

Table of Views adopted by the Committee on the Rights of the Child and Follow-up status

Communication	Subject matter / Views	Follow-up status
Non-refoulement		
<p>3/2015 I.A.M. v Denmark</p>	<p><u>Subject</u>: Deportation of girl to Puntland, where she would be at risk of being submitted to female genital mutilation.</p> <p><u>Views</u>: The Committee observed that:</p> <p>a) The Refugee Appeals Board limited its assessment to a general reference to a report on central and southern Somalia, without assessing the specific and personal context in which the author and her daughter would be deported and without taking the best interests of the child into account, in particular in light of the persistently high prevalence of female genital mutilation in the Puntland State of Somalia and the fact that the author would be returned as a single mother, without a male supporting network;</p> <p>b) The State party has argued that the author, by having left Somalia, appears to be an independent woman with considerable personal strength who must be able to resist any social pressure and thus be able to protect her daughter from female genital mutilation. However, the Committee notes that the author's departure could similarly be understood as an inability to resist pressure. In any event, the Committee considers that the rights of the child under article 19 of the Convention cannot be made dependent on the mother's ability to resist family and social pressure, and that State parties should take measures to protect the child from all forms of physical or mental violence, injury or abuse in all circumstances, even where the parent or guardian is unable to resist social pressure;</p> <p>c) The evaluation of a risk for a child to be submitted to an irreversible harmful practice such as female genital mutilation in the country to which he or she is being returned should be adopted following the principle of precaution, and where reasonable doubts exist that the receiving State cannot protect the child against such practices, State parties should refrain from returning the child.</p> <p>The Committee therefore concluded that the State party failed to consider the best interests of the child when assessing the alleged risk of the author's daughter to be subjected to female genital mutilation if returned to the Puntland State of Somalia, and to take proper</p>	<p>FU discontinued</p>

	<p>safeguards to ensure the child's wellbeing upon return, in violation of articles 3 and 19 of the Convention.</p> <p><u>Remedy:</u> The State party should provide the author with adequate reparation, including financial compensation and rehabilitation for the harm suffered. The State party is also under an obligation to prevent similar violations from occurring in the future, in particular by revising the Organic Act No. 4/2015 on safeguarding the security of citizens, which entered into force on 1 April 2015. Particularly, it should revise its tenth additional provision concerning the special regime applicable in Ceuta and Melilla, that legalizes the State party's practice of indiscriminate summary deportations at the border.</p>	
<p>4/2017 D.D. v Spain</p>	<p><u>Subject:</u> Summary deportation of unaccompanied migrant child who attempted to jump over the border fence in the Spanish enclave in Melilla</p> <p><u>Views:</u> The Committee noted that: (a) the author arrived in Spain as an unaccompanied child deprived of his family environment; (b) he was left sitting on top of one of the Melilla border fences for several hours, without receiving any form of assistance from the Spanish authorities; (c) as soon as he climbed down from the fence, he was arrested, handcuffed and returned directly to Morocco by the Spanish Civil Guard; and (d) in the period between his coming down the fence and being returned to Morocco, the author did not receive any legal assistance, was not offered the assistance of an interpreter to enable him to communicate properly, was not subjected to an initial assessment process to determine whether he was an unaccompanied child, was not given the benefit of the doubt and treated as a child, did not undergo an identity check or interview and was not asked about his specific personal circumstances and/or his particular vulnerabilities at that time.</p> <p>The Committee further noted that, before returning the author to Morocco, the State party did not ascertain the author's identity, did not ask about his personal circumstances and did not conduct a prior assessment of the risk, if any, of persecution and/or irreparable harm in the country to which he was to be returned. The Committee considers that in light of the situation of violence against migrants in the border area in Morocco and of the ill-treatment to which the author in particular was subjected, the failure to carry out an assessment, prior</p>	<p>FU ongoing. FU information to be included in the FU report of the 84th session</p>

