
CHILDREN IN ARBITRARINESS AND ABUSE IN DETENTION CENTRES

Ms Mahavarshini R, Government Law College, Coimbatore

ABSTRACT

Children are part of the most vulnerable group and yet the most overlooked in detention centres due to administrative convenience or parental detention. Although the *United Nations Convention on the Rights of the Child (CRC)* and the *International Covenant on Civil and Political Rights (ICCPR)* mandate that detention must be lawful, necessary, and used only as a measure of last resort. While facing physical mistreatment, psychological harm, inadequate nutrition, denial of healthcare, and lack of access to education, their heightened vulnerability also exposes them to risks of sexual exploitation and trauma from prolonged separation from family. This paper explores the arbitrariness and abuse faced by children in detention centres by tracing past practices, current conditions, and recent legal developments. It highlights how racialised communities—such as Rohingya, Palestinians, and African migrants—are disproportionately affected. Discuss landmark cases of *Mubilanzila Mayeka v. Belgium*, *A v. Australia*, *Saadi v. UK*, *R (AA) v. Secretary of State for the Home Department*, and *Olga Tellis v. BMC*, which illustrate systemic failures. The study further engages with fragmented identities, factional fault lines, citizenship, and deportation, arguing that child detention remains inherently abusive and incompatible with dignity, liberty, and developmental rights.

1. Introduction

Human rights are universal, inherent rights that belong to every person, ensuring dignity, equality, and freedom from discrimination, regardless of their race, gender, religion, or other characteristics. They establish standards for how individuals are treated within society and their relationship with the state, compelling governments to uphold these rights and prevent their violation. Key examples include the right to life, liberty, free expression, education, work, and health, as enshrined in the Universal Declaration of Human Rights (UDHR).

Arbitrary detention and abuse of children in detention centres is a widespread global issue and a grave violation of international human rights law. Children are held in various facilities, including juvenile justice centres, immigration detention centres, and military prisons, often enduring physical and sexual abuse, neglect, and psychological trauma.

1.1 Arbitrary detention

Arbitrary or unlawful detention is the deprivation of a child's liberty without a legal basis or proper judicial oversight. This can include:

- **National security threats:** In conflict zones, children, often with little evidence, are accused of association with armed groups and detained for extended periods without charge.
- **Migration status:** Children are detained based solely on their own or their parents' migratory status, even in countries with laws against the practice.
- **Flawed criminal justice systems:** Children may be detained for minor offences, or even if they are the victims of a crime, due to failing justice systems.
- **Relatives' alleged crimes:** Children are sometimes wrongfully arrested and held for the alleged crimes of their family members.
- **Political reasons:** In some countries, children are deprived of their liberty for expressing political views.

1.2 Common forms of abuse and mistreatment

Abuse in detention centres can take many forms, with detrimental and long-lasting effects on

a child's mental and physical health.

- **Physical and sexual violence:** Children are highly vulnerable to violence from guards and other detainees, with young children housed with adults facing an especially high risk.
- **Neglect:** Detained children are systematically denied basic necessities, including adequate food, clean water, sanitation, medical care, and education.
- **Solitary confinement:** This practice, which is extremely harmful to a child's well-being, is often used as a disciplinary measure.
- **Psychological and emotional trauma:** The trauma of detention, family separation, and the abusive environment can cause severe mental health issues, such as anxiety, depression, and post-traumatic stress disorder (PTSD).
- **Lack of legal safeguards:** Many children are held without legal counsel or information about their cases, violating their human rights and due process.

1.3 Affected populations

Children in detention centres come from various backgrounds and situations, including:

- **Migrant and refugee children:** These children, especially those who are unaccompanied, face arbitrary detention and abuse in facilities in countries like Libya, Indonesia, and Australia.
- **Children in conflict zones:** In countries like Myanmar, Syria, Iraq, and the Democratic Republic of Congo, children are detained by security forces and often subjected to torture or inhuman conditions.
- **Victims of trafficking and exploitation:** Children who have been trafficked or sexually exploited are sometimes arrested and detained instead of receiving protection.
- **Children in the juvenile justice system:** These children, often from marginalised backgrounds, are exposed to violence and abuse in detention facilities designed for rehabilitation.

2. Review of Literature

C Ferstman-2024¹

“Arbitrariness as an Indication of Harm” argues that arbitrary detention is not only unlawful but also inherently harmful. Its unpredictability, lack of safeguards, and denial of agency cause deep psychological and emotional suffering—feelings of powerlessness, despair, and loss of dignity. Ferstman shows that this harm can, in some cases, amount to **torture or cruel, inhuman and degrading treatment**, not merely a procedural violation. She stresses that arbitrariness itself—through uncertainty, indefinite confinement, and lack of recourse—can cross the threshold of severe ill-treatment. This re-framing highlights the urgency of stronger legal safeguards and accountability, making clear that arbitrary detention is not a minor rights violation but a profound human rights abuse.

