



Convention on the Rights of the Child

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Committee on the Rights of the Child

Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 48/2018*, **

<i>Communication submitted by:</i>	Y.F.
<i>Alleged victims:</i>	F.F., T.F. and E.F., the author's children
<i>State party:</i>	Panama
<i>Date of communication:</i>	21 June 2018
<i>Date of adoption of decision:</i>	3 February 2020
<i>Subject matter:</i>	Transfer of children from Benin to Panama with the father's consent, non-return of the children without the father's consent; right to maintain direct contact with the father
<i>Procedural issues:</i>	Lack of consent of the children; competence <i>ratione temporis</i> ; non-exhaustion of domestic remedies; lack of substantiation of claims
<i>Articles of the Convention:</i>	2, 5, 8, 9, 10, 11, 16, 35 and 37
<i>Articles of the Optional Protocol:</i>	5 (2) and 7 (c), (e), (f) and (g)

1.1 The author of the communication is Y.F., an adult national of Benin. He submits the present communication on behalf of his three children, F.F., T.F., and E.F., who are of Beninese and Panamanian nationality and were born on 22 December 2001, 18 September 2003 and 20 February 2005, respectively. He claims that his children are the victims of violations of their rights under articles 2, 5, 8, 9, 10, 11, 16, 35 and 37 of the Convention. The author is not represented by counsel. The Optional Protocol entered into force for the State party on 16 May 2017.

1.2 On 2 July 2018, in accordance with article 6 of the Optional Protocol, the Working Group on Communications, acting on behalf of the Committee, decided not to request the State party to adopt interim measures, there being no discernible risk of irreparable harm.

* Adopted by the Committee at its eighty-third session (20 January–7 February 2020).

** The following members of the Committee participated in the examination of the communication: Suzanne Aho Assouma, Amal Salman Aldoseri, Hynd Ayoubi Idrissi, Bragi Gudbrandsson, Philip Jaffé, Olga A. Khazova, Cephass Lumina, Gehad Madi, Faith Marshall-Harris, Benyam Dawit Mezmur, Clarence Nelson, Otani Mikiko, Luis Ernesto Pedernera Reyna, José Ángel Rodríguez Reyes, Aïssatou Alassane Moulaye Sidikou, Ann Marie Skelton, Velina Todorova and Renate Winter.



1.3 On 3 September 2019, in accordance with article 6 of the Optional Protocol, the Working Group on Communications, acting on behalf of the Committee, reiterated its decision not to request the State party to adopt interim measures, as the author had not provided any additional information to suggest that his children risked suffering irreparable harm.

1.4 On 8 October 2019, in accordance with article 9 of the Optional Protocol, the Working Group on Communications, acting on behalf of the Committee, decided to reject the author's request to initiate a friendly settlement procedure.

1.5 On 3 December 2019, in accordance with article 6 of the Optional Protocol, the Working Group on Communications, acting on behalf of the Committee, reiterated its decision not to request the State party to adopt interim measures, as the author had not provided any additional information to suggest that his children risked suffering irreparable harm.

The facts as submitted by the author

2.1 The author married a Panamanian woman; they decided to reside in Benin, the author's country of origin. Three children were born of the marriage: F.F., T.F., and E.F. On 20 July 2015, with the father's consent, the children travelled with their mother to Panama with the intention of returning to Benin on 12 September 2015. However, the children and their mother never returned.

2.2 On 22 December 2015, the office of the International Criminal Police Organization (INTERPOL) in Benin requested assistance from the office of INTERPOL in Panama, which, on 2 February 2016, replied with information that the mother and the three children were undergoing medical and psychological treatment.

2.3 On an unspecified date, the author filed an appeal with the Court of First Instance of Cotonou, Benin. In a judgment dated 20 April 2016, the Court ordered that the children be repatriated to their family home in Benin and that the father be granted exclusive custody until the mother chose to return.

2.4 On 20 May 2016, the Beninese Embassy in Cuba contacted the Panamanian Embassy in Cuba to request cooperation in the repatriation of the children but received no reply.

