United Nations CRC/C/92/2

Convention on the Rights of the Child

Distr.: General
8 March 2023

Original: English

Committee on the Rights of the Child

Follow-up progress report on individual communications*

I. Introduction

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	
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

* Adopted by the Committee at its ninety-second session (16 January–3 February 2023).

II. Communications

A. *C.R. v. Paraguay* (CRC/C/83/D/30/2017)

Date of adoption of Views:	3 February 2020
Subject matter:	Child's right to maintain personal relations and direct contact with his or her father; non-enforcement of judicial decision establishing visitation arrangements
Articles violated:	Articles 3, 9 (3) and 10 (2) of the Convention

1. Remedy

1. The State party is under an obligation to provide the author's daughter with effective relief for the violations suffered, in particular through the adoption of effective measures to ensure the enforcement of final judgment No. 139 of 30 April 2015, which established visitation arrangements in respect of the author and his daughter, including through counselling and other appropriate and proactive support services intended to rebuild the relationship between C.R. and her father, taking due account of an assessment of her best interests at the time.

2. The State party is also under an obligation to prevent similar violations in the future. In this regard, the Committee recommended that the State party:

(a) Take the measures necessary to ensure the immediate and effective execution of judicial decisions in a child-friendly way, so that contact between the child and his or her parents was re-established and maintained;

(b) Train judges, members of the National Secretariat for Children and Adolescents and other relevant professionals on the right of children to maintain personal relations and direct contact with both parents on a regular basis and, in particular, on the Committee's general comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration.

3. The State party was also requested to include information about any such measures in its reports to the Committee under article 44 of the Convention.

4. The State party was further requested to publish the Committee's Views and to have them widely distributed.

2. State party's response

5. In a submission dated 24 August 2020, the State party provided its observations.

6. The State party submits that, following the issuance of the Committee's Views, the General Human Rights Unit of the Ministry of Foreign Affairs proceeded to transmit it to the institutions concerned, on 24 February 2020, in its capacity as general coordinator of the interinstitutional commission responsible for the execution of the necessary actions for compliance with judgments, recommendations, requests and other international commitments in the field of human rights. A first interinstitutional meeting led to the creation of an ad hoc working group of the consultative advisory committee of the inter-institutional commission, composed of representatives of the Ministry of Foreign Affairs, the Ministry of Children and Adolescents, the Supreme Court of Justice and the Office of the Attorney General, which began a process of detailed analysis of the conclusions and recommendations contained in the opinion. At a second meeting of the ad hoc working group, held on 4 August 2020, the opportunities and challenges of the first stage were identified, laying the groundwork for strengthening inter-institutional coordination.

7. The State party submits a report, dated 23 June 2020, provided by the Court of First Instance for Children and Adolescents of the First Shift of the City of Luque, in which the Court noted that, in the health context determined by the coronavirus disease (COVID-19)

pandemic, digital communication had been achieved between the author and his daughter on several occasions, with the accompaniment of the social worker of the court and the case's judge. The Court emphasized the difficulties surrounding holding face-to-face meetings, in particular due to the distance between the places of residence of C.R. and her father, namely, Luque, Paraguay, and Buenos Aires, as well as the particular situation with respect to the management of international borders as a result of the COVID-19 pandemic.

8. The State party also submits Final Judgment No. 329 of 7 August 2020 of the same Court, which includes the establishment of a schedule of video calls between father and daughter, visits and C.R.'s travel to Buenos Aires at the expense of her father.

9. Regarding the obligation to prevent similar violations in the future, the State party alleges that it is strengthening the system of administration of specialized justice for children and adolescents, so that any measure adopted with respect to children or adolescents is based on their best interests. In that regard, the State party submits that the enactment of Law No. 6083/18, amending Law No. 1680/01 on the Children and Adolescents' Code, provides for substantial improvements to the legal system regarding the judicial approach to delicate aspects related to the rights of children and adolescents, such as family cohabitation and relationship disputes between a child's father and mother. The Law introduces the possibility that the court may dictate, as a precautionary measure, the provisional establishment of family cohabitation and/or the relationship regime and order the specialized orientation of the family group. The court may also order measures for the coercive enforcement of the relationship regime under penalty of ordering compulsory measures, such as the prohibition of the child or adolescent leaving the country, the search of the domicile and seizure of the child and the assistance of the public force for the execution of the judicial order.

