

2024

## Destruction and Discrimination: How France Violated the Fundamental Rights of Irregular Migrant Children in Mayotte

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### Recommended Citation

Smith, Molly E. (2024) "Destruction and Discrimination: How France Violated the Fundamental Rights of Irregular Migrant Children in Mayotte," *American University International Law Review*. Vol. 39: Iss. 2, Article 5.

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# DESTRUCTION AND DISCRIMINATION: HOW FRANCE VIOLATED THE FUNDAMENTAL RIGHTS OF IRREGULAR MIGRANT CHILDREN IN MAYOTTE

MOLLY E. SMITH\*

*Articles 2 and 3 of the United Nations Convention on the Rights of the Child (UNCRC) guarantee freedom from status-based discrimination in any state action involving children and require states to properly consider children's best interests. Despite France's position as a UNCRC state party, its government denied access to housing and conducted improper detention and expulsion procedures based on the irregular migratory status of children in its small overseas department of Mayotte. This Comment argues that France therefore violated international human rights law under UNCRC Articles 2 and 3. Furthermore, this Comment recommends three possible action steps, particularly that France should shift its focus from destruction of informal homes to construction of better housing communities by engaging in slum upgrading programs and ensuring access to fundamental rights for irregular migrant children in Mayotte.*

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I. INTRODUCTION.....	369
II. BACKGROUND .....	372
A. (DE)COLONIALIZATION AND DEPARTMENTALIZATION .....	372
B. IMMIGRATION POLICY AND PRACTICE IN MAYOTTE: TENSIONS, IRREGULARITIES, AND WUAMBUSHU .....	374
1. Wuambushu's Slum Destruction and Eviction.....	375
2. Wuambushu's Improper Detention and Expulsion.....	377
C. CHILDREN'S RIGHTS UNDER INTERNATIONAL LAW .....	379
1. Increased Protection for Children in Irregular Migratory Situations .....	379
2. UNCRC Obligations and CRC Enforcement .....	381
i. Case of A.E.A. v. Spain.....	382
ii. Role of the CRC's General Comments.....	384
III. ANALYSIS .....	384
A. THE CRC WOULD HAVE JURISDICTION IN AN INDIVIDUAL COMMUNICATION REGARDING FRANCE'S ACTIONS .....	385
1. France did not Make any Reservations or Declarations to the UNCRC or the Optional Protocol.....	386
2. A Person or Group Bringing an Individual Communication Would Likely Have an Admissible, Substantial Claim.....	387
i. A Party Would Likely Exhaust All Available and Effective Domestic Remedies .....	387
ii. A Party Would Likely Submit a Sufficiently Substantiated Claim.....	389
B. THE CRC WOULD LIKELY FIND THAT FRANCE DISCRIMINATED ON THE BASIS OF CHILDREN'S IRREGULAR MIGRATORY STATUS AND NEGLECTED TO PROPERLY CONSIDER THEIR BEST INTERESTS .....	392
1. Slum Destruction and Eviction Discriminated Against Irregular Migrant Children and Neglected Their Best Interests .....	394
2. Improper Detention and Expulsion Discriminated Against Irregular Migrant Children and Neglected Their Best Interests .....	399
IV. RECOMMENDATIONS.....	403
A. FRENCH PARTNERSHIP WITH THE U.N.-HABITAT'S PARTICIPATORY SLUM UPGRADING PROGRAMME .....	404

B. INDIVIDUAL AND ORGANIZATIONAL CAMPAIGNS TO COMPEL THE DEFENDER OF RIGHTS TO ACT.....	405
C. CRC INITIATION OF AN INQUIRY PROCEDURE REGARDING FRANCE’S ACTIONS IN MAYOTTE.....	406
V. CONCLUSION .....	408

## I. INTRODUCTION

For the nearly fifty years since Mayotte’s vote to remain under France’s rule, the two have maintained a tense relationship.<sup>1</sup> Despite the island’s French status, foreigners comprise an estimated fifty percent of its population;<sup>2</sup> many individuals irregularly migrate<sup>3</sup> from the neighboring Comoros islands.<sup>4</sup> Mayotte is an official department<sup>5</sup> of France; however, the French Constitution allows for legislative exceptions<sup>6</sup> in the laws governing the state’s overseas populations.<sup>7</sup>

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1. See discussion *infra* Part II.A.

2. Iris Derœux, *Mayotte: Four Key Dates to Explain the Migratory Tensions on the French Department*, LE MONDE (Aug. 27, 2022), [https://www.lemonde.fr/en/les-decodeurs/article/2022/08/27/mayotte-four-key-dates-to-explain-the-migratory-tensions-on-the-french-department\\_5994998\\_8.html](https://www.lemonde.fr/en/les-decodeurs/article/2022/08/27/mayotte-four-key-dates-to-explain-the-migratory-tensions-on-the-french-department_5994998_8.html).

3. See generally *Key Migration Terms*, INT’L ORG. FOR MIGRATION, <https://www.iom.int/key-migration-terms> (defining irregularly migrating persons as those moving outside regulations, laws, or international agreements).

4. *Mayotte: face à la France, le “double discours” des Comores* [*Mayotte: Facing France, the “Double Discourse” of the Comoros*], FRANCE 24 (Apr. 25, 2023) [hereinafter *Mayotte and the “Double Discourse” of the Comoros*], <https://www.france24.com/fr/france/20230425-mayotte-face-%C3%A0-la-france-le-double-discours-des-comores>.

5. See generally *Département*, ENCYC. BRITANNICA, <https://www.britannica.com/topic/departement> (defining departments as France’s largest local governmental units); see also discussion *infra* Part II.A.

6. See CONSTITUTION Oct. 4, 1958, art. 73 (Fr.), amended by Loi constitutionnelle 2008-724 du 23 juillet 2008 de modernisation des institutions de la Ve République (1) [Constitutional Law 2008-724 of July 23, 2008, on the Modernization of the Institutions of the Fifth Republic (1)], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFF. GAZETTE OF FR.], Aug. 24, 2008, p. 149 (declaring that French law automatically applies, but the government may alter it according to a specific population).

7. See, e.g., *La liberté d’aller et venir entravée pour les habitant-e-s de Mayotte: le conseil constitutionnel valide les contrôles d’identité généralisés et discrétionnaires* [*The Freedom to Come and Go Hampered for Mayotte Inhabitants: The Constitutional Council Validates Generalized and Discretionary Identity Checks*], LIGUE DES DROITS DE L’HOMME [HUM. RTS. LEAGUE] (Nov. 30, 2022) [hereinafter *Generalized and Discretionary Identity Checks*], <https://www.ldh->

Consequently, France imposes stricter, Mayotte-specific immigration laws not applicable elsewhere in French territory.<sup>8</sup> Sweeping actions aimed at confronting irregular migration on the island continue to infringe migrants' rights, including those of children.<sup>9</sup> France's recent "Operation Wuambushu" (Wuambushu) demonstrated an unprecedented and disproportionate use of force against irregular migrants in Mayotte, strengthening ongoing accusations of human rights violations.<sup>10</sup>

Due to Wuambushu's destruction of slums housing irregular migrant children<sup>11</sup> and the operation's escalation of improper detention and expulsion practices,<sup>12</sup> this Comment argues that France

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france.org/la-liberte-daller-et-venir-entravee-pour-les-habitant-es-de-mayotte-le-conseil-constitutionnel-valide-les-contrôles-d'identité-généralisés-et-discretionnaires (reporting on the Constitutional Council's authorization of indefinite, systematic identity checks throughout Mayotte).

8. See generally Romain Geoffroy, *Mayotte, le département des exceptions légales* [Mayotte, the Department of Legal Exceptions], LE MONDE (Feb. 13, 2024), [https://www.lemonde.fr/les-decodeurs/article/2024/02/13/mayotte-le-departement-des-exceptions-legales\\_6171286\\_4355771.html](https://www.lemonde.fr/les-decodeurs/article/2024/02/13/mayotte-le-departement-des-exceptions-legales_6171286_4355771.html) (summarizing key examples of differing policies between mainland France and Mayotte); see also discussion *infra* Part II.B.

9. See discussion *infra* Part II.B.

10. See France: Violent Military Operation to Deport Irregular Migrants in Mayotte Raises Concerns Amid Diplomatic Crisis with Comoros and Puts French Rights Violations in The Spotlight, EUR. COUNCIL ON REFUGEES & EXILES (May 5, 2023) [hereinafter *French Violations in The Spotlight*], <https://ecre.org/france-violent-military-operation-to-deport-irregular-migrants-in-mayotte-raises-concerns-amid-diplomatic-crisis-with-comoros-and-puts-french-rights-violations-in-the-spotlight> (reporting UNICEF's fears of Wuambushu violating the rights of many children following the deportation of their parents and noting the Human Rights League's initiation of a lawsuit against a French official following his declaration that the murder of migrants may be "necessary").

11. See, e.g., Julia Pascual, *A Mayotte, les promesses en trompe-l'œil des « décasages » des bidonvilles* [The French Government's Deceptive Promises Behind Shantytown Evictions in Mayotte], LE MONDE (Apr. 28, 2023) [hereinafter Pascual, *Deceptive Promises*], [https://www.lemonde.fr/en/france/article/2023/04/28/the-french-government-s-deceptive-promises-behind-shantytown-evictions-in-mayotte\\_6024688\\_7.html](https://www.lemonde.fr/en/france/article/2023/04/28/the-french-government-s-deceptive-promises-behind-shantytown-evictions-in-mayotte_6024688_7.html) (reporting on the French government's vow to destroy 1,000 shantytowns within two months as part of Wuambushu).

12. See, e.g., *Detention of Children: European Court of Human Rights Rules Against France 11 Times*, STATEWATCH (May 11, 2023), <https://www.statewatch.org/news/2023/may/detention-of-children-european-court-of-human-rights-rules-against-france-11-times> (discussing three cases concerning the confinement of families with young children in which the ECtHR found that French authorities

violated the UNCRC Article 2 non-discrimination protection<sup>13</sup> and the Article 3 promise to properly consider children's "best interests."<sup>14</sup>

Section II of this Comment summarizes the modern history between Mayotte and France, focusing on the island's transition to departmental status. Next, it notes how decades of tension and Mayotte-specific immigration policies laid the foundation for Wuambushu. It then explains the increased international human rights law protection for children in irregular migratory situations. Finally, it introduces how the Committee on the Rights of the Child (CRC) uses Articles 2 and 3 as "General Principles" for interpreting all UNCRC fundamental rights.<sup>15</sup>

Section III analyzes Wuambushu's slum devastation and improper detention and expulsion practices. It asserts that contrary to its obligations under UNCRC Articles 2 and 3, France discriminated against children on the basis of their irregular migratory status and failed to properly consider their best interests.<sup>16</sup> The extent of France's actions in Mayotte suggests there are likely multiple UNCRC violations that this Comment will not thoroughly evaluate. The Article 27 guarantee to an adequate standard of living<sup>17</sup> and the Article 9 promise to freedom from arbitrary family separation<sup>18</sup> could each receive its own respective law review article. This Comment will only analyze these rights through the lens of the non-discrimination and best interest "General Principles" of Articles 2 and 3.<sup>19</sup> The French government used an illegitimate, status-based distinction to discriminate against children, neglecting proper consideration of their

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subjected the children to inhuman or degrading treatment).

13. See U.N. Convention on the Rights of the Child art. 2(1), Nov. 20, 1989, 1577 U.N.T.S. 3, 46 [hereinafter UNCRC] (precluding states from discriminating against children on the basis of status).

14. See *id.* art. 3(1) (requiring states, in all actions involving children, to assess the child's best interests as a "primary consideration").

15. *How We Protect Children's Rights with the U.N. Convention on the Rights of the Child*, UNICEF, <https://www.unicef.org.uk/what-we-do/un-convention-child-rights> (differentiating Articles 2, 3, 6, and 12 as "General Principles" for UNCRC interpretation).

16. See discussion *infra* Part III.B.

17. UNCRC, *supra* note 13, art. 27(1).

18. *Id.* art. 9(1).

19. See *How We Protect Children's Rights with the U.N. Convention on the Rights of the Child*, *supra* note 15.

best interests and failing to account for the impacts of Wuambushu.<sup>20</sup> Therefore, this Comment ultimately argues that the CRC would likely find that France violated UNCRC Articles 2 and 3.<sup>21</sup>

Section IV suggests that in the event of an individual communication,<sup>22</sup> the CRC should propose measures for redress. This Comment further recommends French participation in an international slum upgrading program<sup>23</sup> designed to meet the housing needs of individuals living in informal communities, including Mayotte's irregular migrant children. Additionally, it encourages large-scale campaigns by individuals and organizations to put pressure on the *Défenseur des Droits* (Defender of Rights), the United Nations (U.N.)-recognized enforcement authority for UNCRC infringements in French territory.<sup>24</sup> Finally, this Comment proposes that the CRC should initiate an inquiry procedure<sup>25</sup> exploring France's serious violations against Mayotte's children of irregular migratory status.

## II. BACKGROUND

### A. (DE)COLONIALIZATION AND DEPARTMENTALIZATION

In December 1974, France held a referendum in its colony of Comoros.<sup>26</sup> Despite initially agreeing to acknowledge the cumulative

20. See discussion *infra* Part III.B.

21. See discussion *infra* Part III.A–B.

22. See Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure art. 5(1), Dec. 19, 2011, 2983 U.N.T.S. 135, 159 [hereinafter Optional Protocol] (providing that a person or group may submit a claim against a state for UNCRC violations).

23. See *The Participatory Slum Upgrading Programme (PSUP)*, U.N.-HABITAT, <https://unhabitat.org/programme/the-participatory-slum-upgrading-programme-psup>; *infra* Part IV.A.