	<p>to his deportation, of the risk of irreparable harm to the author and the failure to take his best interests into account violate articles 3 and 37 of the Convention.</p> <p>The Committee considered that, in the light of the circumstances of the case, the fact that the author, as an unaccompanied child, did not undergo an identity check and assessment of his situation prior to his deportation and was not given an opportunity to challenge his eventual deportation violates his rights under articles 3 and 20 of the Convention.</p> <p>Lastly, the Committee considered that the manner in which the author was deported, as an unaccompanied child deprived of his family environment and in a context of international migration, after having been detained and handcuffed and without having been heard, without receiving the assistance of a lawyer or interpreter and without regard to his needs, constitutes treatment prohibited under article 37 of the Convention.</p> <p><u>Remedy:</u> The State party should provide the author with adequate reparation, including financial compensation and rehabilitation for the harm suffered. The State party is also under an obligation to prevent similar violations from occurring in the future, in particular by revising the Organic Act No. 4/2015 on safeguarding the security of citizens, which entered into force on 1 April 2015. Particularly, it should revise its tenth additional provision concerning the special regime applicable in Ceuta and Melilla, that legalizes the State party's practice of indiscriminate summary deportations at the border.</p>	
Age determination of unaccompanied migrant children		
<p>11/2017 N.B.F. v Spain</p>	<p><u>Subject:</u> Subjecting unaccompanied child to medical test to determine his age (Greulich & Pyle test); detention in a migrant detention centre for adults pending deportation</p> <p><u>Views:</u> The Committee considered that the determination of the age of a young person who claims to be a minor is of fundamental importance, as the outcome determines whether that person will be entitled to or excluded from national protection as a child, and his/her entitlement to the rights recognised in the Convention. It is therefore imperative that there be due process to determine a person's age, as well as the opportunity to challenge the</p>	<p>FU ongoing. FU report of the 82nd session.</p>

	<p>outcome through an appeals process. While that process is under way, the person should be given the benefit of the doubt and treated as a child.</p> <p>The Committee noted that: (a) for the determination of his age, the author, who arrived in Spanish territory undocumented, underwent medical tests consisting of an X-ray of his left hand and, allegedly, a physical examination, with no additional tests, psychological tests in particular, being administered, and there is no record of the author having been interviewed as part of the process; (b) on the strength of the tests carried out, the medical centre in question determined that the author's bone age was more than 19 years according to the Greulich and Pyle atlas, without indicating a possible margin of error; and (c) on the basis of this medical result, the juvenile prosecution service of the Provincial High Court of Granada issued a decree stating that the author was of legal age.</p> <p>The Committee considers that States parties should appoint a qualified legal representative, with the necessary linguistic skills, for all young persons claiming to be minors, as soon as possible on arrival and free of charge. The Committee is of the view that the provision of a representative for such persons during the age-determination process is to give them the benefit of the doubt and is an essential guarantee of respect for their best interests and their right to be heard. Failure to do so implies a violation of articles 3 and 12 of the Convention, as the age-determination process is the starting point for the application of the Convention.</p> <p><u>Remedy:</u> The State party is also under an obligation to prevent similar violations in the future, in particular by ensuring that all procedures for determining the age of possible unaccompanied children are carried out in a manner consistent with the Convention and that, in the course of such procedures, the documentation submitted by the persons subjected to them is taken into consideration and that these persons are promptly assigned a qualified legal representative free of charge or that their freely designated lawyers are recognized.</p>	
<p>16/2017 L. v Spain</p>	<p><u>Subject:</u> Subjecting unaccompanied child to medical test to determine his age (Greulich & Pyle test); detention in a migrant detention centre for adults pending deportation; non-consideration of birth certificate submitted thereafter</p>	<p>FU ongoing. FU information to be included in the FU report of the 84th session</p>

Views: The Committee recalled its ruling in CRC case 11/2017 regarding the importance of the age determination process and the benefit of the doubt.

The Committee noted that: (a) for the determination of his age, the author, who arrived in Spanish territory undocumented, underwent a medical test consisting of an X-ray of his left hand, with no additional tests, psychological tests in particular, being administered, and there is no record of the author having been interviewed as part of the process; (b) on the strength of the single test carried out, the hospital in question determined that the author's bone age was more than 19 years according to the Greulich and Pyle atlas, without indicating a possible margin of error; (c) on the basis of this result, the Public Prosecution Service of Almería Province issued a decree stating that the author was an adult; and (d) the Public Prosecution Service did not consider the copy of the birth certificate provided by the author on 22 May 2017 as the basis of a potential review of the age determination decree.