2.5 On 23 September 2016, the author submitted a request for the recognition and enforcement of a foreign judgment to the Supreme Court of Justice of Panama. According to the author, the Court contacted the Panamanian Ministry of Foreign Affairs. On 29 September 2016, the author's lawyer met with a Ministry official and was reportedly told that an official letter from Benin would be required if the repatriation of the children were to proceed.

2.6 Accordingly, on 3 November 2016, the Ministry of Foreign Affairs and Cooperation of Benin forwarded to the Ministry of Foreign Affairs of Panama the judgment of 20 April 2016, requested its assistance in the repatriation of the children and designated the Beninese Embassy in Cuba as its intermediary with the Panamanian authorities for the operational aspects of the repatriation.

2.7 On 9 November 2016, the Ministry of Foreign Affairs of Panama replied to the Beninese authorities pointing out that Benin was not a party to the Hague Convention on the Civil Aspects of International Child Abduction and had not concluded any bilateral agreements with Panama to combat the illicit transfer of children.

2.8 On 29 December 2016, 11 July 2017 and 18 April 2018, the Ministry of Foreign Affairs and Cooperation of Benin reiterated its request to the Panamanian authorities.

Complaints made by the mother of the children against the author

2.9 On 30 December 2015, "with the complicity of officials of the Public Prosecution Service" of Panama, the mother of the children filed a criminal complaint against the author for domestic violence and child abuse. The case was closed on 8 June 2017.

2.10 On 30 December 2015, the mother also filed for custody, upbringing and visitation rights before the Second Family Court of the first judicial circuit of Panama. The Court admitted the proceedings on 11 January 2016.

2.11 On 18 January 2016, the Court ordered temporary protection measures prohibiting the father from contacting the children in person, by telephone or by any electronic means. On 13 June 2016, the Court awarded temporary custody of the children to the mother.

2.12 On 10 September 2016, the Court finally allowed the author to communicate with his children, albeit under the supervision of their maternal grandfather. However, on 11 November 2016, the Court prohibited the children from using French or Yoruba (their native languages) in all such communications. On 8 November 2017, ruling on an appeal submitted by the author, the Superior Family Court upheld the measure prohibiting the children from using their native languages in all telephone conversations with their father.

The complaint

3.1 The author claims that his children are the victims of violations of their rights under articles 2, 5, 8, 9, 10, 11, 16, 35 and 37 of the Convention, as a result of the intimidation, threats and deceit used against them by officials of the State party with a view to securing their consent to staying in Panama.

3.2 In particular, the author claims that the Court should not have agreed to hear custody proceedings brought by a parent who does not reside in Panama, since it did not have the territorial jurisdiction to do so, but it should have taken measures to put an end to the abduction of the children by their mother.

3.3 The author claims that, by concealing an international parental abduction, the Court has committed an extremely grave act and has become complicit in the unlawful non-repatriation of the children through acts of corruption. In this regard, the author notes that he has filed a complaint with the anti-corruption prosecutor's office of the Panamanian Attorney General's Office.

3.4 The author also claims that the fact that the State party has prohibited the children from using their native language is a crime against humanity because it is an attempt to erase their identity. He requests that the Committee contact the Attorney General's Office in the State party to facilitate the repatriation of his children.

Additional information submitted by the author

4.1 On 11, 14 and 25 March, 16 April and 9 July 2019, the author alleged that, in a hearing held on 4 September 2018, the authorities of the State party pressured his children into signing a document that is prejudicial towards him, and that this gave rise to the adoption of new protection measures on 18 September 2018 restricting his communications with his children to one hour every Saturday.

4.2 The author explained that he has submitted further repatriation requests to the Ministry of Foreign Affairs and the President of Panama.

4.3 The author also explained that on 27 February 2019, the Permanent Mission of Benin to the United Nations Office at Geneva contacted the Permanent Mission of Panama to the United Nations Office at Geneva to request that the State party submit its observations on the communication submitted by the author to the Committee.

4.4 The author is seeking compensation of US\$ 1,800,000 for himself and for his children for the harm they have suffered.