Michelle Peterie - 2018²

Michelle Peterie (2018) argues that Australia’s immigration detention centres function like **prisons**, not just administrative camps. Detainees face **deprivation** (loss of autonomy, privacy), **frustration** (uncertainty, bureaucratic delays, separation from family), and resulting **trauma** (mental illness, despair). These harms are not accidental but built into the system’s design, making detention punitive in effect rather than merely administrative.

Michael Bochenek-2016³

Michael Bochenek (2016), ‘*Children Behind Bars*’, shows that over a million children worldwide are detained—often for minor or non-criminal acts. Detention is routinely used as a **first resort**, despite international law requiring it to be a **last resort**. Children face overcrowding, abuse, lack of education, and family separation, leading to lasting trauma. The report urges governments to adopt **alternatives to detention** and ensure that, if used, it is only for the shortest necessary time under child-appropriate conditions.

¹ Ferstman, C. (2024). “Arbitrariness” as an Indication of Harm. In *Conceptualising Arbitrary Detention* (pp. 51-82). Bristol University Press.

² Peterie, M. (2018). Deprivation, frustration, and trauma: immigration detention centres as prisons. *Refugee Survey Quarterly*, 37(3), 279-306.

³ Bochenek, M. (2016). Children behind bars: The global overuse of detention of children. *Human Rights Watch*.

3. International Legal Frameworks

The international legal framework for human rights includes the Universal Declaration of Human Rights (UDHR), two core covenants (International Covenant on Civil and Political Rights and International Covenant on Economic, Social, and Cultural Rights), and specific treaties for groups like children and women, forming the International Bill of Human Rights. These legally binding documents establish obligations for states to respect, protect, and fulfil the rights of their citizens, guided by the UN Human Rights Council and other bodies that provide oversight and enforce standards.

3.1 The United Nations Convention on the Rights of the Child (CRC)⁴

The CRC (1989, in force 1990) is the most widely ratified treaty on child rights, establishing children as independent rights-holders. Its general principles include non-discrimination (Article 2), the best interests of the child (Article 3), the right to life, survival, and development (Article 6), and the right to be heard (Article 12). Substantive protections extend to education (Articles 28–29), health (Article 24), and protection against exploitation and armed conflict (Articles 32–39). Crucially, the CRC regulates deprivation of liberty under Article 37, prohibiting torture and cruel treatment, banning capital punishment for minors, and mandating that detention be used only as a last resort for the shortest appropriate time, with access to family, legal aid, and education. Article 40 ensures due process rights for children in conflict with the law, emphasising rehabilitation over punishment. The CRC thus balances protective measures with participatory rights, ensuring that children's dignity, autonomy, and welfare remain at the core of state obligations.

3.2 The International Covenant on Civil and Political Rights (ICCPR)⁵

The ICCPR (1966, in force 1976) is a cornerstone of international human rights law, protecting civil and political freedoms for all individuals, including children. It guarantees the right to life (Article 6), freedom from torture and cruel treatment (Article 7), and protection from arbitrary arrest or detention (Article 9). Importantly, Article 10 requires humane treatment of all detainees, and specifies that juveniles must be separated from adults and accorded treatment

⁴ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990).

⁵ International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. Doc. A/6316, 999 U.N.T.S. 171 (adopted Dec. 16, 1966, entered into force Mar. 23, 1976), reprinted in 6 I.L.M. 368 (1967), available via OHCHR

appropriate to their age and status. Article 14(4) provides that juvenile offenders be dealt with in a manner that considers their age and promotes rehabilitation. Further, Article 24 explicitly affirms every child's right to measures of protection required by their status as minors. Together, these provisions impose obligations on states to ensure that children in conflict with the law are not unnecessarily criminalised, are treated with dignity, and are afforded opportunities for reintegration. The ICCPR, when read alongside the CRC, reinforces that child detention should be exceptional, rights-based, and strictly limited.

4. The Arbitrariness and Abuse faced by Children in Detention centres

Children in detention centres around the world face widespread issues of arbitrary detention and abuse, a serious violation of their human rights. This problem affects children caught in conflicts, immigration detention, and abusive judicial systems, causing severe physical and psychological harm.

Arbitrary and illegal detention

International law states that the detention of a child should be a measure of last resort and for the shortest appropriate period. However, many children face arbitrary detention, with officials often violating basic due process.

