



Geneva - Paris, October 2015

## Declaration

### **BICE advocacy for sustainable solutions for children escaping conflicts and persecutions**

*People on the move is a global and historic phenomenon which should be dealt with by using a rights based approach, specifically the rights of people seeking asylum. Considering that between January and August 2015, more than 533.824<sup>1</sup> persecuted people escaping conflicts have converged towards Europe, generally after a dangerous crossing of the Mediterranean and the Aegean Sea, and that more than 2.980 people, including children, have perished, sustainable solutions have become necessary.*

*Indeed, despite recent initiatives<sup>2</sup>, the International Catholic Child Bureau (BICE) and its member organisations, signatory of this declaration,<sup>3</sup> remain preoccupied by the way the European Union and its Member States have treated the thousands of men, women and children who were forced to flee conflicts and persecutions to seek international protection in Europe.<sup>4</sup> Such a physical, emotional and psychological uprooting traumatizes these displaced people, and entails an obligation from transit and destination States to provide protection and care regardless of their migratory status, especially when it concerns children and adolescents, whether accompanied or not.<sup>5</sup>*

#### **An international obligation to protect**

1. Over and above generosity and solidarity, the obligation to protect people seeking international protection is enshrined in international human rights instruments, including the 1989 Convention on the Rights of the Child, particularly in Articles 3 and 22<sup>6</sup>, the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the 1951 Convention relating to the Status of Refugees, the 1967 New York Protocol relating to the Status of Refugees<sup>7</sup> as well as other regional instruments.
2. Rescue at sea is also a State international obligation, under the 1974 International Convention for the Safety of Life at Sea and the 1979 International Convention on Maritime Search and Rescue which provides in its chapter 2.1.10 that “parties shall ensure that assistance be provided to any person in distress at sea. They shall do so regardless of the nationality or status of such a person or the circumstances in which that person is found.”
3. The treaty obligations to protect presuppose a duty of diligence when it comes to children and adolescents seeking asylum, whether they hold legal documents or not, and whether they are accompanied or not, in accordance to the principle of the best interests of the child, which compels States to refrain from practices of confinement, retention, detention and isolation, and to make every effort to preserve their fundamental rights, including their right to life, health, and physical and moral integrity.

#### **Call for the respect of the responsibility to protect people fleeing conflict and persecution**

4. BICE and the signatories of this Declaration recall that various institutions and mechanisms of the United Nations, such as the Human Rights Council, the Office of the High-Commissioner for Human Rights (UNHCHR), the High Commissioner for Refugees, the International Organization for Migration<sup>8</sup>, the Committee on the Rights of Migrant Workers<sup>9</sup>, the Committee on the Rights of the Child<sup>10</sup>, and the Special Rapporteur on the human rights of migrants,<sup>11</sup> have called on States to avoid the demonization of migrants and to fight against smuggling networks,

while stressing that the repressive policies against illegal immigration as well as the closing of borders have failed. It is no longer possible to deny a situation that, by its scale, will significantly impact years to come.

5. The priority on border controls given by the European Union through its Frontex agency, at the expense of rescues at sea in the Aegean, Mediterranean and elsewhere, has led to a death toll in 2015 of more than 2,980 people, including children. The picture of the lifeless body of little Aylan, 3 years old, washed up on a beach in Turkey has provoked international indignation and emotion. He is the symbol of the lack of legal channels that would allow displaced people to avoid perilous crossing at the risk of their lives. Replacing the Italian *Mare Nostrum* operation by the European *Triton* Operation, and tripling its resources, is acceptable provided that the rescue dimension is maintained and strengthened, and that an a rights-based approach is duly integrated.
6. Fragmented solutions and the hesitation of the leaders of the European Union to develop a common strategy based on the respect of the human rights of people seeking asylum and on the shared responsibility of its Member States, have led to feelings of hatred, xenophobia and intolerance towards these people in the media, the public opinion and some political leaders. They exacerbate populist speeches, downplaying the role of these people as partners in the development of their countries of origin, transit and destination.
7. Detention or isolation of people seeking asylum, especially children and adolescents, on the grounds that they did not have the required documents is not in accordance with international law. The economic or sexual exploitation, torture, cruel, inhuman and degrading treatment inflicted on these people is contrary to international obligations of States. Building walls on borders while timidly fighting against criminal trafficking networks is likely to jeopardize the fundamental rights of these people.
8. Relocating the application centres in the asylum-seekers' countries of origin through partnership agreements, thus reinforcing the watchdog role of these third party countries outside the EU, further violates the rights of these migrating people, and abrogates the Member States' responsibilities. The establishments of hotspots in the countries of arrival into the European Union should respect the jurisprudence of the European Court of Human Rights in the case of *M.S.S. v. Belgium and Greece* on January 21st, 2011<sup>12</sup>.

### **Towards a strengthened international cooperation**

9. BICE and the signatory organisations of this declaration welcome the following commitments and initiatives which are a step towards a more holistic approach of the migration situation in Europe.
  - 9.1. States such as Lebanon are receiving 1.113.914 registered Syrian refugees, Jordan 628.887 and Turkey 4.086.760, in other words approximately 25%, 10% and 5% of their population<sup>13</sup>, whereas the 533.824 registered persons in Europe between April and August 2015 only represent 2% of the total population of the European Union. Other States such as Germany and Sweden are taking their responsibilities to protect by welcoming many asylum-seekers.
  - 9.2. The EU Agreement of September 23, 2015 on the relocation of 120,000 people within the EU Member States, as well as the financial support pledged to Middle Eastern countries hosting Syrian refugees, are acts that are heading in the right direction.
  - 9.3. Two studies were commissioned by the United Nations Human Rights Council. The first one, to the UNHCHR, will focus the situation of migrants in transit, including unaccompanied children and adolescents, as well as women and girls.<sup>14</sup> The second study will be conducted by the Advisory Committee of the Council and will deal with the overall issue of unaccompanied migrant children and adolescents and human rights<sup>15</sup>. These laudable initiatives should suggest concrete actions to address the protection of children seeking asylum, especially through international cooperation.
  - 9.4. In addition, the Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families are jointly engaged in the development of a General Comment on "children in the context of migration" which should guide legislation and State practice.