State party's observations on admissibility and the merits

5.1 On 16 August 2019, the State party submitted its observations on the admissibility and merits of the communication, in which it argues that the communication is inadmissible under article 5 of the Optional Protocol since the author has not provided evidence that the children have consented to his submitting the communication on their behalf and since he has neither justified nor explained his acting without such consent.

5.2 With regard to the diplomatic steps taken by the Ministry of Foreign Affairs and Cooperation of Benin and the Beninese Embassy in Cuba, the State party indicates that the

Ministry of Foreign Affairs of Panama transferred the request for international judicial assistance in respect of the children's repatriation to the Office of the Senior Prosecutor for International Affairs of the Attorney General's Office and the General Secretariat of the Supreme Court of Justice in order to decide on the feasibility of the request. The State party notes that the Ministry replied to the authorities of Benin, indicating that it would not be possible to accede to their requests for various reasons. In this regard, in addition to pointing out that Benin is not a party to the Hague Convention and has not concluded a bilateral agreement with Panama to combat the illicit transfer of children, the Ministry indicates that no sovereign power has jurisdiction over another sovereign power, for which reason a Beninese judgment cannot be enforced in Panama without proceedings for the recognition and enforcement of a foreign judgment having been undertaken before the Fourth Chamber (General Division) of the Supreme Court of Justice of Panama, in accordance with articles 100 and 1420 of the State party's Judicial Code. Thus, to request the enforcement of a foreign judgment, simply providing a copy of the judgment is not sufficient; an enforcement order must first have been sought.

5.3 The State party specifies that the author's request to initiate proceedings for the recognition and enforcement of a foreign judgment before the Ministry was rejected because the competent body for such proceedings is the Fourth Chamber of the Supreme Court.

5.4 In this regard, the State party indicates that on 4 May 2016 the Panamanian consulate in Paris submitted a request to the Ministry of Foreign Affairs of Panama for international judicial assistance in the recognition and enforcement of a foreign judgment, which was transmitted to the Supreme Court of Justice on 13 June 2016. On 21 January 2018, the Fourth Chamber declared the judgment of the Beninese court non-enforceable because Panamanian law prohibits the recognition and enforcement of foreign judgments passed by default or in absentia.

5.5 On 3 May 2018, the author submitted through the diplomatic channel a further application for the repatriation of the three children. On 10 May 2018, the Ministry of Foreign Affairs of Panama requested an authenticated copy of the judgment of 21 January 2018 rejecting the enforcement of the foreign judgment from the General Secretariat of the Supreme Court of Justice, which it sent to the author on 4 June 2018.

5.6 With regard to the proceedings relating to offences against the family and marital status, specifically domestic violence and child abuse, the State party notes that the court hearing the case made reference to the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women and initially indicated that "the facts of the criminal case having been established, there is an urgent need to apply protection measures in response to the assaults that led the victim of the offence to make the complaint in order to guarantee her peace of mind and security". Subsequently, however, the proceedings were brought to a close by a definitive decision to stay proceedings issued on 8 June 2017 by the Eleventh Circuit Criminal Court of the first judicial circuit of Panama, owing to the existence of grounds that made it impossible to pursue the criminal prosecution. The State party therefore rejects the author's claim that the Public Prosecution Service colluded with the mother of the children.

5.7 With regard to the application relating to custody, upbringing and visitation rights lodged by the mother of the children before the Second Family Court of the first judicial circuit of Panama, in which she sought a ruling preventing the children from leaving the country, the State party notes that the Court, after admitting the proceedings, ordered that a court-appointed social worker should visit the mother's place of residence and that the author in Benin should be notified. The Court indicated that "since the request to prevent the minors from leaving the country is a measure that seeks to protect the children's best interests", it would accede to it, in accordance with article 766 of the Family Code. It thus assigned temporary custody of the children and responsibility for their upbringing to the mother, ordered that they be prevented from leaving the country, decided not to establish visits between the author and the children, and deferred ruling on the author's request for permission to communicate with his children on an ongoing basis until further evidence became available.