The Committee also noted the author's allegations that he was not appointed a guardian or representative to defend his interests as a possible unaccompanied child migrant before or during the age determination process and recalls its ruling in the CRC case 11/2017 with regard to this matter, finding as well a violation of articles 3 and 12 of the Convention, as the age determination process is the starting point for the application of the Convention. The failure to provide timely representation can result in a substantial injustice.

The Committee also noted the author's allegations that the State party violated his rights insofar as it altered elements of his identity by attributing to him an age and a date of birth that did not correspond to the information on his birth certificate, even after the author had presented a copy of the certificate to the Spanish authorities. The Committee considers that a child's age and date of birth form part of his or her identity and that States parties have an obligation to respect the right of the child to preserve his or her identity without depriving him or her of any elements of that identity. In the present case, the Committee noted that, although the author provided the Spanish authorities with a copy of his birth certificate, which contained data pertaining to the child's identity, the State party failed to respect the identity of the author by denying that the birth certificate had any probative value, without a prior formal assessment of the data contained in the certificate by a competent authority

	<p>and without having, alternatively, checked the data contained in the certificate with the authorities of the author's country of origin. Consequently, the Committee found that the State party violated article 8 of the Convention.</p> <p><u>Remedy:</u> The State party must provide the author with effective reparation. The State party is also under an obligation to prevent similar violations in the future, in particular by ensuring that all procedures for determining the age of possible unaccompanied children are carried out in a manner consistent with the Convention and that, in the course of such procedures, the documentation submitted by the persons subjected to them is taken into consideration and that these persons are promptly assigned a qualified legal representative free of charge or that their freely designated lawyers are recognized.</p>	
<p>22/2017 B. v Spain</p>	<p><u>Subject:</u> Unaccompanied minor determined as an adult following his refusal to undergo medical test to determine his age; rejection of his representative to assist him during the age determination process; non-consideration of official identity documents issued by his country of origin, including full birth certificate and biometric passport.</p> <p><u>Views:</u> The Committee recalls its ruling in case 11/2017 regarding the fundamental importance of the age determination process as the outcome determines whether that person will be entitled to or excluded from national protection as a child, and regarding the fact that States parties should appoint a qualified legal representative to all young persons claiming to be minors, as the absence of timely representation can result in a substantial injustice.</p> <p>The Committee also recalls joint general comment No. 4 / 23, which states that available documents should be considered genuine unless there is proof to the contrary. The Committee thus considers that a person should not be declared to be an adult exclusively on the basis of a refusal to undergo medical tests. The Committee noted that: (a) the officials identity documents submitted by the author during the age-determination procedure were at no point regarded as valid prior to the age-determination decree declaring him to be an adult and nor was his biometric passport, which was subsequently provided to the authorities in support of a request for review of the age-determination decree; (b) consequently, the State party considered the author as an undocumented immigrant and requested him to undergo medical tests; (c) based on the author's refusal to undergo the</p>	<p>FU ongoing. FU information to be included in the FU report of the 84th session.</p>

tests because he held originals of official identity documents, the Office of the Prosecutor for Minors issued a decree stating that the author was an adult; (d) neither a guardian nor a lawyer was present to assist the author at the hearing of age determination.

Thus, the Committee considered that the age-determination procedure was not accompanied by the safeguards needed to protect the author rights under the Convention. The failure to consider the author's original copies of official identity documents issued by a sovereign country, the declaration of adulthood in response to the author's refusal to undergo age-determination tests and the rejection of his representative to assist him during this process, constitute a **violation of articles 3 and 12 of the Convention**.

Furthermore, as a child's age and date of birth form part of identity and States parties have an obligation to respect the right of the child to preserve his or her identity without depriving him or her of any elements of that identity, the Committee finds that the State party **violated article 8 of the Convention** by rejecting as evidence all the official documents attesting the age of minor, without even assessing their validity or verifying the information with the authorities of the country of origin.

In addition, the State's failure to provide protection in response to his situation as an unprotected, highly vulnerable unaccompanied child migrant who was ill, even after the author had submitted to the Spanish authorities identity documents confirming that he was a child, constitutes a **violation of articles 20 (1) and 24 of the Convention**.