4.1 Violating basic due process

Lack of legal safeguards: Children are often detained for long, indefinite periods without access to a lawyer, judicial review, or information about why they are being held. For instance, a 2024 'Human Rights Watch' report on El Salvador noted that under a state of emergency, children were convicted with a lack of due process.

- **Immigration-related detention:** In places like Libya, migrant and refugee children face arbitrary detention due to their or their parents' immigration status. The UN Committee on the Rights of the Child has affirmed that such detention is never in the child's best interest and should be ended.
- **Detention alongside adults:** Children are often held with adult detainees, including dangerous criminals. This practice violates international standards and increases the risk of abuse and exploitation for children.

4.2 Types of abuse and poor conditions

Beyond the legal arbitrariness, children in detention centers are subjected to a range of inhumane conditions and systematic abuse.

4.2.1 Physical and sexual abuse

- **Physical violence:** Accounts of severe and frequent beatings are common. This includes beatings by guards using batons, and in some cases, children being forced to watch guards beat other detainees.
- **Sexual violence and exploitation:** Detained children are at high risk of sexual violence and exploitation from guards and other detainees. A 2024 Amnesty International report on Venezuela documented cases of torture, including sexual abuse, against detained children.

4.2.2 Inhumane living conditions

- **Overcrowding:** Facilities often operate far above their official capacity, with minimal ventilation and sleeping space.
- **Inadequate resources:** Children are systematically deprived of basic necessities like sufficient food, clean water, proper sanitation, and medical care. In some cases, deaths in custody have been reported due to a lack of medical treatment.
- **Lack of family contact:** Detained children are often denied regular contact with family members and legal representatives, isolating them and worsening the trauma.

4.2.3 Long-term psychological effects

The trauma of detention has severe and lasting impacts on children. A study in the UK found that even brief detention periods caused post-traumatic stress disorder, anxiety, suicidal ideation, and developmental delays in children. Long-term effects can include:

- Nightmares and sleep difficulties
- Behavioral problems, such as tantrums and aggression

- Difficulty with social and academic development
- Accountability and oversight

Accountability for these abuses is consistently lacking. Many detention systems have no clear procedures for staff training, transparent regulations, or independent complaints mechanisms for detainees. This allows a culture of impunity to thrive, with staff who perpetrate violence rarely facing appropriate discipline or prosecution.

International human rights bodies, such as the UN Committee Against Torture, have called for regular, unannounced, and independent inspections of detention facilities to ensure standards are met. Advocacy groups like Human Rights Watch have also repeatedly urged governments to close abusive centres and replace them with supportive alternatives.

5. Legal Sphere

- **Arbitrary detention and age-misclassification.** States and agencies still detain children — sometimes because they've been misclassified as adults (age-assessment failures) or because detention is used as a default rather than a last resort. This is a cross-country problem affecting migrants, children in conflict areas, and children in criminal justice processes.
- **Physical, psychological and sexual abuse inside facilities.** Reports document verbal and physical abuse, use of solitary confinement, and inadequate protection from sexual violence in some detention settings (immigration centres, young offender institutions and conflict-affected detention sites).
- **Poor conditions and denial of basic services.** Children in custody often face excessive lockdowns, little education, poor healthcare and minimal family contact — which worsen harm and increase recidivism risk.

5.1 Recent Legal Policies

- **International framework & authoritative standards reaffirmed** — The UN Convention on the Rights of the Child (Article 37) and related UN guidance continue to be the benchmark: detention of children must be a *last resort*, used for the *shortest possible time*, and must avoid torture/cruel treatment; states remain accountable to these

standards. Recent UN work (global studies, Committee decisions) has emphasised the prohibition of immigration detention for children where feasible.

- **Humanitarian / conflict settings — stronger alarm and advocacy (example: Myanmar).**⁶ UNICEF and partners continue to document mass displacement and growing risks to children (killed, detained, or separated) in conflict contexts; these reports have strengthened calls for legal protections and humanitarian access.
- **United Kingdom — scrutiny and litigation on detention conditions and use of detention for children seeking asylum.**⁷ Human Rights Watch and NGOs have criticised UK practice (including age assessment, adult classification, and abusive conditions at centres such as Manston). Parliamentary and inspectorate reports have also pushed for reforms (including improved legal advice, independent monitoring, and ending harmful practices).
- **India — judicial engagement and incremental reforms.** India's courts and commentators have been active: the Supreme Court and high courts have issued important clarifications on child protection laws (POCSO, Juvenile Justice Act) and reinforced that minors' rights must be protected even where social or personal law claims complicate cases. Debates continue about bail, trial age for heinous crimes, and practical implementation gaps (e.g., JJ Boards, Child Welfare Committees). **Policy reviews and sector reports calling for systemic reform.** Several reviews and NGO reports (sentencing reviews, inspectorate reports, NGOs like Howard League) highlight that detention regimes often fail children's rights obligations and call for concrete changes: reduce use of custodial options, improve legal representation, improve education/rehabilitation, independent oversight, and data transparency.

