



Convention on the Rights of the Child

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Committee on the Rights of the Child

Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communications Nos. 77/2019, 79/2019 and 109/2019*, **, ***

<i>Communication submitted by:</i>	F.B. et al. (represented by counsel, Marie Dosé) and D.A. et al. (represented by counsel, Martin Pradel)
<i>Alleged victims:</i>	S.B. et al.
<i>State party:</i>	France
<i>Dates of communications:</i>	1 March, 13 March and 25 November 2019 (initial submissions)
<i>Date of adoption of Views:</i>	8 February 2022
<i>Subject matter:</i>	Repatriation of children whose parents are linked to terrorist activities
<i>Procedural issue:</i>	Extraterritorial jurisdiction
<i>Substantive issues:</i>	Protective measures; right to life; access to medical care; arbitrary detention
<i>Articles of the Convention:</i>	2, 3, 6, 19, 20, 24 and 37
<i>Articles of the Optional Protocol:</i>	5 (1) and (2) and 7 (e) and (f)

1.1 The authors of the communications are: F.B., acting on behalf of her grandchildren S.B. (2015),¹ A.B. (2016) and A.S.B. (2018); N.S., acting on behalf of her grandchildren K.A. (2015) and M.A. (2018); S.A., acting on behalf of her grandchildren H.K. (2010), S.K. (2013) and H.K. (2016); Z.B., acting on behalf of her grandson S.B. (2017); A.D., acting on behalf of her grandchildren A.S. (2015), S.S. (2016), A.S. (2017) and I.S. (2017); A.N.R., acting on behalf of her grandchildren O.G. (2011), A.G. (2013), H.G. (2014), S.J.G. (2015), M.G. (2016) and S.G. (2018); S.D., acting on behalf of her niece I.J. (2008); M.D., acting on behalf

* Adopted by the Committee at its eighty-ninth session (31 January–11 February 2022).

** The following members of the Committee participated in the consideration of the communication: Suzanne Aho, Hynd Ayoubi Idrissi, Rinchen Chopel, Bragi Gudbrandsson, Philip Jaffé, Sopia Kiladze, Gehad Madi, Faith Marshall-Harris, Benyam Dawit Mezmur, Clarence Nelson, Otani Mikiko, Luis Ernesto Pedernera Reyna, José Ángel Rodríguez Reyes, Ann Skelton, Velina Todorova, Benoit Van Keirsbilck and Ratou Zara.

*** A joint opinion by Committee members Sopia Kiladze, Luis Ernesto Pedernera Reyna and Benoit Van Keirsbilck (concurring) is annexed to the present Views.

¹ The victims' initials are followed by their year of birth in brackets.



of his niece S.D. (2013);² L.L., acting on behalf of his grandchildren Q.L. (2010), H.L. (2014), I.L. (2016) and A.L. (2018); P.D., acting on behalf of her grandchildren E.C. (2009), A.H. (2012), I.H. (2014) and Y.D. (2018); A.E., acting on behalf of his nephews A.R.E. (2015) and H.E. (2017); S.G., acting on behalf of her grandson N.B. (2016); I.Z., acting on behalf of her nephew S.B. (2015);³ F.F., acting on behalf of her grandson Y.H. (2016); N.B., acting on behalf of her grandson S.B. (2017); N.B., acting on behalf of her nephews D.B. (2013), A.B. (2014) and S.B. (2015); L.H., L.H. and D.A., acting on behalf of their grandchildren M.A. (2013), A.A. (2014), J.A. (2016), A.A. (2017), S.H. (2017) and R.A. (2018); and C.D. and A.F., acting on behalf of their grandchildren L.F. (2003), A.F. (2006), S.F. (2011), N.F. (2014) and A.A. (2017).

1.2 The authors are nationals of France, with the exception of F.F., who is a national of Algeria and resides in France. The victims are all children of French nationals – relatives of the authors – who are alleged to have collaborated with Da’esh. Some of the children were born in the Syrian Arab Republic, while others travelled there with their parents at a young age. They are currently being held in the Rawj, Ayn Isa and Hawl camps in the north-east of the country, which are under the control of the Syrian Democratic Forces. The authors claim that the State party has not taken the measures necessary to repatriate the children to France and that this failure to act constitutes a violation of articles 2, 3, 6, 19, 20, 24 and 37 of the Convention. The authors are represented by counsel. The Optional Protocol entered into force for the State party on 7 April 2016.

