



Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Decision adopted by the Committee under article 4 (2) (c) of the Optional Protocol, concerning Communication No. 108/2016^{*,**}

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| <i>Communication submitted by:</i> | F.H.A. (represented by counsel, the Advokatkompagniet law firm) |
| <i>Alleged victim:</i> | The author |
| <i>State party:</i> | Denmark |
| <i>Date of communication:</i> | 7 November 2016 (initial submission) |
| <i>References:</i> | Transmitted to the State party on 14 November 2016 |
| <i>Date of adoption of decision:</i> | 17 February 2020 |

* Adopted by the Committee at its seventy-fifth session (10–28 February 2020).

** The following members of the Committee participated in the examination of the present communication: Gladys Acosta Vargas, Hiroko Akizuki, Tamader Al-Rammah, Gunnar Bergby, Marion Bethel, Esther Eghobamien-Mshelia, Naéla Mohamed Gabr, Hilary Gbedemah, Nahla Haidar, Dalia Leinarte, Rosario G. Manalo, Lia Nadaraia, Aruna Devi Narain, Rhoda Reddock, Elgun Safarov, Wenyan Song, Franceline Toé-Bouda and Aicha Vall Verges.



Background

1.1 The author of the communication is F.H.A., a Somalian national born in 1988. Her asylum application in Denmark was rejected, and she risks deportation to Somalia. She claims that her deportation would constitute a breach by Denmark of her rights under articles 1 and 2 (d), read in conjunction with article 2 (e) and (f), of the Convention. The author is represented by counsel, the Advokatkompagniet law firm. The Convention and the Optional Protocol thereto entered into force for Denmark on 21 May 1983 and 22 December 2000, respectively.

1.2 On 14 November 2016, when the communication was registered, the Committee, acting through its Working Group on Communications under the Optional Protocol, pursuant to article 5 (1) of the Optional Protocol and rule 63 of the Committee's rules of procedure, requested the State party not to deport the author pending the consideration of her case. On 11 May 2017, the State party informed the Committee that, on 16 November 2016, the Refugee Appeals Board of Denmark had suspended the time limit for the author's departure from Denmark.

Facts as submitted by the author

2.1 The author is a Somali national born in 1988, belonging to the Abgal clan from Cali Xaaji, Shabelle Dhexe. Her parents died when she was young, and she was raised by an uncle. The spouse of her uncle maltreated her, including by burning her with a metal pipe.

2.2 In June 2010, the author began a relationship with her future spouse, against her uncle's will. Her future husband belonged to the Bon clan and was a hunter. He lived with his mother in Cali Xaaji.

2.3 In December 2010, one of the author's cousins accidentally struck a villager, who died as a result. The family of the deceased villager sought compensation, and the cousin was arrested.

2.4 At the end of December 2010, the author's future husband sought the permission of the author's uncle to marry her, to no avail.

2.5 On 5 January 2011, the author's uncle travelled in order to secure funds for the compensation of the accidental death. The author and her future husband found a sheikh, who married them. The author stayed with her husband until her uncle returned on 8 February 2011.

2.6 On 8 February 2011, the uncle attacked the author's husband and forced the author to return to his home. There, he chained the author by her foot and told her that he would "give" her to the father of the deceased villager as compensation for the accidental death caused by her cousin. The author attempted in vain to commit suicide by imbibing petrol that she had found in the house.

2.7 On 4 March 2011, the author was moved to the house of the deceased villager's father and was forced to marry him. On 28 March 2011, she managed to escape and went to her husband's home. They escaped to Eel Baraf village, where her husband had a friend. They stayed in that village for three years without being discovered.

2.8 On 13 June 2014, however, the author and her husband met a man from Cali Xaaji in the market. The man told the author that her uncle believed that she was dead but that her husband from her forced marriage was still looking for her. According to the author, her husband risked imprisonment because her uncle had not compensated the family of the deceased villager. The author asked the man not to mention that he had seen her.

2.9 Two days later, however, the author's uncle arrived in Eel Baraf, accompanied by several members of Al-Shabaab. They shot and wounded her husband with a gun. Subsequently, the author understood that her husband had been hospitalized in Mahaday. At the time, the author had been working in the fields, and the farmers agreed to hide her. Therefore, when the author's uncle searched the house, he did not find her. The author's father-in-law arranged for her transportation to Halgen, where she stayed with one of his friends.

2.10 The author's father-in-law then arranged for her to travel to Ethiopia. While she was there, her father-in-law informed her that her uncle was still looking for her and had found out that she was in Ethiopia.¹ The author left Ethiopia by plane on 18 August 2014, as arranged by an agent paid by her father-in-law. She arrived in Denmark on 19 August 2014 and immediately applied for asylum.

