

The Human Rights of Unaccompanied Minors in the USA from Central America

David Androff¹

Published online: 27 May 2016
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Abstract The summer of 2014 saw an unprecedented increase in the number of children from Central America immigrating into the USA. This paper examines these events by setting the context of immigration across the USA–Mexico border, reviewing the extent and causes of the influx in immigration, and detailing the political, legal, and social work responses to the child migrants. This article contributes implications for rights-based practice with child migrants.

Keywords Unaccompanied minors · Migrant children · Immigration · Human rights

Immigration is often discussed in contentious political terms, and much has been made of the anti-immigrant rhetoric in the 2016 Presidential campaign. This article aims to provide a human rights perspective on a recent immigration flashpoint, the 2014 influx of children from Central America into the USA.¹ After a brief review of the patterns of migration and

policy responses to immigration into the USA, this paper examines the extent and causes of the surge of unaccompanied minors from Central America. Responses to the so-called crisis ranged from political debate and opportunism to law enforcement, human rights, and social work interventions. These various responses will be reviewed, followed by a discussion of how social workers can incorporate human rights into their practice with unaccompanied minors. The conclusion connects the discussion of this crisis to other struggles for child migrants' rights worldwide.

First, a few notes about terminology. This paper uses the term *crisis* to describe the increase of Central American children immigrating into the USA, which peaked in 2014. The term *crisis* has negative connotations and implications that should be avoided, mainly because it risks hyperbole, problematizes the migrants, and adds a sensational flavor to the phenomenon which also risks inculcating historical amnesia, obscuring long-term dynamics and trends at work. However, it is also useful for its brevity and for lack of better language. The term *minor* refers to a child under the age of 18. The term *unaccompanied* refers to children that were apprehended by themselves, without a parent, legal guardian, or other adult family member. The phrase *unaccompanied alien children* is the language used by the U.S. Customs and Border Patrol to report the number of children apprehended without a parent or family member. This paper refrains from using the term *alien*; the federal government uses this term to indicate a persons' status as without legal documentation or authority, but this paper avoids it for its dehumanizing context. The phrase *family unit* is also used in U.S. Custom and Border Patrol reports of apprehensions that count the total number of individuals who are apprehended with a family member, including either a child under the age of 18, or parent or legal guardian. The label *Southwest border* refers to the land border between the USA and Mexico along the US states of

⁰ A version of this paper was presented to the Council on Social Work Education's Committee on Human Rights at the 2014 Annual Program Meeting in Tampa, Florida (Androff 2014b). A revised version was presented to the Working Group on Human Rights-based Social Work Advocacy for the Rights of Migrant Children and Children in Mixed Status Families in the USA at a seminar convened by the University of Connecticut's Human Rights Institute and the School of Social Work in Hartford, Connecticut, in 2015 (Androff 2015). This paper benefited from the generous feedback at these meetings and the ongoing discussion of the ad hoc Council on Social Work Education's subcommittee on Children's Rights.

✉ David Androff
David.Androff@asu.edu

¹ School of Social Work, Arizona State University, 411 N. Central Ave, Ste. 800, Phoenix, AZ 85004, USA

California, Arizona, New Mexico, and Texas that stretches between the Pacific Ocean and the Gulf of Mexico.

Context of the Borderlands Between the USA and Mexico

The historical roots of the surge of Central American child migrants into the USA are deep and touch upon the legacy of U.S. imperialism in Latin America and frequent American intervention that has resulted in destabilizing political and economic systems throughout the region (Hernandez 2014; Organista 2008; Zayas 2015). Another historical factor is the social construction of the USA–Mexico border; there are so-called Mexican-Americans living in the Southwest U.S. today who trace their lineage back to a time when their homes in California, Arizona, New Mexico, or Texas were part of Mexico. They did not immigrate; the border did. A third historical factor is the economic imbalance and pull that has been fueled by the long-standing U.S. demand for cheap labor, lax trade policy, and poverty and inequality throughout Central America.

Federal and state-level immigration policy changes since 2001 drastically shaped an anti-immigrant climate and resulted in human rights violations such as discrimination against the broader Latino population in the USA, whether immigrant or not (Androff et al. 2011; Becerra et al. 2013). In addition to federal policy shifts, state-level policies have also contributed to the criminalization of immigration. Arizona in particular has led the nation in a series of state-level anti-immigration policies. Policies are considered “anti-immigrant policies” or “anti-immigration policies” when they restrict the human rights of immigrants.