5.8 The State party specifies that the author asked that he be allowed to communicate directly, in person and on an ongoing basis with the children by technological means. On 29 August 2016, in accordance with the best interests of the children, the Court decided to

allow the use of communication technologies, established what forms of communication could take place on weekdays and on weekends, and clarified that, pending a ruling on the merits of the case, all conversations would be supervised by the children's grandfather "to avoid any problems or inappropriate language being directed towards the children, thus ensuring their protection in accordance with their best interests". On 11 November 2016, the Court received a special request from the author, asking for the communications with his children to be conducted in French. The Court rejected the request on the grounds that "supervision of the visits requires an understanding of the language used" and that the person responsible for such supervision did not understand French, while the author and his children all spoke Spanish.

5.9 Subsequently, in a decision dated 16 February 2017, the Court ruled on a motion for annulment submitted by the author, in which he requested that the entire proceedings be declared null and that temporary custody be taken away from the mother. The State party indicates that the Court examined and replied to each of the points put forward by the author, pointing out, in particular, that the author had gone to the Court and had been personally notified of the decision, thus eliminating the need for a letter rogatory, that the Public Prosecution Service was involved in the proceedings, and that the Court was competent to process the custody application since the mother and the children are Panamanian nationals and are living in Panama.

5.10 The State party also notes that the Office of the Circuit Prosecutor specializing in Civil and Family Matters, in its final recommendation to the Court, recommended that the children be invited to an oral hearing to determine how the exchanges they had with their father using technological means were going. On 23 May 2017, a discussion with the children in the presence of a court-appointed social worker was scheduled for 26 June 2017. During the discussion, one of the children, F.F., said that their father spoke to the children in French although he knew that their grandfather did not speak the language, that he complained about having to pay for the communications and that he had told the children that they did not have to enrol in school because they would soon return to Benin with him. In addition, T.F., another of the children, said that the exchanges were dull and unpleasant, that their father threatened and insulted the children's family in Panama, and that afterwards she felt upset and did not feel like studying. She also added: "We ask him to calm down but he keeps shouting, and he gets like that because he does not think that we should be here in Panama, I feel safer here in Panama because he has always been a very violent man. [...] My dad hit us for the smallest of things and he hit my mum too. During our calls with my dad I get the same feeling that I had when I was in Africa." As a result, the Court issued a warning to the author, urging him to reflect on his actions, to make sure that all communication took place in Spanish and not to let his personal interests take precedence over the safety and emotional stability of the children.

5.11 In addition, the State party explains that, in a decision dated 10 July 2017, the Court replied to the author's requests that the children's mother and grandfather be held in contempt of court. The State party notes that, according to the Court, the supervisor had always given advance warning whenever personal commitments or exceptional circumstances had prevented him from attending a communication session, whereas the author did not give any advance warning on the days when he missed a scheduled session. The Court rejected the requests to hold the mother and grandfather in contempt.

5.12 On 8 September 2017, the Court considered a new request for the mother of the children to be held in contempt. The Office of the Circuit Prosecutor specializing in Civil and Family Matters recommended the Court not to grant the request, and the Court, taking into account various articles of the Family Code and the Judicial Code, rejected it.

5.13 On 8 November 2017, the Superior Family Court ruled on the appeal submitted by the author against the decision of 11 November 2016 denying his request for the communications with his children to be conducted in French or Yoruba. The Court referred to the Brasilia Regulations Regarding Access to Justice for Vulnerable People in upholding the appealed decision, ruling that there were no procedural omissions that could invalidate the proceedings and that "allowing the father to communicate with his children in a language that the supervisor does not speak or understand undermines the nature of the temporary supervisory measure entrusted to that third person, in this case the maternal grandfather, who speaks only Spanish, which is aimed not at indoctrinating the children [...] but rather at preventing them from being exposed to uncomfortable situations, thus ensuring

their comprehensive protection”. The Court also noted that the use of communication through electronic means was an exception to the rule in terms of the visitation regime, since ideally parents should engage with their children face-to-face in order to renew the emotional ties broken by paternal separation. However, since the author is not in Panama, the aim is also to “facilitate some sort of communication between the father and the children”. Thus, the Superior Court followed the recommendation made by the seventh senior prosecutor for the first judicial district at civil hearing No. 159-17, held on 18 October 2017, to the effect that the appealed decision should be upheld.