10. The State party submits that, on 13 May 2020, the Supreme Court of Justice approved a resolution constituting guidelines for specialists who work with children and adolescents. Subsequently, by resolution No. 339 of 1 June 2020, the Superintendence Council of the Supreme Court ordered the commissioning of officials from various professional specialties to integrate into the Interdisciplinary Advisory Team of Justice for Children and Adolescents in Asunción. In addition, the Supreme Court has agreed to conduct training, with the cooperation of the Inter-American Children's Institute, within the framework of the cooperation agreement in force between the Ministry of Children and Adolescents and the Institute, in order to strengthen the capacities of the judges of the Childhood and Adolescence Court and other State officials and increase their understanding of international instruments.

11. Regarding the publication and wide dissemination of the Committee's Views, the State party notes that they were disseminated through official web pages, public platforms and institutional social networks, and it provides the links thereto.

12. The State party concludes by submitting that, on 6 August 2020, a dialogue was held between the ad hoc working group of the consultative advisory committee of the inter-institutional commission and the author, in order to verify the progress made in implementation of the recommendations contained in the Views.

3. Author's comments

13. In his submissions, dated 24 May 2021 and 14 November 2022, the author contends that the State party has not given full effect to the Committee's Views. He claims that the State party has not fulfilled the obligation to repair the damage caused to him and his daughter. He adds that the legal costs borne by him were not reimbursed and that no psychological assistance was provided to C.R.

14. The author reports that the judges responsible for his case did not attend the training with the cooperation of the Inter-American Children's Institute proposed by the State party. He alleges that he is not aware of any other such training that the judges may have taken part in.

15. The author informs the Committee that, over the course of the COVID-19 pandemic, his communication with his daughter has faded, despite the fact that he sought help to resolve the situation from various authorities. He claims that, in spite of C.R.'s mother's agreement

that C.R. could travel to Argentina, the new trial initiated to modify the visitation rights took several years and the author had to bear his own legal costs.

16. The aforementioned circumstances notwithstanding, the author informs the Committee that the overall situation of his relationship with his daughter has improved. C.R. visited him and his family in Argentina recently, the author plans to come to Paraguay soon to visit C.R. and it is expected that C.R. will again travel to see the author during the school holiday period in January 2023.

4. Decision of the Committee

17. The Committee decides to close the follow up dialogue with an A assessment, given that the measures adopted by the State party are largely satisfactory.

B. *X.C. et al. v. Denmark* (CRC/C/85/D/31/2017)

Date of adoption of Views:	28 September 2020
Subject matter:	Deportation of three children and their mother to China, with a risk that the children would be removed from the custody of the unmarried mother and that they would not be registered in the *hukou* (household register), which is necessary to obtain access to health, education and social services
Articles violated:	Articles 3, 6 and 8 of the Convention

1. Remedy

18. The State party is under an obligation to refrain from deporting the author and her children to China.

19. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

20. The State party was requested to publish the Committee's Views and to disseminate them widely.

2. State party's response

21. In a submission dated 31 January 2022, the State party provided its observations.

22. Regarding the requirement that the State party refrain from deporting the author and her children, the State party explains that the author's asylum case was reopened on 4 November 2020. The State party notes that the Danish Refugee Appeals Board has a policy to reopen all cases that a human rights treaty body has challenged. On 19 March 2021, an oral hearing took place before a new panel. Subsequently, a new request was sent to the Ministry of Foreign Affairs for further information on the circumstances that gave rise to a finding of a violation of articles 3, 6 and 8 of the Convention.

23. The Board first sought to understand whether the Chinese authorities would accept a Danish birth certificate for the purpose of registration in the *hukou*, and, if not, what documentation would be required. The Ministry informed the Board that, pursuant to the law in force in China, a Danish birth certificate would be accepted for that purpose. However, the author and her husband would need to apply for confirmation that the relevant person does not have "overseas Chinese status", because both the author and her partner have lived in Denmark and applied for asylum. Neither of them have succeeded in their applications for asylum, and therefore their applications for such confirmation are likely to be approved within 10 days of submission. After the approval, the author would need to submit her children's birth certificates to the police station where either her *hukou* registration, or that of the children's father, is recorded. After a review by local authorities, the application would be complete.

