development Index 2010*, in HUMAN DEVELOPMENT REPORT 2010, THE REAL WEALTH OF NATIONS: PATHWAYS TO HUMAN DEVELOPMENT 143, 145-46 (2010).

66. See U.N. Comm. on the Rights of the Child, *supra* note 11, ¶ 28.

67. Special Representative of the Secretary-General for Children and Armed Conflict, Report of the Secretary-General on Children and Armed Conflict in Afghanistan, ¶ 15, U.N. Security Council, U.N. Doc. S/2011/55 (Feb. 3, 2011).

68. *Id.* ¶¶ 15-24.

to protect national security. While the protection offered by non-refoulement is significant for the individual, there is cost to the State.

Balancing non-refoulement and State security interests, however, is not an option. Though non-refoulement for children applies in more areas than it does for adults, there are no exceptions, nor are there exceptions to the norm in other human rights contexts. Ultimately, the underlying risk of “irreparable harm” to individual children is non-negotiable: their interests cannot be traded away.