24. DÉFENSEUR DES DROITS [DEF. OF RTS.], DEFENDING AND PROMOTING THE RIGHTS OF THE CHILD 2 (2021) [hereinafter DEFENDING AND PROMOTING THE RIGHTS OF THE CHILD], [https://www.defenseurdesdroits.fr/sites/default/files/2023-08/ddd\\_depliant-DDD\\_defendre-et-promouvoir-les-droits-de-l-enfant\\_EN\\_202205.pdf](https://www.defenseurdesdroits.fr/sites/default/files/2023-08/ddd_depliant-DDD_defendre-et-promouvoir-les-droits-de-l-enfant_EN_202205.pdf); see also discussion *infra* Part IV.B.

25. Optional Protocol, *supra* note 22, art. 13(1) (providing for a CRC investigation into suspected “grave or systematic” rights violations); see also discussion *infra* Part IV.C.

26. Iain Walker, *Mayotte, France and the Comoros: Mimesis and Violence in the Mozambique Channel*, in *ACROSS THE WAVES: STRATEGIES OF BELONGING IN INDIAN OCEAN ISLAND SOCIETIES* 200, 204 (Iain Walker & Marie-Aude Fouéré eds.,

result, the French government disregarded the colony's overall preference for independence and used Mayotte's pro-France majority to justify retaining control over the island.<sup>27</sup> This decision was unpopular with the international community, yet France ignored calls from the U.N.<sup>28</sup> to honor the unity of the four Comorian islands.<sup>29</sup> Mayotte became a territorial collectivity in 1976,<sup>30</sup> establishing a governmental structure distinct from French administration and with local governance overseeing the island's specific interests.<sup>31</sup>

In 2000, Mayotte's population expressed its desire for departmentalization,<sup>32</sup> a process it hoped would transition the island into decolonization.<sup>33</sup> France added Mayotte to its constitution in 2003,<sup>34</sup> and the island became an official French department in 2011.<sup>35</sup> Departmentalization established Mayotte governing structures corresponding to those in mainland France.<sup>36</sup> It generated hope for increased opportunities, such as the economic and social growth occurring in another nearby French department, La Réunion.<sup>37</sup>

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2022).

27. Mamadou Hébié, *Was There Something Missing in the Decolonization Process in Africa?: The Territorial Dimension*, 28 LEIDEN J. OF INT'L L. 529, 547 (2015).

28. E.g., U.N. General Assembly, Question of the Comorian Island of Mayotte, U.N. Doc. A/RES/35/43, ¶ 1 (Nov. 28, 1980), [https://documents.un.org/symbol-explorer?s=A/RES/35/43&i=A/RES/35/43\\_2537118](https://documents.un.org/symbol-explorer?s=A/RES/35/43&i=A/RES/35/43_2537118) (reaffirming Comorian sovereignty over Mayotte).

29. Hébié, *supra* note 27, at 547.

30. Dan Golembeski, *Mayotte: France's New Overseas Department in the Indian Ocean*, 85 THE FRENCH REV. 440, 446 (2012).

31. See Nathalie Mrgudovic, *The French Overseas Territories in Transition*, in THE NON-INDEPENDENT TERRITORIES OF THE CARIBBEAN AND PACIFIC: CONTINUITY AND CHANGE 85, 88 (Peter Clegg & David Killingray, eds., 2012) (defining a territorial collectivity as locally-elected governance with select administrative power).

32. Golembeski, *supra* note 30, at 446.

33. See Nick Nesbitt, *Departmentalization and the Logic of Decolonization*, 47 L'ESPRIT CRÉATEUR [THE CREATIVE SPIRIT] 32, 38, 42 (2007) (describing departmentalization as progress toward decolonization).

34. Mrgudovic, *supra* note 31, at 88, 95.

35. Walker, *supra* note 26, at 204; see also *Département*, *supra* note 5 (defining departments as France's largest local governmental units).

36. See Nesbitt, *supra* note 33, at 33 (describing the establishment of a French prefecture, general council, legal code, and judiciary).

37. Walker, *supra* note 26, at 214.



However, this development never arrived.<sup>38</sup> Tensions continue between France and Mayotte, as the government enforces French and European laws without providing many of the promised changes.<sup>39</sup>

## B. IMMIGRATION POLICY AND PRACTICE IN MAYOTTE: TENSIONS, IRREGULARITIES, AND WUAMBUSHU

Article 73 of the French Constitution allows the government to implement policies for its overseas populations differing from those applicable in mainland France.<sup>40</sup> Regulations in Mayotte must still comply with French and European standards.<sup>41</sup> However, irregularities persist between mainland France and Mayotte, such as the recent upholding of a generalized identity check policy in Mayotte by the French Constitutional Council.<sup>42</sup> To push back against irregular migration, the policy allows authorities to request identification from anyone anywhere on the island.<sup>43</sup> Although in theory it prohibits conducting these checks discriminatorily, in practice the policy's allowance for authorities' broad discretion leads to biased targeting against undocumented migrants of irregular status.<sup>44</sup> Such

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38. *Id.* at 215.

39. *See id.* at 215–16 (recounting the inadequate educational, health, and economic services characterizing Mayotte).

40. CONSTITUTION Oct. 4, 1958, art. 73 (Fr.), *amended by* Loi constitutionnelle 2008-724 du 23 juillet 2008 de modernisation des institutions de la Ve République (1) [Constitutional Law 2008-724 of July 23, 2008, on the Modernization of the Institutions of the Fifth Republic (1)], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFF. GAZETTE OF FR.], Aug. 24, 2008, p. 149.

41. *See, e.g.*, Code de l'entrée et du séjour des étrangers et du droit d'asile [CESEDA] [Code of Entry and Stay of Foreigners and the Right to Asylum] art. R761-5 (Fr.) [hereinafter CESEDA] (proclaiming a Mayotte-specific judicial review process for immigration issues); Consolidated Version of the Treaty on the Functioning of the European Union arts. 349, 355(1), June 7, 2016, 2016 O.J. (C 202) 47, 195, 197 (declaring that Mayotte falls under European law).

42. *See Generalized and Discretionary Identity Checks, supra* note 7 (highlighting the inconsistency between the constitutional promise of equality without discrimination and the adaptation of departmental laws authorizing certain constraints).

43. *Id.*

44. *See id.* (noting that the absence of limits allows for the police to assume full power to engage in random, discriminatory checks without the need to provide justification); *see also* Conseil d'État, 7ème ch., Oct. 13, 2023, No. 474868, paras. 2, 10, <https://www.conseil-etat.fr/fr/arianeweb/CE/decision/2023-10-13/474868> (annulling an order from Mayotte's administrative court, which previously granted

discriminatory Mayotte-specific policies<sup>45</sup> and decades of decolonization tension<sup>46</sup> laid the foundation for escalated anti-migration efforts.<sup>47</sup>

In April 2023, France launched Wuambushu to “take back” Mayotte from the growing population of individuals migrating irregularly to the island.<sup>48</sup> The operation was only the most recent of many anti-migration actions stemming from a long history of colonialism.<sup>49</sup> Wuambushu demonstrated a new, intensified approach to France’s anti-migration efforts, destroying migrants’ homes and escalating improper detention and expulsion practices.<sup>50</sup>

### 1. *Wuambushu’s Slum Destruction and Eviction*

Wuambushu began as Interior Minister Gérald Darmanin sent nearly two thousand French authorities to execute widespread destruction and evictions in slums housing migrants of irregular status, including children.<sup>51</sup> While a court initially blocked the authorities’

a migrant’s request to suspend a decree revoking her temporary residence card).

45. *E.g.*, *Generalized and Discretionary Identity Checks*, *supra* note 7 (detailing the weaponization of generalized identity checks throughout Mayotte conducted in the name of confronting irregular and illegal migration).

46. *See generally* Nesbitt, *supra* note 33, at 41–42 (detailing how departmentalization did not fulfill all its promised decolonization goals); *see also* Walker, *supra* note 26, at 214–16 (tracing the mounting tensions throughout decolonization and departmentalization).

47. *See* discussion *infra* Part II.B.1–2.

48. *See* Michael Garcia Bochenek, *French Police Forcibly Oust Undocumented Migrants from Mayotte*, HUM. RTS. WATCH (Apr. 27, 2023), <https://www.hrw.org/news/2023/04/27/french-police-forcibly-oust-undocumented-migrants-mayotte> (noting Wuambushu’s translation to “take back” or “reclaim” in Mayotte’s most common language).

49. *See, e.g.*, Pauline Rouquette, *Mayotte: que prévoit l’opération “Shikandra”, pour la lutte contre l’immigration clandestine? [Mayotte: What Does Operation “Shikandra” Plan for the Fight Against Illegal Immigration?]*, FRANCEINFO (Aug. 26, 2019), <https://la1ere.francetvinfo.fr/mayotte-que-prevoit-operation-shikandra-lutte-contre-immigration-clandestine-742935.html> (reporting France’s 2019 land and air surveillance effort targeting irregular flows of migrants from Comoros to Mayotte); *id.* (identifying Wuambushu as part of a historical effort to “deprive the people in Mayotte of basic rights”).

50. Bochenek, *supra* note 48; *Detention of Children: European Court of Human Rights Rules Against France 11 Times*, *supra* note 12; *see also* discussion *infra* Part III.B.2.

51. *See, e.g.*, Gregoire Merot, *Anti-Migration Operation on French African*

actions with judicial orders,<sup>52</sup> slum demolition resumed in May 2023.<sup>53</sup> Wuambushu's destruction uprooted families and children who had lived in Mayotte for years, exacerbating the deep-rooted tensions between the government and the island's population.<sup>54</sup>

The authorities were free to execute these evictions and demolitions under the power of Mayotte's local departmental Prefect, a French-appointed regional governor responsible for carrying out regulations on the island.<sup>55</sup> The Prefect's extensive authority includes the ability to permit the destruction of informal housing and the eviction of occupants.<sup>56</sup> In contrast, such action occurring elsewhere in French territory requires judicial approval.<sup>57</sup> As fifty percent of Mayotte's population consists of children under seventeen,<sup>58</sup> anti-migration demolition and evictions lead to widespread child homelessness.<sup>59</sup>

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*Island of Mayotte Stirs Tensions, Exposes Inequalities*, AP NEWS (May 18, 2023), <https://apnews.com/article/france-migrants-africa-police-operation-mayotte-comoros-4e467c5c09cfb5ef82d9b82fe4c90d70> (noting that UNICEF called on France to provide housing for evicted families and “mental health support for children whose homes [were] razed”).

52. E.g., *French Court Halts Controversial Migrant Expulsions from Mayotte Slum*, FRANCE 24 (Apr. 25, 2023), <https://www.france24.com/en/africa/20230425-french-court-halts-controversial-migrant-expulsions-from-mayotte-slum> (reporting that the Mayotte court found the clearance of one slum had “no legal foundation”).

53. Christophe Ayad, *A Mayotte, une première évacuation d'un bidonville dans la résignation: « C'est là que je suis née, que j'ai eu mes enfants »* [In Mayotte, a First Evacuation of a Shanty Town in Resignation: “That's Where I Was Born, That's Where I Had My Children”], LE MONDE (May 25, 2023), [https://www.lemonde.fr/outr-mer/article/2023/05/25/a-mayotte-une-premiere-evacuation-d-un-bidonville-dans-la-resignation\\_6174768\\_1840826.html](https://www.lemonde.fr/outr-mer/article/2023/05/25/a-mayotte-une-premiere-evacuation-d-un-bidonville-dans-la-resignation_6174768_1840826.html).

54. See Merot, *supra* note 51 (“We have lost everything, they destroyed our lives.”); see also Walker, *supra* note 26, at 214–16 (acknowledging the mounting tensions throughout decolonization and departmentalization).

55. See Décret 2015-1016 du 18 août 2015 relatif à l'observatoire de l'immigration à Mayotte [Decree 2015-1016 of August 18, 2015, Relating to the Observation of Immigration in Mayotte], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFF. GAZETTE OF FR.], Aug. 20, 2015, p. 127 (outlining prefecture power over all aspects of immigration in Mayotte).

56. Geoffroy, *supra* note 8.

57. *Id.*

58. Julia Pascual, *Dans les bidonvilles de Mayotte, une jeunesse sans horizon* [In the Slums of Mayotte, Young People Don't See a Future], LE MONDE (May 3, 2023), [https://www.lemonde.fr/societe/article/2023/05/02/dans-les-bidonvilles-de-mayotte-une-jeunesse-sans-horizon\\_6171760\\_3224.html](https://www.lemonde.fr/societe/article/2023/05/02/dans-les-bidonvilles-de-mayotte-une-jeunesse-sans-horizon_6171760_3224.html).

59. See, e.g., *Mayotte Migrant Crisis: French Territory Set to Demolish*

Wuambushu specifically targeted Mayotte's slums, which amount to forty percent of the island's housing.<sup>60</sup>

## 2. *Wuambushu's Improper Detention and Expulsion*

Wuambushu escalated ongoing child detentions and improper expulsions in Mayotte.<sup>61</sup> Prior to the operation, the French government detained 3,135 children in Mayotte in 2021, in stark contrast to its detention of only seventy-six children in mainland France.<sup>62</sup> A recent national report estimated that the government continued to detain 2,905 children in Mayotte in 2022.<sup>63</sup> Additional reports noted France's illegal detention of several children without at least one parent or guardian.<sup>64</sup> Wuambushu sought to expel irregular migrants at an alarming rate, leading to increased child detentions and family separations.<sup>65</sup> Despite international pushback,<sup>66</sup> the French government maintains a practice of separating children from their

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*Shantytown*, FRANCE 24 (Apr. 23, 2023), <https://www.france24.com/en/live-news/20230423-migrant-fears-grow-as-france-eyes-clearance-of-mayotte-shantytown> (“[I]f [the police] destroy our houses, where are we going to go with the children?”).

60. *French Violations in The Spotlight*, *supra* note 10.

61. *See id.* (reporting that Wuambushu exposed underlying problems in Mayotte while tripling the number of migrant arrests).