5.2 Current Priority of Courts

- **Better age-assessment safeguards** (to reduce wrongful adult classification).

⁶ UNICEF – Myanmar situation reports / Humanitarian Action for Children UNICEF, *Humanitarian Action for Children 2024: Myanmar* (2024), <https://www.unicef.org/appeals/myanmar>

⁷ Human Rights Watch – reporting on UK detention & children (Manston, asylum age assessment) Human Rights Watch, *UK: Children Among Asylum Seekers Held in Inhuman Conditions at Manston* (Nov. 4, 2022), <https://www.hrw.org/news/2022/11/04/uk-children-among-asylum-seekers-held-inhuman-conditions-manston>.

- **Stronger limits on immigration detention of children** and family-friendly alternatives
- **Mandatory and specialist legal advice for children in custody** and faster access to bail/alternatives.
- **Transparency, inspections and independent monitoring** (prison inspectorates, human rights bodies, UNICEF/NGOs).

5.3 Practical legal remedies and advocacy entry points

1. **Use international norms (CRC Article 37, Committee jurisprudence) in litigation and policy submissions.** Article 37 is a strong, readily citable basis to challenge arbitrary detention and poor treatment.
2. **Push for mandatory child-specialist legal advice and speedy bail/alternatives.** Evidence and recent reports show that access to early legal aid reduces unnecessary detention.
3. **Challenge age-assessment procedures & demand independent medical/forensic assessments.** Litigation and strategic interventions can force more rigorous, rights-compliant assessments (important in asylum and criminal contexts).
4. **Insist on independent monitoring, data publication and complaints mechanisms.** Monitor inspections, NGO access, and routine data releases (numbers detained, ages, time in custody) to expose patterns of abuse.
5. **Use rehabilitation and community alternatives models in impact litigation and policy advocacy.** Present evidence that non-custodial measures reduce harm and reoffending.

Children continue to face arbitrary detention and abuse in multiple settings (migration, conflict, youth justice), but a mix of UN standards, judicial interventions and high-profile reports in 2024–2025 has strengthened legal arguments and policy pressure for alternatives to detention, better safeguards (age assessment, legal advice), and independent oversight.

6. Majorly affected Communities

Children who are undocumented migrants or asylum-seekers (especially unaccompanied minors), stateless or displaced children (such as Rohingya refugees), Indigenous children, minority ethno-racial groups, those from conflict zones, and children from poorer socio-economic backgrounds are majorly affected. These groups often face multiple layers of discrimination: lack of legal protection, delayed access to due process, family separation, inadequate facilities, and exposure to violence or ill treatment. For example, in Malaysia Rohingya refugees (many with no legal recognition) are held in detention centres under degrading conditions with little oversight. In Australia, Indigenous children—especially in the Northern Territory—represent an overwhelming majority in juvenile detention. And in India, Rohingya refugees have been held for years in various detention or holding centres, including children, often without ongoing legal cases.

6.1 Rohingya children⁸

- In **India**, hundreds of Rohingya refugees—including many children—are held in detention centres or jails under the Foreigners Act with little or no legal process. Some children have been detained since infancy, with no schooling, no adequate recreation, and severely restricted access to basic needs.
- In **Myanmar (Rakhine / Arakan State)**, Rohingya families returning after displacement have been detained by armed groups (e.g. the Arakan Army), including very young children. Two children under five recently died in custody due to a lack of clean water, poor medical care and nutrition.
- Also in the Thailand / Burma context, Rohingya children (including unaccompanied minors) are held in immigration detention centres for long stretches; these facilities are overcrowded, unsanitary, with insufficient food, medical care, no or very limited opportunity for education, and often detained alongside adults.
- Rohingya children are among the world's largest stateless populations, which makes them especially vulnerable to arbitrary detention since they lack documentation and

⁸ Human Rights Watch, *Malaysia: Abusive Detention of Migrants, Refugees* (Mar. 5, 2024), <https://www.hrw.org/news/2024/03/05/malaysia-abusive-detention-migrants-refugees>

legal recognition. Their detention is often justified under “illegal migration” laws despite being refugees. This systemic denial of nationality violates *Article 7 of the UN Convention on the Rights of the Child (CRC)* (right to birth registration and nationality).