1.3 On 13 and 27 March and 4 December 2019, in accordance with article 6 of the Optional Protocol, the working group on communications, acting on behalf of the Committee, rejected the authors’ request for interim measures consisting in the repatriation of the children to France. However, the Committee requested the State party to take the diplomatic measures necessary to protect the right to life and integrity of the children, including by ensuring that they have access to any medical care that they may need.

1.4 On 30 September 2020, at its eighty-fifth session, and on 4 February 2021, at its eighty-sixth session, the Committee examined the admissibility of the three communications and found them admissible insofar as they raised issues relating to articles 2, 3, 6, 19, 20, 24 and 37 of the Convention. The Committee concluded that the State party does exercise jurisdiction over the children who are the subject of the communications. The Committee noted the parties’ statements that S.H. and his mother were repatriated to France on 9 December 2019⁴ and that S.D. and S.B. were repatriated to France on 15 March 2019.⁵ In the light of this information, the Committee discontinued its consideration of the communications in respect of S.H., S.D. and S.B. For more information on the facts, the complaint, the parties’ observations and comments on the admissibility of the communications and the Committee’s decisions in that regard, see the decisions on admissibility.⁶

1.5 Following the Committee’s decisions on the admissibility of the three communications, the State party submitted its observations on the merits of communication No. 77/2019 on 23 June 2021. In its submission, it reported that O.G., A.G., H.G. and S.G. had been repatriated in June 2020 and that K.A. and M.A. had been repatriated in January 2021. The authors confirmed in their reply of 20 September 2021 that the complaint had become moot in respect of O.G., A.G., H.G., S.G., K.A. and M.A. They also noted that the communication had become moot in respect of S.B., who had been expelled from Turkey on 22 July 2021.

² Repatriated on 15 March 2019.

³ Repatriated on 15 March 2019.

⁴ *S.H. et al. v. France* (CRC/C/85/D/79/2019-CRC/C/85/D/109/2019), para. 9.3.

⁵ *S.B. et al. v. France* (CRC/C/86/D/R.77/2019), para. 8.3.

⁶ *S.H. et al. v. France* (CRC/C/85/D/79/2019-CRC/C/85/D/109/2019); and *S.B. et al. v. France* (CRC/C/86/D/R.77/2019).

State party's observations on the merits

2.1 On 22 and 23 June 2021, the State party submitted its observations on the merits of the communications. It recalls that it has repatriated more minors – 35 French minors in total – than any other country in Western Europe and that it is actively contributing to the humanitarian response in support of displaced persons and refugees in the north-east of the Syrian Arab Republic.

2.2 The State party emphasizes that, to date, the authors have not provided any evidence that the right to life and right to health of the children who are the subject of the present communications are under threat, or that the children are being arbitrarily detained by the Syrian Democratic Forces. It is difficult for the Forces to keep control over the camp and to gain access to certain areas; as a result, they are unable to identify and locate the foreign nationals who are being held there. In particular, in communication No. 77/2019, the authors do not give the exact location of some of the children.⁷ Lastly, as regards the child victims allegedly being held in Rawj, the information provided by the authors about the conditions in which they are being held is very general and relates mainly to the situation in Hawl. Consequently, to date, there is no evidence that these children are in the Rawj and Hawl camps⁸ or that they are being subjected to the alleged violations of the Convention.

2.3 In any case, even if the children were being held in the Rawj camp, that would not mean that there had been a violation of the Convention. First of all, regarding the claim of arbitrary detention, the State party notes that the fact that the authorities in the north-east of the Syrian Arab Republic do not constitute a State does not render the detention of the child victims – who are parties to a non-international armed conflict – arbitrary. Such detention is covered by international humanitarian law,⁹ which allows for the detention of persons who have fought on behalf of Da'esh, as well as their spouses and children, for imperative reasons of security.¹⁰

2.4 The State party asserts that it cannot be concluded from either the Convention or the work or Views of the various United Nations committees that States parties have a positive obligation to repatriate their nationals who may be at risk of inhuman or degrading treatment. The European Court of Human Rights has not made reference to any such obligation either. In practice, such an obligation would conflict with the principle of the sovereignty of the States in which violations are allegedly being committed. It would also go beyond the commitment that States intended to make when they ratified the Convention, which cannot be interpreted in that way.