5.14 On 8 March 2018, the Superior Court heard an appeal against the decision of 10 July 2017 denying the author’s request for the penalty for contempt to be applied. In reviewing the first instance decision, the Superior Court found that the appellant was in the wrong, since he had already offered evidence in relation to his motion regarding non-compliance with the visitation regime and had failed to substantiate his claims. The Court found that the author’s arguments did not directly concern the issue of whether or not contempt could be proven, instead focusing on the “illicit removal and non-return of the children” and the Court’s lack of jurisdiction to hear proceedings relating to the custody and upbringing of the children. The Superior Court also noted that the author sometimes failed to call the children at the scheduled times, leaving them waiting for his call, and that his conversations with them, rather than being pleasant, were in fact disagreeable, which is at odds with their best interests.

5.15 On 3 April 2018, the Third Family Court of the first judicial circuit of Panama ruled on a motion submitted by the father, requesting that the judge in the case be removed on the grounds that she had studied at the same school and at the same university as the mother of the children and therefore had personal ties with her. According to the Court, “it is untenable to remove a judge on the grounds that one of the parties to the case had studied at the same primary, secondary or higher education establishment as the judge hearing the case, since such a circumstance does not point to either friendship or enmity, it being possible that these people have never even met; the Court therefore concludes that the request is unfounded given the facts described”. The Court also considered the author’s other allegations to be unfounded.

5.16 On 20 July 2018, in response to further allegations brought by the author in the context of the proceedings concerning custody, upbringing and visitation rights, the Court reiterated that it has jurisdiction given that the mother and the three children have Panamanian nationality and are currently residing in Panama. Furthermore, the Court ruled that the competent authority to process requests for international return is a juvenile court, for which reason it declared the application for the international return of the children inadmissible.

5.17 The State party indicates that the proceedings concerning custody, upbringing and visitation rights, in the context of which the courts are required to rule on various proceedings and appeals brought by the author, are currently at the evidence-gathering stage. The State party argues that the proceedings are being conducted thoroughly and conscientiously in accordance with the applicable procedures and formalities and without bias towards either party and in the best interests of the children. The State party therefore rejects the author’s claims that the children are the victims of violations of the Convention, intimidation, threats and deceit.

Author’s comments on the State party’s observations on admissibility and the merits

6.1 On 28 August 2019, the author submitted his comments on the State party’s observations, in which he reiterates that his children are the victims of a crime against humanity because they have not been able to speak in their native language during their conversations with him, and that they are the victims of an international abduction in which corrupt officials of the State party are complicit. In this regard, the author claims that his accusation of corruption was declared admissible on 27 March 2019, when the Attorney General of Panama requested the opening of criminal investigations.¹

¹ According to the documents attached to the communication, on 27 May 2019 the Public Prosecution Service declined to deal with the complaint, since the claims made against various officials fell outside of the jurisdiction of the Office of the Government Prosecutor, and transferred it to the

6.2 With regard to the fact that the children have not consented to his submitting the communication in their names, the author claims that, as their father, he has the right to act before the Committee.

6.3 The author also maintains that the competent courts are the juvenile courts. In this regard, on 8 November 2017, he brought proceedings before the First Juvenile Court of the first judicial circuit of Panama to secure the international return of his children. However, the Court declared itself incompetent owing to the fact that proceedings relating to custody, upbringing and visitation rights had already been initiated.

6.4 The author reiterates his request that interim measures be introduced allowing him to communicate with his children through electronic means on a weekly basis from the Juvenile Court in their native language. In addition, the author reiterates his claim for compensation in the amount of \$1,850,000.

Additional information submitted by the author

7.1 On 9 September 2019, the author submitted additional information. He claims to have requested consular protection from the Permanent Mission of Benin to the Office of the United Nations at Geneva, in order that the latter might seek a friendly settlement before the Committee on his and his children's behalf.² He therefore requests the Committee to proceed with the friendly settlement procedure (para. 1.4 above).

