



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 communication No. 100/2019* ** ***

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| <i>Communication submitted by:</i> | P.N. et al. (represented by counsel, Johanna Niemi) |
| <i>Alleged victims:</i> | S.N. et al. |
| <i>State party:</i> | Finland |
| <i>Date of communication:</i> | 30 September 2019 (initial submission) |
| <i>Date of adoption of Views:</i> | 12 September 2022 |
| <i>Subject matter:</i> | Repatriation from Syrian refugee camps of children whose parents are linked to terrorist activities |
| <i>Procedural issue:</i> | Jurisdiction, exhaustion of domestic remedies, competence <i>ratione temporis</i> , <i>ius standi</i> |
| <i>Substantive issues:</i> | Protective measures; right to life; access to medical care; arbitrary detention |
| <i>Articles of the Convention:</i> | 2, 6, 19, 20, 24, 27, 28, 37, 39 and 40 |
| <i>Articles of the Optional Protocol on the involvement of children in armed conflict:</i> | 7 |
| <i>Articles of the Optional Protocol:</i> | 5 (1) and (2) and 7 (e) and (f) |

1.1 The authors of the communication are: P.N., acting on behalf of her niece S.N. (2017);¹ K.K., acting on behalf of her grandchildren Mh. (2017) and Mu. (2016); and O.M., acting on behalf of her grandchildren S. (2017), K. (2014) and J. (2013). The authors are

* Adopted by the Committee at its ninety-first session (29 August–23 September 2022).

** The following members of the Committee participated in the consideration of the communication: Suzanne Aho, Aissatou Alassane Sidikou, 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 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.



nationals of Finland. They submit the present communication on behalf of the children mentioned above, also of Finnish nationality, as well as on behalf of some other 33 Finish children who are held in the Al-Hol camp and have no access to legal aid or to legal information that would enable them to submit a communication. The parents of the child victims are alleged to have collaborated with Da'esh. The child victims were born in the Syrian Arab Republic, and are currently being held in the Al-Hol camp in the north-east of the country, which is under the control of the Syrian Democratic Forces. The authors claim that the State party has not taken the measures necessary to repatriate the child victims to Finland and that this failure to act constitutes a violation of articles 2, 6, 19, 20, 24, 27, 28, 37, 39 and 40 of the Convention, as well as of article 7 of its Optional Protocol on the involvement of children in armed conflict. The authors are represented by counsel. The Optional Protocol on a communications procedure entered into force for the State party on 12 February 2016.

1.2 On 10 October 2019, in accordance with article 6 of the Optional Protocol on a communications procedure, 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 Finland. However, the Committee requested the State party to take any measures necessary to guarantee the safety and well-being of the children, including by ensuring that they have access to any medical care that they may need.

Facts as submitted by the authors

2.1 According to the authors, at an unknown date, the mothers of the child victims were evacuated to the Al-Hol camp from the city of Baghuz and other previously Da'esh-controlled areas in the Syrian Arab Republic. They claim that despite knowing that the children were at risk of irreparable harm in the Al-Hol camp, the Finnish government had announced that it would not assist the child victims or repatriate them.

2.2 The conditions in the camp are extremely poor because of the over-crowding, unhygienic sanitary conditions, scarcity of food and lack of clean drinking water. Additionally, the authors state that forms of "extremist pressure and coercion" prevail in the camp. The tents provided frequently collapse in the wind and in the rain. There is no heating in the winter. As a result of these conditions, the children in the camp frequently suffer from malnutrition and various illnesses.

2.3 Mu. suffers from serious malnutrition and repeated diarrhoea. He has received no medical care and has, as a result, not developed at a normal rate. In the summer of 2019, when he was one year and nine months old, he was 73 cm in height and weighed 7.9 kilos. J. recently suffered from pneumonia and was hospitalised. She is currently recovering, but suffers from continuous diarrhoea and other diseases. S., who is two-year old, almost died on several occasions. He is suffering from malnutrition and diarrhoea, his development has been delayed and he has difficulties with speech and movement. S.N. has a hip injury and is unable to walk.

2.4 The authors argue that the State party's domestic remedies are unavailable and ineffective because the inaction of the Finnish authorities cannot be challenged in administrative or judicial proceedings.