24. The Board then sought to understand the estimated time frame for the *hukou* registration process. It found that it would in principle take about 30 days but that in practice the process takes much longer. The length of the process depends on whether the Chinese authorities add additional, unreasonable requirements. The addition of unreasonable requirements could be likely in the author's case, because the author escaped being forced to have an abortion, she left China illegally and her two children have different fathers. However, it is impossible to predict the outcome.

25. The Board next sought to understand what rights children who are unregistered but awaiting the completion of the *hukou* application process would enjoy in China. Because the waiting period is in principle 30 days, the Government of China has not implemented any policies regarding children who are waiting to be registered. It is therefore unknown what rights such children would have while waiting for the registration process to be completed.

26. The Board then sought to understand what rights are given to children who have a *hukou* registration, compared with the rights afforded to unregistered children. It found that registered children are entitled to receive nine years of education and health care. A *hukou* registration number also acts as the only form of identification for children until they are 18 years of age. If a child has no identification number, they may still be able to go to school, but it would have to be a private institution and, even then, the child may still be denied entrance without a *hukou* registration number. Medical care would not be available without a *hukou* identification number. Without a *hukou* registration number, children are unable to buy plane or train tickets and could face other difficulties in the course of daily life.

27. However, because the author and her husband have a *hukou* registration number and can apply for the children's registration, the limitations experienced by children without a registration number are unlikely to affect the author's children.

28. Considering those findings, on 17 August 2021, the Board issued a new decision indicating that the additional information did not give rise to a different outcome than the one reached in the original decision. The Board explained that the potential for additional hurdles and the fact that the author had left her country illegally because she had been subjected to forced abortion could not be regarded as sufficient reason to grant her asylum. In addition, because no information was provided to suggest that the children would not have rights during the application process, the Board could not find that the rights of the children would be in danger if they were to be sent to China.

29. The State party claims that re-opening the claim to examine the additional information has given full effect to the Views and the State party's obligations under the Convention.

30. The State party notes that, currently, the author and her children have applied for residence in the State party under section 9 of the Aliens Act, and the Danish Immigration Service has granted the author and her children residence in Denmark for the duration of the proceedings. If the author were to cease to have a lawful basis of residence, she and her children would be deported to China.

31. In relation to the State party's obligation to ensure that similar violations do not occur in the future, the State party submits that the Views will be considered in future cases before the Danish Immigration Service and the Refugee Appeals Board. To ensure that all members of the Board are aware of the Committee's Views, they are published on the Board's website. Views critical of the State party are also discussed by the Coordination Committee of the Board. In addition, the State party reiterates that the Board reopens cases in which criticism has been raised. Each case before a treaty body regarding the Board is published in the annual report of the Board.

32. The State party submits that the Views have been published on the Board's website and that it has made the Views publicly available. It explains that, because of the widespread use of English in the State party, the Views have not been translated into Danish.

3. Author's comments

33. In her submission, dated 9 June 2022, the author contends that the State party has not in fact given full effect to the Committee's Views.

34. The author claims that the State party has not fulfilled the obligation to refrain from deporting her and her children. She submits that the repetition of the same flawed process does not fulfil the State party's obligations. The author pointed to her children's real risk of facing a lack of access to education or health care in China. Whether or not the process of *hukou* registration is likely to result in the children's registration, the author argues that the information presented to the Board clearly showed a real risk of the violation of the children's rights. She holds that the uncertainty of the time frame for registering the children, and the uncertainty surrounding what rights would be afforded to them during that time, shows that their risk is even greater and more likely. Considering such uncertainty, the State party cannot in good faith rely on the Chinese authorities to uphold the rights of the author's children.

35. Regarding the State party's claim that the steps necessary to prevent the same violations in the future have been taken, the author submits that the State party has made no changes to rules or policies. The systems that the State party noted were already in place when the Views were adopted. The author claims that the fact that her second asylum review resulted in the same outcome is evidence of the lack of substantive change.