7.2 On 4 November 2019, the author transmitted to the Committee a statement made by an Italian journalist to the Ombudsman's Office in Panama City in which he affirmed that "the three abducted children have been unable to return to their home country owing to a series of tricks and appalling illegal acts". The author reiterated his request that interim measures be introduced allowing him to communicate through electronic means with his children on a weekly basis in their native language (para. 1.5 above).

7.3 On 8 November 2019, the author reported to the Committee that although the name of the person who drafted and authorized the transmission of the State party's report to the Committee does not appear therein, the person in question is an official of the Ministry of Foreign Affairs, who thus encroached on the duties of the National Secretariat for Children, Adolescents and the Family. Therefore, according to the author, the present communication is being handled by the authorities of the State party outside any legal framework.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 20 of its rules of procedure under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, whether the communication is admissible.

8.2 The Committee notes the State party's argument that the communication is inadmissible because domestic remedies have not been exhausted, since the proceedings relating to custody, upbringing and visitation rights, in the context of which the courts are required to resolve various proceedings and appeals brought by the author, are currently at the evidence-gathering stage. It also notes that, according to the State party, the proceedings are being conducted thoroughly and conscientiously in accordance with the applicable procedures and in the best interests of the children. The Committee notes that the author has not submitted comments related to the exhaustion of domestic remedies. The Committee recalls that for the purposes of determining the effectiveness of domestic remedies, their duration is assessed in the light of the circumstances of the case, including the author's procedural activity, which may entail a delay in the resolution of the procedure by hindering or delaying the processing of the case.³ In this regard, the Committee notes that in

Attorney General's Office. On 22 July 2019, the Attorney General's Office requested the Court to provide a copy of the case file in the context of an investigation into an alleged offence against the public administration.

² The Committee has received no communication in this regard from the Permanent Mission.

³ Inter-American Court of Human Rights, *Genie Lacayo v. Nicaragua*, Merits, Reparations and Costs, Judgment of 29 January 1997, para. 79, and *Argüelles et al. v. Argentina*, Preliminary Objections,

the present case, in November 2016, the Court ruled on the author's request for communications with his children to be conducted in French; that on 16 February 2017, the Court ruled on a motion for annulment submitted by the author; that on 10 July 2017, the Court ruled on the author's requests that the children's mother and grandfather be held in contempt of court; that on 8 September 2017, the Court heard a new request for the mother of the children to be held in contempt; that on 8 November 2017, the Superior Court ruled on the appeal submitted by the author against the decision denying his request for communications to be conducted in French; that on 8 March 2018, the Superior Court heard an appeal against the decision rejecting the request for the penalty for contempt to be applied; that on 3 April 2018, a court ruled on a motion to remove the judge in the case; that on 20 July 2018, the Court had to rule on further proceedings brought by the author; and that on 18 September 2018, the Court had to modify the system of protection measures in place in order to restrict the communications to one hour every Saturday owing to the author's behaviour during the conversations with his children. In the light of the foregoing, the Committee concludes that the settlement of domestic remedies has not been unduly delayed.

8.3 In addition, the Committee notes that the author has not substantiated his claims regarding alleged violations of the rights contained in articles 2, 5, 8, 9, 10, 11, 16, 35 and 37 of the Convention, for which reason it declares the communication inadmissible on account of its being manifestly ill-founded, in accordance with article 7 (f) of the Optional Protocol.

8.4 In the light of the foregoing, the Committee declares the present communication inadmissible under article 7 (e) and (f) of the Optional Protocol.

9. The Committee on the Rights of the Child decides:

(a) That the communication is inadmissible under article 7 (e) and (f) of the Optional Protocol;

(b) That this decision shall be transmitted to the author of the communication and, for information, to the State party.

Merits, Reparations and Costs, Judgment of 20 November 2014, para. 195; European Court of Human Rights, *Ruíz Mateos v. Spain*, Judgment of 23 June 1993, paras. 38 et seq.