62. LA CIMADE, CENTRES ET LOCAUX DE RÉTENTION ADMINISTRATIVE [ADMINISTRATIVE DETENTION CENTERS AND LOCATIONS] 22 (2021) [hereinafter ADMINISTRATIVE DETENTION CENTERS AND LOCATIONS], [https://www.lacimade.org/wp-content/uploads/2022/03/RA\\_CRA\\_2021\\_web.pdf](https://www.lacimade.org/wp-content/uploads/2022/03/RA_CRA_2021_web.pdf).

63. *Detention of Children: European Court of Human Rights Rules Against France 11 Times*, *supra* note 12.

64. U.S. DEP'T OF STATE, 2022 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: FRANCE 16–17 [hereinafter 2022 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: FRANCE], <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/france>.

65. *See French Violations in the Spotlight*, *supra* note 10 (arguing that the increase in deportations “shine[s] a light on” child detentions and family separations); *see also France: Call for the Respect of Fundamental Rights in Mayotte in the Framework of Operation “Wuambushu”*, COUNCIL OF EUR. (May 11, 2023) [hereinafter *Fundamental Rights in the Framework of Operation “Wuambushu”*], <https://rm.coe.int/declaration-france-call-for-the-respect-of-fundamental-rights-in-mayot/1680ab33a0> (noting France's establishment of forty-four detention sites within a month).

66. *E.g., Fundamental Rights in the Framework of Operation “Wuambushu”*, *supra* note 65 (warning that Wuambushu constitutes a potential breach of Article 4 of Protocol 4 of the European Convention on Human Rights, which protects against collective expulsion).

families during expulsion.<sup>67</sup> In *Moustahi v. France*, the European Court of Human Rights (ECtHR) condemned France in 2020 for violating European standards against collective expulsion and for unlawfully separating families and arbitrarily assigning children to unrelated adults during detention and expulsion.<sup>68</sup> According to France, it already separated three to four thousand children and families prior to Wuambushu.<sup>69</sup> UNICEF noted the dangers of separation, warning of further unlawful family separations following the operation.<sup>70</sup>

Of all expulsions out of French territory, approximately seventy-five percent occurred in Mayotte in 2022.<sup>71</sup> Nevertheless, the government has refused to facilitate a more efficient and compassionate system.<sup>72</sup> For example, authorities in mainland France must refer expulsion detainees to a judge within forty-eight hours,<sup>73</sup> while individuals in Mayotte may have to wait as long as five days.<sup>74</sup> However, authorities frequently expel detainees hastily overnight, preventing them from waiting multiple days to see a judge.<sup>75</sup> Those fortunate enough to receive judicial review experience rushed

67. See *id.* (confronting France for its destruction of the makeshift settlements of isolated children); *L'UNICEF se positionne contre l'opération Wambushu [sic] pour protéger les enfants étrangers [UNICEF Positions Itself Against Operation Wambushu [sic] to Protect Foreign Children]*, FRANCEINFO (Apr. 10, 2023) [hereinafter *UNICEF Positions Itself Against Operation Wuambushu*], <https://la1ere.francetvinfo.fr/mayotte/l-unicef-se-positionne-contre-l-operation-wambushu-pour-protoger-les-enfants-etrangers-1383842.html>.

68. *Moustahi v. France*, App. No. 9347/14, ¶¶ 18, 31–34, 38 (June 25, 2020), <https://hudoc.echr.coe.int/fre?i=002-12877>.

69. *French Violations in The Spotlight*, *supra* note 10.

70. *UNICEF Positions Itself Against Operation Wuambushu*, *supra* note 67.

71. Julia Pascual, *Dans le centre de rétention de Mayotte, « ce ne sont que des pauvres qui essayent de s'en sortir »* [*In the Mayotte Detention Center, "It's Only Poor People Trying to Get By"*], LE MONDE (Apr. 26, 2023), [https://www.lemonde.fr/societe/article/2023/04/26/dans-le-centre-de-retention-de-mayotte-ce-ne-sont-que-des-pauvres-qui-essayent-de-s-en-sortir\\_6171002\\_3224.html](https://www.lemonde.fr/societe/article/2023/04/26/dans-le-centre-de-retention-de-mayotte-ce-ne-sont-que-des-pauvres-qui-essayent-de-s-en-sortir_6171002_3224.html).

72. See ADMINISTRATIVE DETENTION CENTERS AND LOCATIONS, *supra* note 62, at 7 (reporting how degraded health facilities worsen detainees' situations); *Detention of Children: European Court of Human Rights Rules Against France 11 Times*, *supra* note 12 (noting French detention of nearly 3,000 children 2022).

73. Geoffroy, *supra* note 8.

74. CESEDA, *supra* note 41, art. R761-5.

75. See Geoffroy, *supra* note 8 (reporting on overnight deportations conducted without consideration of migrants' rights).

proceedings, leading to neglected rights.<sup>76</sup>

### C. CHILDREN'S RIGHTS UNDER INTERNATIONAL LAW

#### 1. *Increased Protection for Children in Irregular Migratory Situations*

International human rights law recognizes that the situation and status of migrants and children render them uniquely vulnerable to rights violations,<sup>77</sup> and therefore acknowledges their need for increased protection.<sup>78</sup> Discriminatory societal structures often preclude migrants' full access to fundamental rights, such as an adequate standard of living.<sup>79</sup> Those migrating irregularly encounter additional discrimination due to their status,<sup>80</sup> and multiple international instruments therefore confirm their enhanced protection.<sup>81</sup> Human rights law defends persons, not statuses.<sup>82</sup> While states may legally distinguish between non-citizens and citizens

76. *See id.* (articulating that authorities overseeing rushed judicial proceedings do not respect the individuals' rights).

77. *See generally* OHCHR & GLOB. MIGRATION GRP., PRINCIPLES AND GUIDELINES, SUPPORTED BY PRACTICAL GUIDANCE, ON THE HUMAN RIGHTS PROTECTION OF MIGRANTS IN VULNERABLE SITUATIONS 1, <https://www.ohchr.org/sites/default/files/PrinciplesAndGuidelines.pdf> [hereinafter HUMAN RIGHTS PROTECTION OF MIGRANTS IN VULNERABLE SITUATIONS] (outlining various rights vulnerabilities for migrant children due to factors such as age and migratory status).

78. *See* U.N. Comm. on Econ., Soc. & Cultural Rts. [CESCR], *General Comment No. 7 on the Right to Adequate Housing (Art. 11.1 of the Covenant): Forced Evictions*, ¶ 10, U.N. Doc. E/1998/22 (May 20, 1997) [hereinafter CESCR General Comment No. 7] (asserting additional non-discrimination obligations for states in protecting vulnerable groups such as children).

79. *See* Global Migration Group, *Statement of the Global Migration Group on the Human Rights of Migrants in Irregular Situations*, OHCHR, (Sept. 30, 2010), <https://www.refworld.org/docid/4f7157bc2.html> (concluding that vulnerability from irregular status can preclude protection and relief).

80. *See id.* (recognizing that migrants' irregular status renders them vulnerable).

81. *E.g.*, G.A. Res. 71/1, New York Declaration for Refugees and Migrants, ¶¶ 5, 41 (Oct. 3, 2016) ("We are committed to protecting . . . all migrants, regardless of their migratory status"); G.A. Res. 70/1, The 2030 Agenda for Sustainable Development, ¶¶ 19, 23, 29 (Oct. 21, 2015) (explaining the vulnerability of irregular migrants and the need for non-discrimination protections).

82. F. V. Garcia Amador (Special Rapporteur), *International Responsibility: Second Report*, 113, U.N. Doc. A/CN.4/106 (1957), [https://legal.un.org/ilc/documentation/english/a\\_cn4\\_106.pdf](https://legal.un.org/ilc/documentation/english/a_cn4_106.pdf).

politically,<sup>83</sup> they may not discriminate on the basis of status regarding other vital rights.<sup>84</sup> The U.N. necessitates respect for fundamental rights inherent to everyone,<sup>85</sup> allowing only case-by-case exceptions that are legitimate and proportional.<sup>86</sup>

Due to their stage of development, children are more vulnerable than adults to circumstances affecting their health and well-being.<sup>87</sup> These circumstances for children in irregular migratory situations are especially difficult, as they often face decreased domestic protections<sup>88</sup> leading to inadequate housing and family separation conflicting with their best interests.<sup>89</sup> Irregular migrant children are therefore the most vulnerable members of a group already susceptible to discriminatory rights violations.<sup>90</sup>

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83. U.N. HIGH COMM'R FOR REFUGEES [UNHCR], RIGHTS OF NON-CITIZENS 8 (2006) [hereinafter RIGHTS OF NON-CITIZENS], <https://www.refworld.org/docid/46ceabb22.html> (outlining valid distinctions based on express political rights and freedom of movement).

84. See, e.g., G.A. Res. 217 (III) A, Universal Declaration of Human Rights art. 2 (Dec. 10, 1948) (promising non-discrimination for rights within the Declaration).

85. See U.N. Charter art. 55(c) (“... universal respect for... rights and fundamental freedoms for all...”).

86. See RIGHTS OF NON-CITIZENS, *supra* note 83, at 5 (“Exceptional distinctions... can be made only if they serve a legitimate State objective and are proportional to the achievement of that objective.”); U.N. Comm. on the Elimination of Racial Discrimination [CERD], Recommendation on Discrimination Against Non-Citizens, ¶ 4, (Aug. 5, 2004) [hereinafter CERD], <https://www.refworld.org/docid/45139e084.html> (requiring legitimate and proportional justifications for differences based on immigration status).

87. *Child Rights and Why They Matter*, UNICEF, <https://www.unicef.org/child-rights-convention/child-rights-why-they-matter>.

88. See HUMAN RIGHTS PROTECTION OF MIGRANTS IN VULNERABLE SITUATIONS, *supra* note 77, at 1 (arguing that it is critical to protect the rights of individuals who are not protected by established legal classifications).

89. See U.N. Comm. on the Rts. of the Child [CRC], *General Comment No. 21 on Children in Street Situations*, ¶¶ 26, 28, U.N. Doc. CRC/C/GC/21 (June 21, 2017) [hereinafter CRC General Comment No. 21] (declaring that authorities must consider the vulnerability of homeless children when determining their best interests).

90. See Ian M. Kysel, *Promoting the Recognition and Protection of the Rights of All Migrants Using a Soft-Law International Migrants Bill of Rights*, 4 J. ON MIGRATION & HUM. SEC. 29, 33 (2016) (identifying migrant children generally as particularly vulnerable).

## 2. *UNCRC Obligations and CRC Enforcement*

To ensure these enhanced protections for children, the U.N. unanimously adopted the UNCRC in 1989.<sup>91</sup> France has agreed to every international instrument protecting children's rights, including the UNCRC, which it signed and ratified in 1990.<sup>92</sup> The UNCRC requires each state to implement procedures to realize the rights of all children within its jurisdiction.<sup>93</sup> The CRC recognizes the Defender of Rights,<sup>94</sup> an independent administrative institution,<sup>95</sup> as the authority responsible for ensuring France's faithfulness to its treaty obligations.<sup>96</sup> Today, the UNCRC is the most ratified treaty on human rights.<sup>97</sup> Article 2 protects a child's guarantee to be free from status-based discrimination, requiring states to "take all appropriate measures" to ensure this right.<sup>98</sup> Such "appropriate" measures include taking into account a child's best interests under Article 3.<sup>99</sup> Interpretation of all other UNCRC provisions, such as the Article 27 guarantee to an adequate standard of living<sup>100</sup> and the Article 9 restriction on family separation,<sup>101</sup> requires adherence to these "General Principles" of non-discrimination and best interest consideration under Articles 2 and 3.<sup>102</sup>

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91. *Background to the Convention*, OHCHR, <https://www.ohchr.org/en/treaty-bodies/crc/background-convention>.

92. *Children's Rights*, MINISTÈRE DE L'EUROPE ET DES AFFAIRES ÉTRANGÈRES [MINISTRY OF EUR. & FOREIGN AFF.], <https://www.diplomatie.gouv.fr/en/french-foreign-policy/human-rights/children-s-rights>.

93. See UNCRC, *supra* note 13, arts. 42, 44(1)–(2) (mandating that UNCRC principles be "widely known" and that states submit to the CRC their measures adopted pursuant to the UNCRC).

94. DEFENDING AND PROMOTING THE RIGHTS OF THE CHILD, *supra* note 24, at 2.

95. *Glossaire [Glossary]*, DÉFENSEUR DES DROITS [DEF. OF RTS.], <https://www.defenseurdesdroits.fr/glossaire-221#glossaire-aa1> (defining *autorité administrative indépendante* as a rights-monitoring institution free from governmental intervention).

96. DEFENDING AND PROMOTING THE RIGHTS OF THE CHILD, *supra* note 24, at 2.

97. *How We Protect Children's Rights with the U.N. Convention on the Rights of the Child*, *supra* note 15.

98. UNCRC, *supra* note 13, art. 2(1)–(2).

99. See *id.* art. 3(1) (establishing best interests as a primary consideration for all government actions concerning children).

100. *Id.* art. 27(1).

101. *Id.* art. 9(1).

102. See *How We Protect Children's Rights with the U.N. Convention on the*



The CRC monitors adherence to UNCRC obligations, requiring states to regularly submit rights reports.<sup>103</sup> Its Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (Optional Protocol)—which France ratified in 2016<sup>104</sup>—allows parties to bring complaints (individual communications) against ratifying states.<sup>105</sup> The CRC evaluates individual communications by persons or groups who exhaust all “available and effective” domestic remedies<sup>106</sup> and present substantiated claims for UNCRC violations,<sup>107</sup> and may provide recommendations for redress.<sup>108</sup> The CRC has yet to consider an individual communication analyzing the principles of non-discrimination and best interest consideration regarding housing destruction and family separation for irregular migrant children; however, there are cases in which it has applied this analysis to other situations.<sup>109</sup>

*i. Case of A.E.A. v. Spain*

A Moroccan mother submitted an individual communication on behalf of her son (A.E.A.), asserting that Spain’s refusal to enroll A.E.A. in public primary school constituted a UNCRC violation.<sup>110</sup> In

*Rights of the Child*, *supra* note 15 (differentiating Articles 2, 3, 6, and 12 as “General Principles” for interpreting rights under the UNCRC).