36. The author claims that the decisions of the State party to not grant asylum put unnecessary strain on her and her children because they will likely be granted permanent residence in the State party through other avenues. The State party's laws require that it grant permanent residence to aliens who have cooperated in return efforts for 18 months, but have failed to return to their country of origin, and where return is futile. China frequently refuses to take back its citizens. At the time of the submission, 10 months had passed since the author and her children began cooperating in the State party's efforts to return them to China. The efforts have not been successful. Therefore, the author believes that she and her children will be granted permanent residence, because China will not accept them.

37. The author concludes by noting that, while the Views have been made publicly available on the Board's website, they have not been translated into Danish. An additional article that was published on the Board's website about the Views was written only in Danish. The author requests that the State party translate the Views into Danish and the article about the Views into English.

4. Decision of the Committee

38. The Committee held a meeting with representatives of the State party on 18 January 2023. Given that there appear to be further developments in the author's case, the Committee decides to maintain the follow-up dialogue open and to request further information from the State party on the implementation of the Committee's Views, in particular concerning the outcome of the author's pending residence applications for her and her children.

C. *K.S. and M.S. v. Switzerland* (CRC/C/89/D/74/2019)

Date of adoption of Views:	10 February 2022
Subject matter:	Deportation to the Russian Federation; access to medical care (cochlear implant)
Articles violated:	Articles 3, 6 (2), 12 and 24 of the Convention

1. Remedy

39. The State party is under an obligation to provide M.S. with effective reparation, including adequate compensation.

40. The State party is also under an obligation to take all steps necessary to prevent any further violations of the rights provided for in articles 3, 12 and 24 of the Convention, in particular by ensuring that children are routinely given the opportunity to be heard in connection with any decision concerning them, that they receive information, in a language that they understand, about this opportunity, the relevant context and the consequences of the

hearing in connection with asylum proceedings and that national protocols for the removal of children are in line with the Convention.

41. The State party should also ensure that the consideration of children's asylum applications based on the need for medical treatment necessary for a child's development include an assessment of the availability and practical accessibility of such treatment in the State to which the child is to be returned.

42. The State party was requested to publish the Committee's Views and to have them widely disseminated in the official languages of the State party.

2. State party's response

43. In a submission dated 7 July 2022, the State party provided its observations.

44. With regard to the requirement that the State party ensure that children are given the opportunity to be heard, the State party submits that the State Secretariat for Migration had already adopted such a practice. The State party points out that, following the Committee's first decision on the merits concerning, inter alia, the failure to hear an accompanied minor asylum-seeker under the age of 14,[1] the State Secretariat took various measures to ensure that the right to be heard of the children concerned was respected.

45. The State party explains that, in order to ensure that children are systematically heard in the context of asylum procedures, in accordance with article 12 of the Convention, the State Secretariat adapted its practice regarding the hearing of accompanied children under 14 years of age providing for the right to be heard through their parents and the personal hearing of accompanied children under 14 years of age if necessary. Both cases are to be assessed from the perspective of the best interests of the child when the decision is made. The State party argues that, as such practices were already adopted in 2021 following the above-mentioned Views, no new measures would therefore be necessary to follow up on the Committee's findings in the present case.

46. With regard to individual measures in the present case, the State party alleges that the authors left Switzerland for the Russian Federation in March 2018 without providing the Swiss authorities with their contact details. Moreover, they have not filed any new applications in Switzerland since then.

47. With regard to the Committee's findings on effective access to medical care, the State party notes that, in recent years, the State Secretariat for Migration has made various efforts to improve its skills and optimize the processes in the federal centres for asylum-seekers when examining medical applications for adults and children. Such efforts include:

(a) Gathering a team comprising internal specialists responsible for obtaining medical information on countries of origin who can use the database (MedCOI) and the transnational network of medical experts of the European Union Agency for Asylum;

(b) Holding numerous training courses on the processing of medical applications for the asylum staff, including with external experts;

(c) The development of new tools to ensure the optimal recognition and examination of medical applications by the competent staff;

(d) Establishing an interdepartmental working group, which has optimized the procedures for clarifying the medical situation of asylum-seekers in the federal centres;

(e) Since the last revision of the Asylum Act, in March 2019, automatically providing health insurance to all asylum-seekers in Switzerland from the moment that they enter a federal centre for asylum-seekers until their departure, thereby entitling them to all medical benefits provided by the Federal Law on Health Insurance.