Complaint

3.1 The authors argue that, by its inaction, the State party violates articles 2, 6, 19, 20, 24, 27, 28, 37, 39 and 40 of the Convention on the Rights of the Child, as well as article 7 of its Optional Protocol on the involvement of children in armed conflict. They assert that the State party failed: to permit the children to access the consular services, suspecting that this was based on their ethnicity, their mothers' religious convictions or their age (article 2); to assist the children to leave the camp (article 37); to repatriate the children from a camp where the living conditions are extremely poor and put their life, health and development at risk (articles 6, 19, 24 and 27); and to offer them rehabilitation (article 39 of the Convention and article 7 of the Optional Protocol on the involvement of children in armed conflict).

3.2 The authors recall that according to article 20 of the Convention, when the family cannot protect the child, the latter has the right to State protection. The authors also submit

that some of the older children at the camp may have committed “cruelties” under duress or manipulation. If this is the case, the investigation of their actions should be carried out in accordance with article 40 guarantees. For the authors, these procedural and other safeguards have not and cannot be fulfilled in the circumstances at the camp.

3.3 The authors stress that the State party was well informed of the deplorable sanitary conditions in which the children found themselves and has the possibility to negotiate their release from the Al-Hol camp and to repatriate them. They argue that the fact that the violations take place outside the territory of the State party does not absolve it from its obligations under the Convention, because – by its inactions – the State party is directly contributing to the continuous violations of the child victims’ rights. The authors note that there is no obstacle preventing the State party from repatriating the child victims because the authorities governing the camp have announced that they allow and promote the repatriation of European citizens to their country of origin.

State party’s observations on admissibility

4.1 In its submissions of 10 December 2019, the State party considers that the communication is inadmissible due to the authors’ lack of standing, for lack of Committee’s competence *ratione temporis*, for non-exhaustion of domestic remedies and because of the State party’s lack of jurisdiction over the children.

4.2 The State party refers to article 5 (2) of the Optional Protocol and argues that the authors have not established that they are acting with the consent of the legal guardians of their child relatives. The situation in the present case is different from that in similar communications against France already decided by the Committee,² where the children’s guardians had provided consent telephonically. As to the other 33 children on whose behalf they also introduce this communication, the State party notes that their personal details or identities are not specified and that the authors do not provide any authorization to act on their behalf. The State party is not aware if the legal guardians of those other 33 children are even aware about the present communication. It therefore considers that the communication on their behalf should be declared inadmissible as anonymous.

4.3 The State party recalls that, in accordance with the general rules of international law and the principles of non-retroactivity of treaties, the Optional Protocol does not bind the State party in relation to any act or fact that took place or any situation that ceased to exist before the date of the entry into force of the Optional Protocol. The State party notes that the authors do not mention any time-frame as to when the alleged violations occurred and it thus considers that the communication should be declared inadmissible *ratione temporis* to the extent that any facts or alleged violations have occurred prior to 12 February 2016, when the Optional Protocol entered into force for the State party.

4.4 The State party highlights that none of the Convention articles raised by the authors before the Committee have been invoked before the domestic authorities and that domestic remedies have therefore not been exhausted.

4.5 The State party then contests the Committee’s jurisdiction, and argues that its obligations under the Convention and its Optional Protocols are determined by jurisdiction, not the citizenship of the individuals. The Committee has already stated in its General Comment no. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin that the enjoyment of rights stipulated in the Convention is not limited to children who are citizens of a State party and must therefore, if not explicitly stated otherwise in the Convention, also be available to all children, including asylum-seeking, refugee and migrant children, irrespective of their nationality, immigration status or statelessness.³

4.6 The State party argues that it has only agreed to respect the rights set forth in the Convention in situations that fall within its sovereignty and competence and over which it is likely to have effective control. The State party adds that it cannot be held accountable for situations that it did not create and over which it has no effective control.

² *L.H. and others v. France* (CRC/C/85/D/79/2019–CRC/C/85/D/109/2019).

³ CRC/GC/2005/6, para. 12.

4.7 The State party refers to article 29 of the Vienna Convention on the Law of Treaties, to the decision of the European Court of Human Rights in *Banković and others v. Belgium*⁴ and to the jurisprudence of the Committee against Torture.⁵ It argues that in public international law, the concept of jurisdiction is primarily territorial, unless a different intention appears from the treaty or is otherwise established, and that the extraterritorial jurisdiction of a State stems from the effective control it is likely to exercise outside its borders.⁶ The State party refers to the jurisprudence of the European Court of Human Rights,⁷ the International Court of Justice⁸ and the Inter-American Commission on Human Rights⁹ and recalls that, in order for children to come under the jurisdiction of the State party, the authors must demonstrate that they are under the effective control of Finland, either through its agents or through a local authority over which Finland would have such great control as to cause that authority to in fact be dependent on it. In the present instance, the State party notes that the authors have not provided any evidence that Finland exercised any control or authority over the children or over the territory in question.