2.11 On 20 August 2015, the Immigration Service of Denmark rejected the author's asylum application. That decision was confirmed on 17 November 2015, on appeal, by the Refugee Appeals Board.

2.12 The author was in contact with her husband through an acquaintance, using social media. In the course of their exchanges, he informed her that, after her departure, he had fled as well, and her uncle had killed his father.

Complaint

3.1 The author claims that the facts as submitted reveal a violation of her rights under articles 1 and 2 (d), read in conjunction with article 2 (e) and (f), of the Convention. First, she was subjected to domestic abuse, controlling behaviour and degrading treatment in her uncle's house. Second, she was forced to marry a much older man as compensation for a death caused by her cousin. The author refers to the Committee's general recommendation No. 19 (1992) on violence against women and general recommendation No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, noting that her past experience amounts to gender-based discrimination, because her liberty and integrity were not respected. In Somalia, she was subjected to inhuman and degrading treatment and, repeatedly, domestic violence, contrary to articles 1 and 2 of the Convention. If returned there, with no male support network, she will be at risk of inhuman and degrading treatment.²

3.2 The author claims that domestic violence and a lack of protection therefrom are widespread in Somalia. Because her uncle's clan is powerful, she has no prospect of success in obtaining protection from the authorities. The author refers to a number of reports³ containing background information showing that women remain subordinated to men in Somalia and that domestic and gender-based violence remain prevalent and unsanctioned there.

3.3 Accordingly, in the light of the author's past experience and the risk of her being subjected to inhuman and degrading treatment in the future, against which she would

¹ No date specified. The author does not provide information on how exactly she travelled to Ethiopia.

² In this connection, the author quoted the judgment in the case *R.H. v. Sweden* (application No. 4601/14), in which the European Court of Human Rights ruled that a single woman in Mogadishu with no male support network would be at risk of inhuman and degrading treatment.

³ Such as Human Rights Watch, *World Report 2015*; Swedish Migration Agency, report on women in Somalia (2014); Home Office of the United Kingdom of Great Britain and Northern Ireland, "Country information and guidance: Somalia – women fearing gender-based harm and violence", version 3.0 (London, 2016); and Office of the United Nations High Commissioner for Refugees, *International Protection Considerations with Regard to People Fleeing Southern and Central Somalia* (Geneva, 2014).

be unable to find protection, her deportation would amount to a violation of articles 1 and 2 (d), read in conjunction with article 2 (e) and (f), of the Convention.

State party's observations on admissibility and the merits

4.1 The State party presented its observations on admissibility and the merits on 11 May 2017. It considers that the communication is manifestly ill-founded. Alternatively, it submits that the author's deportation would not breach the provisions of the Convention.

4.2 The State party recalls the facts of the case. The author, a Somali national, arrived in Denmark on 19 August 2014 without valid travel documents and applied for asylum. The Immigration Service of Denmark rejected her application on 20 August 2015. The Refugee Appeals Board confirmed that decision on 17 November 2015.

4.3 Before the immigration authorities, the author claimed that she feared being killed by her uncle because she had married against his will and had run away from the man whom she had been forced to marry. She also expressed a fear of being obliged to live with that man.

4.4 The State party notes that, on the basis of an overall assessment, the Refugee Appeals Board could not accept the author's statements as facts because they seemed fabricated for the occasion with regard to a number of essential points. The Board considered, for example, that the information provided by the author to the immigration authorities that she had been able to escape on foot after having been chained in the house for 25 days was not plausible. In addition, the author indicated that the man whom she had been forced to marry had been standing in front of the house during her escape. The Board also found it implausible that the author had not been found when her uncle searched for her in the house while she was hiding in the fields and that her future husband had been able to see her between October 2010 and the moment that they married, given that she was living in her uncle's house at the time.

4.5 Accordingly, the Refugee Appeals Board concluded that the author had failed to render it probable that, in the event of her return to Somalia, she would be at specific and individual risk of persecution falling within article 7 (1) of the Aliens Act, or would risk abuse under article 7 (2) of the same Act. In the light of those conclusions, the Board decided that it had no reason to grant the request to adjourn the case pending the author's medical examination for signs of torture.

4.6 The State party provides a detailed description of the composition, jurisdiction, independence, prerogatives, legal basis for decisions and use of background information of the Refugee Appeals Board.

