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Karen Foley:
Hi and welcome to the December 2016 PodMag, the audio news magazine from Arts & Social Science at the Open University. I'm Karen Foley and in this edition we're focusing on human rights. You may well know that December 10th is Human Rights Day, a United Nations campaign that calls for people to know and push for their rights no matter where they are in the world.

I'll be talking to Meg-John Barker about gender and sexuality and Marie Gillespie about children refugees. But before I do there's one piece of news to mention.

Joe Smith has written a report called 'Climate Change on Television, what the Paris agreement means for broadcasters'. Television is of course one of the main sources of information for the UK public about climate change. And in this report Joe argues that television has a really good track record of making issues relevant to climate change accessible to mainstream audiences. And he also makes some really concrete suggestions for ways in which it could contribute to tell a range of stories about climate change that will engage audiences and better equip them to respond to this very dynamic story. There's a link that you can access to find out more about this in the transcript.

In 2011 the United Nations Human Rights Council passed a resolution on human rights sexual orientation and gender identity. They commissioned a report on how international human rights could be used to prevent acts of violence and discrimination against people based on their sexual or gender identity. But to this day the United Nations hasn't gained any consensus to adopt a declaration in support of sexual and gender identity rights.

I'm talking to Meg-John Barker one of the lead authors of the Bisexuality Report done by the Open University.

Meg-John you say that it was difficult to measure rates of biphobic incidents because police and other services don't record it. So how important is it to make a claim about the extent to this when it has been acknowledged that change needs to happen?

Meg-John Barker:
Hi Karen. Yeah, it is really important to measure these things because in terms of actually getting resources allocated you need to be able to show that something's an issue. And I guess post-Brexit we've definitely seen a big increase in the rates of homophobic and racist violence and discrimination. And it would be good to know where we're at in terms of biphobic incidents as well. Because we know that bisexual people have a specific kind of experience which is different from gay people or trans people which is often about being unrecognised because people tend to assume that

sexuality is a matter of being gay or being straight. So it would be useful to know how much discrimination bisexual people in the UK are experiencing.

Karen Foley:
You said that there's a measurement of how it effects mental health and also that this can relate to funding for various projects.

Meg-John Barker:
Yeah, that's right. So with mental health we do have the statistics. There's been many, many studies carried out globally and they all find that bisexual people have worse mental health than either straight people or lesbian and gay people. And that is a helpful piece of information in terms of trying to get mental health resources to bisexual people.

Karen Foley:
I mentioned before that the UN hadn't actually made a declaration. What do you think some of the barriers have been for them in that process?

Meg-John Barker:
Well I think a part of it is having to get so many different countries in line or behind the same thing. And we know that within the UN some of the countries that are involved still criminalise lesbian, gay, bisexual and trans people to some extent and some of them to a very high extent.

I think also we need to remember the history when it comes to that of the fact that actually our own country was extremely homophobic and transphobic – is how we put it in today's language – at the times when it was colonising a lot of other countries and actually shipped those kind of attitudes to those other countries. So we have to remember that history when we're criticising other countries for still being in that place.

Karen Foley:
OK. I wanted to also ask about identity and adolescence because whilst, you know, there's an increase in adult identities the BBC recently showed this programme about the journey of a trans girl. And it did receive quite a mixed reaction but, you know, when you think about it logically adolescence is a time of identity formation.

Meg-John Barker:
Exactly. And I think it is young people who are showing us just how diverse gender and sexuality actually are. So if you look at recent YouGov surveys, for example, it's really high numbers of young people who are identifying in some way other than entirely heterosexual. And it was about forty odd percent of young people who were identifying in some way other than completely heterosexual. And then again quite high numbers of young people who were identifying their gender in other ways than just simply male or

simply female. So it's really important that we give young people the resources to navigate these kind of journeys that they're on.

And at the moment, you know, they're getting a lot of awareness from social media and things but they're getting very little education or support in schools around these issues because again governments are kind of in a way moving away from models of having really good sex and relationship education rather than towards it.