4.8 Finally, the State party notes that the allegations raised by the authors are not substantiated because they are general in nature and not related to the facts concerning the individual situation of the children mentioned in the present communication.

Authors' comments on the State party's observations

5.1 On 17 February 2020, the authors submitted their comments in response to the State party's observations on admissibility. They recall that they are close relatives to the children named in the present communication, who are constrained with their mothers in a camp controlled by the Syrian Democratic Forces. In these circumstances, the authors have standing to act in the best interests of the children named in the communication. Given the fact that all the other children in the Al-Hol camp that are Finnish citizens are in an identical situation, the authors claim that they also have standing to act on behalf of the whole group of similarly situated children. The State party knows the identities of all children in the Al-Hol camp who are Finnish citizens. If the Committee does not accept the authors' standing on behalf of the whole group, then it should proceed to the merits in respect of the children who are named in the communication.

5.2 As to the State party's argument of incompatibility *ratione temporis*, the authors clarify that the communication relates to violations that have occurred since March 2019,¹⁰ and which are of a continuous nature.

5.3 The authors highlight that the State party has not named any single domestic remedy in respect of any alleged violation invoked. They specify that they have made requests for child protection measures to the child protection authority in Helsinki, but their requests were dismissed. They have also complained to the Chancellor of Justice, who issued a decision on 9 October 2019.¹¹ However, the Chancellor cannot overturn the decisions of the child protection authority, nor that of the Government.

5.4 The authors mention that, on 16 December 2019, the Government issued a decision in principle on the repatriation from the Al-Hol camp. These guidelines do not confer rights

⁴ Application No. 52207/99, decision of 12 December 2001, paras. 59 and ff.

⁵ *Roitman Rosenmann v. Spain* (CAT/C/28/D/176/2000 and Corr.1), para. 6.6; *Z. v. Australia* (CAT/C/53/D/511/2012); and *Agiza v. Sweden* (CAT/C/34/D/233/2003).

⁶ The State party refers to Joint General Comment no. 3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 22 of the Committee on the Rights of the Child (2017), para. 12; General Comment no. 31 (2004) of the Human Rights Committee; European Court of Human Rights, *Al Skeini and others v. United Kingdom*, application No. 55721/07, judgment of 7 July 2011, para. 138; Inter-American Commission on Human Rights, *Djamel Ameziene v. United States*, 20 March 2012, para. 30.

⁷ *Al Skeini and others v. United Kingdom*, para. 134.

⁸ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136, at p. 179, paras. 109–111.

⁹ *Djamel Ameziene v. United States*, paras. 30–35.

¹⁰ No further details.

¹¹ No further details of copies of documents issued by domestic authorities.

to individuals, nor have they translated into any effect on the ground. The authors claim that there is no remedy in respect of such a decision and mention that on 22 May 2019, the author K.K. lodged a complaint with the Parliamentary Ombudsman, which is still pending. But this is also not an effective remedy, given that the Ombudsman cannot overturn any decision by the authorities.

5.5 As to jurisdiction, the authors submit that the communication only relates to acts or omissions that are within the jurisdiction of the State party. The authors do not pretend that the State party should take repatriation measures without proper negotiations and agreement with the authorities that have control over the territory.

State party's additional observations

6.1 In its submission of 4 August 2020, the State party informed the Committee that, on 16 December 2019, the State party's Government issued guidelines for the repatriation of Finnish nationals from the refugee camp Al-Hol in Syria. Based on these guidelines, Government resolution UM/2019/203 was adopted on 19 December 2019. The State party declares that it is the Government's unequivocal and common resolve to repatriate children from the camp as soon as possible. Two children were repatriated in December 2019 and, in August 2020, another mother with her children who fled from Al-Hol to Turkey was repatriated with the assistance of the Finnish authorities.