2.5 It does not by any means follow from customary international law, international case law or the Vienna Convention on Consular Relations of 1963 that States have an obligation to repatriate their nationals, including when they are likely to be subjected to inhuman or degrading treatment abroad. While repatriation may, in certain circumstances, be one of the ways in which consular assistance is provided, it is by no means an obligation for the sending State. The fact that the vast majority of States members of the Council of Europe are not taking steps to repatriate their nationals shows that there is a consensus on this matter, for if they were under such an obligation, they would all have opened negotiations to that end. Furthermore, neither the Conseil d'État (the highest administrative court) nor the Constitutional Council has found that the State party has any such obligation under domestic law.

2.6 Contrary to what the Committee stated in its decisions on the admissibility of the communications, the State party does not in any way have the “capability” to repatriate the

⁷ In a letter to the Ministry for Europe and Foreign Affairs, the authors stated that the mother and children had not been located.

⁸ To the State party's knowledge, the Ayn Isa camp has been dismantled and several escapes were reported when that occurred.

⁹ Article 3 common to the Geneva Conventions of 12 August 1949 and any applicable customary law.

¹⁰ The International Committee of the Red Cross considers that non-State groups may also impose non-criminal detention, or internment, on the basis of international humanitarian law. See the commentary on article 3 common to the Geneva Conventions of 12 August 1949 (para. 728), available on the website of the International Committee of the Red Cross.

children who are the subject of the present communications. Their repatriation does not, as the authors claim, depend solely on the willingness of the Government of the State party to take action but on many factors, including the consent of the authorities in the north-east of the Syrian Arab Republic, who are detaining them;¹¹ the consent of the mothers to the repatriation of their children;¹² the difficulties encountered by the Syrian Democratic Forces in identifying and locating foreign nationals; the fact that the French nationals who are being held in the Rawj camp are under the control not of a sovereign State but of de facto authorities, which means that the mothers cannot be extradited; and the complexity and dangerousness of such missions, which naturally depend on the relations that each State has with the various actors in the armed conflict that continues to rage in the north-east of the Syrian Arab Republic. Members of Da'esh hiding within the camp itself pose a security risk for repatriation operations. Several members of the camp's internal security forces (Asayish) and several humanitarian workers have been murdered inside the camp in recent months.

2.7 In any event, if the Committee were to find that the State party had an obligation to repatriate its nationals, this could only be understood to mean an obligation of conduct.

Author's comments on the State party's observations

Communication No. 77/2019

3.1 In their comments dated 20 September 2021, the authors note that the French intelligence services had already been able to draw up an accurate and regularly updated register of the children in the camps in the north-east of the Syrian Arab Republic, including information on their civil status, their location and, for those who were not born abroad, the date of their arrest, the date of their arrival at the camps and the date of their departure for the Syrian Arab Republic.¹³ Moreover, in practice, the supposed "obstacles" to repatriation invoked by the State party, including the lack of diplomatic and consular representatives in the Syrian Arab Republic, did not in any way prevent the State party from repatriating nationals on five occasions in the past, since the conditions allowed for it to send French delegations to oversee the operation on the ground. Repatriation is all the more feasible as the Autonomous Administration of North and East Syria frequently reiterates its call for international cooperation and for States to repatriate their nationals from the camps.

3.2 The authors consider that the information regarding the whereabouts of the children cannot be invoked as grounds for inadmissibility, since the Committee has already declared the communication admissible and must now make a decision on the merits. In any case, the question of their whereabouts is not an insurmountable obstacle to repatriation.

3.3 The authors note that the State party does not contest the allegation that it failed to meet its obligations under the Convention. They argue that States parties have a positive obligation to take measures to protect the rights of the child, including measures to prevent or put an end to any infringement of the rights enshrined in the Convention, including by third parties.¹⁴ The authors maintain that the State party is choosing not to take the positive measures that it can reasonably be expected to take in order to protect and ensure the rights of the children concerned, even though it is well aware that they are being subjected to serious rights violations.

3.4 According to the authors, the French authorities' decision not to repatriate the children in question violates their right to non-discrimination as enshrined in article 2 of the

¹¹ In order to hand over the persons concerned, the authorities would need to issue an administrative expulsion order, but the State party has not had diplomatic or consular representatives in the Syrian Arab Republic since 2012.

