



# Convention on the Rights of the Child

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## Committee on the Rights of the Child

### Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 120/2020\*, \*\*, \*\*\*

<i>Communication submitted by:</i>	K.X.B.R. and A.R.U. (represented by counsel, Gabriella Tau, Boris Wijkström and Sarah Frehner of the Swiss Advocacy Centre for Migrants' Rights)
<i>Alleged victims:</i>	A.C.R.B., K.A.R.B., E.E.R.B., A.A.R.B., A.A.R.B. and L.L.R.B.
<i>State party:</i>	Switzerland
<i>Date of communication:</i>	9 July 2020 (initial submission)
<i>Subject matter:</i>	Expulsion of six children, nationals of El Salvador, and their parents (unsuccessful asylum-seekers) to El Salvador, where they might be subjected to irreparable harm
<i>Substantive issues:</i>	Best interests of the child; right to life; prohibition of torture and ill-treatment; right to health and refugee status
<i>Articles of the Convention:</i>	3, 6 (2), 12, 24, 27 and 37 (a)

1. The authors of the communication are K.X.B.R., a Salvadorian national born on 25 February 1989, and her husband, A.R.U., a Salvadorian national born on 28 October 1987. They are submitting the communication on behalf of their six children: A.C.R.B., born on 22 July 2019, K.A.R.B., born on 7 April 2017, E.E.R.B., born on 6 October 2014, A.A.R.B., born on 28 August 2011, A.A.R.B., born on 31 December 2009, and L.L.R.B. born 30 March 2008, all Salvadorian nationals. The authors claim that their deportation to El Salvador would constitute a violation by the State party of their children's rights under articles 3, 6 (2), 12, 24, 27 and 37 (a) of the Convention owing to the risk of irreparable harm they would suffer in that country. The authors are represented by counsel, Gabriella Tau, Boris Wijkström and

\* Adopted by the Committee at its ninety-fourth session (4–22 September 2023).

\*\* The following members of the Committee participated in the examination of the communication: Suzanne Aho, Aïssatou Alassane Moulaye, Thuwayba Al Barwani, Hynd Ayoubi Idrissi, Mary Beloff, Rinchen Chopel, Rosaria Correa, Bragi Gudbrandsson, Sopia Kiladze, Faith Marshall-Harris, Benyam Dawit Mezmur, Luis Ernesto Pedernera Reyna, Ann Skelton, Velina Todorova, Benoît Van Keirsbilck and Ratou Zara.

\*\*\* Pursuant to rule 8 (1) (a) of the Committee's rules of procedure under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, Philip Jaffé did not participate in the examination of the communication.



Sarah Frehner of the Swiss Advocacy Centre for Migrants' Rights. The Optional Protocol entered into force for the State party on 24 July 2017.

2. The authors' children, all from El Salvador and currently residing at the Federal for Asylum Centre in the canton of Fribourg, are six siblings aged between 8 months and 12 years at the time of submission of the present communication. They grew up under the thumb of two notorious gangs, "Barrio 18" and "MS 13", which perpetrate various offences, including extortion, homicide and the recruitment of children. Their daily lives were marked by fear and restrictions, including lack of access to medical care, exacerbated by their family relationship with the Barrio 18 gang leader.

3. The family sought safety and, on arrival in Switzerland on 30 January 2020, immediately applied for asylum. However, on 13 March 2020, the State Secretariat for Migration rejected their application, without first hearing the children. In response, on 23 March 2020, the authors lodged an appeal with the Federal Administrative Court, in which their main contention was that the State Secretariat had disregarded the children's best interests. That appeal was rejected on 15 April 2020.

4. On 9 July 2023, acting in accordance with article 6 of the Optional Protocol, the Committee, through its working group on communications, requested the State party to adopt interim measures by suspending the return of the authors and their six children to El Salvador while the consideration of their case was pending before the Committee.

5. On 5 February 2021, the State party submitted its observations on the admissibility and merits of the communication. It held that the authors' allegation of a violation of article 12 of the Convention due to the failure of the Federal Administrative Court to hear the oldest children was inadmissible. According to the State party, this issue was neither explicitly nor implicitly raised by the authors before the Court. In addition, the State party also argued that a separate analysis of issues relating to the merits and admissibility would be necessary in order to guarantee respect for the best interests of the children.

6. On 15 October 2021, the authors put forward their arguments, stating that during the asylum procedure, neither of the parents had been questioned about their children's situation in the country of origin. They also contended that the alleged violation of Article 12 of the Convention meant that the substantive questions should be examined in conjunction with those of admissibility.

7. On 8 December 2022, the authors requested the State Secretariat for Migration to review their asylum application. On 6 February 2023, the State party requested the suspension of consideration of the communication, relying on the principle of subsidiarity, as the authors' appeal was still pending before the national courts.

8. After a re-examination of the case prompted by the children's medical situation on 23 March 2023, the State party granted the asylum application of the authors and their children on 29 March 2023. As a result, they have obtained a temporary residence permit in the State party.

9. At its meeting of 20 September 2023, the Committee, having considered that the children no longer risked being returned to El Salvador and that the matter was therefore moot, decided to discontinue its consideration of communication No. 120/2020 in accordance with rule 26 of its rules of procedure under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

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