6.2 The State party further mentions that three women and their children – including S., K. and J. – left the Al-Hol camp on their own initiative and arrived in Finland on 31 May 2020. As these three children are no longer being held in the Al-Hol camp, the author O.M. has lost her victim status as to alleged violations of the rights enshrined in the Convention and its Optional Protocols. The State party therefore requests the Committee to declare the communication inadmissible concerning O.M. in application of article 7 (c) of the Optional Protocol to the Convention.

6.3 On 17 December 2021, the State party informed the Committee that on 10 December 2021, it repatriated a woman with her four children from the Al-Hol camp via Turkey, in cooperation with the Turkish authorities. On 16 July 2021, the State party also repatriated a woman with her two children from the Roj camp. Since 2019, the State party has repatriated a total of 35 Finnish nationals, including 26 children and nine adults, who were held in north-east Syria. Approximately 10 Finnish nationals remain in the Syrian camps.

6.4 The State party affirms its intention, to the extent possible, to repatriate the Finnish children still held in the camps. When it has not been possible to repatriate individuals, the State party has sought, given the difficult circumstances and with the aim of primarily protecting the safety of children, opportunities and ways to ensure the rights and wellbeing of the Finnish children residing at the Al-Hol camp by other available means, to the extent it has been possible. The measures undertaken have included a remote paediatrician and a remote school arrangement for the Finnish children in Al-Hol.

Authors' additional observations

7.1 In their submission of 11 February 2021, the authors confirmed that S., K. and J. returned to Finland with their mother on 31 May 2020. However, they argue that the communication should not be declared inadmissible with regard to the author O.M. because S., K. and J. have suffered from the violations of the Convention during they stay in the camp from the spring of 2019 to May 2020. During this time, the State party did not use the means available to protect them.

7.2 The authors mention that on 16 December 2020, the State party's Ombudsman issued a decision on K.K.'s claim in which it acknowledged no duty of the Ministry to repatriate the children, but underlined the need to respect the fundamental human rights of the children.

7.3 The authors submit that while the Finnish Government stated in the summer of 2019 its public position not to help the children in the camp, it nonetheless changed its position in December 2019 by committing itself to the repatriation of the children from the Al-Hol camp. But while the Finnish Embassy in Turkey granted travel documents to families that left the camp on their own initiative and by their own means – including S., K., J. and their mother

– it did not do anything to assist these families to leave the camp. The State party has thus violated their right to protection during their stay in the camp.

7.4 As to the State party's allegation that it has sought to ensure the wellbeing of the children in the camp, the authors have not received any information about such measures from their relatives in the camp. It was the UNHCR that has provided subsistence to families in Al-Hol. The authors' relatives in the camp have never seen any Finnish delegation visiting the camp, but they did see a Swedish delegation.

State party's observations on the merits

8.1 On 9 June 2022, the State party submitted its observations on the merits. It reiterates its plea for inadmissibility and adds that the allegations under articles 39 and 40 of the Convention and article 7 of the Optional Protocol on the involvement of children in armed conflict are entirely speculative because they refer only to possible and hypothetical future circumstances. It also notes that while the authors mention a request made before the child protection authority, they have not appealed that decision. The State party also recalls the Government resolution UM/2019/203 on guidelines for repatriation of Finnish nationals from the refugee camp in Al-Hol in Syria¹² and reiterates its "unequivocal and common resolve to repatriate the children from the camp[s] as soon as possible."

8.2 On the merits, the State party considers that there has been no violation of articles 2, 20, 24 (4) and 37 of the Convention. The claim under article 2 of the Convention, in particular, appears to be a mere speculation and thus lacks substantiation for the purposes of admissibility. The State party argues that, in the special circumstances of the case, it is unclear whether the communication is compatible with the provisions of the Convention and the Optional Protocol on the involvement of children in armed conflict concerning jurisdiction, in particular article 2 and 6 (1), respectively.

8.3 The State party notes that the decisions to repatriate a number of Finnish children together with their mothers have been taken on a case-by-case assessment, with the best interests of the child as a primary consideration, and using all available information to evaluate the possible risks for national security. The requests for consular assistance and/or repatriation have been registered by the Consular Services of the Ministry for Foreign Affairs. Both the requests from the persons themselves and those of their relatives (in Finland) have been registered and acted upon with the condition that, in accordance with the applicable legislation concerning personal data guaranteeing the protection of the right to privacy, the relatives have not always been entitled to all personal information concerning the detained individuals.