4.7 The State party notes that, in its decision of 17 November 2015, the Refugee Appeals Board found that the author's account of her grounds for seeking asylum appeared to be non-credible and that she had failed to render probable those grounds. From the Board decision, it also appeared that the grounds were implausible, considering that, in the circumstances described, the author had been able to escape on foot from the house of the husband from her forced marriage after having been chained there for 25 days. It also did not seem credible that she had been able to hide in a large container without being discovered, given that several people were searching for her. Moreover, the Board found it implausible that the author's future husband had been able to see her between October 2010 and January 2011, because she lived in her uncle's house during that period. On the basis of its credibility assessment, the Board could not accept as fact that the author had had a conflict with her uncle. The State party notes that the present communication contains no new

elements pertaining to the author's credibility and that the author has not disputed the credibility assessment.

4.8 On the credibility assessment, the State party refers to the Committee's decision in *M.C. v. Denmark*, in which it was noted that, on the basis of the limited information provided by the author, and considering that she had provided no information as to how the harassment of her children would constitute a personal risk to her, the Committee was unable to establish whether there had been systematic harassment amounting to gender-based violence in the author's case. In addition, the Committee noted that the author had made no link between the alleged facts and the violation of the articles of the Convention that she had invoked. In the circumstances, the Committee considered that the author had failed to sufficiently substantiate, for the purposes of admissibility, her claim that her removal would expose her to a real, personal and foreseeable risk of serious forms of gender-based violence. It therefore declared the communication inadmissible.⁴

4.9 The State party also refers to the decision of the Human Rights Committee in *N. v. Denmark*, in which the Committee recalled that it was generally for the organs of States parties to examine the facts and evidence of a case, unless it could be established that such an assessment was arbitrary or amounted to a manifest error or denial of justice.⁵ The author had not explained why the decision of the Refugee Appeals Board would be contrary to that standard, nor had he provided substantial grounds to support his claim that his removal would expose him to a real risk of irreparable harm in violation of article 7 of the International Covenant on Civil and Political Rights. The Committee accordingly concluded that the author had failed to sufficiently substantiate his claim of a violation of article 7 for the purposes of admissibility and found that the communication was inadmissible pursuant to article 2 of the Optional Protocol to the Covenant.

4.10 The State party notes that, in *K. v. Denmark*,⁶ the Human Rights Committee recalled that it was generally for the organs of States parties to examine the facts and evidence of the case in order to determine whether such a risk existed, unless it could be established that the assessment was arbitrary or amounted to a manifest error or denial of justice. In the same case,⁷ the Refugee Appeals Board thoroughly examined each of the author's claims, analysing in particular the threats allegedly received by the author, and found them to be inconsistent and implausible on several grounds. The author challenged the assessment of evidence and the factual conclusions by the Board, but he did not explain why that assessment would be arbitrary or otherwise amount to a denial of justice.

4.11 The State party also notes that the European Court of Human Rights has accepted that, as a general principle, the national authorities are best placed to assess not only the facts but, in particular, the credibility of witnesses, because it was they who had had an opportunity to see, hear and assess the demeanour of the individual concerned.⁸

4.12 The State party observes that it cannot accept as fact that the author established contact with her spouse and became aware that he had fled Somalia and had been staying in the Sudan and that her father-in-law had been killed by her uncle. The author's initial account of her grounds for asylum has been dismissed, and the new

⁴ *M.C. v. Denmark* (CEDAW/C/62/D/56/2013), para. 9.4.

⁵ *N. v. Denmark* (CCPR/C/114/D/2426/2014), para. 6.6.

⁶ *K. v. Denmark* (CCPR/C/114/D/2393/2014), para. 7.4.

⁷ *K. v. Denmark*, para. 7.5.

⁸ European Court of Human Rights, *R.C. v. Sweden* (application No. 41827/07), judgment of 9 March 2010, para. 52.

information that she provided has been neither substantiated nor rendered probable. Accordingly, the new information cannot lead to a different assessment of the case.

4.13 On the general situation in Somalia, the State party notes that, following the assessment of the author's grounds for asylum and her general credibility, the Refugee Appeals Board found that it had not been rendered probable that the author had had a conflict with her uncle. The State party therefore finds that the author would not be without a male support network in Somalia. It also observes that it is for the author to render probable the grounds for asylum that she had relied on and that she has failed to meet that burden of proof. The State party cannot accept therefore that the author is a single woman with no male support network.