- The *UN Special Rapporteur on Myanmar* and UNHCR have repeatedly called for an end to arbitrary detention of Rohingya in Myanmar, Bangladesh, India, and Southeast Asia. Conditions such as lack of schooling, child-friendly spaces, and family unity breaches are cited as “prolonged violations” of Articles 37 and 40 CRC.
- Rohingya minors detained in immigration facilities in Malaysia and Thailand often languish for years without trial, with girls especially vulnerable to trafficking networks due to prolonged detention and lack of protective mechanisms.

6.2 Palestinian children⁹

- Since October 2023, there has been a surge in the number of Palestinian children detained by Israeli authorities, including a record number held under **administrative detention** (i.e. without charge or trial).
- Reports show pervasive **physical and psychological abuse**: beatings, strip-searches, blindfolding, injuries at arrest (broken bones, gunshot wounds), and being interrogated in unknown locations without legal representation or the presence of a caregiver. Many also report deprivation of food, water, sleep, and limited family contact. Legal changes have made the situation worse: a recent law permits sentencing Palestinian minors (ages 12-14) to prison if convicted of serious violent offences, reversing previous norms and exposing young children to closed detention facilities.
- Unlike most contexts, Palestinian children are processed through *military courts* rather than civilian juvenile systems. This contravenes CRC Article 40, which guarantees children special protections and treatment distinct from adults. Military courts have a conviction rate of over 95%.

⁹ Save the Children, *Stripped, Beaten, and Blindfolded: Ongoing Violence and Abuse of Palestinian Children Detained by Israeli Military* (2023), <https://www.savethechildren.org.uk/news/media-centre/press-releases/2023/stripped-beaten-and-blindfolded-new-research-reveals-ongoing-violence-and-abuse-of-palestinian-children-detained-by-israeli-military>

- As of mid-2024, more than 200 Palestinian children were held under administrative detention, meaning no formal charges, no access to evidence, and indefinite renewals every six months. This practice violates Article 9 of the International Covenant on Civil and Political Rights (ICCPR).
- NGOs report widespread trauma, including PTSD, depression, and disrupted education. Children often sign “confessions” written in Hebrew (a language many do not understand) under duress.
- UN experts and organisations like *Save the Children* and *Defence for Children International–Palestine* argue that systemic detention practices amount to *grave child rights violations* under international humanitarian law (IHL), especially given that children in occupied territories are “protected persons” under the Fourth Geneva Convention.

6.3 African migrant children¹⁰

- In **Mauritania**, children from West Africa (13-17 years old) who are irregular migrants are detained with unrelated adults, in poor sanitation, with minimal food, and subject to physical abuse by police. Detention periods vary, sometimes several days; many are then expelled without adequate procedural safeguards.
- In **Libya**, migrant and refugee children face overcrowded detention centres (far exceeding capacity), arbitrary detention, neglect, abuse, and extortion. They are often held with adult detainees without differentiation. Basic protections and regulations are almost non-existent; children’s rights violations are daily (hunger, illness, violence).
- African migrant children are disproportionately affected by Europe’s outsourcing of migration control to North African states (Libya, Mauritania, Tunisia). Many are intercepted at sea and then detained in appalling conditions before being forcibly deported. This violates the principle of *non-refoulement* under the Refugee Convention.
- Detention centres in Libya, funded in part through EU agreements, have been

¹⁰ Human Rights Watch, “*They Accused Me of Trying to Go to Europe*”: Migration Control Abuses and EU Complicity in Mauritania (Aug. 27, 2025), <https://www.hrw.org/report/2025/08/27/they-accused-me-of-trying-to-go-to-europe/migration-control-abuses-and-eu>.

documented as sites of *systematic abuse* — forced labour, sexual exploitation, and trafficking of minors. UNICEF and Human Rights Watch describe them as “warehouses of suffering.”

- Many African children are denied access to asylum procedures altogether, being treated as “irregular migrants” instead of minors entitled to child protection under CRC Article 22 (special protection for refugee children).
- Girls, particularly from sub-Saharan Africa, face sexual violence and exploitation in detention. Boys are often subjected to forced labour. Both experience lack of legal counsel and family tracing services.

7. Landmark Cases

Landmark cases are highly significant court rulings that establish new legal precedents or significantly alter the interpretation of existing laws, often with lasting effects on individual rights and society. These cases expose how **laws, policies, and institutions** were structured in ways that **systematically violated rights** — not just isolated mistakes. They highlight **structural disregard for vulnerable groups**: asylum seekers, refugees, children, and the urban poor. Courts/Committees were forced to intervene because **the system itself failed to balance state authority with human rights obligations**.