8.4 The State party submits that since late 2019/early 2020, the competent Finnish authorities have maintained regular contact with every detained individual who has been willing to engage with them. This has included both physical meetings in the camps and systematic, almost daily remote contacts. The repatriated 35 individuals previously detained in the camps in north-east Syria include all the individuals who have requested consular assistance from the Finnish state either directly or indirectly. As to the approximately 10 individuals who remain detained in the camps – most of them being children – the State party declares that, despite the best efforts by the Government, and for reasons beyond the Government's control, Finnish authorities have so far not been able to repatriate these remaining individuals.

8.5 In this connection, the State party observes that none of the adult individuals still in detention have requested help for their children or for themselves or shown any disposition to engage with Finnish government representatives. Under its national consular legislation, it is not possible for the public authorities to repatriate citizens against their will.

¹² The designated competent authority is a Foreign Service official titled Special Envoy, appointed by the Minister for Foreign Affairs. The Special Envoy will direct the activities of the authorities and make the repatriation decisions in compliance with the Constitution of Finland, international treaty obligations and applicable national legislation, on a case by case basis.

8.6 The State party also mentions that the repatriation of Finnish children and their mothers has at no stage depended solely upon the will of its Government because the so-called Autonomous Administration of North East Syria, which is a non-state actor in control of the territory, has not been willing to hand over families – children together with their mothers – to state representatives without extensive negotiations on a wide variety of issues. Indeed, since December 2019, the State party has repeatedly and explicitly requested to repatriate Finnish children and their mothers, but the local authority has only consented to individual handovers after lengthy engagements. For example, before the local authority consented to a joint repatriation of some Finnish and German families in December 2020, the negotiations lasted for almost one year.

8.7 Moreover, before June 2021, the stated policy of the local administration, as communicated to the State party, was to hand over only orphans and special humanitarian cases for repatriation, and, as for the overwhelming majority of European nationals, the primary objective of the authority was to put the adults on trial locally and not to hand families over for repatriations before that. The State party notes that the local trials have not materialized. In May 2021, despite a prior agreement, the local authority refused to hand one family over to Finnish representatives who had travelled to north-east Syria for that purpose.

8.8 However, in June 2021, the position of the local authority changed. It has since then shown more willingness to hand over European nationals to their respective states. This includes the family that the authority refused to hand over in May 2021, which was successfully repatriated in July 2021.

8.9 The State party notes that it has not been possible to repatriate only the children and, thus, separate the children from their mothers because the local authority in control of the camps – referring explicitly to the Convention – does not allow for this separation, except only in the most urgent medical cases. In turn, the Finnish authorities are not able to request the separation of a child from his or her mother, as the sole authority materially capable to effect such a separation is a non-state armed group.

8.10 The State party further notes that the authors do not specify or substantiate in any way the alleged violations of articles 6, 19, 24, 27 and 28. It notes that in December 2019, the Finnish authorities organized a remote paediatrician, on call and at the mothers' disposal, for consultations concerning the children's health issues. In April 2020, another remote service – a Finnish school of distant learning – was introduced. The teaching was possible through mobile devices that the mothers had at their disposal. Altogether, 22 Finnish children in Al-Hol took part in daily lessons and assignments, in Finnish language, mathematics, science and English. Helsingin Sanomat, the largest newspaper in Finland, published on 3 November 2021 an interview of a teacher who had taught Finnish children in Al-Hol.¹³

8.11 At present, the remote paediatrician remains at the disposal of the individuals in the camps, although mobile connections have been severely weakened since the summer of 2021. The remote school has had to halt its operations temporarily, until the connections may eventually be restored. For the State party, it is evident that the Finnish authorities have, within their jurisdiction and to the maximum extent possible, ensured the survival and development of the child and taken all appropriate legislative, administrative, social and educational measures to protect the children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.

8.12 Finally, as to the alleged violations of articles 39 and 40 of the Convention and 7 of the Optional Protocol on the involvement of children in armed conflict, the State party notes that the children already having returned to Finland have benefited, for example, of the measures referred to in the Child Welfare Act. Thus, they have been provided with an opportunity to go to school or to attend pre-primary education. For the State party, it is evident that the Finnish authorities have, within their jurisdiction, taken all appropriate measures to promote physical and psychological recovery and social reintegration and concerning the rehabilitation and social reintegration of the children.

¹³ Copy of the article on file.

8.13 On 15 August 2022, the State party provided further details as to the support measures that are available for children returning from conflict areas and their closed relatives.