¹² The State party's position is that the authors' daughters and sisters should be tried locally. However, the children concerned will be repatriated if their mothers agree and if conditions allow.

¹³ Luc Mathieu, Willy Le Devin and Dominique Albertini, "État islamique : un rapatriement programmé, préparé, mais gelé" (Islamic State: plans for repatriation put on ice), *Libération* (Paris), 4 April 2019.

¹⁴ European Court of Human Rights, *El-Masri v. the former Yugoslav Republic of Macedonia*, Application No. 39630/09, Judgment, 13 December 2012, para. 198.

Convention, read in conjunction with articles 3, 6, 16,¹⁵ 24 and 37. The implicit decisions to deny repatriation to these children were clearly prompted by the activities of their parents, who are suspected or known to be linked to terrorist organizations. Other French nationals have been repatriated without there being any clear, consistent and established criteria that show why orphans should be considered more deserving of repatriation than children accompanied by their mothers, when both groups are equally at risk of violations of the principle of the best interests of the child and of their rights to life, family and health and their right not to be subjected to inhuman or degrading treatment or unlawful deprivation of liberty.

3.5 As regards the substance of article 3 of the Convention, it cannot be denied that the State party's failure to repatriate the children undermines the protection of their best interests, as it will result in their being detained in the camps for an extended and indefinite period, in conditions that threaten their survival and physical integrity. They face a severe lack of health care, food, water, sanitation facilities and education and they are at risk of indoctrination. From a procedural standpoint, owing to the State party's particularly opaque policy of repatriation on a case-by-case basis and the lack of an explicit decision to refuse repatriation (the various requests for repatriation that have been made remain unanswered), the "decision" of the French authorities not to repatriate the children does not in any way indicate that the best interests of the child were a primary consideration or were even taken into account. In order to fulfil its obligations under article 3 of the Convention, the State party should arrange for the joint repatriation of the mothers and children concerned, in order to preserve the family environment.

3.6 In addition, the authors maintain that there has been disproportionate interference with the children's right to life, survival and development (Convention, art. 6), their right to maintain family relations with close relatives such as their grandparents, uncles and aunts who are the authors of the communication (art. 16), their right to the highest attainable standard of health (art. 24) and their right not to be subjected to cruel, inhuman or degrading treatment or to be deprived of their liberty unlawfully or arbitrarily (art. 37). The authors consider that the lack of action by the State party in this regard constitutes a failure to discharge its positive obligation to prevent all such violations. The State party was fully aware of the general situation in the camps in the north-east of the Syrian Arab Republic and was alerted to the specific situation of the children concerned through numerous letters from the authors' counsel and explicit requests for repatriation. Instead of taking all the measures available to it to put an end to these violations (repatriation being the only measure that is reasonable and in line with its obligations), the State party has chosen to let them continue.

3.7 Although the authors acknowledge that the Convention does not explicitly establish a specific positive obligation to repatriate children who are being detained in the camps in the north-east of the Syrian Arab Republic, they assert that such an obligation can be inferred in this case from the State party's positive obligation to ensure the rights of the child. They argue that the only way in which the State party can fulfil its positive obligations in this case in accordance with international law is to repatriate the children concerned¹⁶ and that this gives rise to a specific positive obligation to do so, because of the specific nature and gravity of the situation. This positive obligation can also be interpreted in the light of the consular protection mechanism provided for in public international law.

Communications No. 79/2019 and No. 109/2019

3.8 In their comments dated 29 September 2021, the authors informed the Committee that, according to the latest data published by the non-governmental organization Save the Children on 23 September 2021, 62 children – or approximately 2 per week – have died in the Hawl and Rawj camps since the beginning of 2021. Moreover, another threat, namely the spread of new Da'esh cells in these camps, is likely to become increasingly difficult to

¹⁵ In their initial submission, the authors invoked article 19 rather than article 16 of the Convention.

¹⁶ See A/HRC/46/36, para. 30; and Council of Europe Commissioner for Human Rights, "Third-party intervention", document CommDH (2021)21, para. 18 (in the case *H.F. and M.F. v. France and J.D. and A.D. v. France*, applications No. 24384/19 and No. 44234/20).

manage.¹⁷ Many French and international institutions have unanimously condemned the living conditions in which French nationals – especially children – are being held in the camps in the north-east of the Syrian Arab Republic and the State party’s refusal to repatriate them. The authors are concerned about the physical and mental health of the children, their living conditions in the Rawj camp and the fact that they do not have access to appropriate medical care or education.¹⁸ Moreover, the State party knows perfectly well where the children are located within the Rawj camp, contrary to its claims.