Arizona received national attention for its 2010 anti-immigration policy, SB 1070, which required police to determine people’s immigration status where there is “reasonable suspicion” that they do not have legal documentation (Androff and Tavassoli 2012). This law was copied in other states before ultimately becoming struck down by the Supreme Court (Zayas 2015). It was not an isolated case of reactionary lawmaking; in fact, it was the culmination of a decade of smaller pieces of anti-immigration legislation. These include state-level policies that mandated “English-only” education, anti-smuggling legislation that criminalized migrants as “self-smugglers,” and an employer sanction law that was never implemented while its funds were used to pay for workplace raids. These laws, and the SB 1070 law that gave police officers legal sanction to racially profile, occurred within the larger federal context of rapidly increasing deportations and the militarization of border security along the USA–Mexican border (Androff 2014a).

Advocates, including social workers, for the human rights of immigrants in Arizona have been active throughout this time, working for state and federal policy reform as well as to counter the general culture of stigma and discrimination. Protests, boycotts, legal action, and pressuring state legislators

have been core aspects of this type of advocacy. Particularly vocal has been the Dreamers movement, active in Arizona as well as other states, with a high-profile valedictorian from Arizona State University coming forward to disclose her status as an undocumented person who was brought to the USA as a child (Pratt 2011). In the Arizona State University (ASU) School of Social Work, the Southwest Collaborative on Immigration, Inequality, and Poverty undertook research to document and explore the impact of such policy changes.

However, human rights activists were criminalized along with migrants and emboldened law enforcement officials enforcing draconian anti-immigration laws added to an overall climate of fear that permeated Latino communities and surrounded agencies and organizations working with them, including social work practitioners (Androff and Tavassoli 2012). Many social workers, in order to pursue their ethical commitments to engage with and serve immigrant populations, stopped asking clients about their immigration or documentation status. Program objectives and descriptions were revised to focus on “low-income, monolingual Spanish speakers” which became a synonym for undocumented immigrants. This linguistic sidestep allowed social workers to continue using federal and state funding without risking their clients, their programs, or their practice. This continuation of practice undoubtedly met some need among the community; however, it did not effectively challenge or overcome anti-immigration policies.

Despite this “don’t ask; don’t tell” strategy of avoiding discussing immigration status, many Latinos, regardless of their immigration status, avoided seeking services altogether. Mistrust of the government and social workers by proxy and founded or unfounded fears of immigration policy enforcement served to widen service gaps among populations already affected by underutilization of services. Many Latino families pulled their children from school; children were given emergency contact information if they were to come home and find their parents detained or deported. Violations of the human rights of migrants, especially their civil and political rights, have been well documented (Androff and Tavassoli 2012).

A Peak in Immigration

Against this backdrop, the summer of 2014 saw a dramatic rise in the number and proportion of migrants to the USA from Central America; many of them are children and families with children (Chishti and Hipsman 2016; UNHCR 2014). The U.S. Customs and Border Patrol reports the total number of apprehensions on the Southwest border for each federal fiscal year. Apprehensions of unaccompanied children rose 77 % from 38,759 in Fiscal Year 2013 to 68,541 in Fiscal Year 2014 (USCPB 2014). In Fiscal Year 2015, this fell 42 % to 39,970 (USCBP 2015). The largest group within this population is children under the age of 12 years old, which increased 117 %. Startlingly, the increase in family

units was even greater. In Fiscal Year 2013, there were 14,855 of these apprehensions which rose to 68,445 in Fiscal Year 2014, an incredible 361 % increase. In Fiscal Year 2015, this fell 42 % to 39,838 (USCBP 2015).

By February of 2015, the number of unaccompanied children apprehended by the U.S. border security agents began to decline. These numbers represent the culmination of a 4-year trend of increasing migration of children and families with children from Central America. In Fiscal Year 2011, the total number of unaccompanied minors was 15,949, and in the subsequent fiscal years, it grew to 24,403, then 38,759, and 68,541 as previously noted. The unaccompanied minors came from across the Central American region, with the highest numbers from Honduras (27 % under the age of 12), El Salvador (22 % under the age of 12), Guatemala (10 % under the age of 12), and Mexico (3 % under the age of 12).