Karen Foley:
So education and I guess the removal of some of these binary classifications could be useful. But how would say that, you know, culture in the UK and elsewhere in the world indeed could actually shift to move forward on some of these issues about gender and sexual equality and more to the point the issue of human rights to express exactly what people want to in terms of their gender?

Meg-John Barker:
Yeah. I mean to my mind again another area is sort of media representation and wider culture representation that we need to move away from kind of depictions of just kind of, I guess the only depiction still of kind of LGBT people tend to be very much as a minority when actually everybody is gender and sexually diverse. We all fetch up in different places in terms of our gender and our sexuality and that those things are about a lot more than just what gender we are and what gender we're attracted to. Our sexuality is about a lot more than that and so is our gender. It's about the roles we take and the ways we express ourselves.

So I would really like to see a shift towards representing the full kind of rainbow of gender and sexual diversity to everybody rather than this fixed… this idea of just minority rights.

Karen Foley:
That's a nice link to my final point which is about Human Rights Day and Human Rights Week. Do you think this will make a difference in terms of the media presence?

Meg-John Barker:
Hopefully. You know, and I think again this year 2016 I think a lot of us are very mindful that's there's a danger we're really moving quite finally opposite direction of kind of acceptance of diversity and equality for everybody and valuing all human beings equally. There's the real risk of that. So I guess any kind of day or week that tries to do the opposite, that tries to say this is why equality and diversity are such important areas is a positive in my book.

Karen Foley:
Meg-John Barker that's been really interesting, thank you very, very much.

Meg-John Barker:
No problem.

Karen Foley:
I'm now talking to Professor of Sociology, Marie Gillespie about human rights and refugee children. Hi Marie. I firstly want to ask you about why are international treaties or conventions important for the protection of refugee children and their human rights?

Marie Gillespie:
There are 60 million refugees around the world and half of those are children. And international treaties are therefore important to refugee children because they set standards. When a state ratifies a treaty the government of that state promises to the international community that it will conduct itself according to those standards.

Karen Foley:
So what are the main conventions then that would help protect refugee children?

Marie Gillespie:
Well there are two main conventions that protect refugee children in principle. The first is the 1951 Refugee Convention. That set standards that apply to children in the same way as adults. So, for example, a child who has a well-founded fear of being persecuted, on a number of grounds, is a refugee. And, for example, a child who holds refugee status can't be forced to return to their country of origin. That's the non-refoulement principle.

And thirdly no distinction is made between children and adults in social welfare and legal rights. So that's the 1951 Refugee Convention. But in 1989 the Convention for the Rights of the Child came in to being and that's the main treaty which sets most of the standards concerning children. And even though it's not a refugee treaty, refugee children are covered because it states that rights are to be granted to all persons under the age of 18 without discrimination of any kind.

So this is really, really, really important because the Convention on the Rights of a Child first of all got us thinking differently about children. We often think of children as having needs that need to be met rather than rights that are internationally recognised. It is one of the most universally ratified treaties in the world and its standards are universal and it provides a very powerful tool for advocacy. It's if you like the most complete statement of children's rights every produced.

Karen Foley:
So what are then the main rights that are covered within these conventions?

Marie Gillespie:

One has to see the convention as a whole, all the rights are linked and no right is more important than another. So, for example, the right to relax and play and the right to freedom of expression have equal importance to the right to be safe from violence and the right to education.

So while there are a number of different rights there are three overarching rights that are called the Triangle of Rights. The first is the best interest of the child, the second is non-discrimination and the third is the right to participate. So the first, the best interest of the child has two main applications in government policymaking and in decisions about children on an individual basis. And in all cases it means that actions concerning children must take in to account the best interest of the child as a primary consideration.

Now this is a bit of a conundrum really because, for example, the interest of the child may not always be identical to those of parents or adults and at times they can even conflict. So in making policies the state must carefully separate out the various interests at stake. It's important to note that these treaties and conventions are not actually legally binding. A state doesn't – or a government – doesn't have to take the course of action that is best for children but it has to take in to account the best interests as a primary consideration.