48. The State party notes that, in the federal centres for asylum-seekers, doctors and nursing staff provide basic medical care, which includes referral to specialists and hospitals.

[1] *E.A. and U.A. v. Switzerland* (CRC/C/85/D/56/2018).

In addition, the special needs of children are taken into account, in both the medical and supervisory aspects.

49. With regard to what constitutes adequate compensation to the victim, the State party notes that neither the Convention nor the Optional Protocol thereto include articles which impose on States parties an obligation to provide compensation.

50. With regard to taking the steps necessary to prevent similar violations from occurring in the future, the State party notes that it considers that the adapted practices of the State Secretariat concerning the examination of asylum applications of a child requiring medical treatment is in accordance with article 24, read in conjunction with articles 3 and 6 (2), of the Convention and that such measures taken will prevent similar violations.

51. The State party considers that it has taken the measures necessary to give effect to the Committee's Views in the present case.

3. Authors' comments

52. In a submission dated 31 October 2022, the authors provided comments on the State party's response to the Committee's Views. The authors note that the State Secretariat for Migration has not yet adapted section A.2 of its manual entitled "Asylum and return" and that it continues to systematically disregard articles 3 (1) and 12 of the Convention.

53. The authors submit that only children who have reached the age of 14 are examined without any further requirements. They also argue that the description of the best interests given in the aforementioned manual is a poorly structured collection of criteria, given that it does not make it clear how the concepts influence the result. They submit that the manual does not mention whether the interests of the child prevail or how.

54. The authors point out that neither the State Secretariat for Migration nor the Federal Administrative Court apply articles 3 (1) and 12 of the Convention in their procedures and that the State party continues to ignore the Committee's general comment No. 12 (2009) on the right of the child to be heard and general comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration and the Committee's findings concerning individual communications.

55. The authors allege that the State party has refused, over the past 30 years, to introduce children's rights into the Asylum Act, the Aliens and Integration Act or the Administrative Procedure Act.

56. The authors submit that the Administrative Committee of the National Council and the Council of States have categorically refused to analyse the jurisdiction of the Federal Administrative Court regarding the Asylum Act and the Aliens Act and that the Political Institutions Committees of both chambers of the parliament have unanimously refused their petition to adapt the above-mentioned laws to the Convention. The authors point out that national interest and adultism dominate the three powers (parliament, public administration and courts) and prevent them from respecting the rights and human dignity of children with regard to asylum.

57. The authors submit that the State party does not mention any measures it has taken to ensure that the findings of the Committee are known and can be respected within the State Secretariat for Migration, the Federal Administrative Court and the national courts.

4. State party's further information

58. In a submission dated 14 December 2022, the State party provided further information. The State party notes that, contrary to what has been argued by the author, the State Secretariat for Migration did make the required changes to its working methods, in particular in what concerns the "Asylum and Return" manual, which have been conveyed to the organizations who legally represent asylum-seekers.

59. The State party points out that the State Secretariat for Migration sent the author the bulletin addressed to the legal representatives in the federal reception centres for asylum-seekers and the procedure established for the attention of collaborators with the State Secretariat.

60. The State party alleges that that the State Secretariat for Migration now ensures, in cases where there is a family with accompanied children under the age of 14, that such children can appropriately express their views in accordance with article 12 of the Convention, which is done through such measures as: (a) transmission to the State Secretariat, by legal representation services, of any information concerning the particular situation of the accompanied child under 14 years of age; (b) systematic questioning of the child's parents on their personal fears and those of their children; and (c) conduct of a hearing when expressly requested by the child, in order to establish the relevant facts relating to the specific situation of the child.

61. The State party notes that the State Secretariat for Migration has organized training for its staff and employees of legal representation services from various federal asylum centres on the hearing of children between 6 and 13 years of age, at which two experts on child psychology were present.

62. The State party emphasizes that, on 22 September 2022, its National Council adopted a *postulat* (No. 20.4421) which requests the Federal Council, in collaboration with the Swiss Competence Centre for Human Rights, to analyse to what extent the best interest of children is guaranteed within the framework of asylum and immigration regulations within the State party. A report on the subject will be drafted by 2024.