4.14 The State party adds that it finds that the general situation in Somalia is not of such a nature that any woman returning to that country risks abuse as defined under section 7 of the Aliens Act. The State party refers to a report of the United States Department of State,⁹ in which it was noted that, while Al-Shabaab had reportedly lost control of many major cities and towns in the regions of central and southern Somalia, it still controlled some smaller towns and most rural areas, thereby limiting overall access by the Federal Government of Somalia and other actors to even the urban centres under government control. Furthermore, even in those cities that have been recovered by the African Union Military Observer Mission in Somalia or the Sudan National Armed Forces, the presence of Al-Shabaab was reported to remain significant at the urban periphery and in some parts of the cities.¹⁰

4.15 The State party notes that the author claimed that, by failing to take into account her isolated life as an oppressed woman, the Refugee Appeals Board had failed to adopt a gender-sensitive approach in its decision, thereby demonstrating a lack of general knowledge of Somali patriarchal social norms. The State party also notes that, under general recommendation No. 19 of the Committee on the Elimination of Discrimination against Women, gender-based violence is a form of discrimination, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms, such as the right to life, the right to security of person and the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment. The State party further notes that the Board could not accept as fact the author's account of her grounds for asylum, including the claims that she was forcibly married to the father of a person whom her cousin had accidentally killed and that she feared her uncle because she had run away from the man whom she had been forced to marry. The State party finds that, given those circumstances, the author would not be exposed to a real, personal and foreseeable risk of serious forms of gender-based violence or abuse by her family, the authorities or others in Somalia.

4.16 The State party notes that the decisions of the Refugee Appeals Board are based on an individual assessment of the asylum seeker, taking into account the relevant aspects of that person's particular situation, such as cultural differences, age and health.

4.17 As to the author's marks of torture and the claim that the Refugee Appeals Board had refused to initiate an examination of the author for such marks, the State party observes that, in cases in which torture is relied upon as an element of grounds for asylum, the Board may find it necessary to obtain additional information on torture before making a decision. It can request an examination for signs of torture. If the Board considers it as fact or a possibility that an asylum seeker had previously been subjected to torture, but finds that, upon assessment of that person's specific situation,

⁹ United States of America, Department of State, *2015 Country Reports on Human Rights Practices: Somalia* (Washington, D.C., 2016).

¹⁰ The State party also refers to: Danish Refugee Council, *South and Central Somalia: Security Situation, al-Shabaab Presence, and Target Groups* (Copenhagen, 2017).

there is no real risk of torture in the event of removal, it will not normally initiate such an examination. That approach also applies to cases in which an asylum seeker has appeared to be non-credible throughout the proceedings and the Board therefore finds a basis for rejecting that person's claim of torture in its entirety.

4.18 The State party notes that, in the present case, the Refugee Appeals Board found that, based on an overall, specific and individual assessment, the author's account of her grounds for asylum lacked credibility, and the Board therefore found no reason to initiate an examination of her for signs of torture.

4.19 The State party notes that the Refugee Appeals Board made its decision of 17 November 2015 on the basis of a procedure during which the author had had the opportunity to present her views, both in writing and orally, with the assistance of counsel. The Board had conducted a comprehensive and thorough examination of the evidence in the case. With reference to the Board's decision, the State party considers that the author will not be at risk of persecution or abuse justifying asylum upon return to Somalia and that her return will not violate articles 1 and 2 (d), (e) and (f) of the Convention.

Author's comments on the State party's observations on admissibility and the merits

5.1 The author presented her comments on the State party's observations on admissibility on 15 August 2017. She notes that the State party has failed to substantiate that her communication was inadmissible on the basis of being manifestly ill-founded.

5.2 Regarding the State party's observations on the merits, the author claims that it has failed to give sufficient weight to her individual circumstances, which may have compromised her appearance of credibility. The author refers to the decision of the Human Rights Committee in *A.A.S. v. Denmark*, in which it was noted that, in the light of the information provided by the author, the information available at the time to the Committee and the record of human rights violations in Somalia, the Committee considered that the State party's immigration authorities had not given sufficient weight to the cumulative effect of the author's individual circumstances, which made him particularly vulnerable, in assessing the risk of him being subjected to treatment contrary to article 7 of the Covenant, in the event of his forcible return to Somalia. In the Committee's view, the author's situation was distinguishable from that of other Somali nationals who had sought asylum abroad on the grounds of the general situation in Somalia, given that he had left the country of origin at the age of 5 and did not have any remaining family or social network in Somalia, had limited literacy skills in the Somali language, belonged to a minority clan and had suffered from tuberculosis in the recent past. In those circumstances, the Committee was of the view that the author's removal to Somalia, in the absence of further consideration of his case in the light of the cumulative effect of the aforementioned individual circumstances, would put him at a real risk of irreparable harm such as that envisaged in article 7 of the Covenant, in particular given the fact that his brother had already been granted protection status by the State party's immigration authorities.¹¹

5.3 The author claims that the State party has violated her right to due process. Her reasons for seeking asylum have been consistent with her initial claim and have now been substantiated by hard evidence from her spouse. It is not unlikely or improbable that the author has been in contact with her spouse through her online social network. Challenging that fact would only reveal a lack of knowledge on the part of the

¹¹ *A.A.S. v. Denmark* (CCPR/C/117/D/2464/2014), para. 7.7.

authorities, as well as their obliviousness to cultural circumstances and the accessibility of the Internet.