103. UNCRC, *supra* note 13, arts. 43(1), 44(1).

104. *Status of Ratification Interactive Dashboard: France*, UNHCR, <https://indicators.ohchr.org> [hereinafter *France Ratification Status*] (displaying French ratification status upon selecting “France” in the left-side panel).

105. See Optional Protocol, *supra* note 22, art. 1(3) (declaring that a state must be party to the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure in order for the CRC to receive and individual communication concerning that state).

106. INT’L JUST. RES. CTR., EXHAUSTION OF DOMESTIC REMEDIES IN THE UNITED NATIONS SYSTEM 1 (2017) [hereinafter EXHAUSTION OF DOMESTIC REMEDIES IN THE UNITED NATIONS SYSTEM], <https://ijrcenter.org/wp-content/uploads/2018/04/8.-Exhaustion-of-Domestic-Remedies-UN-Treaty-Bodies.pdf>.

107. Optional Protocol, *supra* note 22, art. 7(e)–(f); see also discussion *infra* Part III.A.2.

108. Optional Protocol, *supra* note 22, art. 10(5).

109. See, e.g., A.E.A. v. Spain, Comm. No. 115/2020, Views Adopted on the Convention to the Rts. of the Child on a Communications Procedure, Comm. on the Rts. of the Child [CRC], ¶¶ 12.8–12.9, U.N. Doc. CRC/C/87/D/115/2020 (June 22, 2021) (finding that Spain violated Articles 2 and 3 by refusing to enroll a child of irregular status in public school).

110. *Id.* ¶¶ 1, 3.1–3.2 (asserting violations of Articles 2 and 3).

2019, A.E.A.'s mother sent an application to the local public school, providing several documents to prove A.E.A.'s residence in Melilla,<sup>111</sup> a Spanish "colonial enclave" off Morocco's Mediterranean coast.<sup>112</sup> Although A.E.A. was born in Melilla and resided there, he was a Moroccan national.<sup>113</sup> Despite official government policies and statements acknowledging the universal right to education,<sup>114</sup> A.E.A.'s mother argued that in practice, Spain discriminated against her son on the basis of his irregular status<sup>115</sup> and failed to properly consider his best interests.<sup>116</sup>

After determining that A.E.A.'s available domestic remedies were ineffective,<sup>117</sup> the CRC found that in refusing to admit A.E.A. to public school in Melilla, Spain violated UNCRC Articles 2 and 3.<sup>118</sup> Despite Spain's affirmation of the universality of education rights and its claim that the denial of enrollment had no connection to A.E.A.'s status,<sup>119</sup> the CRC declared that children living irregularly in Melilla, including A.E.A., faced status-based discrimination in practice.<sup>120</sup> Although the Spanish government confirmed A.E.A.'s Melilla residence, it still refused enrollment.<sup>121</sup> The CRC found that Article 3 did not permit Spain to grant itself such extensive discretion to create this inadequate, generalized standard for best interest considerations.<sup>122</sup> It pointed to the absence of an individualized evaluation as a failure to treat A.E.A.'s best interests as a primary consideration.<sup>123</sup> It further declared that Article 2 violations can occur regardless if the discrimination is in policy or in practice.<sup>124</sup>

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111. *Id.* ¶¶ 2.1–2.2.

112. *See* Hébié, *supra* note 27, at 538, 542 (describing Melilla as an overseas territory and a remnant of colonialism).

113. *A.E.A. v. Spain*, ¶¶ 1.1, 2.2.

114. *Id.* ¶¶ 7.3, 7.5 (noting Spain's acknowledgment of educational rights regardless of status and its Melilla-specific policies).

115. *Id.* ¶ 7.12 (indicating A.E.A.'s lack of residence permit or visa).

116. *Id.* ¶¶ 3.1–3.2.

117. *Id.* ¶ 11.2; *see also* discussion *infra* Part III.A.2.a.

118. *A.E.A. v. Spain*, ¶¶ 12.8–12.9.

119. *Id.* ¶¶ 7.12, 12.5.

120. *Id.* ¶¶ 12.4–12.5.

121. *Id.* ¶ 12.8.

122. *Id.* ¶ 12.9.

123. *Id.*

124. *See id.* ¶ 12.8 (clarifying that discrimination can be "overt or hidden" and

ii. *Role of the CRC's General Comments*

In addition to individual communications, the CRC also expresses its views through General Comments.<sup>125</sup> These provide essential insight into its UNCRC interpretation.<sup>126</sup> The CRC uses General Comments to confirm the fundamentality of the right to non-discrimination and its universal application to irregular migrant children,<sup>127</sup> to protect the rights of homeless children or those living in informal housing,<sup>128</sup> and to prohibit arbitrary family separation and collective expulsion decisions.<sup>129</sup> Additionally, General Comment No. 14 defines primary consideration of children's best interests, requiring states to assess them on a different level from the interests of other groups due to children's increased vulnerability to rights abuses.<sup>130</sup>

### III. ANALYSIS

Deep-rooted decolonization tension and decades of Mayotte-

“direct or indirect”).

125. *General Comments*, OHCHR, <https://www.ohchr.org/en/treaty-bodies/general-comments>.

126. *See id.* (explaining that “[e]ach of the treaty bodies publishes its interpretation of the provisions of its respective human rights treaty in the form of ‘general comments’” covering a wide range of topics).

127. U.N. Comm. on the Protection of the Rts. of All Migrant Workers and Members of Their Families [CMW] & U.N. Comm. on the Rts. of the Child [CRC], *Joint General Comment No. 3 and No. 22 on the General Principles Regarding the Human Rights of Children in the Context of International Migration*, ¶ 21, U.N. Doc. CMW/C/GC/3-CRC/C/GC/22 (Nov. 16, 2017) [hereinafter CRC General Comment No. 22].

128. CRC General Comment No. 21, *supra* note 89, ¶¶ 2, 4.

129. U.N. Comm. on the Protection of the Rts. of All Migrant Workers and Members of Their Families [CMW] & U.N. Comm. on the Rts. of the Child [CRC], *Joint General Comment No. 4 and No. 23 on State Obligations Regarding the Human Rights of the Children in the Context of International Migration in Countries of Origin, Transit, Destination and Return*, ¶ 28, U.N. Doc. CMW/C/GC/4-CRC/C/GC/23 (Nov. 16, 2017) [hereinafter CRC General Comment No. 23]; U.N. Comm. on the Rts. of the Child [CRC], *General Comment No. 6 on the Treatment of Unaccompanied and Separated Children Outside Their Country of Origin*, ¶ 18, U.N. Doc. CRC/GC/2005/6 (Sept. 1, 2005) [hereinafter CRC General Comment No. 6].

130. U.N. Comm. on the Rts. of the Child [CRC], *General Comment No. 14 on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (Art. 3, para. 1)*, ¶ 37, U.N. Doc. CRC/C/GC/14 (May 29, 2013) [hereinafter CRC General Comment No. 14].

specific policies laid the foundation for France's recent anti-migration operation, Wuambushu.<sup>131</sup> Demolishing slums and escalating improper detentions and expulsions, Wuambushu targeted the island's irregular migrant children.<sup>132</sup> Due to their age and status, the children were particularly vulnerable to rights infringements affecting their well-being.<sup>133</sup> The French government failed to protect the children's right to non-discrimination and to properly account for their best interests.<sup>134</sup> The CRC would have jurisdiction in an individual communication regarding these issues, and would likely confirm that Wuambushu violated the rights of Mayotte's irregular migrant children under UNCRC Articles 2 and 3.<sup>135</sup>

#### A. THE CRC WOULD HAVE JURISDICTION IN AN INDIVIDUAL COMMUNICATION REGARDING FRANCE'S ACTIONS

To consider an individual communication alleging a state UNCRC violation, the CRC must have proper jurisdiction.<sup>136</sup> The accused state must be a party to the UNCRC and its Optional Protocol without any reservations or declarations impacting applicability.<sup>137</sup> Furthermore, the submitting party must prove exhaustion of "available and effective" domestic remedies<sup>138</sup> and present a "sufficiently substantiated" claim.<sup>139</sup>

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131. See discussion *infra* Part II.A–B.

132. See discussion *infra* Part III.B.

133. See *Child Rights and Why They Matter*, *supra* note 87 (noting children's inherent dependence on adults and the disproportionate impact on their lives resulting from the actions of both the government and their adult caretakers).

134. See discussion *infra* Part III.B.

135. See discussion *infra* Part III.A–B.

136. See Optional Protocol, *supra* note 22, art. 1(3) (precluding individual communications concerning states not party to the UNCRC).

137. See *Individual Communications*, OHCHR, <https://www.ohchr.org/en/treaty-bodies/crc/individual-communications> (necessitating that a complaint be filed only against a state party to the UNCRC and to the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure).

138. EXHAUSTION OF DOMESTIC REMEDIES IN THE UNITED NATIONS SYSTEM, *supra* note 106, at 1.

139. Optional Protocol, *supra* note 22, art. 7(f). Article 7 of the Optional Protocol lists multiple admissibility components. This Comment proceeds assuming that a party with jurisdiction would comply with the conditions for victim identification and written communications and abide by the submission timeline. Furthermore, because no previous CRC individual communication addresses this situation in

1. *France did not Make any Reservations or Declarations to the UNCRC or the Optional Protocol*

Victims of UNCRC rights violations may bring an individual communication against a state if the state has ratified both the treaty and its Optional Protocol.<sup>140</sup> Upon signature and ratification of the UNCRC, France did not make any declarations or reservations regarding its overseas populations or the treaty's applicability to those populations.<sup>141</sup> A decentralized model grants significant power to local departmental mechanisms.<sup>142</sup> However, France negotiates global agreements and develops services for improvements for all populations within its jurisdiction, including its overseas departments.<sup>143</sup> The CRC confirmed that, pursuant to a 1993 decision by France's *Conseil d'État*, a treaty promulgated in mainland France has full legal effect in France's overseas departments without requiring any additional procedures.<sup>144</sup> France also ratified the Optional Protocol without reservations, declarations, or statements precluding its application to its overseas departments.<sup>145</sup> The CRC therefore has jurisdiction to consider individual communications regarding rights violations in Mayotte.<sup>146</sup>

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Mayotte, a party's submission would not violate the prohibition on repetitive subject matter. Therefore, this Comment only analyzes the exhaustion of domestic remedies and claim substantiation requirements.

140. *Id.* art. 1(3).

141. *See* UNCRC, *supra* note 13, at 171 (revealing France's declarations and reservations pertaining only to Articles 6, 30, and 40(2)(b)(v)).

142. U.N. Comm. on the Rts. of the Child [CRC], *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention*, U.N. Doc. CRC/C/65/Add.26, ¶ 27 (Oct. 9, 2003) [hereinafter CRC 2003 Consideration of French Report].

143. *See id.* ¶ 28 (recognizing France's responsibility for the negotiation of "international instruments" encompassing "regulations on family policy, measures to encourage social development, and improving the operation of all the services within its competence").

144. U.N. Comm. on the Rts. of the Child [CRC], *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Annex I*, U.N. Doc. CRC/C/FRA/4, ¶ 26 (Feb. 21, 2008) [hereinafter CRC 2008 Consideration of French Report].

145. *See France Ratification Status*, *supra* note 104 (indicating a lack of French reservations or declarations to the Optional Protocol).

146. *See* Optional Protocol, *supra* note 22, art. 5(1) (allowing communications submissions within a state party's jurisdiction); *see also* CRC 2008 Consideration

2. *A Person or Group Bringing an Individual Communication Would Likely Have an Admissible, Substantial Claim*

When a party initiates an individual communication, the CRC determines admissibility prior to considering allegations on the merits.<sup>147</sup> An individual or group must exhaust domestic remedies and present a substantial claim.<sup>148</sup> A party submitting an individual communication regarding France's actions in Mayotte would likely meet these requirements.<sup>149</sup>

i. *A Party Would Likely Exhaust All Available and Effective Domestic Remedies*

The CRC requires individuals or groups to utilize any judicial or administrative options offering "reasonable prospect[s] of redress."<sup>150</sup> However, following established international human rights law practice,<sup>151</sup> the Optional Protocol allows for exceptions to this requirement.<sup>152</sup> Parties must exhaust only effective remedies which are available to them.<sup>153</sup> Therefore, a party may bring an individual communication without exhausting domestic options for redress if the remedies would be "unreasonably prolonged" or "unlikely to bring effective relief."<sup>154</sup> The CRC in *A.E.A. v. Spain* found that by excluding A.E.A. from public education for two years following his mother's initial enrollment request, Spain's remedy was ineffective

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of French Report, *supra* note 144 (noting that international agreements apply to overseas France).

147. See Optional Protocol, *supra* note 22, art. 7 (providing the criteria by which the CRC determines the admissibility of an individual communication).

148. *Id.* art. 7(e)–(f).

149. See discussion *infra* Part III.A.2.a–b.

150. See, e.g., *D.C. v. Germany*, Comm. No. 60/2018, Views Adopted on the Convention to the Rights of the Child on a Communications Procedure, Comm. on the Rts. of the Child [CRC], ¶ 6.5, U.N. Doc. CRC/C/83/D/60/2018 (Mar. 10, 2020) (requiring authors to explore all possible "judicial and/or administrative avenues that may offer them a reasonable prospect of redress").

151. See, e.g., EXHAUSTION OF DOMESTIC REMEDIES IN THE UNITED NATIONS SYSTEM, *supra* note 106, at 2 (noting the widespread adoption of exceptions, as well as certain exceptions specific to each treaty body).

