



United Nations Human Rights Council - XXXII Session
Agenda item 3 - Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Ending the Immigration Detention of Children

*Joint oral statement submitted by the International Detention Coalition,
in collaboration with Defence for Children International (DCI)*

Introduction

The immigration detention of migrant children and families represents a grave threat to human rights. Every day, all around the world, millions of migrant children and members of their families are placed in detention centers simply because they lack the proper documents to enter or remain in the territory. Within this context, migrant children are particularly vulnerable to abuse and neglect.

Impact on Child Health and Development

Regardless of the conditions in which migrant children are detained, a number of studies have shown that detention has a profound and negative impact on child health and development. Even very short periods of detention can undermine child psychological and physical well-being and compromise their lifelong cognitive development. Reports of the effects of immigration detention on children have found excess rates of suicide, suicide attempts, self-harm, mental disorder and severe attachment disorder. Compared with adults, children suffer disproportionately from the distress of being detained.

Immigration Detention is a Child Rights Violation

For this reason, the Committee on the Rights of the Child has made clear that children should never be criminalized or subject to punitive measures because of their or their parent's migration status and that the detention of a child because of their or their parent's migration status constitutes a child rights violation. Immigration detention is never in the best interests of the child.

Furthermore, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has stated that—not only is child immigration detention a violation of child rights—but that it exceeds the requirement of necessity, is grossly disproportionate and also constitutes cruel, inhuman or degrading treatment.

Joining a growing number of UN experts, in July 2014 the Chairperson of the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families called upon States to expeditiously and completely cease the immigration detention of children, and to adopt alternatives to detention that fulfill the best interests of the child and allow children to remain with their family members or guardians in non-custodial, community-based contexts while their immigration status is being resolved.

Conclusion

It is important to remember that migrant children—regardless of their immigration status—are first and foremost children. Migrant children are entitled to the same fundamental rights to liberty, security, health, education, and family life as any other child. The best interests of the child must always be a primary consideration and must always take priority over migration policy and other administrative considerations such as border control or enforcement. Immigration detention of children is a clear violation of child rights and is never in the best interests of the child.

Recommendations

We therefore urge member States to adopt the following recommendations:

- Expeditiously and completely end the immigration detention of children, in line with the recommendation of the UN Committee on the Rights of the Child, Children should never be detained for reasons related to immigration enforcement or control.
- Make clear in domestic legislation, policies and practices that the principle of the best

interests of the child takes priority over migration policy and other administrative considerations such as border control or enforcement. The best interests of the child must be a primary consideration in any action taken in relation to migrant children.

- Appoint a legal guardian as soon as an unaccompanied or separated child is identified, and maintain such guardianship arrangements until the child has either reached the age of majority or permanently left the jurisdiction of the state
- Ensure there are appropriate non-custodial, community-based alternatives to detention for the entire family which protect the best interests of the child. The immigration detention of a family member can never be a sufficient reason to legitimize or justify the immigration detention of a child. Instead, the child's right to liberty *extends to the entire family*.
- Ensure alternatives to detention are in place, both in law and practice, as prescribed by international law. Alternatives to detention are to be the first option. Develop training for judges, police, border officers, immigration officials, and other relevant actors to ensure the proper identification and referral of children to non-custodial, community-based contexts instead of detention.
- When shelters or other alternative accommodation are used for the purpose of child protection and support, they must not become a proxy for expanded unnecessary restrictions to the liberty of child migrants and families.