3.9 The authors consider that, since the Committee has established that the children who are the subject of the present communications are under the jurisdiction of the State party, the State party cannot refuse to take the measures necessary to protect its minor nationals without failing to honour its international obligations under the Convention. They note that the political and religious views of the children’s parents – however reprehensible they may be on account of their links to an extremist ideology that is against the interests of the State party – were evidently taken into account by the State party in its decision not to ensure the children’s rights, in violation of articles 2 and 3 of the Convention.

3.10 Even though the State party has known for more than two years that the children who are the subject of the present communications are being held in very poor sanitary conditions in camps that are situated in an area of armed conflict and are at risk of death or serious injury, it refuses to take the measures necessary to ensure respect for the rights enshrined in article 6 of the Convention. It has to be acknowledged that more than 250 children of French nationality are still being held in camps in the north-east of the Syrian Arab Republic. By deciding to repatriate some children and not others, the State party is distinguishing between children in a way that is unacceptable and contrary to its international obligations. The repatriation of the children together with their mothers would be in the best interests of the children. In any event, the French authorities have not taken any steps to establish whether the mothers concerned would consent to their children being repatriated without them.

3.11 Recalling that six of the children who are the subject of the present communications were born on Syrian territory to parents with French nationality, the authors assert that the situation faced by the children violates their fundamental rights to be registered after birth and to acquire a nationality (in the case of children born in the camps) and to preserve their identity and family relations, under articles 7 and 8 of the Convention.¹⁹

3.12 With reference to articles 20, 24 and 28²⁰ of the Convention, the authors complain that there is a lack of medical care, as some of the children have been suffering from war injuries for several years and are therefore at risk of illness, injury and imminent death. Moreover, all of the children who are the subject of the present communications are, at the very least, affected by the lack of access to water and food. They are thus exposed to the harmful consequences that malnutrition can have in children of such a young age.

3.13 Lastly, with reference to article 37 of the Convention, the authors recall that the children who are being detained in the camps in the north-east of the Syrian Arab Republic are not subject to any detention orders and that no legal action is being taken against them locally. As to the State party’s claim that the deprivation of liberty to which the children are being subjected constitutes administrative internment in the context of a non-international armed conflict, the authors point out that this exceptional measure is permissible only if the security of the State makes it “absolutely necessary”²¹ or for “imperative reasons of security”.²² In the present case, the detention of the children in the camps quite clearly cannot

¹⁷ See S/2021/68.

¹⁸ A.F., who is 14 years old, suffered a serious injury to his left foot during a bombing incident and needs urgent orthopaedic surgery, without which he may lose the use of his foot permanently; L.F., who is 17 years old, is facing the threat of forced and early marriage; and one of the grandchildren of the author D.A. is asthmatic, while another has a broken arm and no access to the appropriate surgical treatment.

¹⁹ Articles 7 and 8 of the Convention were not mentioned in the initial submissions.

²⁰ Article 28 of the Convention was not mentioned in the initial submissions.

²¹ Geneva Convention relative to the Protection of Civilian Persons in Time of War, art. 42.

²² *Ibid.*, art. 78.

be justified on either of these two grounds. On the contrary, it is the security of the children that is under threat.

3.14 The children who are the subject of the present communications are in such a dire situation that repatriation to French territory is the only measure that can effectively protect them. It should also be noted that the State party maintains regular contact with representatives of the Syrian Democratic Forces in order to monitor the changing situation in the Syrian Arab Republic. The State party is therefore in sufficiently close contact with the Syrian Democratic Forces to be able to ensure that the children detained in the area receive the protection to which they are entitled.

Third-party intervention on the merits

4.1 On 23 July 2021, the Defender of Rights submitted a third-party intervention on the merits of the three communications. After investigating similar complaints, she issued a decision on 22 May 2019 in which she found several violations of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and the Convention on the Rights of the Child and made recommendations to the Government of France. According to the Defender of Rights, the situation of the children who have been held in these camps, in an area of armed conflict, for several months or even years and, in some cases, since birth, undoubtedly constitutes inhuman and degrading treatment that puts their lives at risk within the meaning of articles 6 and 37 of the Convention and is contrary to the best interests of the child as protected by article 3. The situation also violates other fundamental rights, including the right to be registered after birth and to acquire a nationality (in the case of children born in the camps), the right to preserve one's identity and family relations (Convention, arts. 7–8), the rights to protection provided by the State party and to health care (arts. 19–20 and 24) and the right to education (art. 28).