Authors' comments on the State party's observations

9. In their comments dated 11 July 2022, the authors contested the State party's submissions.¹⁴ In particular, they insisted that they had not received any formal decision from the child protection authorities, hence there was no concrete decision that they could have appealed.

Issues and proceedings before the Committee

Consideration of admissibility

10.1 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.

10.2 The Committee notes the State party's uncontested statement that S., K. and J. left the Al-Hol camp on their own initiative together with their mother and arrived in Finland on 31 May 2020. In light of this information, the Committee considers that the communication based on the State party's failure to repatriate S., K. and J. has become moot and therefore decides to discontinue this part of the communication.

10.3 The Committee notes the State party's argument that the authors have not established that they acted with either the child victims' or their mothers' consent, contrary to the requirements of article 5 of the Optional Protocol. It further notes the State party's argument that the authors have not provided the identities and have also not established that they act with the consent of the other 33 Finish children held in the camps or their mothers. The Committee notes the authors' argument based on the child victims' age, the lack of means of communication and on the fact that the present communication is clearly in the best interests of the children as the aim is to end their detention in deplorable and life-threatening conditions in the camp. It finally notes the authors' argument that 33 other children of Finish nationality are in a similar situation. The Committee recalls that, pursuant to article 5 (2) of the Optional Protocol, where a communication is submitted on behalf of an individual or group of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent. The Committee considers that, in the particular circumstances of the present case, the child victims and their mothers have limited communication with the authors, which deprives them of any realistic possibility to provide a written consent. It also notes that the present communications appear to be in the best interests of the child victims. Therefore, the Committee considers that article 5 of the Optional Protocol does not constitute an obstacle to the admissibility of the present communication submitted on behalf of S.N., Mh. and Mu.

10.4 The Committee considers, however, that the authors have failed to justify their legitimation to act on behalf of the other children who are not their relatives, or to justify that the relatives of these children would be unable to file a communication with the Committee on their behalf. The Committee therefore considers that the authors lack *ius standi* to represent other children of Finish nationality held in the camp. The Committee therefore declares the communication filed on behalf of these children inadmissible pursuant to article 5 (2) of the Optional Protocol.

10.5 The Committee notes the State party's argument that the communication is inadmissible for non-exhaustion of domestic remedies. The Committee notes the authors' statement that they filed requests for child protection measures to the child protection authority in Helsinki and to the Chancellor of Justice, to no avail, and that domestic remedies are unavailable and ineffective in the context of all requests for protection and/or repatriation of children and their mothers. The Committee notes that the State party has not demonstrated, including through the jurisprudence of the national courts, that the authors had at their

¹⁴ They make reference to the Committee's decision in *L.H. and others v. France* (CRC/C/85/D/79/2019–CRC/C/85/D/109/2019).

disposal any judicial remedy that was available and effective to contest the administrative refusal to repatriate their relatives. Under these circumstances, the Committee considers that there is no obstacle to the admissibility of the communication under article 7 (e) of the Optional Protocol.

10.6 The Committee notes the State party's argument that the authors' claims are inadmissible *ratione temporis* to the extent that they refer to events that occurred before the entry into force of the Convention for the State party. However, the Committee notes the authors' declaration that their communication refers to events that occurred after the entry into force of the Convention for the State party, and that, through its inaction, the State party has allowed for the alleged violations to continue after that date. In this connection, the Committee notes the State party's assertion that it has maintained regular contact with every detained individual who has been willing to engage with it, including through both physical meetings in the camps and systematic, almost daily remote contacts. In light of the authors' continued life-threatening situation in the camps and the fact that this situation was well known to the State party after the entry into force of the Optional Protocol, the Committee considers that the State party's failure to remedy it engaged the Committee's competence *ratione temporis* to examine the alleged violations of the Convention. The Committee therefore concludes that it is not precluded by article 7 (g) of the Optional Protocol from examining the communication.

10.7 As to the issue of jurisdiction, the Committee notes the State party's argument that it cannot be held accountable for situations that it did not create, over which it has no effective control and that are the actions of other States or non-State actors, solely on the ground that the children are its nationals. The State party further argues that the children are not under the jurisdiction of the State party because they are not under the effective control of the State party, either through its agents or through a local authority over which the State party has control.