63. The State party adds that the petition filed by the author's representative on 3 June 2020, which sought to examine the possibility of transposing certain Convention provisions into national law, was refused by the Federal Office of Justice, the Council of States and the National Council. They considered that, since its entering into force for the State party, the Convention is an instrument that is an integral part of the State party's legal system and has validity and binding force at the national level, which means that all State bodies are obliged to respect and apply the standards of the Convention. The State party affirms that it is up to the States parties to determine how, within their legal systems, they intend to give effect to the obligations set out in the Convention.

64. With regard to the dissemination of the findings of the Committee, the State party recalls that they were systematically brought to the attention of the authorities concerned and were also made accessible on the Internet, including in French. It notes that the Federal Office of Justice expressly refers to the possibility of sending individual communications to the Committee on its website. It concludes by arguing that, given that free access to the Internet is stable and guaranteed in the State party, such measures are sufficient for the dissemination of the Committee's views.

5. Decision of the Committee

65. The Committee decides to maintain the follow-up dialogue open and to request a meeting with the State party in order to discuss the prompt implementation of the Committee's Views.

D. *Y.A.M. v. Denmark* (CRC/C/86/D/83/2019)

Date of adoption of Views:	4 February 2021
Subject matter:	Deportation of a girl to Somalia, where she would allegedly face a risk of being forcefully subjected to female genital mutilation
Articles violated:	Articles 3 and 19 of the Convention

1. Remedy

66. The State party is under an obligation to refrain from deporting Y.A.M. to Somalia and to ensure that she is not separated from her mother and brother.

67. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. In particular, the State party is requested to ensure that asylum proceedings affecting children include a best interest analysis and that, where a risk of a serious violation is invoked as grounds for non-refoulment, the specific circumstances in which the children would be returned are duly taken into account.

68. The State party was requested to publish the Committee's Views and to have them widely disseminated in the official language of the State party.

2. State party's response

69. In a submission dated 5 November 2021, the State party provided its comments.

70. Regarding the requirement that the State party refrain from deporting Y.A.M. and ensure that she is not separated from her mother and brother, the State party explains that the Refugee Appeals Board reopened the author's case and both of the author's children's cases. On 7 June 2021, an oral hearing took place before a new panel, where the Board re-examined the cases and granted the author and her children asylum under section 7 (1) of the Aliens Act. The State party claims that it has therefore fulfilled the obligation to refrain from deporting Y.A.M. to Somalia and from separating her from her mother and brother.

71. Regarding the requirement of preventing similar violations from occurring in the future, the State party notes that the Danish Immigration Service and the Refugee Appeals Board are legally obliged to take the State party's international obligations into account, including the Views of the Committee. Therefore, the Views in the present case will be considered in future assessments of the State party's international obligations. The State party notes that, to ensure that all members of the Board are aware of the Committee's Views involving the State party, the State party publishes the Views on the website of the Board. In addition, the Committee's Views that are critical of the State party are specifically discussed by the Board's Coordination Committee. The minutes from the Coordination Committee are circulated to all members of the Board and published on the Board's website.

72. The State party also notes that the Board reopens all cases in which a human rights treaty body has raised criticism. The case is reheard by a new panel consisting of members of the Board who were not previously been involved with the case. The new panel will also consider the Views or relevant decisions of a treaty body as the basis of the case. The Board then uploads an anonymized version of its new decision to its website. The State party also notes that all Views of the Committee, and all other treaty bodies, are published in the annual report of the Board, which is distributed to all members of the Board.

73. The State party submits that it has taken the necessary and relevant steps to prevent similar violations in the future.

74. The State party also notes that the Views in the present case have been published in the Board's annual report, which is available on the Board's website. It explains that, because of the widespread use of English in the State party, the Views have not been translated into Danish.

3. Author's comments

75. In a submission dated 22 March 2022, the author acknowledged the State party's fulfilment of the obligation to ensure that she and her children were not deported to Somalia and that they remained together.

76. However, the author points out that, in its decision of 7 June 2021, the Board misstated the severity of the risk of female genital mutilation faced by her daughter, if she were to be deported to Somalia. The information that the Board seems to have relied on was outdated and even contrary to statements that the Danish Immigration Service has made about the increased risk of female genital mutilation for girls returning to Somalia from Western States. She notes that the decision was largely based on her ability to protect her daughter from female genital mutilation. The author argues that the rights of the child cannot be made dependent on the ability of the parents to resist family and social pressure, and she refers to paragraph 8.7 (b) of the Views. Such reliance is not in line with the Committee's Views or the best interests of the child.