4.2 In the face of a situation that has been recognized as violating the Convention and pursuant to the principle of the best interests of the child set out in article 3 of the Convention, the State party has a number of obligations towards these children, who are French nationals. Some of these obligations are positive, such as the obligation to adopt appropriate and effective measures to put an end to the treatment arising from the conditions of detention in the camps as soon as possible and to provide the children with protection. The Defender of Rights considers that the only way to ensure that the children are protected and to end the ongoing violations of their fundamental rights is to arrange for them to be returned to French territory with their mothers and to be assisted by the competent services. The fact that the State party has already repatriated a number of children shows that this measure – which these families have been requesting for months to no avail – is perfectly feasible.

Issues and proceedings before the Committee

Further consideration of admissibility

5.1 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, whether the communication is admissible under the Optional Protocol.

5.2 The Committee notes the developments relating to the admissibility of the three communications that occurred after it had adopted its decisions on admissibility. With regard to communication No. 77/2019, the Committee notes the parties' statements concerning the repatriation to France of O.G., A.G., H.G., S.G., K.A., M.A. and S.B. in June 2020, in January 2021 and on 22 July 2021. In the light of this information, the Committee considers that the communication has become moot and that its consideration should be discontinued insofar as it related to the State party's failure to repatriate these children.

5.3 The Committee also notes that the authors invoked articles 7, 8, 16 and 28 of the Convention only when they submitted their comments on the merits. Their claims under these articles were therefore not included in the arguments concerning the admissibility and merits of the case to which the State party was invited to respond. The authors have not shown why they were unable to make these claims at an earlier stage of the proceedings and have not

sufficiently substantiated them. Accordingly, the Committee finds these claims inadmissible under article 7 (f) of the Optional Protocol.

5.4 However, the Committee finds that the authors' claims under articles 2, 3, 6, 19, 20, 24 and 37 of the Convention have been sufficiently substantiated and proceeds to consider them on the merits.

Consideration of the merits

6.1 The Committee has considered the present communications in the light of all the information made available to it by the parties, in accordance with article 10 (1) of the Optional Protocol.

6.2 The Committee must determine, in particular, whether, in the circumstances of the present case, the State party's failure to take protective measures in respect of the child victims who are being held in the Rawj, Ayn Isa and Hawl camps constitutes a violation of the children's rights under the Convention. The authors specifically accuse the State party of failing to repatriate the children and claim that repatriation is the only possible means of ensuring the children's access to the necessary health care, their right to life and development and their protection from arbitrary detention and ill-treatment.

6.3 The Committee notes the conflicting arguments put forward by the parties as to whether States have an obligation to repatriate their nationals under public international law or international human rights law and what falls within the scope of the consular assistance that a State must provide to its nationals who are outside its territory. However, the Committee considers that the question to be resolved is whether, in the specific circumstances of the present communications, the State party has taken all the measures necessary to implement and ensure the rights enshrined in the Convention in respect of the child victims who are under its jurisdiction, taking into account the principle of the best interests of the child as a primary consideration.

6.4 The Committee notes the State party's argument that it does not have the capability to repatriate the children, as that course of action does not depend solely on the willingness of the State party but also on the consent of the authorities in the north-east of the Syrian Arab Republic and of the children's mothers, and is hindered by the difficulties encountered in identifying the children and ensuring the security of such operations. The Committee reiterates the point made in its decisions on admissibility, namely that the State party, as the State of the children's nationality and by virtue of the information available to it on the French children being held in the camps and its relationship with the Syrian authorities, has the capability and the power to protect the rights of the children in question by taking action to repatriate them or provide other consular responses. This capability is demonstrated by the fact that the State party has already successfully repatriated more than 30 French children without reporting any incidents relating to their repatriation or any refusal to cooperate on the part of the Syrian Democratic Forces. The Committee notes that, on the contrary, the leaders of the Syrian Democratic Forces have repeatedly expressed their wish to see all foreign nationals being detained in the camps repatriated to their States of nationality, thus leaving it to the State party to decide whether or not to proceed with repatriation. As to the consent of the children's mothers, the Committee notes that their consent has reportedly not been sought. It also observes that, as it noted in its decisions on the admissibility of the communications, most of the mothers gave their express consent to the submission of these communications on behalf of their children.