The child migrants were fleeing to escape human rights violations such as violence and deprivation in their countries of origin; accounts of children being targeted for torture, rape, theft, and recruitment into criminal gangs are extensive and disturbing (Chishti and Hipsman 2015). The rise in violent activity by criminal networks such as drug cartels served to propel children to risk migration journeys northward rather than face increasing violent conditions. This was a major *push* factor in the classic push/pull paradigm of migration patterns. Additionally, many parents had already migrated to the USA for work and sent for their children to join them after crime and violence escalated throughout Central America. Children traveling north toward their families served as a *pull* factor. These parents may have originally intended to return to their countries of origin, which later became infeasible as the situation in their country of origin deteriorated. Prior to the increase in border security and criminalization of immigration, it was more common for parents to migrate to the USA to work seasonally—always returning to their home and usually without the intention to settle permanently in the USA. This was a migration pattern known as circular migration; however, increased border security disrupted this pattern. An additional factor that may have exacerbated these factors was the pervasive *permiso* myth spread by human smugglers that the USA was granting amnesty to migrants. This was a widespread false rumor, perhaps based on a misinterpretation of the Obama administration's Deferred Action program, popularly known as DACA. This program only applied to people who entered the USA before the age of 16 and have been in the country since 2007; therefore, it would not apply to migrants currently entering the country.

Responses to the Crisis

The dramatic increase in child migrants from Central America received widespread media coverage. The children that were apprehended were housed in shelters to await immigration

hearings and possible family reunification (Chishti and Hipsman 2016). This practice of detaining child immigrants to the USA violates international human rights as codified in the International Covenant on Civil and Political Rights (Human Rights First (HRF) 2015). However, they quickly exceeded the existing shelter space beyond capacity, which consisted of only 7000 beds nationally. The overflows of children were warehoused in detention facilities, while the government commissioned the new construction of new facilities. There have been reports of human rights violations and inhumane conditions within the shelters and detention centers, spurring several immigrant rights organizations to file a complaint for 116 unaccompanied minor children whose rights had been violated in immigration detention (Huebner et al. 2014). Subsequent reports provide evidence that the Immigration and Customs Enforcement agency knowingly covers up human rights violations in immigration detention (National Immigrant Justice Center and Detention Watch Network 2015). Still, other rights groups have documented the negative impact of immigration detention upon these unaccompanied minors (HRF 2015). With a substantial backlog in immigration cases, the waiting period for a hearing is long. The hearings assess children's claims of asylum, and the United Nations High Commission for Refugees estimates that many if not most have legitimate refugee claims of being unable to return to their country of origin due to a well-founded fear of persecution (UNHCR 2014).

Political Responses

The unaccompanied minor crisis spurred anti-immigration sentiment and reactions. Some commentators conflated several unrelated yet sensational media stories, prompting conservative politicians to issue warning that the child migrants might be carrying Ebola and terrorists in their midst (Santana 2014). Despite the bleak legal status of the unaccompanied minors, there have been calls in the USA from anti-immigrant politicians for more severe and harsh reactions and protests against the migrants. In one case, widely reported in the late night talk shows, Arizona State Representative Adam Kwasman from the 11th district became infamous when he misidentified a yellow school bus of YMCA campers to be some of the unaccompanied minors when they drove past an anti-immigrant rally that he was leading (Capehart 2014). Upon seeing the school bus pass the rally, he chased after them and made a statement to the media that "I was actually able to see some of the children in the buses and the fear on their faces. This is not compassion" (Capehart 2014, p. 1). This media interview was a follow-up to his live-tweeting his anti-immigrant rally with tweets such as "This is not compassion. This is the abrogation of the rule of law. This is very sad" (Capehart 2014, p. 1). When he learned of his mistake, he maintained the American camper children did in fact appear very scared. Such reactions were not limited to Arizona. For

instance in Michigan, anti-immigrant protesters carried machine guns in a march against the Central American children (Knake 2014). Many opponents called for sending the apprehended migrant children home without any due process of law. This type of reaction extended to the White House, with the Obama administration supporting fast-tracking of deportations for the migrant children (Chishti and Hipsman 2015). Despite more recent proposals from the Obama administration to classify the migrant children as refugees, the refugee quota allotments for Central America were reduced to 4000.

Not all the political reactions were negative. The U.S. Representative from Tucson, Raul Grijalva, called for a policy response that of sympathy and compassion. The Department of Homeland Security identified the migrants as a humanitarian issue as much as an issue of border security. In addition to calling for fast-track deportations, President Obama attempted to increase the federal response in several ways (Chishti and Hipsman 2015). He asked Congress for \$2 billion for immigration judges, in order to better fund the judiciary and invest in the immigration judiciary infrastructure which would reduce the backlog and waiting time. Only \$10 million of the requested \$2 billion was appropriated. The Obama administration established a Unified Coordination Group under the Department of Homeland Security. The administration expedited applications for refugee status and the process for family reunification, expanded shelter facility capacity and added Spanish language case management staff, and contracted out for shelters, getting supplies for the Red Cross and faith-based organizations.

