

UN Child Rights Experts call for EU-wide ban on child immigration detention

GENEVA/BRUSSELS (21 February 2018) -- Ahead of a key meeting of EU institutions and Member States today on issues relating to migration and asylum, the primary UN body monitoring child rights on Wednesday urged European countries to end the detention of children in the context of migration.

“EU law should not allow for child immigration detention, even as a last resort, and the reform of the Common European Asylum System is a timely opportunity to ban this practice,” said Renate Winter, Chair of the UN Committee on the Rights of the Child.

EU law currently stipulates that migrant and asylum-seeking children may be placed in detention, as a last resort, if it is in their best interests. However, Winter stressed that “the claim that detention is necessary to protect children from going missing, being exploited or ‘absconding’ is misguided. Detaining children, whether unaccompanied or on the basis of their or of their parents’ immigration status, is never in the best interests of the child and constitutes a violation of the rights of the child.”

“There can be no exceptions to this principle,” Winter said. “All EU Member States have ratified the UN Convention on the Rights of the Child, and there should be no provisions in EU law that allow for practices that violate EU Member States’ international obligations.”

The Committee on the Rights of the Child further emphasized that irregular entry or stay should not be equated to the commission of crimes. According to the Committee, although the possibility of detaining children as a last resort exists in criminal law, it does not apply to immigration proceedings as that would never be in the best interests of the child. When it is in the best interests of the child to remain with his/her family, the Committee highlighted that the prohibition of detention extends to the child’s parents as well. In such cases, non-custodial solutions must be found for the entire family.

“To truly protect children,” Winter said, “the EU and its Member States should redirect resources from detention centres to non-custodial, human-rights-based solutions.”

A number of promising practices already exist in Europe and elsewhere, which allow for effective migration management while guaranteeing the protection of the best interests of the child. These include providing children and their families with community-based placement; access to services in a protective environment, on a non-discriminatory basis, with child-friendly, clear information and support; and the appointment of guardians at the point of arrival or upon first identification of the unaccompanied child.

The Committee welcomed ongoing EU initiatives to support the development of such measures, and urged that they be strengthened and coupled with the adoption of laws and policies prohibiting child immigration detention.

“We also encourage the EU and its Member States to provide safe spaces for the views of children to be brought into decision-making processes in this area. The current reform discussions are a test for the EU and its Member States to show that they are serious about both protection and child participation,” Winter said.

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For background documents please see:

Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/343/59/PDF/G1734359.pdf>

Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return*

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/343/65/PDF/G1734365.pdf>