



**Recommendations to the Draft Joint General Comment  
No. 3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and  
No. 21 of the Committee on the Rights of the Child  
on the Human Rights of Children in the Context of International Migration.**

Kids Empowerment is honored to have the opportunity to present these recommendations at the attention of the Committee on the Rights of the Child and the Committee on the Rights of All Migrant Workers and Members of Their Families.

Kids Empowerment is an international organization based in Paris providing research services, education, and technical assistance developing legal framework for the empowerment of migrant children. Overall we consider that this draft General Comment is very comprehensive and covers most issues that are of concern in relation to the respect of human rights of migrant children. Both committees are to be commended for the quality of this draft. In order to provide recommendations as short as possible, we have chosen to focus on points that are most urgent in France. Only paragraphs for which contain recommendations have been included in the table below.

<b>Recommended drafting</b>	<b>Comments</b>
47. Age determination processes should be a measure of last resort. The Committees cautions against age determination methods based on, inter alia, bone analysis, that are flawed and inaccurate with wide margins of error, <b>and physical body observation, that are degrading for the child.</b> <del>and remind</del> States <b>are reminded</b> that age determination	While bone testing is an invasive method, physical body observations are degrading means to evaluate a child with damaging consequences for the child undergoing these tests.

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<p>processes should be a measure of last resort and be carried out in a prompt, child-friendly, gender sensitive, culturally appropriate and multi-disciplinary manner, and be conducted by child protection officials or officials with sufficient and relevant expertise and training. The benefit of the doubt should always be given to the individual being assessed. The right to appeal the decision before an independent body should be ensured.</p> <p><b>47 bis. Age determination through methods based on bone analysis and physical body observation should be carried out only with the consent of the child and/or his legal representative. The refusal by a child to undergo such examination should not constitute a ground for the authorities to deny him the recognition of his minority.</b></p>	<p>Public and judicial authorities sometime use the refusal for a minor to undergo these types of age assessment as a de facto recognition of majority of the concerned minor. Children have to consent to these procedures when undertaken. The refusal to consent should not be used against the child to deny him his rights as a child.</p>
<p>53. In view of the Committees, child protection and welfare actors,, rather than immigration agencies should take primary responsibility for migrant children and children should be housed with their family members unless there are compelling reasons for separation in line with the child’s best interests. Unaccompanied children should be placed in the national/local alternative care system, preferably in community and/or family-type care –when such arrangements exist- rather than in institutional care. <b>Informal alternative care should be developed with proper child safeguarding measures in place to ensure adequate placement for all unaccompanied minors. Placement of minors in hotels is to be avoided.</b> All children should have access to adequate healthcare and education , including for their sexual and reproductive health, as well as additional services, such as psycho-social and trauma counselling and additional services that could be necessary in each case. These decisions have to be taken within a child-sensitive due process, including their right to be heard and should take into account vulnerabilities and needs of children, including such based on their gender, age or mental health conditions</p>	<p>It is a current practice in France to place unaccompanied minors who are 15 and older in very cheap hotels where the child is in close contact with criminal and other underground activities (prostitution, gangs...) due to the lack of available space in state facilities. At the same time there is growing number of minors whose minority is contested who have become street children. As a result they can encounter well intentioned people who will provide them with a shelter or can become victims of persons ready to exploit them. There is room for an informal alternative placement system, yet it should be regulated to ensure the protection of these minors.</p>
<p>57. While child migration-related detention constitutes in itself a violation of children’s right to liberty, in any instance where a child is nevertheless deprived of liberty, States are</p>	<p>France has established administrative detention areas at the ports of arrivals where children can</p>