152. Optional Protocol, *supra* note 22, art. 7(e).

153. EXHAUSTION OF DOMESTIC REMEDIES IN THE UNITED NATIONS SYSTEM, *supra* note 106, at 1.

154. Optional Protocol, *supra* note 22, art. 7(e).

and A.E.A. therefore did not need to demonstrate exhaustion of remedies prior to submitting a claim.<sup>155</sup>

A party submitting a claim against France would likely exhaust all effective and available domestic remedies.<sup>156</sup> French courts continue to deny relief to migrants on the island; the *Conseil d'État* recently annulled an order from Mayotte's administrative court which previously granted a migrant's request to suspend a decree revoking her residence permissions.<sup>157</sup> In *Moustahi v. France*, the ECtHR declared that France's arbitrary pairing of two children with an unrelated adult precluded them from remedy because they were not accompanied by someone who cared for their interests and who could legally speak for them in domestic courts.<sup>158</sup> France's denial of redress for irregular migrants in these situations in Mayotte demonstrates the probability of similar domestic remedy challenges for a party seeking to allege French violations during Wuambushu.<sup>159</sup> Moreover, even if a party failed to exhaust domestic remedies, such examples illustrate the likelihood that the available remedies would be "unlikely to bring effective relief," therefore exempting the party from the exhaustion requirement.<sup>160</sup>

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155. *A.E.A. v. Spain*, Comm. No. 115/2020, Views Adopted on the Convention to the Rights of the Child on a Communications Procedure, Comm. on the Rts. of the Child [CRC], ¶ 11.2, U.N. Doc. CRC/C/87/D/115/2020 (June 22, 2021).

156. *See* EXHAUSTION OF DOMESTIC REMEDIES IN THE UNITED NATIONS SYSTEM, *supra* note 106, at 1 (requiring that attempts to resolve human rights violations must first occur at the national level).

157. *Conseil d'État*, 7ème ch., Oct. 13, 2023, No. 474868, ¶¶ 2, 10, <https://www.conseil-etat.fr/fr/arianeweb/CE/decision/2023-10-13/474868>.

158. *Moustahi v. France*, App. No. 9347/14, ¶ 38 (June 25, 2020), <https://hudoc.echr.coe.int/fre?i=002-12877>; *see also* Press Release, Eur. Ct. of Hum. Rts. [ECtHR], Administrative Detention Followed by Hasty Removal of Two Children Having Unlawfully Entered Mayotte from the Comoros: Several Violations of the Convention 2 (June 25, 2020) (stating that the ECtHR found no available remedy for the two detained children).

159. *See* Optional Protocol, *supra* note 22, art. 7(f) (noting the inadmissibility of an individual communication when the claim is "manifestly ill-founded or not sufficiently substantiated").

160. *See id.* art. 7(e) (waiving the requirement to exhaust domestic remedies in situations where such remedies would be "unreasonably prolonged or unlikely to bring effective relief").

*ii. A Party Would Likely Submit a Sufficiently Substantiated Claim*

A substantiated claim requires indicating a sufficient nexus between the action and the state<sup>161</sup> and proving the state did not have a legitimate and proportional reason for that action.<sup>162</sup> Generalized grievances—such as claims rooted in pure assumptions,<sup>163</sup> general reference to a UNCRC article,<sup>164</sup> mere disagreement with a domestic court’s conclusions,<sup>165</sup> or failure to provide a “link” between the grievance and the state’s (in)action,<sup>166</sup>—do not demonstrate an adequate connection.<sup>167</sup> In contrast, in *A.E.A. v. Spain*, the CRC found that providing a detailed timeline of events and specific, unreasonable state actions substantiated A.E.A.’s claims and demonstrated Spain’s

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161. See, e.g., *K.Y.M. v. Denmark*, Comm. No. 3/2016, Views Adopted on the Convention to the Rights of the Child on a Communications Procedure, Comm. on the Rts. of the Child [CRC], ¶ 10.3, U.N. Doc. CRC/C/77/D/3/2016 (Mar. 8, 2018) (identifying the author’s failure to demonstrate a link between her national origin and the absence of domestic appeal proceedings).

162. See, e.g., *A.E.A. v. Spain*, Comm. No. 115/2020, Views Adopted on the Convention to the Rights of the Child on a Communications Procedure, Comm. on the Rts. of the Child [CRC], ¶ 12.7, U.N. Doc. CRC/C/87/D/115/2020 (June 22, 2021) (clarifying that the CRC will not question the state unless its “interpretation is clearly arbitrary or amounts to a denial of justice”); see also RIGHTS OF NON-CITIZENS, *supra* note 83, at 7 (allowing distinctions between citizens and non-citizens only when it is legitimate and proportional to a state objective).

163. See, e.g., *C.A.K.O. v. Chile*, Comm. No. 129/2020, Views Adopted on the Convention to the Rights of the Child on a Communications Procedure, Comm. on the Rts. of the Child [CRC], ¶ 6.6, U.N. Doc. CRC/C/92/D/129/2020 (Mar. 16, 2023) (declaring that in providing only unsubstantiated factual assumptions, the author failed to demonstrate that the national courts’ decisions were arbitrary or constituted a denial of justice).

164. See, e.g., *C.E. v. Belgium*, Comm. No. 12/2017, Views Adopted on the Convention to the Rights of the Child on a Communications Procedure, Comm. on the Rts. of the Child [CRC], ¶ 7.3, U.N. Doc. CRC/C/79/D/12/2017 (Nov. 5, 2018) (concluding that mere reference to the UNCRC is insufficient on its own and must be further substantiated).

165. See, e.g., *L.H.A.N. v. Finland*, Comm. No. 98/2019, Views Adopted on the Convention to the Rights of the Child on a Communications Procedure, Comm. on the Rts. of the Child [CRC], ¶ 7.5, U.N. Doc. CRC/C/85/D/98/2019 (Oct. 29, 2020) (stating that disagreement with domestic authorities’ conclusions is insufficient without demonstrating that the authorities’ assessment was “clearly arbitrary or otherwise amounted to a denial of justice”).

166. See, e.g., *K.Y.M. v. Denmark*, ¶ 10.3 (requiring a nexus between the complaint and the state’s action).

167. See *id.* (finding that there must be a connection between the complaint’s alleged harm and the state’s role in creating that harm).



discrimination and failure to account for best interests.<sup>168</sup> While a state has a legitimate interest in administering its educational system, managing admissions without conducting proper individualized assessments is arbitrary and therefore does not constitute a legitimate and proportional reason to violate Article 2's non-discrimination promise and Article 3's guarantee to consider a child's best interests.<sup>169</sup>

Similarly, a party bringing a claim against France would be able to provide sufficient details to present a substantial claim; homelessness, like that following Wuambushu's slum devastation, leads to tangible loss and harmful effects on children.<sup>170</sup> Furthermore, there is extensive proof that detention and family separation negatively impact children's well-being.<sup>171</sup> Just as A.E.A. outlined a detailed timeline of his grievances,<sup>172</sup> parties from Mayotte could provide a precise timeline of specific events during Wuambushu affecting children of irregular migratory status: when and how authorities demolished their

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168. A.E.A. v. Spain, Comm. No. 115/2020, Views Adopted on the Convention to the Rights of the Child on a Communications Procedure, Comm. on the Rts. of the Child [CRC], ¶¶ 2.1–2.7, 11.5, U.N. Doc. CRC/C/87/D/115/2020 (June 22, 2021).

169. *See id.* ¶¶ 12.7–12.8 (stating that Spain's refusal to enroll A.E.A. without justification and in the absence of an individualized assessment constituted a UNCRC Article 3 violation).

170. *See, e.g.,* Merot, *supra* note 51 (“We have lost everything, they destroyed our lives. How can our children grow up positively when living through this?”); *see also* CRC General Comment No. 21, *supra* note 89, ¶ 50 (indicating that destruction of informal housing and forced evictions lead to additional rights violations for children).

171. *See Child Immigration Detention is Not Only Wrong, It Is Ineffective*, INT'L ORG. FOR MIGRATION (Sept. 16, 2019), <https://www.iom.int/news/child-immigration-detention-not-only-wrong-it-ineffective> (noting that studies routinely demonstrate the negative impacts and trauma of family separation on children's health and development).

172. A.E.A. v. Spain, ¶¶ 2.1–2.7, 11.5.

homes,<sup>173</sup> detained them,<sup>174</sup> or separated them from their families.<sup>175</sup> This information would present a clear, factual representation of a sufficient link between the alleged grievances and the French government's actions.<sup>176</sup>

Like Spain and its educational protocols,<sup>177</sup> France may have a legitimate interest in implementing immigration policies.<sup>178</sup> However, it may not create such policies based on discrimination and without conducting best interest assessments; this is a failure of its duty to balance legitimate goals against human rights obligations.<sup>179</sup> Wuambushu introduced unprecedented destruction and detention, responding disproportionately against irregular migration in Mayotte.<sup>180</sup> Just as Spain failed to properly balance its education objectives with reasonable policies regarding students of irregular status like A.E.A.,<sup>181</sup> France neglected its responsibility to seek more proportional means to reach its end goal of addressing immigration concerns, choosing instead to implement widespread devastation and

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173. E.g., Meerie Jesuthasan, *'Insulted, Humiliated, Hunted': Plight of Migrants as Slums Razed in French Territory of Mayotte*, THE GUARDIAN (May 31, 2023), <https://www.theguardian.com/global-development/2023/may/31/insulted-humiliated-hunted-plight-of-migrants-as-slums-razed-in-french-territory-of-mayotte> (noting the exact day authorities destroyed most of the homes in a targeted slum).

174. E.g., *Fundamental Rights in the Framework of Operation "Wuambushu"*, *supra* note 65 (remarking on France's creation of forty-four detention sites within one month).

175. E.g., 2022 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: FRANCE, *supra* note 64 (describing the detention of many children without at least one parent).

176. See, e.g., *K.Y.M. v. Denmark*, Comm. No. 3/2016, Views Adopted on the Convention to the Rights of the Child on a Communications Procedure, Comm. on the Rts. of the Child [CRC], ¶ 10.3, U.N. Doc. CRC/C/77/D/3/2016 (Mar. 8, 2018) (explaining that a generalized claim without a specific link is not substantiated).

177. *A.E.A. v. Spain*, ¶¶ 12.7–12.8.

178. See generally Juan Carlos Murillo, *The Legitimate Security Interests of the State and International Refugee Protection*, 6 SUR-INT'L J. ON HUM. RTS. 117, 120 (2009) (noting a state's sovereign right to adopt and limit its own immigration policy).

179. See CRC General Comment No. 14, *supra* note 130, ¶ 6(c) (declaring that decisions must evaluate the possible impact and the child's best interest); see also Murillo, *supra* note 178, at 117 (emphasizing the necessity of balancing security interests and human rights responsibilities).

180. See, e.g., Bochenek, *supra* note 48 (articulating the "unprecedented" scale of the French authorities' operation against undocumented migrants).

181. *A.E.A. v. Spain*, ¶ 12.9.

expulsion.<sup>182</sup> Therefore, assuming the party first exhausted domestic remedies, a person or group submitting an individual communication regarding France's mistreatment of irregular migrant children would likely have a sufficiently substantial claim.<sup>183</sup>

**B. THE CRC WOULD LIKELY FIND THAT FRANCE DISCRIMINATED ON THE BASIS OF CHILDREN'S IRREGULAR MIGRATORY STATUS AND NEGLECTED TO PROPERLY CONSIDER THEIR BEST INTERESTS**

France's policies and practices against irregular migrant children were discriminatory under UNCRC Article 2 and failed to take best interests into account under Article 3.<sup>184</sup> State institutions assume a "positive obligation" to ensure children's well-being,<sup>185</sup> and must incorporate this consideration into all governmental actions.<sup>186</sup> By destroying slums and separating children from their families, the French government's actions during Wuambushu violated not only Articles 2 and 3,<sup>187</sup> but infringed additional standard of living and family togetherness rights under the UNCRC.<sup>188</sup>

To identify a violation under UNCRC Articles 2 and 3, the CRC

182. See Bochenek, *supra* note 48 (reporting the French government's demolition of slums and its expulsion of "large number[s] of undocumented migrants").

183. See Optional Protocol, *supra* note 22, art. 7(e)–(f) (calling for an exhaustion of domestic remedies and a substantiation of one's allegations).

184. U.N. Comm. on Econ., Soc. & Cultural Rts. [CESCR], *Duties of States Towards Refugees and Migrants Under the International Covenant on Economic, Social and Cultural Rights*, ¶ 6, U.N. Doc. E/C.12/2017/1 (Mar. 13, 2017) [hereinafter *Duties of States*] (recognizing that regular status is not a condition for non-discrimination); CRC General Comment No. 14, *supra* note 130, ¶ 6(c) (requiring decisions to evaluate the possible impact and the child's best interest); UNCRC, *supra* note 13, arts. 2(1), 3(1).

185. John Eekelaar & John Tobin, *Article 3: The Best Interests of the Child*, in *THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD: A COMMENTARY* 73, 77 (John Tobin ed., 2019); see also UNCRC, *supra* note 13, art. 3(2) (outlining the responsibility to provide necessary care for children's well-being).

186. CRC General Comment No. 14, *supra* note 130, ¶ 14(a).

187. See UNCRC, *supra* note 13, arts. 2(1), 3(1) (detailing the principle of non-discrimination and the need to consider children's best interests).