10.8 The Committee is being called upon to determine if the State party has competence *ratione personae* over the children detained in the Al-Hol camp in north-eastern Syrian Arab Republic. The Committee recalls that, under the Convention, States have the obligation to respect and ensure the rights of the children within their jurisdiction, but the Convention does not limit a State's jurisdiction to "territory".¹⁵ A State may also have jurisdiction in respect of acts that are performed, or that produce effects, outside its national borders.¹⁶ In the migration context, the Committee has held that under the Convention, States should take extraterritorial responsibility for the protection of children who are their nationals outside their territory through child-sensitive, rights-based consular protection.¹⁷ In its decision on *C.E. v. Belgium*, the Committee considered that Belgium had jurisdiction to ensure the rights of a child located in Morocco who had been separated from a Belgian-Moroccan couple that had taken her in under the *kafalah* system.¹⁸ The Committee finally recalls that it has already examined three similar communications against France, where it concluded that France did exercise jurisdiction over the children who were detained in the camps in north-eastern Syrian Arab Republic.¹⁹

10.9 In the present case, the Committee notes that it is uncontested that the State party was aware of the situation of extreme vulnerability of the children, who were detained in a refugee camp in a conflict zone. Detention conditions have been internationally reported as

¹⁵ Territorial jurisdiction was deliberately left out of article 2 (1) of the Convention. See Office of the United Nations High Commissioner for Human Rights, *Legislative History of the Convention on the Rights of the Child: Volume 1*, (New York, United Nations, 2007), pp. 332–333.

¹⁶ A/70/303, para. 33; www.ohchr.org/Documents/Issues/Terrorism/UNSRsPublicJurisdictionAnalysis2020.pdf, para. 8.

¹⁷ Joint general comment No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 23 of the Committee on the Rights of the Child (2017), paras. 17 (e) and 19.

¹⁸ CRC/C/79/D/12/2017.

¹⁹ *L.H. and others v. France* (CRC/C/85/D/79/2019–CRC/C/85/D/109/2019) and *F.B. and others v. France* (CRC/C/86/D/77/2019).

deplorable.²⁰ The detention conditions pose an imminent risk of irreparable harm to the children's lives, their physical and mental integrity and their development. The Committee recognizes that the effective control over the camp was held by a non-State actor that had made it publicly known that it did not have the means or the will to care for the children and women detained in the camps and that it expected the detainees' countries of nationality to repatriate them. The Committee also notes that the Independent International Commission of Inquiry on the Syrian Arab Republic has recommended that countries of origin of foreign fighters take immediate steps towards repatriating such children as soon as possible.²¹ In the circumstances of the present case, the Committee observes that the State party, as the State of the children's nationality, 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. These circumstances include the State party's rapport with the Syrian Democratic Forces, the latter's stated willingness to cooperate in repatriations, and the fact that at least 26 children have been successfully repatriated from the camps in north-east Syria since 2019.²²

10.10 In light of the above, the Committee concludes that the State party does exercise jurisdiction over the children who are the subject of the communication.

10.11 The Committee considers that the authors have failed to sufficiently substantiate their claims under article 40 of the Convention and article 7 of its Optional Protocol on the involvement of children in armed conflict, and declares them inadmissible under article 7 (f) of the Optional Protocol.

10.12 However, the Committee finds that the authors' claims under articles 2, 6, 19, 20, 24, 27, 28, 37 and 39 of the Convention have been sufficiently substantiated and proceeds to consider them on the merits.

Consideration of the merits

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

11.2 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 Al-Hol camp 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.

11.3 The Committee notes the State party's argument that repatriation of Finnish children detained in the Al-Hol camp 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. The Committee reiterates the point made in its previous similar cases of repatriation brought against France,²³ and considers that the State party, as the State of the children's nationality and by virtue of the information available to it on the Finnish children being held in the Al-Hol camp 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 at least 26 Finnish children without reporting any incidents relating to their repatriation, other than the delays in negotiations with local authorities, 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

²⁰ See the conference room paper submitted by the Independent International Commission of Inquiry on the Syrian Arab Republic to the Human Rights Council at its forty-third session. Available at www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session43/Pages/ListReports.aspx.

²¹ *Ibid.*, para. 99 (c).

²² *L.H. and others v. France*, para. 9.7; and *F.B. and others v. France* (admissibility), paras. 8.7-8.8.

²³ *F.B. and others v. France* (CRC/C/89/DR/77/2019, CRC/C/89/DR/79/2019 and CRC/C/89/DR/109/2019), para. 6.4.

