



Convention on the Rights of the Child

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Committee on the Rights of the Child

Follow-up progress report on individual communications*

I. Introduction

1. The present report is a compilation of information received from States parties and complainants on measures taken to implement the Views and recommendations on individual communications submitted under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure. The information has been processed in the framework of the follow-up procedure established under article 11 of the Optional Protocol and rule 28 of the rules of procedure under the Optional Protocol. The assessment criteria were as follows:

Assessment criteria

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| A | Compliance: Measures taken are satisfactory or largely satisfactory |
| B | Partial compliance: Measures taken are partially satisfactory, but additional information or action is required |
| C | Non-compliance: Reply received but measures taken are not satisfactory or do not implement the Views or are irrelevant to the Views |
| D | No reply: No cooperation or no reply received |
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* Adopted by the Committee at its eighty-second session (9–27 September 2019).



II. Communications

A. *K.Y.M. v. Denmark* (CRC/C/77/D/3/2016)

Date of adoption of Views: 25 January 2018

Subject matter: Deportation of a single mother and her daughter to Puntland, Somalia, where K.Y.M would face a risk of being subjected to female genital mutilation against her will

Articles violated: Articles 3 and 19 of the Convention

1. Remedy

2. The State party is under an obligation to refrain from deporting the author and her daughter to Puntland. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.
3. The State party was requested to publish the Views and to have them widely disseminated in the official language of the State party.

2. State party's response

4. In its submission dated 5 September 2018, the State party observed that it was standard practice for the Refugee Appeals Board to reopen cases in which a United Nations treaty body had found that the decision made by the Board was contrary to an international convention. However, the Board found no basis for reopening the case at hand, given that the author and her daughter had left Denmark and the Danish authorities were not aware of their whereabouts. Even though the Government and the Board had suspended the time limit for the departure of the author and her daughter, the Board accepted as a fact that the author and her daughter had left Denmark, given that their location had been unknown since early 2017.
5. In reference to the request to publish the Committee's Views, the State party reports that the Views and decisions of the United Nations treaty bodies in cases against Denmark involving the Refugee Appeals Board, and information on further measures taken by the Board, are uploaded to the Board's website as quickly as possible after the Views and decisions have been adopted. The Views and information on the present case were posted on 9 February 2018.
6. In addition, the Board publishes, in its annual report, the Views and decisions of the committees in cases against Denmark. The Ministry of Foreign Affairs has also made the Committee's views publicly available on its website. The State party asserts that, given the prevalence of English language skills in Denmark, the Government sees no reason for full translation of the Committee's Views into Danish.

3. Comments of the author's counsel

7. In his comments dated 26 April 2019, the author's counsel indicated that he was not informed by the author of her new location or residence.
8. However, he notes that the Government has refrained from responding to the Committee's Views in relation to the prevention of similar violations in the future. He notes that a press release was published on the Refugee Appeals Board's website stating that the Board was maintaining its practice despite criticism from the Committee. In that press release, the Board explains that the decision of the Committee is against its practice and against the jurisprudence of the European Court of Human Rights and that the deciding factor must therefore be whether the family can be assumed to be capable of protecting the child from circumcision.

4. Decision of the Committee

9. The Committee takes note of the absence of information about the author and her daughter's whereabouts and the lack of contact between the author and her counsel since early 2017, and accepts that it was not possible to implement the individual remedy.

10. With regard to the general remedy, however, the Committee takes note of the absence of information on any measures taken by the State party to prevent similar violations in the future. In the light of the above, the Committee decides to close the follow-up dialogue with a B assessment.

B. *N.B.F. v. Spain* (CRC/C/79/D/11/2017)

Date of adoption of Views: 27 September 2018

Subject matter: The author arrived in Spain aboard a boat, claiming to be an unaccompanied migrant child. Given that he was undocumented, he was subjected to a test consisting of an X-ray of his left hand to determine his age using the Greulich and Pyle method. The result of this test showed that he was more than 19 years old. He claimed that the test was inaccurate and inappropriate and that no representative was appointed for him during the age-determination process.

Articles violated: Articles 3 and 12 of the Convention and article 6 of the Optional Protocol.

1. Remedy

11. The State party is under an obligation to prevent similar violations in the future, in particular by ensuring that all procedures for determining the age of possible unaccompanied children are carried out in a manner consistent with the Convention and that, in the course of such procedures, the persons subjected to them are promptly assigned a qualified legal or other representative free of charge.

12. The State party was requested to publish the Views and disseminate them widely.

2. State party's response

13. In its follow-up submission, dated 20 May 2019, the State party noted that, on 18 December 2018, the Office of the Attorney General had issued a detailed legal report on the rules and administrative practices currently followed with respect to the matters indicated by the Committee, highlighting the aspects in which the Committee had requested effective measures to prevent similar violations in the future.