6.5 The Committee notes the authors' argument that the child victims, most of whom are young children, are barely surviving in the prison camps where they are being held, which are controlled by the Syrian Democratic Forces and situated in a war zone. They are living in inhuman sanitary conditions, lack basic necessities, including water, food and health care, and therefore face an imminent risk of death. The State party argues that the authors have not demonstrated that the children who are the subject of the present communications are exposed to any specific risks but have merely described the general situation in the camps. However, the Committee notes that the security situation, the restrictions on movement and the sanitary conditions described apply to all children who are being held in the camps,

including the child victims, who must face the same detention and living conditions as the other people living in the camps. The Committee is of the view that the causes of harm have been sufficiently identified and that there is no reason to believe that the children specifically named in these communications are less at risk than other people in the camps.

6.6 The Committee recalls that States parties have an obligation to adopt positive measures to give full effect to the rights of all children under their jurisdiction, pursuant to article 4 of the Convention.²³ It considers that this obligation is particularly strong when it comes to protecting children from ill-treatment and potential violations of their right to life. In the present case, the Committee notes that the imminent risk of death faced by the children being held in camps in the Syrian Arab Republic has been noted in several reports, including a conference room paper of the Independent International Commission of Inquiry on the Syrian Arab Republic.²⁴ The State party is well aware of the situation and has repatriated several of these children of its own accord.

6.7 With respect to article 6 of the Convention, the Committee notes the authors' arguments, which are supported by evidence, that many children have died in the camps, that such deaths continue to occur and that the living conditions described, including the lack of food and water, pose an imminent and foreseeable threat to the lives of all the children who are being held in the camps. The Committee notes that the State party does not deny that the conditions in the camps are as described by the authors and the third party. In the light of the foregoing, the Committee considers that there is sufficient information to establish that the conditions of detention pose an imminent and foreseeable threat to the lives of the child victims and that the State party's failure to protect them constitutes a violation of article 6 of the Convention.

6.8 As regards the authors' claims under article 37 (a) of the Convention, the Committee considers that there is sufficient evidence to establish that the prolonged detention of the child victims in the conditions described, including in particular the lack of health care, food, water, sanitation facilities and education, has an impact on their development and constitutes cruel, inhuman or degrading treatment or punishment, in violation of article 37 (a) of the Convention.

6.9 The Committee notes the State party's argument that it does not have a positive obligation to repatriate its nationals under the Convention. However, given that the State party is aware of the prolonged detention of these French children in a life-threatening situation and is capable of taking action, the Committee considers that the State party has a positive obligation to protect these children from an imminent risk of violation of their right to life and an actual violation of their right not to be subjected to cruel, inhuman or degrading treatment.

6.10 Lastly, with respect to the authors' claims under article 3 of the Convention, the Committee recalls that the best interests of the children must be a primary consideration in all actions concerning them. It also recalls paragraph 18 of its general comment No. 14 (2013), which states that inaction or failure to take action and omissions are also "actions". In the circumstances of the present case, the Committee concludes that the State party has not shown that it gave due consideration to the best interests of the child victims when assessing the authors' requests for their repatriation and that this constitutes a violation of article 3 of the Convention.

6.11 In the light of the foregoing and in the particular circumstances of the present case, the Committee concludes that the State party's failure to protect the child victims constitutes a violation of their rights under articles 3 and 37 (a) of the Convention and that the State party's failure to protect the child victims from an imminent and foreseeable threat to their lives constitutes a violation of article 6 (1) of the Convention.

²³ Inter-American Court of Human Rights, Advisory Opinion OC-17/2002, 28 August 2002, para. 87.

²⁴ Conference room paper of the Commission on children's rights in the Syrian Arab Republic (A/HRC/43/CRP.6), available (in English only) on the website of the Commission (www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/Documentation.aspx).

6.12 Having reached this conclusion, the Committee does not consider it necessary to examine whether the same facts constitute a violation of articles 2, 6 (2), 19, 20, 24 and 37 (b) of the Convention.

7. The Committee, acting under article 10 (5) of the Optional Protocol on a communications procedure, is of the view that the facts before it disclose a violation of articles 3, 6 (1) and 37 (a) of the Convention.

