

Comments by the Netherlands on 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

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The Government of the Netherlands welcomes the initiative by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Committee on the Rights of the Child to prepare a Joint General Comment on the Human Rights of Children in the Context of International Migration.

First of all, the Government of the Netherlands wishes to emphasise that migrant children need protection from all forms of violence and exploitation such as child labour, forced marriage as well as child trafficking. Sexual and gender-based violence against girls and boys must be combatted and the root causes that force parents to send their children to migrate and undertake treacherous journeys seeking a better future must be addressed.

Further, as regards the draft text of the Joint General Comment (April 24, 2017), the Government of the Netherlands would like to submit the following comments.

The Government of the Netherlands underlines the view, as expressed in paragraph 25 of the draft Joint Comment, that the best interests of the child should be taken as a primary consideration in all actions affecting children. In this context the Government of the Netherlands also points out that the Committee on the Rights of the Child, in its General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, stated that *'In order to demonstrate that the right of the child to have his or her best interests assessed and taken as a primary consideration has been respected, any decision concerning the child or children must be motivated, justified and explained. (...) If, exceptionally, the solution chosen is not in the best interests of the child, the grounds for this must be set out in order to show that the child's best interests were a primary consideration despite the result.'*<sup>1</sup> The Committee thus acknowledged that, exceptionally, there may be a solution which is not in the best interests of the child. This view corresponds to the legislative history of the Convention of the Rights of the Child.<sup>2</sup>

It seems, however, that paragraph 16, paragraph 28, in particular the first point, and paragraph 75 of the draft text suggest that the best interests of the child should not be taken as *a* primary consideration, but as *the* primary consideration. The same seems to apply to paragraph 15 and paragraph 52 of the draft text where it is stated that child protection authorities should have a leading/deciding role on policies, practices and decisions and that they should take primary responsibility for migrant children.

The Government of the Netherlands is of the opinion that, in line with General Comment 14 of the Committee on the Rights of the Child and the legislative history of the Convention on the Rights of the

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<sup>1</sup> General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (2013) p. 20.

<sup>2</sup> See the Legislative History of the Convention of the Rights of the Child (<http://www.ohchr.org/Documents/Publications/LegislativeHistorycrc1en.pdf>) p. 346.

Child, there may be situations in which competing interests can be of equal, if not greater, importance than the interests of the child. Therefore, the Government of the Netherlands would welcome a revision of the above-mentioned paragraphs of the draft text to make clear that such situations may exist.