77. The author therefore submits that the State party has not fulfilled its obligation to refrain from deporting the author's daughter and to refrain from separating her from her mother and brother.

78. The author notes that, although the Board reiterated its resolve to keep the best interests of the child as a primary consideration in all actions involving children, it has not implemented principles of precaution, as called for by the Committee in paragraph 8.7 of the Views. She refers to a similar case currently pending before the Committee concerning a 2-year-old girl who faces a risk of being subjected to female genital mutilation if deported from the State party.[2] On 5 November 2021, the State party transmitted its observations on the admissibility and merits of that case, in which it indicated that it had denied asylum to the child concerned because it considered that her parents were able to resist family and social pressure.

79. In that regard, the author also points to the public refusal of the Refugee Appeals Board to change its practices in similar cases, including in response to the Committee's Views in another case[3] regarding a girl facing a risk of female genital mutilation if deported. The author notes that a press release was published on the Board's website, stating that the Board was maintaining its practice despite criticism from the Committee.[4] 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 decisive factor must therefore be whether the family can be assumed to be capable of protecting the child from female genital mutilation. The author is therefore not of the view that the State party has in good faith been trying to prevent similar violations of the rights of children.

80. The author concludes by acknowledging that the Views were published in English on the Board's website. The author notes that, on 16 March and 14 June 2021, two short articles regarding the Views were published on the Board's website in Danish. However, the Views have not been translated into Danish and the two articles have not been translated into English. The State party has therefore not fulfilled its obligation to disseminate the Views in the official language of the State party.

4. Decision of the Committee

81. The Committee held a meeting with representatives of the State party on 18 January 2023. The Committee notes that the State party reopened the author's case by virtue of the adopted Views and granted the author and her child asylum. The Committee decides to close the follow up dialogue with an A assessment, given that the measures adopted by the State party are largely satisfactory.

E. *S.B. et al. v. France* (CRC/C/89/D/77/2019-CRC/C/89/D/79/2019-CRC/C/89/D/109/2019)

Date of adoption of Views:	8 February 2022
Subject matter:	Repatriation of children whose parents are linked to terrorist activities
Articles violated:	Articles 3, 6 (1) and 37 (a) of the Convention

1. Remedy

82. The State party is under an obligation to provide the authors and the child victims with effective reparation for the violations suffered. It is also under an obligation to prevent similar violations from occurring in the future. In that regard, the Committee recommended that the State party:

[2] Communication No. 140/2021.

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

[4] See https://fln.dk/da/Nyheder/Nyhedsarkiv/2018/06032018---2.

(a) Provide, as a matter of urgency, an official response to each request for repatriation submitted by the authors on behalf of the child victims;

(b) Ensure that all procedures for the examination of these requests and the implementation of any decisions taken were in accordance with the Convention, taking into account the best interests of the child as a primary consideration and the importance of preventing further violations of the rights of the child;

(c) Take urgent positive measures to repatriate the child victims, acting in good faith;

(d) Support the reintegration and resettlement of each child who had been repatriated or resettled;

(e) Take additional measures, in the interim, to mitigate the risks to the lives, survival and development of the child victims while they remained in the north-east of the Syrian Arab Republic.

83. The State party was requested to include information about any such steps in its reports to the Committee under article 44 of the Convention.

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

2. State party's response

85. In a submission dated 2 August 2022, the State party submitted that the situation in the camps in the north-east of the Syrian Arab Republic was particularly closely monitored.

86. The State party alleges, with regard to humanitarian repatriations from the Syrian Arab Republic, that State party's international commitments to the protection of human rights do not require it to repatriate persons who are not under its jurisdiction. It submits that, therefore, any repatriation implies that the State party enters into negotiations with foreign authorities.

87. The State party points out that, whenever possible, it is proactively mobilizing the means to bring home the children of State party nationals who have chosen to join terrorist organizations abroad. It submits that, if the repatriation of such children implies the return of their mothers and the conditions on the ground make such a return possible, their mothers are returned too, if they accept that they will be brought to justice upon their arrival in the State party.

