

Don't Lower the Bar on Children's Rights: End the Detention of Migrant Children!



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On September 19, UN Member States are coming together for a High Level Summit to collectively address large movements of migrants and refugees. But instead of rising to meet the challenge, some countries are trying to back away from existing obligations and standards. One of the most alarming examples was the successful last-minute attempt to weaken language in the Summit's Political Declaration, which in early drafts reaffirmed that **detention is NEVER in the best interest of the child** and committed to **end the detention of children for purposes of assessing their (or their parents') migration status**.

"Best interests of the child" is a legal principle articulated in the UN Convention on the Rights of the Child, the most widely-ratified of international human rights instruments. Of all the countries in the world **only the United States has failed to ratify it**. But in U.S. law and the law of most countries, the "best interests" principle is enshrined in national (and sub-national) law as a primary consideration in decisions concerning a child's welfare.

It is shameful that the U.S., together with other wealthy countries that pride themselves on their respect for human rights and rule of law, has acted in such a heavy-handed and clumsy way in an attempt to defend the indefensible.

The offending language of the Summit's Political Declaration, as advocated by the U.S., is found in Paragraph 2.12, which states:

*... Furthermore, recognizing that detention for the purposes of determining migration status is **seldom, if ever, in the best interest of the child**, we will use it only as a measure of last resort, in the least restrictive setting, for the shortest possible period of time, under conditions that respect their human rights and in a manner that takes into account, as a primary consideration, the best interest of the child, and we will work towards the ending of this practice.*

This language is inconsistent with and backtracks from multiple authoritative interpretations of the best interests of the child:

The Convention on the Rights of the Child

"...no child shall be deprived of his or her liberty unlawfully or arbitrarily" [Art. 37(b)] and children have the right not to be separated from their parents against their will [Art. 9].

The Committee on the Rights of the Child

"Children should not be criminalized or subject to punitive measures because of their migration status. The detention of a child because of their parent's migration status constitutes a child rights violation and always contravenes the principle of the best interests of the child. In this light, **States should expeditiously and completely cease the detention of children on the basis of their immigration status**" (DGD 2012, Para 78).

The Special Rapporteur on the Human Rights of Migrants

The detention of children and adolescents, even for short periods, is detrimental to their physical and mental health. “Children in immigration detention are often **traumatized** by the experience and have difficulty understanding why they are being **‘punished’** despite having committed no crime.” “The conditions of detention, which may include overcrowding, forced separation from family, sharing cells with adults, exposure to sexual abuse and violence and lack of adequate food, have **a negative impact, both from a human rights and a developmental perspective**. In addition, children in detention are often deprived of access to education, health and play and leisure facilities” — none of which can be said to be in a child’s best interest.

The Inter-American Court of Human Rights

The “last resort” caveat, does not apply in the case of migrant children on the grounds that this principle was developed to respond to criminal offenses, not for administrative offences like irregular border crossings. “...the deprivation of liberty of children based exclusively on migratory reasons exceeds the requirement of necessity, because this measure is not absolutely essential in order to ensure their appearance at the immigration proceedings or to guarantee the implementation of a deportation order... the Court finds that the deprivation of liberty of a child in this context **can never be understood as a measure that responds to the child’s best interest.**”

The UN Committee on Migrant Workers

“...it has been repeatedly stated that **the detention of child migrants cannot be, in any case, in line with the principle of best interest of the child** (...) there is a consensus that unaccompanied or separated children from their families should not be deprived of liberty. Families with children should also not be deprived of liberty, and detention cannot be justified on the grounds of preserving family unit.”

In the U.S., E.U. countries, and elsewhere the rights of children are violated every day as a result of **punitive immigration detention regimes**. Held in detention centres, unaccompanied or with family members, for immigration status violations or separated from detained parents or guardians, detained children are deprived of their rights to liberty and family life. They are taught at a young age what it means to be members of a **criminalized community** and experience the impacts of **xenophobia** and **racism**, which are further amplified by such policies.

As Member States move into a two-year process of negotiations of a Global Compact on Migration, we demand that they prioritize the legal and moral obligation to **ensure the highest standard of protection for migrant children** and **reject provisions that would put children’s rights at risk**. States must affirm that detention is **never in a child’s best interest** and immediately **end the practice of detaining migrant children**.

#EndChildDetention

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