

The devastating effects of immigration detention on the mental and physical health of both unaccompanied and separated children, as well as on children detained with their parents, have been evidenced beyond dispute. In particular, as they are separated from their parents or other primary caregivers, unaccompanied or separated children are particularly vulnerable and detention further compounds their vulnerability.

In fact, the trend in a number of EU Member States and other countries seems to be towards ending the detention of children solely for immigration purposes, and in particular of unaccompanied or separated children.³

This positive development has been hastened by, among others, the jurisprudence of the European Court of Human Rights (ECtHR) arising from cases involving the detention of asylum-seeking children and other children solely for immigration purposes. This case law has rightly emphasised the extreme vulnerability of such children, in particular but not exclusively unaccompanied or separated children.⁴ It should be noted that the Court not only found the detention of these children in violation of Article 5 of the European Convention on Human Rights (i.e. the right to liberty and security of person) but also that it amounted to a violation of Article 3 of the Convention (i.e. freedom from torture and inhuman or degrading treatment).

Moreover, the Council of Europe Commissioner for Human Rights has emphasised that the protection of unaccompanied children, who sometimes disappear or risk being trafficked, could be strengthened through a number of measures without resorting to the deprivation of liberty, "simply by ensuring a sufficiently strict control by custodial institutions to the movement of the minors in their care".⁵

States should invest more substantially in accommodation facilities that are better adapted to the "the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts"⁶ as well as their right to education. All children, whether accompanied or unaccompanied should be able to enjoy these rights and to receive adequate care and protection.

The undersigning organisations call on states to end the detention of all children solely for immigration purposes. Where strictly necessary to limit the freedom of movement of families with children, alternatives to detention do exist and work as is for instance shown by the recent International Detention Coalition's research into alternatives to immigration detention⁷ and by a recent study published by UNHCR⁸.

At the same time, EU institutions are negotiating on Commission proposals recasting the EU asylum *acquis* that include important provisions relating to the detention of children. In this regard, we urge EU Member States to ensure that EU asylum legislation includes a clear ban on the detention of unaccompanied asylum-seeking children and the necessary guarantees to ensure that alternatives to detention are in place with a view to ending the detention of families with children. The ongoing negotiations on the Asylum Package are a unique opportunity for the EU institutions and the Member States to set the standard and

³ See UNICEF and Children's Legal Centre, *Administrative detention of children: a global report*, February 2011, p. 66.

⁴ ECtHR, *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, Application No. 13178/03, Judgment of 12 October 2006, see, inter alia, paras. 55, 101-104 and ECtHR, *Mushkhadzhieva and others v. Belgium*, Application No. 41442/07, Judgment of 19 January 2010, para. 63 (French only).

⁵ Commissioner for Human Rights, *Positions on the rights of minor migrants in an irregular situation*, CommDH/Position Paper(2010)6, Strasbourg, 25 June 2010, p. 4.

⁶ Article 31, Convention on the Rights of the Child.

⁷ See International Detention Coalition, *There are alternatives. A handbook for preventing unnecessary immigration detention*. Available on www.idcoalition.org/cap by Sampson R. Mitchell, G. and Bowring, L. (2011)

⁸ Edwards A., *Back to Basics: The right to liberty and security of person and "Alternatives to Detention" of Refugees, asylum-seekers, stateless persons and other migrants*, Legal and Protection Policy Research Series, UNHCR April 2011.

adopt a legal framework on the non-detention of asylum-seeking children that can be a model for other regions in the world. We believe this would be an important and significant step that would contribute to improving the situation of asylum-seeking children in the EU and an impressive contribution to the commemoration of the 60th anniversary of the 1951 Refugee Convention.

We hope that you will be able to support this call that is made to all EU governments ahead of the Ministerial-level meeting in Geneva on 7 - 8 December 2011.

Yours sincerely,

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On behalf of the coalition 'kinderen horen niet in vreemdelingenbewaring'

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