7.1 Case:- Mubilanzila Mayeka and Kaniki Mitunga v. Belgium¹¹

Application no. 13178/03

Judgment: 12 October 2006

Court: European Court of Human Rights, Second Section

Background

- The case concerned **Kaniki Mitunga**, a **5-year-old Congolese child** who entered Belgium alone in 2002 to join her mother, who had refugee status in Canada.

¹¹ Mubilanzila Mayeka & Kaniki Mitunga v. Belgium, App. No. 13178/03, Eur. Ct. H.R., First Section, 12 Oct. 2006.

- Belgian authorities **detained her in a closed transit centre for adults** for nearly two months, pending deportation to the Democratic Republic of Congo (DRC).
- During detention, the child had **no special care, no psychological support, and was effectively treated like an adult detainee.**
- Despite her mother's attempts (with Canadian authorities' support) to reunite with her in Canada, Belgium insisted on deporting the child back to the DRC alone, where she had no family support.

Legal Issues

1. **Article 3 (ECHR)** – Prohibition of inhuman or degrading treatment
 - Was the detention of a 5-year-old in an adult facility, under such conditions, a violation of human dignity?
2. **Article 5 (ECHR)** – Right to liberty and security
 - Was the child's detention arbitrary and unlawful, given her age and vulnerability?
3. **Article 8 (ECHR)** – Right to respect for private and family life
 - Did Belgium fail to protect family unity and the child's right to be reunited with her mother in Canada?
4. **Article 13 (ECHR)** – Right to an effective remedy
 - Did the child have effective legal recourse against her detention and deportation decision?

Judgment

The ECtHR found **multiple violations**:

- **Article 3:** The child's detention in conditions meant for adults amounted to *inhuman and degrading treatment*. The Court emphasised that children require **special**

protection under the Convention.

- **Article 5(1):** Her detention was **arbitrary and unlawful**, as authorities had not considered less restrictive alternatives.
- **Article 8:** Belgium **failed in its positive obligation** to facilitate family reunification and protect family life, especially given that the mother had legal refugee status in Canada.
- **Article 13:** Lack of effective remedies reinforced the violations.

Significance

- This was the **first time the ECtHR condemned the detention of an unaccompanied minor in adult facilities**.
- The Court stressed that **detention of migrant children should be a last resort** and always in child-appropriate facilities.
- It reinforced the **principle of the best interests of the child** (Article 3, UN Convention on the Rights of the Child).
- The case has been widely cited in **European and international advocacy** against child immigration detention.

The Court held Belgium responsible for the inhuman treatment and unlawful detention of a 5-year-old migrant child, setting a strong precedent that states must adopt *child-sensitive alternatives* and uphold family unity.

7.2 Case Study: A v. Australia¹²

Case: A v. Australia

Application no.: Communication No. 560/1993

¹² Jurisprudence Database, (last accessed Oct. 3, 2025), available at <https://share.google/fPPugJ8QyhZIp1JYq>.

Judgment: 30 April 1997

Court: United Nations Human Rights Committee (UNHRC)

Background

- The case concerned A, a Cambodian asylum seeker who arrived in Australia in 1989 without valid travel documents.
- His refugee application was rejected, and under Australia's **mandatory detention policy**, he was detained for over four years while awaiting deportation.
- Detention conditions were restrictive, and he could not effectively challenge the legality of his detention before a court.
- He argued before the UNHRC that his prolonged, indefinite detention without judicial review violated the International Covenant on Civil and Political Rights (ICCPR).

Legal Issues

1. Article 9(1) ICCPR – Freedom from arbitrary detention

- Was the prolonged mandatory detention of an asylum seeker, without individualised justification, arbitrary?

2. Article 9(4) ICCPR – Right to challenge detention

- Did A have access to an effective procedure to contest the lawfulness of his detention before a court?

3. Article 7 ICCPR – Prohibition of cruel, inhuman or degrading treatment

- Did prolonged detention amount to cruel, inhuman, or degrading treatment?

4. Article 10(1) ICCPR – Humane treatment of detainees

- Were detention conditions incompatible with the requirement of humane treatment?

Judgment

The UNHRC found:

- **Article 9(1):** Violation – detention may be lawful under domestic law but still arbitrary if disproportionate, unnecessary, or prolonged. A's four-year detention was arbitrary.
- **Article 9(4):** Violation – A lacked an effective judicial remedy to challenge his detention.
- **Articles 7 and 10(1):** No violation established – evidence did not prove detention conditions reached the threshold of inhuman treatment.