188. See *id.* arts. 27(1), 9(1) (requiring states to protect against family separation and to recognize a child's right to an adequate standard of living); *How We Protect Children's Rights with the U.N. Convention on the Rights of the Child*, *supra* note 15 (noting Articles 2 and 3 as "General Principles" used to interpret all other UNCRC rights).

looks for a disproportionate state action based on an illegitimate distinction,<sup>189</sup> an improper assessment of the potential impacts of the action,<sup>190</sup> and a failure to take into account children's best interests as a primary consideration.<sup>191</sup> International law recognizes that regular status is not a precondition to receiving protection from discrimination.<sup>192</sup> France created an illegitimate distinction by establishing an irregular migrant status classification contrary to Article 2, targeting homes and executing detentions and expulsions using that classification.<sup>193</sup> Failure to conduct an individualized assessment on how Wuambushu might affect children's access to rights constituted an improper impact evaluation.<sup>194</sup> Finally, France neglected to acknowledge children's unique vulnerability to the impacts of Wuambushu, failing to elevate this consideration to a primary level under Article 3.<sup>195</sup> Therefore, assuming proper

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189. See CRC General Comment No. 22, *supra* note 127, ¶ 22 (asserting that status-based distinctions are discriminatory if they are not legitimate and proportional); CERD, *supra* note 86, ¶ 4.

190. See CRC General Comment No. 14, *supra* note 130, ¶ 6(c) (remarking that UNCRC Article 3 requires states to include an evaluation of the possible positive and negative impacts on children when making decisions affecting children); A.E.A. v. Spain, Comm. No. 115/2020, Views Adopted on the Convention to the Rights of the Child on a Communications Procedure, Comm. on the Rts. of the Child [CRC], ¶ 12.9, U.N. Doc. CRC/C/87/D/115/2020 (June 22, 2021) (requiring an individualized assessment of best interests without excessive state discretion).

191. See CRC General Comment No. 14, *supra* note 130, ¶ 6(a) (requiring states to elevate considerations of children over other groups).

192. Duties of States, *supra* note 184.

193. See UNCRC, *supra* note 13 (compelling states to respect and ensure children's rights under the UNCRC without discrimination); see also discussion *infra* Part III.B.1–2 (arguing that France's targeted destruction of slums and its expulsion of migrants impermissibly discriminated against children of irregular migratory status).

194. See Eekelaar & Tobin, *supra* note 185, at 78 (noting the CRC explains that "a greater level of protection and detailed procedures" are appropriate where a state's decisions will have a major impact on children); CRC General Comment No. 22, *supra* note 127, ¶¶ 14, 16 (encouraging states to develop systematic policies to collect data on children in international migration contexts); CRC General Comment No. 14, *supra* note 130, ¶¶ 6(c), 35 (requiring states to implement ongoing impact evaluations when making decisions affecting children); see also discussion *infra* Part III.B.1–2 (arguing that France's targeted destruction of slums and its expulsion of migrants impermissibly discriminated against children of irregular migratory status).

195. See UNCRC, *supra* note 13, art. 3(1) (establishing best interests as a primary

jurisdiction,<sup>196</sup> the CRC would likely find that France's slum destruction and evictions and its improper detentions and expulsions violated UNCRC Articles 2 and 3.<sup>197</sup>

*1. Slum Destruction and Eviction Discriminated Against Irregular Migrant Children and Neglected Their Best Interests*

The French government was not secretive about its objectives to carry out disproportionate, discriminatory devastation specifically against those of irregular migratory status.<sup>198</sup> Minister of the Interior Gérald Darmanin clearly stated his desire to “expel illegal immigrants” and “destroy a thousand slums by the end of 2023.”<sup>199</sup> This discrimination clearly violated UNCRC Article 2 and occurred despite France's long-standing commitment to respect children's rights.<sup>200</sup> The CRC confirmed that even when a state claims to support the universality of a right, discrimination can still occur in practice.<sup>201</sup> Just as Spain's official recognition of the fundamental right to education did not excuse its discriminatory refusal to enroll a child with irregular status,<sup>202</sup> France's commitment to protecting children's

consideration for all government actions concerning children); *see also* discussion *supra* Part II.C.1 (discussing increased protections for groups vulnerable to rights violations); *infra* Part III.B.1–2 (noting the impact of improper detentions and expulsions on children).

196. *See* discussion *supra* Part III.A.

197. *See* discussion *infra* Part III.B.1–2 (arguing that France's targeted destruction of slums and its expulsion of migrants impermissibly discriminated against children of irregular migratory status).

198. *See, e.g., French Official Calls for the Killing of Comorian Migrants*, TRT WORLD, <https://www.trtworld.com/discrimination/french-official-calls-for-the-killing-of-comorian-migrants-12978169> (reporting that a member of the Mayotte Island State Assembly declared as criminals migrants who resist deportation and proclaimed they should “be killed if necessary”).

199. *France Destroys More Mayotte Slums, Vowing to ‘Regain Control’ of Population*, RFI (June 26, 2023), <https://www.rfi.fr/en/france/20230626-france-destroys-more-mayotte-slums-vowing-to-regain-control-of-population>.

200. *See* UNCRC, *supra* note 13 (compelling states to respect and ensure children's rights under the UNCRC without discrimination); *Children's Rights*, *supra* note 92 (noting France's ratification of all international agreements protecting children, including the UNCRC).

201. *A.E.A. v. Spain*, Comm. No. 115/2020, Views Adopted on the Convention to the Rights of the Child on a Communications Procedure, Comm. on the Rts. of the Child [CRC], ¶ 12.8, U.N. Doc. CRC/C/87/D/115/2020 (June 22, 2021).

202. *Id.* ¶¶ 12.4–12.5.

non-discrimination rights<sup>203</sup> does not mean the government did not discriminate based on an improper distinction when it destroyed the slums housing children of irregular migratory status.<sup>204</sup> France may have valid state goals to address migrants' informal housing;<sup>205</sup> however, it may not violate UNCRC Articles 2 and 3 by depriving children of housing using an illegitimate distinction or by neglecting to consider the potential impacts on the children's well-being.<sup>206</sup>

By specifically targeting slums housing the majority of Mayotte's irregular migrants,<sup>207</sup> France discriminated against children on the basis of status contrary to Article 2 and failed to uphold its guarantee to provide an adequate standard of living.<sup>208</sup> The Committee on Economic, Social and Cultural Rights broadly interprets this guarantee as providing a child with the freedom to live "in security, peace and dignity."<sup>209</sup> "Adequate" housing requires France's attention to several factors, including availability.<sup>210</sup> UNCRC Article 2 compels France to

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203. *Children's Rights*, *supra* note 92.

204. See *A.E.A. v. Spain*, ¶¶ 12.4–12.5 (determining that while Spain legally recognized the right of all children to an education, it failed to execute this right in practice for a child with an irregular administrative status).

205. See Murillo, *supra* note 178, at 117, 120 (noting state sovereignty in establishing immigration policies); but see Irekpitán Okukpon, *Externalization of Border Controls as a Violation of Human Rights of Irregular Migrant Children: A Global Dilemma*, 11 BEIJING L. REV. 651, 653–54 (2020) (asserting that international law limits states' sovereign right to determine immigration policy).

206. See CRC General Comment No. 22, *supra* note 127, ¶ 22 (declaring that differential treatment of migrants must be lawful, proportionate, and in pursuit of a legitimate aim).

207. See Leslie Carretero, *French Territory Mayotte Plans to Demolish Slums and Deport Migrants*, INFOMIGRANTS (Apr. 14, 2023), <https://www.infomigrants.net/en/post/48210/french-territory-mayotte-plans-to-demolish-slums-and-deport-migrants> (reporting that migrants populate the majority of the slums).

208. See UNCRC, *supra* note 13, arts. 2(1), 27(1) (compelling states to respect and ensure children's rights under the UNCRC without discrimination, including the right "to a standard of living adequate for the child's physical, mental, spiritual, moral and social development").

209. U.N. Committee on Economic, Social and Cultural Rights [CESCR], *General Comment No. 4 on the Right to Adequate Housing (Art. 11(1) of the Covenant)*, U.N. Doc. E/1992/23, ¶ 7 (Dec. 13, 1991) [hereinafter CESCR General Comment No. 4].

210. See *id.* ¶ 8(b) (guaranteeing the right to certain essential facilities and infrastructure).

“take all appropriate measures” to protect this right,<sup>211</sup> and Article 3 requires acknowledging children’s interests and involvement prior to commencing any action that may have an “undeniable impact” on children.<sup>212</sup> The CRC believes this allows “no leeway for [state] discretion.”<sup>213</sup> Deploying approximately two thousand authorities to overwhelm a small island and destroy informal housing was unprecedented,<sup>214</sup> objectively unreasonable,<sup>215</sup> and a failure to provide “security, peace and dignity.”<sup>216</sup> There are a variety of accepted methods by which a state can consider best interests or evaluate potential impacts; however, sending a large, disproportionate police force indicates that France’s assessment method was inadequate, if not non-existent.<sup>217</sup> Moreover, the Defender of Rights<sup>218</sup> notes that destroying children’s homes does not align with their best interests,<sup>219</sup> and therefore violates UNCRC Article 3.<sup>220</sup>

Even if France were to claim it targeted the slums for legitimate

211. UNCRC, *supra* note 13, arts. 2(2), 27(3).

212. CRC General Comment No. 14, *supra* note 130, ¶ 40; UNCRC, *supra* note 13, art. 3(1).

213. CRC General Comment No. 21, *supra* note 89, ¶ 49.

214. *See, e.g.*, Bochenek, *supra* note 48 (explaining that while slum demolition and migrant expulsions are not new, Wuambushu had an unprecedented magnitude).

215. *See* U.N. Hum. Rts. Comm. [HRC], *General Comment No. 18: Non-Discrimination*, ¶ 13 (Nov. 10, 1989) [hereinafter HRC General Comment No. 18], <https://www.refworld.org/legal/general/hrc/1989/en/6268> (requiring a “reasonable [objectivity]” test to determine legitimacy and proportionality).

216. *See* CESCR General Comment No. 4, *supra* note 209 (noting that the right to adequate housing should be interpreted broadly to include the freedom to live in “security, peace and dignity”).

217. *See* CRC General Comment No. 14, *supra* note 130, ¶¶ 36–40 (acknowledging a necessary “degree of flexibility” in best interest assessments); Bochenek, *supra* note 48 (noting the unprecedented magnitude of Wuambushu).

218. *See* sources cited *supra* notes 94–96 (noting the Defender of Rights as the independent authority responsible for monitoring France’s adherence to its UNCRC responsibilities).

219. *See* *Mayotte; la Défenseure des droits accentue ses actions pour le respect des droits fondamentaux* [*Mayotte: The Defender of Rights Increases Its Actions for the Respect of Fundamental Rights*], DÉFENSEUR DES DROITS [DEF. OF RTS.] (Apr. 26, 2023) [hereinafter *Défenseur Press Release*], <https://www.defenseurdesdroits.fr/mayotte-la-defenseure-des-droits-accentue-ses-actions-pour-le-respect-des-droits-fondamentaux-490> (emphasizing concern for the lack of consideration regarding children’s best interests in light of Wuambushu).

220. *See* UNCRC, *supra* note 13, art. 3(1) (establishing best interests as a primary consideration for all government actions concerning children).

reasons,<sup>221</sup> the actions still had a disproportionate impact on children of a specific status,<sup>222</sup> violating the Article 2 protection against discrimination.<sup>223</sup> Slums constitute forty percent of Mayotte's housing,<sup>224</sup> and the majority of irregular migrant children live in such informal homes.<sup>225</sup> While the sanitary and safety conditions of slums are likely themselves not in the best interest of the children living there, destroying what housing these children do have is certainly not a better solution under Article 3.<sup>226</sup> The CRC refused to find legitimacy and proportionality in Spain's decision to withhold education on the basis of irregular status.<sup>227</sup> It therefore would likely find that leaving children homeless<sup>228</sup> due to their irregular status would also have a serious impact on their interests and well-being, making such actions

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221. See, e.g., Sophie Bernard, *Mayotte: le ministre de l'Intérieur et des Outre-mer prolonge l'opération Wuanbushu [sic]*, [*Mayotte: The Minister of the Interior and Overseas Territories Extends Operation Wuanbushu [sic]*], MINISTÈRE DE L'INTÉRIEUR ET DES OUTRE-MER [MINISTRY OF THE INTERIOR & OVERSEAS] (June 26, 2023), <https://www.gendarmerie.interieur.gouv.fr/gendinfo/actualites/2023/mayotte-le-ministre-de-l-interieur-et-des-outre-mer-prolonge-l-operation-wuanbushu> (claiming Wuambushu's goal of controlling delinquency and illegal migration).

222. See, e.g., *Mayotte Migrant Crisis: French Territory Set to Demolish Shantytown*, *supra* note 59 (reporting that the majority of migrants living in the slums targeted were undocumented and from nearby Comoros).

223. See UNCRC, *supra* note 13 (compelling states to respect and ensure children's rights under the UNCRC without discrimination).

224. *French Violations in The Spotlight*, *supra* note 10.

225. See *Mayotte Migrant Crisis: French Territory Set to Demolish Shantytown*, *supra* note 59 (reporting the displacement of families due to the demolition of shantytowns).

226. See, e.g., Jesuthasan, *supra* note 173 (noting that housing in the slums is "substandard" but that demolition leaves hundreds of people without shelter); see also discussion *infra* Part IV.A (suggesting that France should ultimately redirect its attention and resources to improving informal housing conditions in order to truly account for children's best interests); UNCRC, *supra* note 13, art. 3(1) (establishing best interests as a primary consideration for all government actions concerning children).

227. See *A.E.A. v. Spain*, Comm. No. 115/2020, Views Adopted on the Convention to the Rights of the Child on a Communications Procedure, Comm. on the Rts. of the Child [CRC], ¶ 12.4, U.N. Doc. CRC/C/87/D/115/2020 (June 22, 2021) (declaring educational rights for all children in Spain, regardless of their nationality of administrative status).