To address the push factors among the unaccompanied minors' countries of origin, the Obama administration requested over \$200 million in aid and security for Central America (Chishti and Hipsman 2015). Additionally, the federal government conducted public education campaigns in Central America aimed at preventing migration by alerting people to the risks and combating the *permiso* myths. This included commissioning a radio song, *La Bestia Norte*, as a form of popular education to warn people of the dangers of migration (Villegas 2014). *La Bestia* means *the beast* and refers to the train that migrants take north and upon which they suffer many brutalities, often referred to as the train of death (Dickson 2014). The song became a popular hit in Central America and can be accessed online at <https://soundcloud.com/kutnews/la-bestia-norte-full-version-radio-psa>. The Mexican government also conducted such campaigns aimed to stem the flow of migrants across and through its borders. This effort included posters and signposts raising awareness about the dangers inherent in the journey and clarifying the U.S. policy against accepting child migrants. Perhaps most significantly, the Mexican government has worked to secure its southern border, through which migrants from Central America enter.

Legal Aid Responses

The human rights of child migrants include the right to legal representation and due process; these rights are protected by the International Covenant on Civil and Political Rights, to which the USA is a party (UN 1966). The child migrants who have been apprehended have little legal recourse and extremely limited access to legal representation. The immigration system in the USA, as a civil and not criminal system, has no public defender (O'Neill et al. 2015). Immigrants, including children, are expected to represent themselves, often relying on insufficient pro bono attorneys (Chen and Gill 2015; National Immigrant Justice Center 2016). Most immigrants detained appear before a judge at their hearing without legal representation. Immigrants who do have access to legal representation obtain legal relief 75 % of the time, as compared to immigrants without representation who are only successful 15 % of the time (Chen and Gill 2015). At estimated 40 % of children in immigration, detention may be eligible for asylum and international legal protection (Chen and Gill 2015).

To address this urgent need, legal aid organizations provide legal representation for the unaccompanied minors. These groups include the Florence Immigrant and Refugee Rights Project in Arizona, the Casa Cornelia Law Center in San Diego, and the Kids in Need of Defense in Washington D.C. The Florence Immigrant and Refugee Rights Project, for example, provides free legal representation to both children and adult immigrants in detention and provides regular "Know Your Rights" presentations inside detention facilities. Their children's program provides kid friendly and age appropriate Know Your Rights presentations and direct pro bono legal representation when needed. In 2014 alone, the Florence Project served 4367 unaccompanied children in Arizona (FIRRP 2014). Many of these groups and others like human rights organizations such as *No Mas Muertas* have engaged in advocacy to support the child migrants. The Florence Project also provided trainings and a public speaker series to advocate for human rights and policy reform.

Social Work Responses

Social workers have an important role to play in to addressing the human rights violations that unaccompanied minors have suffered and promoting their basic human rights, including their rights to a family, health and mental health care, and education. Social work responses range from care and services, foster care and adoption, linking and integration with legal representation, and advocacy. Foster care and adoption services for the migrant children are provided by the unaccompanied refugee minor foster care program. Southwest Key Programs is one such social service organization that provides services to unaccompanied minors such as shelters, family reunification, and culturally competent crisis, health

and education services in Arizona, California, Georgia, New York, Texas, and Wisconsin (<http://www.swkey.org/programs/shelters/>). The Tumbleweed Center for Youth Development in Phoenix, Arizona, maintains a housing facility, known as *Casa de Suenos* for unaccompanied minors in custody of the Office of Refugee Resettlement (<http://tumbleweed.org/programs/casa-de-suenos/>). The services that Tumbleweed provides include shelter, family reunification, individual and group therapy, case management, health care, education, clothing, and toiletries. Social workers staff the agency and provide services, and include interns from the School of Social Work at Arizona State University. Through these programs, social workers strive to ensure that the human rights of unaccompanied minors are promoted and to prevent further violations of their rights.

Social work responses need not be separated from legal responses. The Florence Immigrant and Refugee Rights Project has recently hired social workers to integrate social services with their legal services (Porter 2016). The social workers provide services to their clients, especially children. Many of the immigrants in detention have mental disability, have experienced intimate partner violence, survived torture, and have significant health needs. The social workers connect clients with medical, housing, education, and other services in addition to supporting the clients through the legal process. As a new program, the outcomes of this model have not yet been evaluated.

Human Rights-Based Practice with Unaccompanied Minors from Central America

What are the human rights of these children? The human rights of the children who have migrated to the USA from Central America have largely been neglected in the political rhetoric and media coverage. However, this is an essential human rights issue. The migrant children's rights are indeed human rights. Fleeing human rights violations, many have had their rights violated during their journeys, only to be denied their human rights upon arrival and apprehension in the USA. The human rights of children to a family, safety, and to human development are at stake. Their detention raises the issues of children's rights to due process and access to legal counsel. The government's response raises issues of transparency in proceedings and accountability for abuses in detention.