8. The State party is therefore 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 this regard, the Committee recommends that the State party:

(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 are 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 has been repatriated or resettled;

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

9. Pursuant to article 11 of the Optional Protocol, the Committee wishes to receive from the State party, as soon as possible and within 180 days, information about the steps taken to give effect to the Committee's Views. The State party is also requested to include information about any such steps in its reports to the Committee under article 44 of the Convention. Lastly, the State party is requested to publish the present Views and to disseminate them widely.

Annex

Joint opinion of Committee members Sopio Kiladze, Luis Ernesto Pedernera Reyna and Benoit Van Keirsbilck (concurring)

1. While we agree with the conclusion reached by the Committee in this extremely difficult and sensitive case, we believe that the Committee should have examined the violation of articles 6 (2) and 37 (b) of the Convention.

2. The Committee rightly considered that the authors had sufficiently substantiated their claims as to the inhuman living conditions and the lack of basic necessities, including water, food and health care, which pose an imminent risk of death. Moreover, there is evidence that the children in the camps in the north-east of the Syrian Arab Republic are being held in terrible conditions and are being denied their rights to education and play, along with many other rights.

3. Although it is not easy to define the full scope of the rights enshrined in article 6 (2) of the Convention, under which States parties have an obligation to ensure to the maximum extent possible the survival and development of the child, the present case shows that the children's right to survival has been severely compromised and that their right to development cannot possibly be realized, even to the smallest extent. All of the child victims are at risk of malnutrition, which will have a lasting impact on their development. The impact will be greater in the case of children who have injuries or specific illnesses. The lack of access to education, including early childhood education for the youngest among them, will also continue to harm their development in the long term.

4. Having found a violation of article 37 (a) of the Convention and having concluded that the situation amounted to an actual violation of the child victims' right not to be subjected to cruel, inhuman or degrading treatment, the Committee should have pursued its line of reasoning further and should have found a violation of article 6 (2), given that it is simply impossible for a child to develop fully in the context of inhuman and degrading treatment. The State party's obligation to protect children from a violation of article 37 (a) overlaps with its obligation to protect children from a violation of article 6 (2). States parties are also responsible for omissions, pursuant to article 4 of the Convention. If the State party has an obligation to act but takes no measures to ensure the rights enshrined in the Convention, it must be held accountable for this omission. In order to comply with article 6 (2), the State party should have repatriated the children. The State party did not put forward any reasonable arguments as to why these particular children could not be repatriated, while others had been. The State party has therefore violated article 6 (2) of the Convention.

5. As regards article 37 (b) of the Convention, we have noted that the Independent International Commission of Inquiry on the Syrian Arab Republic stated as follows: "Thousands of women and children remain unlawfully interned in camps across northeast Syria in the territory controlled by the Kurdish-led SDF coalition. Suspected for links with Da'esh but left with no legal recourse and no end date to their ordeal, they have been left to fend for themselves in conditions that may amount to cruel or inhuman treatment. ... Yet, most foreign children remain deprived of their liberty, since their home countries refuse to repatriate them. Most are under 12 years old. No one accuses them of crimes, yet, for over three years, they have been held in horrifying conditions, deprived of their right to education, to play, to proper health care."²⁵

6. The child victims are not subject to any detention orders and no legal action is being taken against them locally. Furthermore, the continued detention of young children who are not parties to the conflict and should be treated primarily as victims is unlawful, disproportionate and amounts to arbitrary detention, in violation of article 37 (b) of the

²⁵ Independent International Commission of Inquiry on the Syrian Arab Republic, "Increasing violence and fighting add to Syria's woes, making it unsafe for return", press release, 14 September 2021.

Convention, including the principles that detention should be used only as a measure of last resort and for the shortest appropriate period of time.

7. The question is whether the State party is responsible for the detention of the child victims and thus for the violation of article 37 (b) of the Convention. It did not take direct action resulting in their detention. However, as a State Party, it had an obligation to take measures to ensure their return, in accordance with article 4 of the Convention. The State party failed to repatriate the child victims and this led to their prolonged, unlawful and arbitrary detention. Consequently, we are of the view that the State party had an obligation and was effectively able to prevent the prolonged detention of the child victims by repatriating them and is therefore responsible for its failure to do so under article 37 (b) of the Convention.