Significance

- Landmark case establishing that “**arbitrary detention**” under **Article 9 ICCPR includes disproportionate or prolonged detention**, even if lawful domestically.
- Reinforced the need for **judicial review of detention**.
- Strongly criticized Australia's mandatory detention regime for asylum seekers.
- Influential precedent in international human rights and refugee law debates.

The Committee held that Australia's detention policy violated the ICCPR and directed it to provide compensation and revise its laws to ensure compliance with human rights standards.

7.3 Case: Saadi v. United Kingdom¹³

Application no.: 13229/03

Judgment: 29 January 2008 (Grand Chamber)

Court: European Court of Human Rights (ECtHR)

Background

¹³ Saadi v. United Kingdom, App. No. 13229/03, Grand Chamber, Eur. Ct. H.R., Jan. 29, 2008.

- The case concerned Mr. Saadi, an Iraqi Kurd who entered the UK in 2001 and applied for asylum.
- While his claim was being processed, UK authorities detained him for **seven days** in an immigration detention centre.
- He argued that his detention was unnecessary, as he was not a security risk and could have been accommodated in the community while his claim was examined.
- He brought the case to the ECtHR, alleging that his detention violated the **right to liberty under Article 5(1) of the European Convention on Human Rights (ECHR)**.

Legal Issues

1. Article 5(1)(f) ECHR – Right to liberty (immigration detention)

- Can asylum seekers be detained while their claims are processed, even if they pose no risk of absconding or threat to public order?

2. Article 5(1)(c) ECHR – Detention pending criminal proceedings

- Was the detention of an asylum seeker comparable to arbitrary imprisonment without trial?

Judgment

- The Grand Chamber found **no violation of Article 5(1)**.
- It held that states are entitled to detain asylum seekers for a limited time to **verify identity, security, and prevent unauthorized entry**.
- Detention need not be based solely on the risk of absconding or criminality; administrative needs (such as processing asylum claims) can justify short-term detention.
- The Court stressed that detention must be:
 - Pursued in **good faith**.

- **Closely connected** to the purpose of preventing unauthorized entry.
- Carried out in a **reasonable period of time**.

Significance

- Clarified the scope of **Article 5(1)(f)**: states may detain asylum seekers **temporarily for administrative reasons**, not just for risk of absconding.
- Balanced **state sovereignty in immigration control** with **individual liberty rights**.
- Criticized by refugee rights advocates, as it gave wide discretion to states to detain asylum seekers during processing.
- Often contrasted with cases like *A v. Australia* (UNHRC), where prolonged and indefinite detention was condemned.

The ECtHR thus upheld the UK's short-term detention of Saadi as lawful, marking an important precedent on the limits of immigration detention under European human rights law.

7.4 Case: R (AA) v. Secretary of State for the Home Department¹⁴

Citation: [2010] EWHC 2265 (Admin)

Judgment: 2010

Court: High Court of Justice, Queen's Bench Division (Administrative Court), United Kingdom

Background

- The case concerned AA, an unaccompanied minor from Afghanistan who arrived in the UK seeking asylum.
- His age was disputed by immigration authorities, and he was treated as an adult, leading

¹⁴ R (on the application of RM (Iran)) v Secretary of State for the Home Department (Appellant), [2023] UKSC 42.

to his placement in adult immigration detention.

- AA challenged the lawfulness of his detention, arguing that it was arbitrary, unlawful, and failed to protect the rights of children under both domestic and international law.

Legal Issues

1. Right to liberty (Article 5 ECHR)

- Was AA's detention lawful given the uncertainty of his age and his claim of being a child?

2. Best interests of the child (Article 3 UN Convention on the Rights of the Child & UK obligations)

- Did the Home Secretary fail to act in accordance with the best interests principle when detaining AA as an adult?

3. Procedural safeguards

- Were proper age-assessment procedures followed before placing AA in adult detention?

Judgment

- The High Court held that AA's detention was **unlawful**.
- Authorities had failed to properly investigate and assess his age before detaining him as an adult.
- Detaining a child (or someone reasonably claiming to be a child) in adult facilities without proper safeguards breached both **domestic public law standards** and **international obligations**.
- The Court emphasized that children must not be deprived of liberty unlawfully and that immigration authorities have a duty to carry out careful, fair age assessments.

Significance

- Reinforced that **age-disputed asylum seekers must benefit from child protection principles** until a lawful age determination is made.
- Strengthened the principle that detention of minors should be a **measure of last resort** and must comply with **child welfare obligations**.
- Important precedent in UK immigration law on the treatment of unaccompanied asylum-seeking children.
- Echoes the reasoning in international cases like *Mubilanzila Mayeka v. Belgium* and stands in contrast to *Saadi v. UK*, as it stresses child-sensitive safeguards in detention decisions.

