



# General Assembly

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## Human Rights Council

### Thirty-second session

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Written statement\* submitted by Defence for Children International, a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[27 May 2016]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.16-08822(E)



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## **Statement by Defence for Children International (DCI) on the Human Rights of Children in Migration Situations**

Mr. President,

Today, many children leave their homes to find a place where they can live peacefully. Sometimes, they travel accompanied by their parents or relatives<sup>1</sup>. Sometimes, they travel alone, hoping to meet their basic needs and human rights or trying to take a lead role - in spite of their young age - in helping their family improve its living conditions. Along the way, they face considerable risks and are all too often subject to human rights violations in their country of origin, transit and/or countries of arrival.

Countries in which children seek refuge are all states parties to the UN Convention on the Rights of the Child, as well as the three Optional Protocols on the sale of children, child prostitution<sup>2</sup> and child pornography, on the involvement of children in armed conflict, and on a communications procedure.

It is therefore essential, in light of the numerous reported violations of children's rights and recent agreements authorizing countries to send asylum-seekers back to places of origin or of transit, to recall that the human rights of migrant, refugee and asylum-seeking children are to be guaranteed at all times.

In order to stop adding to the on-going traumatic experiences that children in migration situations face, and in order to prevent new ones, DCI feels the need to reiterate the following:

- States are obligated to uphold the individual and collective human rights of children in migration situations and must provide them with special protection, taking into account their specific vulnerable situation;
- Children's rights must be respected, independently of the child's individual characteristics and cultural and religious practices and beliefs;
- Children in migration situations must enjoy their right to education, right to health and right to live in adequate conditions, including adequate and dignified shelter, under the same conditions that national citizens would;
- Children's right to express their opinion and to participate must prevail in all decisions and proceedings concerning their lives;
- Immigration and asylum-seeking procedures must prioritize children, whether they are accompanied or not;
- States must favour family reunification in countries and under conditions that can guarantee children's dignity and development;
- Unaccompanied children must be provided with alternative care support, including facilitation to access education;
- Families and unaccompanied children shall never be deprived of liberty based on their migration status<sup>3</sup>;
- Children must be registered as such upon arrival; if doubt is raised on the age of the child, the benefit of the doubt must always be given to the child; should authorities need to verify identity documents in possession of the child, dental and X-ray examinations cannot be used to determine the age of the child given their lack of

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<sup>1</sup> While children might travel without accompanying family members or relatives, they encounter, throughout their migratory journey, adults that can provide protection or expose them to risks.

<sup>2</sup> Nowadays, reference is made to sexual exploitation of children for commercial or non-commercial means, rather than child prostitution.

<sup>3</sup> Report of the 2012 Day of General Discussion: The Rights of All Children in the Context of International Migration (November 2012), Recommendation 78 - *The detention of a child because of their or 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.*

scientific reliability;

- In line with the “*duda in dubio pro reo*”<sup>4</sup> principle, and articles 3, 5 and 12 of the UN Convention on the Rights of the Child, the best interests of the child must prevail in all proceedings;
- Children are entitled to free legal assistance and access to a lawyer, preferably a lawyer specialized in child rights, in all types of proceedings;
- Unaccompanied children must be assisted by a guardian for representation in any administrative or judicial proceedings, in order to guarantee that their human rights and best interests are guaranteed<sup>5</sup>;
- Children must be granted special, preventive protection against smuggling, trafficking and any other forms of exploitation;
- Child victims of human trafficking and/or organized criminal networks must be considered as rights-holders and victims of violations and/or abuses, and must receive subsequent, adequate protection, which includes the delivery of a residence permit based on their victim status, i.e. persons whose human rights, dignity, intimacy and integrity have been violated.
- States hosting children must facilitate children’s integration and their residency even after they turn 18 years old, in order to ensure that sustainable solutions are implemented to take into consideration their best interests; and States must not resort to expulsion procedures when the individual is not in possession of sufficient financial resources;

Defence for Children International (DCI), through its national sections, continuously monitors and assesses the situation and implementation of the aforementioned laws and principles on the ground. DCI national sections report violations to the United Nations Human Rights bodies and mechanisms – including the Committee on the Rights of the Child – and other relevant international and regional mechanisms.

DCI works with other organisations to ensure that the human rights of children and their best interests are guaranteed at all times, and support decisions and actions taken to address and prevent violations thereto.

DCI urges States dealing with children in migration situations to fully respect laws and principles that they agreed upon ratifying international treaties, and recommends that the best interests of the child is always a priority and prevails over existing national immigration policies.

Whenever children seeking refuge are present on national territory, States are to rapidly proceed to: identification; guaranteeing the benefit of the doubt to children if their age cannot be determined; ensuring immediate access to shelter, care and protection services; and unequivocally refraining from resorting to any form of deprivation of liberty.

Thank you.

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<sup>4</sup> Benefit of the doubt

<sup>5</sup> In Europe, the guardian should be able to work in compliance with the ten Core Standards for guardians of separated children ([www.corestandardsforguardians.com](http://www.corestandardsforguardians.com))