Remedy: The State party must provide the author with effective reparation, including the provision of the opportunity for the author to regularize his administrative situation. The State party is also under an obligation to prevent similar violations in the future, in particular by ensuring that all procedures for determining the age of possible unaccompanied children are carried out in a manner consistent with the Convention and that, in the course of such procedures, the documentation submitted by the persons subjected to them is taken into consideration and that these persons are promptly assigned a qualified legal representative free of charge or that their freely designated lawyers are recognized.

Family reunification

**12/2017 C.E. v
Belgium**

Subject: Denial of visa to Moroccan child adopted by Belgian-Moroccan couple under the form of kafalah

Views: The Committee observed that the Belgian immigration authorities refused to grant a visa mainly because kafalah arrangements did not confer a right of residence and because the authors had failed to demonstrate that: (a) C.E. could not be taken care of by her biological family in Morocco, (b) the authors could not ensure her education by leaving her in Morocco, and (c) the authors had the financial means to support C.E. The Committee observes, however, that these reasons, which are general, reflect a failure to consider C.E.'s specific situation — in particular her situation as a child born to an unknown father and abandoned at birth by her biological mother — so that the possibility that she could be taken care of by her biological family seems unlikely and is in any case not supported. The argument that the authors lacked the necessary financial means does not appear to take account of the fact that the Moroccan authorities' decision to authorize the placement by kafalah had taken into consideration the authors' social and financial situation. The Moroccan authorities acknowledged that the authors' situation was satisfactory, by granting the authors a kafalah arrangement for C.E., while the Belgian authorities did the same by allowing the authors to act as C.E.'s special guardians. The State party questions, in general terms, the Moroccan proceedings that led to the kafalah arrangement but does not specify in what way those proceedings did not ensure the necessary safeguards. Lastly, the idea of leaving C.E. in Morocco would seem to ignore the difference between attending to a child's educational needs while leaving him or her in an orphanage and attending to his or her emotional, social and financial needs while living with the child as a parent would. That argument suggests that the immigration authorities have not given any consideration to the emotional ties that have bound the authors and C.E. since 2011. In addition to the legal relationship established by kafalah, the immigration authorities seem to have taken no account of N.S.'s life with C.E. since the latter's birth or the de facto family ties that have naturally been forged by their life together over the years.

**FU discontinued with an "A"
assessment (full compliance)**

The Committee observed in this case that C.E. was 5 years old when the second decision on the authors' application for a humanitarian visa was made and that she would have been perfectly capable of forming views of her own regarding the possibility of living permanently with the authors in Belgium. The Committee does not share the State party's view that it is not necessary to take the views of a child into account in proceedings conducted to determine whether he or she should be issued a residence permit, quite on the contrary. The implications of the proceedings in the authors' case are of paramount importance for C.E.'s life and future, insofar as they are directly tied to her chances of living with the authors as a member of their family.

The Committee concluded that the State party did not specifically consider the best interests of the child when it assessed the application for a visa for C.E. and did not allow her the right to be heard, in breach of articles 3 and 12 of the Convention.

The Committee considered that article 10 of the Convention does not oblige a State party in general to recognize the right to family reunification for children in kafalah arrangements. The Committee is nonetheless of the opinion that, in assessing and determining the best interests of the child for the purpose of deciding whether to grant C.E. a residence permit, the State party is obliged to take into account the de facto ties between her and the authors (N.S. in particular), which have developed based on the kafalah. The Committee notes that, in assessing the preservation of the family environment and the maintenance of ties as factors that need taking into account when considering the child's best interests, "the term 'family' must be interpreted in a broad sense to include biological, adoptive or foster parents or, where applicable, the members of the extended family or community as provided for by local custom (art. 5)". In view of the fact that no consideration was given to the de facto family ties that existed in this case, and since it has been more than seven years since the authors submitted an application for a visa, the Committee concludes that the State party has failed to comply with its obligation to deal with the authors' request, which was equivalent to an application for family reunification, in a positive, humane and expeditious manner and that it has failed to ensure that the submission of the request entailed no

adverse consequences for the applicants and for the members of their family, in **violation of article 10 of the Convention**.

Remedy: The State party is under an obligation to urgently reconsider the application for a visa for C.E. in a positive manner, while ensuring that the best interests of the child are a primary consideration and that C.E.'s views are heard. When considering the best interests of the child, the State party should take into account the de facto family ties established between the authors and C.E. The State party is also under an obligation to do everything necessary to prevent similar violations from occurring in the future.