228. See *Mayotte Migrant Crisis: French Territory Set to Demolish Shantytown*, *supra* note 59 ("[I]f they destroy our houses, where are we going to go with the children?").



impossible to justify in the name of any proposed state goal.<sup>229</sup>

It is irrelevant that the targeted slums constituted unauthorized housing.<sup>230</sup> The CRC notes that children living in informal housing are more vulnerable to discrimination and abuses, and that states should take this vulnerability into account when conducting best interest analyses.<sup>231</sup> It also explicitly indicates that destruction and eviction of these illegal or informal homes have the potential to create additional human rights violations for the children living there.<sup>232</sup> Under France's immigration law, the island's Prefect has exclusive power over decisions involving housing in Mayotte.<sup>233</sup> Unlike elsewhere in France, there is no need to acquire judicial approval prior to eviction and demolition.<sup>234</sup> While Mayotte-specific judicial review policies may not intentionally target children of a particular status,<sup>235</sup> they have a disparate impact on those who are in irregular migratory situations.<sup>236</sup> Indirect policies that appear neutral can nevertheless constitute discriminatory practice, violating UNCRC Article 2.<sup>237</sup> The

229. See CESCR General Comment No. 7, *supra* note 78, ¶ 16 (asserting that evictions should not lead to child homelessness or vulnerability to further rights violations).

230. See CRC General Comment No. 21, *supra* note 89, ¶ 50 (proclaiming that forcibly evicting children from illegal housing can expose them to further rights violations).

231. See *id.* ¶¶ 26, 28 (indicating the unique vulnerability of children in street situations and the responsibility of authorities to take this vulnerability into account).

232. *Id.* ¶ 50.

233. See *supra* notes 55–56 (summarizing the power of Mayotte's Prefect over housing and immigration law).

234. See CESEDA, *supra* note 41, art. R761-5 (noting Mayotte-specific policies that are exceptions to general French rules); see also *Mayotte: la Défenseure des droits regrette « une certaine précipitation » dans l'opération « Wuambushu »* [Mayotte: The Defender of Rights Laments "A Certain Haste" in the "Wuambushu" Operation], LE MONDE (Apr. 27, 2023), [https://www.lemonde.fr/outr-mer/article/2023/04/27/mayotte-la-defenseure-des-droits-regrette-une-certaine-precipitation-dans-l-operation-wuambushu\\_6171155\\_1840826.html](https://www.lemonde.fr/outr-mer/article/2023/04/27/mayotte-la-defenseure-des-droits-regrette-une-certaine-precipitation-dans-l-operation-wuambushu_6171155_1840826.html) (noting the lack of a guaranteed right to appeal was "incompatible" with the accelerated nature of Wuambushu).

235. See Bernard, *supra* note 221 (claiming broad Wuambushu goals to control delinquency and illegal migration).

236. See Carretero, *supra* note 207 (noting that approximately "65% of foreigners live in slums").

237. See *A.E.A. v. Spain*, Comm. No. 115/2020, Views Adopted on the Convention to the Rights of the Child on a Communications Procedure, Comm. on

lack of judicial involvement allows for rapid government action like Wuambushu to target areas housing populations which may include other groups but which have large numbers of irregular migrant children.<sup>238</sup> Through targeted slum destruction and eviction, France discriminated against children of irregular migratory status under UNCRC Article 2 and failed to account for their best interests under Article 3.<sup>239</sup>

## *2. Improper Detention and Expulsion Discriminated Against Irregular Migrant Children and Neglected Their Best Interests*

While France has legitimate interests in creating immigration policies and managing irregular migration,<sup>240</sup> UNCRC Article 2 prohibits using illegitimate distinctions<sup>241</sup> to disproportionately advance state goals through improper detention and expulsion.<sup>242</sup> However, the French government executed its detention and expulsion decisions using such illegitimate, status-based distinctions.<sup>243</sup> Following some of the slum evictions, authorities detained and expelled parents and guardians of irregular migratory status, separating families and leaving the children.<sup>244</sup> Moreover, all Mayotte

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the Rts. of the Child [CRC], ¶ 12.8, U.N. Doc. CRC/C/87/D/115/2020 (June 22, 2021) (specifying that discrimination can be “hidden” or “indirect”); UNCRC, *supra* note 13, art. 2(1).

238. *See* Carretero, *supra* note 207 (noting the high number of undocumented migrants living in the targeted slums).

239. *See supra* notes 207–09 (analyzing France’s violative actions under UNCRC Articles 2 and 3).

240. *See supra* note 205 (acknowledging the balance between state interests and human rights obligations).

241. *See supra* note 189 (recognizing status-based distinctions only when they are legitimate and proportional).

242. UNCRC, *supra* note 13, arts. 2(1), 9(1); *see* CRC General Comment No. 22, *supra* note 127, ¶ 21 (forbidding discrimination); *see also* CRC General Comment No. 23, *supra* note 129, ¶ 28 (prohibiting arbitrary separation and collective expulsion).

243. *See, e.g., Detention of Children: European Court of Human Rights Rules Against France 11 Times, supra* note 12 (noting how the French Ministry of the Interior “continues to turn a deaf ear” to violations of European protocols against discriminatory detention and expulsion practices).

244. *See, e.g., Mayotte and the “Double Discourse” of the Comoros, supra* note 4 (explaining how children of expelled parents are left with neighbors or cousins and are required to support themselves).

detainees waiting for expulsion, including children, lack access to a sufficient judicial review process, particularly in cases of family separation.<sup>245</sup> This directly conflicts with the UNCRC's judicial review requirements for all separation decisions<sup>246</sup> and precludes proper, individualized assessment of best interests under Article 3.<sup>247</sup>

The CRC views family separation as a measure of “last resort,” acceptable only when states exhaust all other, less invasive options for the child's protection.<sup>248</sup> It requires individualized assessments to properly evaluate the potential impacts of separation on a child's best interests under Article 3<sup>249</sup> and to determine rare cases of permissible separation.<sup>250</sup> While there may be individual, unreported circumstances in which family separation would be appropriate,<sup>251</sup> overall France's practice of separating irregular migrant children does not properly consider best interests or potentially harmful impacts.<sup>252</sup> The ECtHR condemned France multiple times,<sup>253</sup> noting in *Moustahi v. France* that the government's goal was not to care for the interests

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245. See Geoffroy, *supra* note 8 (describing the rushed judicial proceedings characterizing expulsions in Mayotte, particularly situations in which immigrants are sent back overnight before any judicial review takes place); see also Bochenek, *supra* note 48 (explaining how these failed policies “deprive people in Mayotte of basic rights”).

246. UNCRC, *supra* note 13, art. 9(1).

247. *Id.* art. 3(1); see CRC General Comment No. 14, *supra* note 130, ¶ 6(c) (declaring that decisions must evaluate the possible impact and the child's best interest).

248. See *B.J. & P.J. v. Czechia*, Comm. No. 139/2021, Views Adopted on the Convention to the Rights of the Child on a Communications Procedure, Comm. on the Rts. of the Child [CRC], ¶¶ 8.3, 8.7–8.8, U.N. Doc. CRC/C/93/D/139/2021 (Aug. 18, 2023) (finding a lack of any adequate assessments of best interests or separation alternatives).

249. UNCRC, *supra* note 13, art. 3(1).

250. CRC General Comment No. 6, *supra* note 129, ¶ 18.

251. *E.g.* UNCRC, *supra* note 13, art. 9(1) (noting that separation is acceptable in situations such as parental neglect or abuse).

252. *Id.* art. 3(1); CRC General Comment No. 23, *supra* note 129, ¶¶ 5–13 (declaring that detaining children as an immigration procedure is never in their best interest and is always a human rights violation).

253. *Detention of Children: European Court of Human Rights Rules Against France 11 Times*, *supra* note 12; see also Okukpon, *supra* note 205, at 664 (observing that ECtHR rulings should deter states from detaining irregular migrant children without prudence in light of human rights treaties).

of the children but instead to expel them as rapidly as possible.<sup>254</sup> While detention itself is not illegal under international law,<sup>255</sup> conditions and procedures must align with human rights standards such as non-discrimination<sup>256</sup> to properly consider children's best interests.<sup>257</sup> In *A.E.A. v. Spain*, the CRC confirmed its opposition to states failing to account for impacts and best considerations when making education policy decisions.<sup>258</sup> It is just as firm on detention rights and conditions, declaring that states should detain children only when there are no viable alternatives.<sup>259</sup>

In *Moustahi v. France*, the ECtHR further criticized France for its long-term practice of exploiting children's irregular status by arbitrarily assigning them to unrelated adults for expulsion without conducting individualized assessments.<sup>260</sup> Reports confirm that generalized, collectively-assessed separations continued throughout Wuambushu.<sup>261</sup> Identity checks on minors revealing their irregular status led to family separation and arbitrary assignments for expulsion.<sup>262</sup> Like Spain's generalized assessment governing A.E.A.'s educational access,<sup>263</sup> France conducted discriminatory identity

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254. *Moustahi v. France*, App. No. 9347/14, ¶ 15 (June 25, 2020), <https://hudoc.echr.coe.int/fre?i=002-12877>.

255. Okukpon, *supra* note 205, at 652.

256. See *International Standards Governing Migration Policy*, OHCHR, <https://www.ohchr.org/en/migration/international-standards-governing-migration-policy> (recognizing non-discrimination as a "cross-cutting human rights principle"); UNCRC, *supra* note 13, art. 2(1).

257. See G.A. Res. 43/173, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment Principle 3 (Dec. 9, 1988), <https://www.ohchr.org/sites/default/files/bodyprinciples.pdf> (prohibiting human rights violations for individuals in detention); UNCRC, *supra* note 13, art. 3(3).

258. *A.E.A. v. Spain*, Comm. No. 115/2020, Views Adopted on the Convention to the Rights of the Child on a Communications Procedure, Comm. on the Rts. of the Child [CRC], ¶ 12.9, U.N. Doc. CRC/C/87/D/115/2020 (June 22, 2021).

259. See CRC General Comment No. 6, *supra* note 129, ¶ 61 (declaring that detention should be a last resort).

260. *Moustahi v. France*, ¶ 38.

261. See 2022 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: FRANCE, *supra* note 64 (indicating France's continued practice of illegally detaining children without a parent or guardian).

262. See *Generalized and Discretionary Identity Checks*, *supra* note 7 (describing how the police's ability to conduct broad, discretionary identity checks enables a mass deportation scheme).

263. *A.E.A. v. Spain*, ¶¶ 12.7–12.9.

checks and generalized expulsion assessments without proper consideration of best interests, ignoring possibilities of negative impacts<sup>264</sup> and violating UNCRC Articles 2 and 3.<sup>265</sup> The CRC's conclusion that withholding education was not in a child's best interest<sup>266</sup> certainly indicates that it would likely find a decision to force a child's separation from a parent or guardian to similarly demonstrate a failure to consider the potential impacts or to account for the child's best interests.<sup>267</sup>

Separating a family for violating immigration law is not a proportional response.<sup>268</sup> Any state advantages to such expulsion practices infringe children's rights under Article 3<sup>269</sup> and do not overcome the damaging impacts on children's development and life.<sup>270</sup> Interior Minister Darmanin explicitly called for "exp[ulsion of] illegal immigrants"<sup>271</sup> and a member of Mayotte's Departmental Council called for the murder of migrants as a deterrent to others who may wish to migrate to the island.<sup>272</sup> If Spain's goal to control access to education was not legitimate,<sup>273</sup> the CRC would certainly find France's ambitions to "break the record for deportations"<sup>274</sup> through

264. See, e.g., *Moustahi v. France*, ¶ 38 ("[T]he Conseil d'État had found that the administrative authority was obliged to verify the identity of foreign minors placed in administrative detention and to ascertain whether there was any connection between them and any adults with whom they might be associated for the purposes of removal and the conditions in which the minors would be received on arrival at their destination.").

265. UNCRC, *supra* note 13, arts. 2(1), 3(1).

266. See *A.E.A. v. Spain*, ¶ 12.9 ("[T]he Committee is of the view that the best interests of A.E.A. were not a primary consideration in the proceedings related to his [enrollment]").

267. UNCRC, *supra* note 13, art. 3(1); see also *UNICEF Positions Itself Against Operation Wuambushu*, *supra* note 67 (warning of the dangers of family separation).

268. CRC General Comment No. 23, *supra* note 129, ¶ 29.

269. UNCRC, *supra* note 13, art. 3(1).

270. CRC General Comment No. 23, *supra* note 129, ¶ 29.

271. *France Destroys More Mayotte Slums, Vowing to 'Regain Control' of Population*, *supra* note 199.

272. See *French Official Calls for the Killing of Comorian Migrants*, *supra* note 198 ("I do not accept the [characterization] of these [Comorian migrants] as young people or children.").

273. *A.E.A. v. Spain*, Comm. No. 115/2020, Views Adopted on the Convention to the Rights of the Child on a Communications Procedure, Comm. on the Rts. of the Child [CRC], ¶ 12.7, U.N. Doc. CRC/C/87/D/115/2020 (June 22, 2021).

274. *France Destroys More Mayotte Slums, Vowing to 'Regain Control' of*

family separation and collective expulsion to be harmful, illegitimate, and not objectively reasonable.<sup>275</sup> France's status-based expulsions,<sup>276</sup> coupled with its failure to guarantee necessary detention protections,<sup>277</sup> violated the rights of Mayotte's irregular migrant children under UNCRC Articles 2 and 3.<sup>278</sup>

#### IV. RECOMMENDATIONS

If a party brings an individual communication, the CRC should provide recommendations articulating measures of redress.<sup>279</sup> In reviewing a communication on Mayotte, the CRC should direct France to provide adequate compensation and housing to the individuals who lost their homes in Wuambushu.<sup>280</sup> It should additionally suggest administrative improvements to the detention system and expulsion process.<sup>281</sup> Whether or not there is an individual communication with CRC recommendations, France and other concerned parties should

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*Population, supra* note 199.