<p>urged to impose such measure for the shortest time and in conditions that meet all the standards of detention as set out in human rights law. Highlighting General Comment No.10 (CRC/C/GC/10, 2007) of the CRC Committee, it is reiterated that States have the legal obligation to comply with international standards on detention conditions, including the Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules) which apply to all forms of detention including administrative or non-criminal detention. This includes ensuring a child-friendly environment; separation from adults who are not the child's parent or guardian (including if the child is above the age of 16 years); child protection safeguards; and, independent monitoring.<sup>38</sup> Access to quality free legal assistance and case management, as well as other services must have ensured. Child protection authorities and children's rights experts should play a guiding role in these cases. <b>“Off-shore” areas considered outside of the national jurisdiction of a State party shall not be established by the given State party as a way to avoid compliance with its international obligations.</b></p>	<p>be detained up to 21 days until they are either deported or released on the French territory by a court ruling. Even though these detention areas are not in the international zone of the airport, but located beyond the passport control area, detainees are not considered to have entered the French territory (even when taken to nearby public hospitals during their detention). Children can be placed with adults during this period because of either the lack of a child dedicated area or, when it exists, the insufficient of capacity of the minors area. Children who want to claim asylum will need to go through an additional step and be heard (sometimes only through a telephone interview) by the asylum office only for a speedy assessment. Will only be considered during this interview whether their claim could be eligible once they would be released on the French territory. These unaccompanied minors are thus not entitled the same rights as these who have entered the French territory via different routes and face additional obstacles to claim asylum or to access child protection because, they do not fall under the French jurisdiction despite their presence on the French soil.</p>
<p>60. The following guarantees of due process, among others in accordance with</p>	<p>De process should be guarantied not only in</p>

international human rights law, must govern any ~~immigration and asylum~~ proceedings, whether administrative or judicial, that involve children<sup>40</sup>, and in particular in the context of Best Interest Assessments and within Best Interest Determination Procedures :

- The right to be notified of the existence of a proceeding, of the decision adopted in the context of the immigration proceedings, its implications and possibilities of appeal;
- The right that the immigration proceedings are conducted by a specialized official or judge; and that any interviews are carried out by professionals trained in communicating with children;
- The right to be heard and to take part in the different procedural stages, in line with the principle of autonomy (article 5 CRC);
- The right to be assisted without charge by a translator and/or interpreter
- Effective access to communication with consular officials and consular assistance, and to receive child-sensitive rights-based consular protection;
- The right to be appointed and assisted by free and quality legal representation and to communicate freely with the representative;
- ~~The obligation to appoint a guardian in the case of children who are unaccompanied or separated;~~<sup>41</sup>
- The right that the decision adopted takes into consideration the best interest of the child and is duly reasoned;
- The right for application and procedures involving children to be treated as a priority, in line with the expediency principle, while ensuring ample time to prepare for proceedings and all due process guarantees are fulfilled;
- The right to appeal the decision before a higher court or independent authority, with suspensive effect, and a reasonable time for the duration of the proceedings;
- Allowing the child access to the territory is a prerequisite to access to procedural

relation to the immigration and asylum proceedings but in any judicial or administrative proceedings the child may encounter.

Currently, in France legal guardians (called administrateurs ad hoc) are appointed for unaccompanied minors only in the case of an asylum claim (which is not a widespread practice) or while the child is detained in an administrative retention area prior to his/her release onto the French territory. An unaccompanied child placed with the French social services may never have a legal guardian designated by court by the time he/she reaches the age of 18. When a guardian is designated it may be the “conseil départemental” which poses serious problems of conflict of interest given that this authority is in charge of providing social services to the child. This lack of guardianship (or independent guardianship) prevents these children from the possibility to defend their rights given that they do not have the capacity to petition a court to seek redress in case of violation of their rights.

<p>safeguards and best interest determination.</p> <ul style="list-style-type: none"> <li>• The <del>appointment of a</del> competent <b>and independent</b> guardian for unaccompanied and separated children, as expeditiously as possible <b>and until they reach the age of 18. This measure</b> serves as a key procedural safeguard to ensure respect for their best interests<sup>42</sup>.</li> </ul>	
<p>85. The marital status of children should not have any significance in the consideration of their need for protection. The married child who is without his/her parents/legal guardian will be treated as an unaccompanied child and be subject to the care by child protection services like any other child, including the offer of a separate place of residence from his/her adult spouse. The best interest of the child and the right to be heard and to participate (art. 12 CRC) should be a primary consideration when decisions regarding the child's place of residence take place. Unaccompanied children are to get their applications considered separately from the spouses. The adult spouse is never to be considered the caretaker or legal guardian of the child.</p>	<p>This question in unfortunately overlooked is some European countries. We are satisfied to find this recommendation in this new version of the draft.</p>