14. The report was sent to the Directorate General for International Legal Cooperation, Interfaith Relations and Human Rights of the Ministry of Justice, which took the following action:

(a) The content of the Views were disseminated publicly on the website of the Ministry of Justice;

(b) Given that the implementation of the Views is the responsibility of various organs of the public Administration, a permanent network of focal points within the different institutions was formed in order to analyse the complex aspects that compliance requires;

(c) On 21 January 2019, a meeting with experts and State ministries was convened in order to evaluate the Views and the possible measures that would be required for its implementation, including: (i) a review of the different problems faced by each participating unit, in view of the growing number of unaccompanied foreign minors illegally crossing the

border; and (ii) a review of the treatment of such migrants, in particular age-determination procedures, the appointment of a legal representative and referral to child protection centres;

(d) On 21 February 2019, the Government participated in a seminar with the European Union Agency for Fundamental Rights, the European Union and the European Asylum Support Office to share information on the correct administrative and normative treatment of unaccompanied migrant children. The European Asylum Support Office presented practical recommendations on age determination, details were shared of the systems in Germany, Italy and Sweden, discussions were held on the challenges of age-determination procedures and proposals were made for good practices to be exchanged.

15. On 5 March 2019, the parliament of Spain was dissolved. Consequently, there has been a temporary delay in the adoption of new decisions, until relevant data can be collected and the network of contacts established.

16. The State party explained that it had developed a plan of action to implement the Views after the general elections, which were due to be held in April and May 2019. As part of its plan, the State party intended to convene a sectoral conference between the autonomous governments in order to ensure coordination on regulatory initiatives or administrative measures. In addition, prior to any adoption of normative or administrative practice and the evaluation of their normative impact, the Government was planning to consult with, and take into consideration, the position of all the autonomous communities with broad territorial competences in their respective spheres.

17. The Government also expected to consider the promotion of legislative measures, regulations and modifications of protocols of action at the national level, in coordination with the measures adopted at the autonomous community level. The State party was also planning a budgetary and financial impact analysis of the required measures and the logistical and administrative procedures necessary to implement them.

3. Author's comments

18. In his comments dated 7 August 2019, the author contends that there has been no judicial or administrative changes following the adoption of the Committee's Views. He challenges the State party's statement that the Views were widely disseminated and notes that, while there is a permanent link to the United Nations website on the Government's website, the State party should have expressly informed all relevant agencies about the Views, including the Office of the Public Prosecutor, the regional authorities with competence over matters concerning the protection of children, the law enforcement bodies, the administration of justice authorities, the school of social educators, social entities, forensic doctors and bar associations across the State party.

19. He adds that the State party's response only contains information on meetings that have resulted in no specific result or change in practice.

4. Decision of the Committee

20. The Committee recognizes the positive efforts made by the State party subsequent to receiving the Views. Due to the complexity of the issue and the number of cases received against Spain, the Committee decides to maintain the follow-up dialogue and to request regular updates from the State party on the status of implementation of the Committee's Views. The State party's compliance with the Views will be assessed in the light of future information from the State party and the author's comments thereon.

C. *C.E. v. Belgium* (CRC/C/79/D/12/2017)

Date of adoption of Views:	27 September 2018
Subject matter:	Denial of a visa to a Moroccan child taken in under <i>kafalah</i> (fostering arrangement) by a Belgian-Moroccan couple
Articles violated:	Articles 3, 10 and 12 of the Convention

1. Remedy

21. The State party is under an obligation to urgently reconsider the application for a visa for C.E. in a positive spirit, while ensuring that the best interests of the child are a primary consideration and that C.E.'s views are heard. In considering the best interests of the child, the State party should take into account the family ties that have been forged de facto between C.E. and the authors.

22. The State party is also under an obligation to do everything necessary to prevent similar violations from occurring in the future.

23. The State party was requested to publish the present Views and disseminate them widely.

2. State party's response

24. In its follow-up submission, dated 8 April 2019, the State party notes that C.E.'s visa application was re-examined and that C.E. appeared at an oral hearing. In the context of that hearing, it was established that C.E. was well integrated in Morocco, both at school and in her family environment.

25. A police investigation was also conducted at the authors' residence in Belgium. According to the resulting report, dated 19 December 2018, the authors have a room in the community in which they live, and it was not possible to establish whether the family would have decent accommodations. Despite that, given the amount of time that had elapsed and the family life that had developed over the years, a decision was adopted, on 28 February 2019, granting C.E. a six-month temporary visa to enter Belgium.

26. The extension of the visa is subject to the provision of satisfactory living conditions and schooling for C.E. in Belgium.

27. With regard to general measures to prevent similar violations in the future, the State party notes the following:

(a) Visa requests for children taken in under *kafalah* will be examined expeditiously;

(b) *Kafalah* arrangements will be assessed in the light of the conditions established in the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children;

(c) Careful attention will be paid to living conditions in Belgium and the situation of the child concerned in his or her country of origin, taking into account the best interests of the child;

(d) The child will be heard, taking into account his or her discernment capacity;

(e) Due weight will be given to the family life that has developed between the child and his or her guardians;

(f) A follow-up assessment of the child's living conditions will be required, if relevant.

28. The State party adds that the Views have been widely published on the website of the Immigration Office, including a summary in French and Dutch.

3. Authors' comments

29. On 6 May 2019, the authors stated that they had no further comments on the State party's follow-up to the Committee's Views.

4. Decision by the Committee

30. The measures taken by the State party, both specific and general, are deemed to be satisfactory.

31. The Committee therefore decides to close the follow-up procedure with an A assessment.