## Recommendations from BICE and the signatory organisations

10. The rights of the child, especially of accompanied or unaccompanied migrant children and adolescents, in the countries of transit and of destination, should be respected and, if necessary, the reunification of families should be facilitated. This should be an important objective in order to promote the welfare and the best interests of migrant children and adolescents. It is also important to respect the consular notice and access requirements set out in the Vienna Convention on Consular Relations so that States can provide consular assistance to children, including legal assistance.
11. The reception conditions of people seeking international protection should respect their dignity and their rights, namely during the crossing of maritime, land or air borders, regarding the accommodation, food and the processing time of asylum applications which should remain reasonable, the public perception of people seeking asylum and the access to rights without discrimination between nationals and refugees.
12. States should refrain from adopting laws, public policies and practices that may adversely affect the full enjoyment of human rights and fundamental freedoms by the people who are persecuted and victims of conflicts, especially minors. It is understood that the sovereign rights of States to enact and enforce measures regarding migration and border security do not exempt them from honouring their obligations under international law.
13. It is crucial to adopt a comprehensive and integrated rights-based approach of migration policies and to cooperate at the regional and international levels in a spirit of shared responsibility by providing credible and safe alternatives, in particular through legal channels for migration which would limit the vulnerability of displaced people, prevent perilous journeys and therefore human tragedies, and safeguard the rights and best interests of children seeking asylum.
14. The fight against criminal migrants trafficking networks should be included as a priority in the international agenda, as a way also to fight against illegal immigration, in accordance with the 2000 United Nations Convention against Transnational Organized Crime and its two Additional Protocols in order to prevent, suppress and punish trafficking in persons, especially women and children; and against the smuggling of migrants by land, sea and air.

**Contact:** Yao Agbetse - BICE international advocacy coordinator  
[yao.agbetse@bice.org](mailto:yao.agbetse@bice.org), Tel. +41 (0)22 552 24 51

---

<sup>1</sup> Data from, the [United Nations High Commissioner for Refugees](#), September 2015.

<sup>2</sup> Cf. "Towards a strengthened international cooperation", point 9 of this Declaration.

<sup>3</sup> Please refer to the annex for the list of signatory organisations.

<sup>4</sup> In accordance with article 1.2 of the 1951 Convention relating to the Status of Refugees, a refugee is a person who has "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it." An asylum-seeker is a person seeking international protection by means of a refugee status for which he is applying. A migrant is a person who moves from one country to another, on a voluntary or forced basis, for various reasons, such as political, economical, cultural or environmental. A migrant can be granted refugee status after a successful assessment of his/her application according to national provisions and relevant international laws.

<sup>5</sup> [CRC/GC/2005/6](#) (2005), General Comment n°6 of the Committee on the Rights of the Child on the "Treatment of unaccompanied and separated children outside their country of origin".

<sup>6</sup> Article 22.1 and 22.2 of the United Nations Convention on the Rights of the Child: "1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties. 2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention."

---

<sup>7</sup> The list of international treaties is non-exhaustive. Can also be cited, the International Labor Organization 1949 revised Convention n°97 on Migrant Workers and the 1975 Convention n°143 on Migrant Workers (supplementary Provisions).

<sup>8</sup> High-level interactive dialogue on the human rights of migrants held on June 15, 2015 at the 29th session of the Human Rights Council. Several interventions of the United Nations High Commissioner for Human Rights on this subject are available on [www.ohchr.org](http://www.ohchr.org). See also the following resolutions of the UN Human Rights Council: A / HRC / 29/2 (2015) and A / HRC / 29/12 (2015).

<sup>9</sup> [Statement](#) on September 9, 2015 by the UN Committee on Migrant Workers

<sup>10</sup> [Statement](#) on September 11, 2015 by the UN Committee on the Rights of the Child.

<sup>11</sup> Recent Reports [A/HRC/29/36](#) (2015), [A/HRC/29/36/Add.2](#) (Italy, 2015) and [A/HRC/29/36/Add.3](#) (Malta, 2015).

<sup>12</sup> In the judgment [M.S.S. v. Belgium and Greece](#), n°0696/09, the Court charges the State which sends the asylum-seeker back to his/her country of arrival with an obligation of vigilance and diligence. It considers that it is the responsibility of the country that sends the applicant back to the country of arrival, not merely to assume that the applicant would be treated in conformity with the Convention standards but, on the contrary, to first verify how the authorities in the arrival country applied their legislation on asylum in practice. § 358-359. See case of *Sharifi and others v. Italy and Greece*, October 21, 2014

<sup>13</sup> UNHCR, statistics dated September 17, 2015 for [Jordan](#) and [Turkey](#) and August 25 2015 for [Lebanon](#).

<sup>14</sup> Resolution [A/HRC/29/2](#) (2015), § 9, of the Human Rights Council. The study will be submitted to the Council before its 31st session in March 2016.

<sup>15</sup> Resolution [A/HRC/29/12](#) (2015), § 4, of the Human Rights Council. The study will be submitted to the Council during its 33<sup>rd</sup> session in September 2016.

**Signatory organisations:**