88. The State party submits that it has conducted several operations, which have resulted in the return of 72 children, and that such operations were very complex and risky, taking place in a war zone in which the State party does not exercise any control.

89. The State party highlights that it has been providing humanitarian support to improve the situation in the north-east of the Syrian Arab Republic, including substantial financial assistance specifically allocated to the humanitarian response for the benefit of displaced persons and refugees in the camps in the region.

90. With regard to the resettlement of repatriated children, the State party alleges that it has mobilized significant efforts to ensure that it is carried out in the best possible conditions, as part of an interministerial policy, through the mobilization of multiple actors in the judicial, social, health and education fields.

91. Without specifically addressing the case of any of the victims, the State party submits that it employs all the means at its disposal to mitigate the risks to the lives of children currently living in the north-east of the Syrian Arab Republic.

3. Authors' comments

(a) Communication No. 77/2019

92. In their comments on the State party's submission, dated 15 September 2022, the authors of communication No. 77/2019 submitted that, despite the recommendations by the

Committee, the State party persisted in considering that the French nationals, the mothers of the children concerned, would likely be judged in Rojava. They note that the Kurdish authorities are urging foreign States to repatriate their adult and child nationals to their respective countries. The authors submit that the mothers of those children should be prosecuted only in the State party.

93. They argue that the State party repatriated 35 children and 16 women on 5 July 2022, demonstrating its capacity to carry out such operations, but that none of the children involved in the present communication were repatriated.

94. With regard to the State party's allegations in relation to the humanitarian aid it provides to the north-east of the Syrian Arab Republic, the authors submit that it has the purpose of keeping children and their mothers behind barbed wire in a war zone. They claim that, contrary to what has been alleged by the State party, it does not use all the means at its disposal to mitigate the risks to the lives of the children concerned. Instead, by refusing to repatriate them, the State party keeps them in the camps, knowing that they are exposed to inhuman and degrading treatment.

95. The authors refer to the recent decision of the European Court of Human Rights,[5] in which the State party was condemned on the basis of article 3 (2) of Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto as amended by Protocol No. 11. The case concerned the refusal of a request by two French families to obtain from the State party authorities the repatriation of their two daughters and three grandchildren arbitrarily detained in camps in the north-east of the Syrian Arab Republic. The decision in question highlights that the protection afforded by that provision may, however, give rise to positive obligations on the part of the State in the event of exceptional circumstances in the existence of extraterritorial elements such as, for example, those which endanger the physical integrity and life of nationals held in camps, in particular children. According to the Court, when the request for return is made on behalf of children, the obligation implies a verification that the competent authorities have taken into account their best interests, their particular vulnerability and their specific needs.

96. The authors submit that the State party's response to the Committee's Views is vague and that nothing has been done for the applicants on whose behalf the application was lodged and who have still not been repatriated. The authors emphasize that, despite the Committee's findings, the State party has done nothing to put an end to the violations found and the measures put forward by the Government have no connection with the applicants' situation.

(b) Communications No. 79/2019 and No. 109/2019

97. In comments on the State party's submission, dated on 11 November 2022, the authors of communications No. 79/2019 and No. 109/2019 argue that the State party's allegations in relation to the humanitarian support to improve the situation in the north-east of the Syrian Arab Republic did not address the essential issue of the case, namely, protecting the children in question and repatriating them to French territory.

98. The authors submit that, although the children who are the subject of communication No. 79/2019 have repeatedly expressed their wish to be repatriated, their requests have been systematically ignored.

99. The authors explain that C.D. and her children, L.F. S.F. N.F. and A.A. (communication No. 109/2019), were repatriated on 20 October 2022.

100. The authors conclude by submitting that the State party therefore has the diplomatic, legal and material means to ensure that the protection measures to which the children in question are entitled are implemented and that the failure to do so is due solely to a lack of political will.

[5] European Court of Human Rights, *H.F. and others v. France* (applications No. 24384/19 and No. 44234/20), Judgment of 14 September 2022.

4. Decision of the Committee

101. The Committee decides to maintain the follow-up dialogue open and to request a meeting with the State party in order to discuss the prompt implementation of the Committee's Views.