Similarly with individual children when decisions are being made about an individual or a child say, for example, an unaccompanied minor, their best interests and their expressed interests need to be taken in to account. So, for example, you might have a child, an orphan, living in a refugee camp with grandparents in the country of origin, an uncle or aunt in a second country of asylum and then an unrelated family in another country that would like to adopt the child.

So deciding what is best for the child is quite complicated. And so you have to include other aspects of the convention which is, for example, the desirability of the continuity of culture and language or the preservation of family and nationality – the expressed interests of the child. So sometimes the expressed interests of the child may be different to what the adults deems to be the best interests.

So just to complete that very quickly. Non-discrimination is fairly self-evident but the convention requires that no discrimination of any kind take place regardless of status. Every child within a state's jurisdiction holds these rights. And finally participation. The view of the child have to be given due weight in accordance with the age and maturity of the child.

So you can see, that Triangle of Rights is quite substantial and states are required to enshrine it in law.

Karen Foley:

You've given us some wonderful colourful examples about some of the complexities here and I just wanted to ask about the extent to which you think that refugee children are actually protected by human rights conventions in practice?

Marie Gillespie:
Well that's a very good question because it's patchy at best. At the moment sadly the Home Office seem to be prioritising the need to control immigration over the best interests of the child in many cases. And let me just give you a couple of examples that will be very familiar. For example, the children, unaccompanied minors in the Calais Jungle, and you'll probably remember how in mid-October the camp was dismantled. And at that time both the British and French governments were accused of breaching children's human rights.

And that was because there were about 50 teenagers abandoned by the authorities in Calais and they were forced out of the refugee camp to sleep in makeshift conditions. Now it was a breach of their rights because the teenagers were promised transport to a reception centre where they could be assessed for asylum or reunification with families in the UK. However, as the media reports showed, after an hour no bus had arrived, police units emerged enforced with riot shields, tear gas and Taser guns and began to kettle the group of teenagers pressing them in to a side street on an industrial estate.

The children were sleeping rough and furthermore legal advocates were not granted access. And human rights lawyers said that this breached the fundamental rights of children by denying vulnerable people legal information at an urgent time. So that's a very good example of the kind of breaching and flouting of the rights of a child.

My own experience, fieldwork in Lesbos in refugee camps this summer, also confirmed that the rights of children were not really being properly protected by European governments – or the Greek government. I mean there are 65,000 refugees, asylum seekers stuck in Greece. And you can imagine a substantial number of them are children. And of course Greece is struggling to deal with these numbers, it's true but while I was there I saw that children were being detained for months in unsanitary and sometimes degrading conditions.

They had to live and sleep in dirty, vermin infested cells. Sometimes without mattresses. So it remains the case that even though the European Commission is attempting a relocation of young minors swiftly, in September this year fewer than 3,500 people had been relocated from Greece. And only 49 of those were unaccompanied children.

Karen Foley:
So, you know, we have Human Rights Day and Human Rights Week, Marie what do you think can be done during this week to actually promote the rights of refugee children?

Marie Gillespie:

Well apart from drawing attention to the UK government's responsibilities, vis-à-vis the resettlement of unaccompanied and separated children and the reuniting of refugee children with their families. And especially protecting unaccompanied asylum-seeking children from being trafficked. There's a huge traffic. A lot of children go missing. A lot are sold or the sex trade and even organ trade. So it's a pretty nasty situation.

But my own particular concern would be to set up more children's legal centres around the UK. And, for example, I'm working closely with Swansea University Law Department and Joan Williams there. And a couple of weeks ago she organised this great conference 'Children Displaced Across Borders' that is holding the Welsh government to account about how they aren't tackling the issues of respecting the rights of children.

And it's quite clear there that some campaigning needs to be done because the law and legal protection isn't applied consistently. Secondly there's not enough Legal Aid. And thirdly there's a very important and significant lack of access to education and training. So these are some of the issues that I'd like to see addressed in the Human Rights Week.

Karen Foley:
Marie Gillespie thank you very much.

That's all we have time for in this edition. I hope you have a good festive break and we'll bring you another PodMag in the New Year.

Bye for now and thanks for listening.