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.

11.4 The Committee notes the authors' argument that the child victims, most of whom are young children, are barely surviving in the Al-Hol camp where they are being held, which is 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 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. 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.²⁴ 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.²⁵ The State party is well aware of the situation and has repatriated several of these children of its own accord.

11.5 With respect to article 6 of the Convention, the Committee notes the authors' arguments, which are supported by evidence, 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 Al-Hol camp. The Committee notes that the State party does not deny that the conditions in the camp are as described by the authors. 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 (1) of the Convention.²⁶

11.6 As regards the authors' claims under article 37 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, constitutes cruel, inhuman or degrading treatment or punishment, in violation of article 37 (a) of the Convention.²⁷

11.7 Given that the State party is aware of the prolonged detention of these Finnish 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.²⁸

11.8 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 article 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.²⁹

11.9 Having reached this conclusion, the Committee does not consider it necessary to examine whether the same facts constitute a violation of articles 2, 19, 20, 24, 27, 28 and 39 of the Convention.³⁰

²⁴ *F.B. and others v. France* (merits), para. 6.6.

²⁵ 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).

²⁶ *F.B. and others v. France* (merits), para. 6.7.

²⁷ *Ibid.*, para. 6.8.

²⁸ *Ibid.*, para. 6.9.

²⁹ *Ibid.*, para. 6.11.

³⁰ *Ibid.*, para. 6.12.

12. 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 6 (1) and 37 (a) of the Convention.

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

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

(c) 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.

14. 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 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. This case is very similar to the communications Nos. 77/2019, 79/2019 and 109/2019 *F.B. et al. and D.A. et al. against France*, but includes a few differences too. In case 109/2019, the authors were slightly older and most of them were born in France, while some were born in Syria. In the present case, all children were born in Syria, and were still babies under the age of three at the time of the submission of the Communication.

3. 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.

4. We take note that the very last Report of the Independent International Commission of Inquiry on the Syrian Arab Republic (A/HRC/51/45), dated 17 August 2022, states that:

“97. Nearly 58,000 individuals, including some 17,000 women and 37,000 children, remain unlawfully held in the Hawl and Rawj camps. More than 17,000 of the children are Iraqi. Compounded by the COVID-19 pandemic and the economic collapse across the Syrian Arab Republic, humanitarian conditions in the camps have plummeted. There is no regular water supply; insufficient sanitation; lack of adequate nutrition, health care and housing; and tents in the camps are in need of repair after years of exposure to the elements. In some areas, 10 families share one latrine. Everyday survival for children continues to be a struggle.

98. (...) The situation of children in the camps is particularly concerning. They lack sufficient health care and access to education and many are traumatized by the violence within the camp. Young boys in the camps risk being transferred to military detention centres alongside adult alleged former Da’esh fighters once they enter puberty, doomed to indefinite detention without legal recourse. Scores of boys aged between 10 and 12 held in the Hawl camp annex have been separated from their mothers, with some placed in military detention, where adult men are also detained. (...)

103. The continuing blanket internment of nearly 58,000 individuals in the Hawl and Rawj camps cannot be justified and amounts to unlawful deprivation of liberty. The 37,000 children in this group are deprived of their most basic rights as children. There are reasonable grounds to believe that the conditions in both camps may amount to cruel or inhuman treatment, further compounded by the deteriorating security situation inside the camps and the related increasing risks to internees. (...).”

These statements, which are increasingly alarming, are well known to States and should lead them to react with all due speed and determination.

5. Under article 6 (2) of the Convention, 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; one of the children almost died on several occasions, 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 very young children who have injuries or specific illnesses, which is the case for all children involved in this communication. The lack of access to early childhood education will also harm their development in the long term.

6. 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.

7. 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."³¹

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

9. 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.

10. Finally, with regard to the 33 children mentioned in the Communication, who have not been identified in a more precise manner, with the result that the Committee has not been able to include them in the examination of this Communication, we are of the opinion that all the information available to the international community, including the State Party, requires that extremely thorough investigations be carried out to try to identify them and provide them with the most urgent assistance that their situation requires. The fact that apparently no adult is able to speak for them and defend their rights demonstrates that they are in an even more vulnerable situation, which implies that even greater efforts must be made by the State Party to ensure respect for their fundamental rights.

³¹ 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.