The ruling highlighted the UK's responsibility to apply **the best interests of the child** as a primary consideration in all immigration decisions involving minors.

7.5 Case: Olga Tellis v. Bombay Municipal Corporation¹⁵

Citation: (1985) 3 SCC 545

Judgment: 10 July 1985

Court: Supreme Court of India

Background

- The case concerned pavement dwellers and slum residents in Bombay (now Mumbai) who were facing eviction and demolition of their shelters by the Bombay Municipal Corporation (BMC).
- The petitioners, led by journalist Olga Tellis, argued that eviction would deprive them of their livelihood, as they lived close to their workplaces.

¹⁵ Olga Tellis & Ors. v. Bombay Municipal Corporation & Ors., (1985) 3 S.C.C. 545; 1986 A.I.R. 180; 1985 S.C.R. Supp. (2) 51 (India), decided July 10, 1985.

- The State justified the evictions on grounds of public health, safety, and city planning.

Legal Issues

1. Article 21 (Right to Life)

- Does the right to life under Article 21 of the Indian Constitution include the **right to livelihood?**

2. Article 19(1)(e) and (g)

- Did eviction violate the right to reside and settle in any part of India, and the right to practice any profession or carry on an occupation, trade, or business?

3. Procedure Established by Law

- Were the evictions lawful under due process, or arbitrary and unreasonable?

Judgment

- The Supreme Court held that:

- **Right to life includes the right to livelihood.** Eviction without alternative shelter would deprive the poor of their livelihood and therefore violate Article 21.
- However, the Court also acknowledged that **pavement dwellers did not have a legal right to encroach on public land.**
- The State could evict them in the interest of public purpose, but only through **fair, just, and reasonable procedure.**
- Evictions without providing an opportunity for a hearing or reasonable notice were unconstitutional.

Significance

- Landmark case that **expanded the scope of Article 21**, reading the **right to livelihood**

into the right to life.

- Balanced socio-economic rights of the urban poor with the State's authority over public land.
- Established the principle that **procedural fairness and human dignity** must guide state action, even in cases of eviction.
- Became a cornerstone of Indian jurisprudence on socio-economic rights and urban poverty.

The Court recognized the plight of pavement dwellers while upholding state authority, setting the foundation for future rights-based interpretations of the Indian Constitution.

8. Conclusion

Across continents and courtrooms, one pattern is painfully clear: when it comes to migrant and refugee children, detention is not an exception but a recurring symptom of broken systems. *A v. Australia* exposed the machinery of indefinite detention; *Mubilanzila Mayeka v. Belgium* laid bare the cruelty of treating a five-year-old like a criminal; *Saadi v. UK* showed how legal loopholes normalise administrative detention; and *R (AA) v. Secretary of State* revealed how even minors can be misclassified, stripped of protection, and locked away. These are not isolated failures—they are the operating logic of states that conflate control with justice, and security with punishment.

The uncomfortable truth is this: **child detention cannot be fixed because it was never designed to protect children in the first place.** It is inherently abusive, inherently degrading, and inherently incompatible with liberty, dignity, and the right to grow. Children caught in these systems carry **fragmented identities**, torn between states that deny them citizenship, communities fractured by conflict, and bureaucracies that treat them as statistics instead of humans. Deportation becomes a ritual of erasure, and detention a theatre of cruelty where the most vulnerable pay for the insecurities of nations.

The time has come for the United Nations to stop playing referee and start playing guardian. Condemnations and “expressions of concern” are not enough. The UN must **take charge of child protection in migration contexts**, not as charity, but as duty under international law.

This means activating its full institutional arsenal:

- **UNESCO** must ensure uninterrupted education, so a child's schooling does not collapse at a border fence.
- **WHO** must guarantee healthcare, nutrition, and trauma support, because detention wounds bodies as much as it scars minds.
- **UNHCR** and **UNICEF** must provide community-based alternatives to detention—foster systems, safe housing, and integration pathways that put children in schools, not cells.
- **OHCHR** must police compliance, exposing governments that outsource cruelty and hide behind legal fictions of “lawful detention.”

A child behind bars is not a statistic; it is a global indictment. Detention of children for migration control is a choice—a deliberate policy of punishment dressed up as procedure. And choices can be unmade. The UN's role is not to tinker at the edges but to **draw a red line**: children belong in classrooms, playgrounds, and families—not detention centres.

The principle is simple, almost embarrassingly so: **no child should ever be caged for the crime of seeking safety**. Anything less is not just a violation of law; it is a betrayal of our shared humanity.