275. See HRC General Comment No. 18, *supra* note 215, ¶ 13 (articulating the authority of the U.N. Human Rights Committee to find permissible a differentiation in treatment, provided that such treatment is objective and reasonable in achieving a legitimate end).

276. See *Moustahi v. France*, App. No. 9347/14, ¶ 1 (June 25, 2020), <https://hudoc.echr.coe.int/fre?i=002-12877> (noting France's violation of European protocols against collective expulsion).

277. See ADMINISTRATIVE DETENTION CENTERS AND LOCATIONS, *supra* note 62, at 11, 26 (revealing that detained children are not provided with information about their rights and that authorities continue to make decisions in defiance of court orders and in violation of children's rights).

278. See UNCRC, *supra* note 13, arts. 2(1), 3(1) (asserting that both private and public institution shall respect children's rights without discrimination and in their best interests); *Fundamental Rights in the Framework of Operation "Wuambushu"*, *supra* note 65 (reporting the Council of Europe's condemnation of France for its failure to respect fundamental rights during Wuambushu).

279. See generally G.A. Res. 60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, ¶¶ 19–23 (Mar. 21, 2006) (outlining the international reparation principles of restitution, compensation, rehabilitation, satisfaction, and non-repetition guarantees).

280. See *A.E.A. v. Spain*, Comm. No. 115/2020, Views Adopted on the Convention to the Rights of the Child on a Communications Procedure, Comm. on the Rts. of the Child [CRC], ¶ 13, U.N. Doc. CRC/C/87/D/115/2020 (June 22, 2021) (urging reparation and compensation for A.E.A.).

281. See *id.* ¶ 13(d) (recommending training for governmental staff).

nevertheless take steps to address the rights violations.<sup>282</sup>

#### A. FRENCH PARTNERSHIP WITH THE U.N.-HABITAT'S PARTICIPATORY SLUM UPGRADING PROGRAMME

Overcrowded and without essential services, slums and other “informal settlements”<sup>283</sup> provide insufficient living conditions.<sup>284</sup> The French government should therefore shift its focus from destruction of these settlements to construction of better communities.<sup>285</sup> Slum upgrading addresses immediate issues<sup>286</sup> and implements long-term, sustainable solutions.<sup>287</sup> The Participatory Slum Upgrading Programme (PSUP)<sup>288</sup> collaborates with partners and slum communities to address inadequate living conditions.<sup>289</sup> Following the 2030 Agenda for Sustainable Development,<sup>290</sup> PSUP strives to achieve universal access to housing that is “adequate, safe and affordable.”<sup>291</sup>

282. See discussion *infra* Part IV.A–C.

283. See *Slums and Slum Upgrading*, CITIES ALLIANCE [hereinafter CITIES ALLIANCE], <https://www.citiesalliance.org/themes/slums-and-slum-upgrading> (defining “slums” as a form of informal settlements within cities).

284. See *id.* (detailing the lack of water, sanitation, waste collection, and other inadequacies in slum communities).

285. See Bochenek, *supra* note 48 (suggesting that French authorities could have focused on taking care of Mayotte’s population rather than destroying slums); CRC General Comment No. 21, *supra* note 89, ¶ 51 (asserting that states should address the structural cases of inequality and provide safe, sanitary housing to prevent children from ending up in street situations).

286. See generally CITIES ALLIANCE, *supra* note 283 (remarking on the need to confront the lack of drainage, water, and housing).

287. See *id.* (noting the importance and interconnectedness of investing on both a global level and a local level); U.N.-HABITAT, GLOBAL ACTION PLAN: ACCELERATING FOR TRANSFORMING INFORMAL SETTLEMENTS AND SLUMS BY 2030 4 (2022), [https://unhabitat.org/sites/default/files/2023/05/global\\_action\\_plan\\_22-05-23.pdf](https://unhabitat.org/sites/default/files/2023/05/global_action_plan_22-05-23.pdf) (emphasizing the need to avoid “quick fix[es],” striving instead for long-term transformation); 2030 Agenda for Sustainable Development, *supra* note 81, ¶¶ 21–22.

288. *The Participatory Slum Upgrading Programme (PSUP)*, *supra* note 23.

289. See *id.* (announcing that over 40 countries have implemented the program’s call for investment).

290. See 2030 Agenda for Sustainable Development, *supra* note 81, ¶¶ 21–22 (outlining the U.N.’s aim to improve the inclusivity, safety, and sustainability of cities and housing).

291. *Housing - Make Slums a Better Place*, PSUP, <https://www.mypsup.org/topics/Housing>.

While France is not currently a PSUP participant, the organization provides opportunities to engage a variety of partners at different levels.<sup>292</sup> Due to the decentralization of the French child welfare system,<sup>293</sup> France should partner with PSUP at either the national or departmental level.<sup>294</sup> France lacks an adequate plan for providing alternative housing in Mayotte, particularly for those who used to live in the now-demolished slums.<sup>295</sup> What housing initiatives exist typically only include plans for short-term solutions.<sup>296</sup> PSUP provides government partners with evaluations of slum infrastructure, allowing for effective and affordable planning.<sup>297</sup> Working together to create a Mayotte-specific approach, the French government and PSUP should begin to adequately house irregular migrant children in protection of their best interests.<sup>298</sup>

#### B. INDIVIDUAL AND ORGANIZATIONAL CAMPAIGNS TO COMPEL THE DEFENDER OF RIGHTS TO ACT

The French Constitution grants the Defender of Rights responsibility to protect individuals' freedoms against violative state actions.<sup>299</sup> The authority's organic statute outlines multiple objectives, including the duty to defend and promote children's rights.<sup>300</sup> Any

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292. See *Participation - Get Involved for the Change!*, PSUP, <https://www.mypsup.org/topics/Participation> (encouraging all countries and stakeholders to participate in the program's mission).

293. See CRC 2003 Consideration of French Report, *supra* note 142, ¶ 27 (explaining that *départementale* leadership holds some responsibility for administering child welfare services).

294. See *id.* ¶ 28 (recommending that France implement the necessary legal measures to protect the rights of children).

295. See Pascual, *Deceptive Promises*, *supra* note 11 (observing that seventy-five percent of individuals living in a destroyed shanty town were yet to be rehoused).

296. See *id.* (noting the large number of individuals yet to be rehoused and the lack of any long-term solutions).

297. *Housing - Make Slums a Better Place*, *supra* note 291.

298. See UNCRC, *supra* note 13, art. 27(3) (requiring "material assistance" with housing).

299. CONSTITUTION Oct. 4, 1958, art. 71-1 (Fr.), *amended by* Loi constitutionnelle 2008-724 du 23 juillet 2008 de modernisation des institutions de la Ve République (1) [Constitutional Law 2008-724 of July 23, 2008 on the Modernization of the Institutions of the Fifth Republic (1)], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFF. GAZETTE OF FR.], Aug. 24, 2008, p. 149.

300. *Le Défenseur des droits vous aide à défendre vos droits et vos libertés* [*The*



organization, group, or individual, including children themselves, can contact the Defender of Rights to report a situation in which a state entity failed to respect a child's rights.<sup>301</sup> Hundreds of experts and lawyers are available to provide free assistance to examine an individual's case and to intervene as necessary.<sup>302</sup>

Following the start of Wuambushu in April 2023, the Defender of Rights spoke out strongly against France's actions, raising concerns of multiple rights violations;<sup>303</sup> it is clearly aware of the issues.<sup>304</sup> The children, their families, or others should contact the authority to open an inquiry into the French government's conduct.<sup>305</sup> Specifically, individuals and organizations should partner to initiate large-scale, noticeable campaigns to put substantial pressure on the Defender of Rights to act upon its concerns and take action in Mayotte.<sup>306</sup>

### C. CRC INITIATION OF AN INQUIRY PROCEDURE REGARDING FRANCE'S ACTIONS IN MAYOTTE

As an alternative (or addition) to a submitted individual communication,<sup>307</sup> the CRC should initiate an inquiry procedure<sup>308</sup>

*Defender of Rights Helps You Defend Your Rights and Freedoms*], DÉFENSEUR DES DROITS [DEF. OF RTS.], <https://www.defenseurdesdroits.fr>; Conseil constitutionnel [CC] [Constitutional Court] decision No. 2011-626 DC, Mar. 30, 2011, J.O. 116 (Fr.) (affirming the organic law of the Defender of Rights).

301. *Défendre et promouvoir les droits de l'enfant* [*Defend and Promote the Rights of the Child*], DÉFENSEUR DES DROITS [DEF. OF RTS.] (Mar. 27, 2023), <https://www.defenseurdesdroits.fr/defendre-et-promouvoir-les-droits-de-lenfant-216>.

302. *Demander de l'aide au Défenseur des droits* [*Ask for Help from the Defender of Rights*], DÉFENSEUR DES DROITS [DEF. OF RTS.] (Oct. 5, 2023), <https://www.defenseurdesdroits.fr/demander-de-laide-au-defenseur-des-droits-146>.

303. See *Défenseur Press Release*, *supra* note 219 (referencing the numerous human rights complaints processed in response to the evacuations and the destruction of slums).

304. See *id.* (detailing that the authority has noted the observations and plans to strengthen its response).

305. See *Defend and Promote the Rights of the Child*, *supra* note 301 (noting that anyone can contact the Defender of Rights).

306. See *id.* (reasserting that anyone can contact the Defender of Rights); *Défenseur Press Release*, *supra* note 219 (noting only the intention to strengthen legal observation of the issues in Mayotte).

307. See discussion *supra* Part III.B.

308. Optional Protocol, *supra* note 22, art. 13(1).

against France.<sup>309</sup> If the CRC obtains trustworthy information revealing “grave or systematic violations,” it may decide to conduct an inquiry.<sup>310</sup> Grave and systematic violations are part of an organized plan, reducing the probability of unpredictability<sup>311</sup> and increasing the likelihood of “substantial harm.”<sup>312</sup>

Homelessness and family separation undoubtedly cause serious emotional, physical, and mental harm.<sup>313</sup> The French government did not attempt to hide that its direct targeting of migrants’ homes was part of a large-scale, intentional operation.<sup>314</sup> Similarly, its patterns of family separation and collective expulsion are part of a long-established anti-migrant approach.<sup>315</sup> Such actions are clear examples of grave and systematic violations under the UNCRC.<sup>316</sup>

Examining the many reports and firsthand accounts,<sup>317</sup> the CRC

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309. See *id.* art. 13(7) (requiring state agreement with the inquiry procedure process); *France Ratification Status*, *supra* note 104 (indicating a lack of French reservations or declarations to the Optional Protocol, including inquiry procedures).

310. Optional Protocol, *supra* note 22, art. 13(1).

311. Comm. on the Rts. of the Child [CRC], *Inquiry Concerning Chile Under Article 13 of the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure*, ¶ 112, U.N. CRC/C/CHL/IR/1 (May 6, 2020) [hereinafter CRC Inquiry Concerning Chile].

312. *Id.* ¶ 111.

313. See CRC General Comment No. 21, *supra* note 89, ¶¶ 29–30 (detailing many increased risks for homeless children, including threats to survival, health, and quality of life).

314. See, e.g., Ayad, *supra* note 53 (noting the organized Operation Wuambushu and its many planned policy objectives).

315. See *Detention of Children: European Court of Human Rights Rules Against France 11 Times*, *supra* note 12 (outlining multiple instances of French violations of European detention and expulsion standards); *UNICEF Positions Itself Against Operation Wuambushu*, *supra* note 67 (recognizing France’s troubling practice of family separation and warning of similar problems following Wuambushu); see also discussion *supra* Part II.A.–B (noting the remnants of decolonization and the ongoing tensions underpinning French policy in Mayotte).

316. See UNCRC, *supra* note 13, arts. 2–3, 9(1), 27(1) (asserting the rights of all children, including the right to freedom from family separation and the right to adequate standards of living).

317. E.g., ADMINISTRATIVE DETENTION CENTERS AND LOCATIONS, *supra* note 62, at 7, 11, 22, 26 (revealing large numbers of detained children, unsanitary detention conditions, and failures to inform detainees of their legal rights); *UNICEF Positions Itself Against Operation Wuambushu*, *supra* note 67 (warning of continued practice of family separation); Bochenek, *supra* note 48 (detailing the disproportionate and unprecedented destruction of informal settlements).

would likely find sufficient information indicating severe violations so as to initiate an inquiry procedure.<sup>318</sup> The recommendations and measures for redress in an inquiry procedure are more substantial than those in an individual communication, and the CRC requests follow up from the state demonstrating progress.<sup>319</sup> Moreover, as an inquiry procedure's requirements do not include exhaustion of domestic remedies, there are likely fewer barriers to possible redress.<sup>320</sup>

## V. CONCLUSION

UNCRC Articles 2 and 3 compel a state to guarantee children freedom from status-based discrimination in light of a primary consideration of their best interests. As France is a state party to both the UNCRC and its Optional Protocol, the CRC would have jurisdiction over an individual communication analyzing France's mistreatment of children in its overseas department of Mayotte. French policies and practices, culminating with Wuambushu, targeted children based on their irregular migratory status and failed to account for their best interests. For these reasons, the CRC would likely find that France violated Articles 2 and 3 of the UNCRC. The French government should take steps to reverse its current course of action in order to provide for the needs of Mayotte's irregular migrant children and to prevent further rights violations.

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318. See Optional Protocol, *supra* note 22, art. 13(1) (outlining the requirements for initiating an inquiry procedure into rights violations under the UNCRC).

319. See CRC Inquiry Concerning Chile, *supra* note 311, ¶¶ 122–33 (urging Chile to adopt a comprehensive plan for child protection; amend existing legislation, enforcement procedures, and judicial processes; and establish “reparation mechanisms” for victim redress).

320. See *Inquiry Procedure*, OHCHR, <https://www.ohchr.org/en/treaty-bodies/crc/inquiry-procedure> (omitting the need to exhaust domestic remedies from the list of inquiry procedure requirements).