Children, among the most vulnerable humans, are deserving of special human rights considerations due to their age. There are a few models for understanding children's rights, as embodied by the 1989 Convention on the Rights of the Child (CRC) (UN 1989). Jones and Walker (2011) organized children's rights into "three P's" of Protection, Provision, and Participation. Save the Children (2008) utilizes the four core

areas of the right to survival, to be safe, to belong, and to develop. UNICEF (2009, 2014) also groups children's rights into the categories of nondiscrimination, the best interest of the child, the rights to life, survival and development, and respect for the views of the child.

The CRC contains at least three articles pertaining to children's right to a family: Article 10 is the right to parental care; Articles 20 and 21 involve the rights to family reunification. This topic, as it relates to migrant and refugee children, was taken up in 2012 during the General Discussion Day of the Committee on the Rights of the Child, which has published a report of migrant children's rights under detention and deportation.

While the USA has not signed the CRC, Article 22 of which states that refugee children have the right to protection and humanitarian aid, the USA has signed the Optional Protocol on the Rights of the Child on the Involvement of Children in Armed Conflict (UNICEF and Coalition to Stop the Use of Child Soldiers 2003). This Optional Protocol was adopted in 2000 and entered into force in 2002. Its primary intent is to prevent the recruitment and use of child soldiers. This might be a potential avenue for advocacy, given that the USA is a party to this Protocol and that many of the migrant children are fleeing from being recruited into armed gangs and criminal networks.

Social workers can incorporate rights-based approaches to their practice with migrant children through the rights-based principles of human dignity, nondiscrimination, participation, transparency, and accountability (Androff 2016). For example, the principle of nondiscrimination holds that migrant children cannot be denied their rights due to their immigration status or lack of documentation. A major gap in current responses to the rights of the unaccompanied minors is in the participation and respect for their views. This may be difficult due to restrictions of access to the migrant children but should not be ignored. The principle of transparency calls not only for clarity on the conditions faced by the children inside the shelters but also for the need to assess and document human rights violations. Accountability involves advocacy for these children as well as for larger political and economic reforms that will address the violence and instability in Central America, such as policies for greater social development and equitable economic growth. Current federal responses such as funding for increased security measures and militarization in Central America are unlikely to address the structural violence.

The Global Context of Migrant Children's Rights

While this paper has focused on the crisis of Central American youth immigrating to the USA across the

Mexican border which peaked in the summer of 2014 as a flashpoint to focus upon advocacy for migrant children's rights in the USA, it cannot be ignored that another flashpoint involving unprecedented migration is occurring in Europe (IOM 2016). Globally, there are over 60 million people who have been displaced from their homes, more than at any point since World War II (UNHCR 2015). Discussions of migrant children's rights in the USA should be mindful of this wider context and therefore also of the need to at least consider the global context of both violations of migrant children's rights and the global context of human rights advocacy for migrant children's rights. The human rights of child migrants in the USA should be connected to the rights of child migrants in Europe.

To make these connections, several questions need to be explored. What is the human rights situation of migrant children in Europe? What human rights violations do they face? Furthermore, how are social workers in Europe reacting to the migration crisis? How are European social workers and professional social work organizations responding to anti-immigrant sentiment and policies? Is there the social work capacity to meet the resettlement, integration, and service needs of the child migrants? What human rights-based advocacy, on behalf of and with child migrants, is having an impact? The consideration of these and other questions may elucidate the ways that social workers can intervene to address the ongoing needs of child migrants as well as to advocate for the amelioration of the conditions in child migrants countries of origin.

Conclusion

This article has examined the human rights of unaccompanied minors in the USA from Central America. Through acknowledging the context of migration in the Borderlands region of the USA and Mexico, the human rights implications of the Central and North American regions' shared histories of colonialism, military conflict, and labor exploitation can be reviewed. Furthermore, the examination of the 2014 child migrant "crisis" reveals the human rights dimensions of child migration: Child migrants are often fleeing human rights violations yet also suffer human rights violations once apprehended in the USA, including detention, abuse, denial of medical care, and restrictions in access to legal representation. The discussion of political responses shows that despite some policies and proposals to protect the human rights of unaccompanied minors in the USA, many politicians and policies further the violations of their rights, demonize the child migrants, and exploit their situation of political purposes. The review of legal and social work responses demonstrate that there are a range of professional interventions that can be used

in social work practice to promote the human rights of unaccompanied minors. However, the social work response should move beyond professional practice, into the realm of policy reform, advocacy, lobbying, direct action, and research.

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