5.4 As for the refusal of the Refugee Appeals Board to order a medical examination for signs of torture, the author takes note of the State party's reference to the conclusion of the Board that, because there was no real risk of torture in the event of the author's deportation, no examination would be initiated. The author claims that that part of the procedure was inconsistent with human rights standards and revealed procedural irregularities because it was not clear what she could have done to substantiate her asylum claim.

5.5 The author claims that, in her case, a lower priority seems to have been given in the proceedings to gender-based issues than to details surrounding those claims. The gender-based violence, forced marriage, domestic abuse and discriminatory, patriarchal societal norms were not properly taken into account and, instead, the proceedings were focused on details related to the flight of the author, with the minor divergent information apparently being sufficient grounds for rejecting her entire claim for protection.

Issues and proceedings before the Committee

6.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol.

6.2 In accordance with article 4 (2) (a) of the Optional Protocol, the Committee is satisfied that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes that the author claims to have exhausted all domestic remedies and that the State party has not challenged the admissibility of the communication on those grounds. The Committee observes that, according to the information available to it, decisions of the Refugee Appeals Board are in principle not subject to appeal before the national courts. Accordingly, the Committee considers that the requirements of article 4 (1) of the Optional Protocol do not preclude it from examining the communication.

6.4 The Committee notes the author's claims that her deportation to Somalia would amount to a violation by Denmark of articles 1 and 2 (d), read in conjunction with article 2 (e) and (f), of the Convention. It also notes the State party's observations that the author has failed to sufficiently substantiate her claims for the purposes of admissibility and has failed to establish that the assessment by the Refugee Appeals Board was arbitrary or amounted to a manifest error or a denial of justice and has failed to identify any irregularity in the decision-making process or any risk factors that the Board failed to take properly into account.

6.5 The Committee reiterates that, according to its jurisprudence, the Convention has extraterritorial effect only when the woman to be returned will be exposed to a real, personal and foreseeable risk of serious forms of gender-based violence.¹²

6.6 The Committee recalls that, under international human rights law, the non-refoulement principle imposes a duty on States to refrain from returning a person to a jurisdiction in which he or she may face serious violations of human rights, notably arbitrary deprivation of life or torture or other cruel, inhuman or degrading treatment or punishment.¹³ It reiterates that gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, amounts to

¹² See, for example, *M.N.N. v. Denmark* (CEDAW/C/55/D/33/2011), para. 8.10.

¹³ See general recommendation No. 32, para. 21.

discrimination within the meaning of article 1 of the Convention and that such rights included the right to life and the right not to be subjected to torture.¹⁴ The Committee reaffirms the obligation of States parties to eliminate discrimination against women, including gender-based violence, reiterating that the obligation comprised two aspects of State responsibility for such violence: that which resulted from the acts or omissions of both the State party or its agents, on the one hand, and non-State actors, on the other.¹⁵

6.7 The Committee notes that, in the present case, the State party's asylum authorities found that the author's account lacked credibility, owing to a number of factual inconsistencies and a lack of substantiation. The Committee also notes the State party's contention that the author's claims had been examined by the national immigration authorities, but were rejected.

6.8 The Committee recalls that it is generally for the authorities of States parties to the Convention to evaluate the facts and evidence or the application of national law in a particular case,¹⁶ unless it can be established that the evaluation was biased or based on gender stereotypes that constitute discrimination against women, was clearly arbitrary or amounted to a denial of justice.¹⁷ In that regard, the Committee notes that, in substance, the author's claims are aimed at challenging the manner in which the State party's authorities assessed the factual circumstances of her case, applied the provisions of legislation and reached their conclusions.

6.9 In the light of the foregoing, on the basis of material on file, while not underestimating the concerns that may be reasonably expressed with regard to gender-based violence and discrimination in Somalia, the Committee considers that the author has failed to substantiate, for the purposes of admissibility, that the assessment of her case by the State party's asylum authorities resulted in any gender-based discrimination or that she would suffer persecution if deported to Somalia.

6.10 The Committee considers that no element on file permits it to conclude that the State party's authorities failed to give sufficient and adequate consideration to the author's application for asylum or that, in the process of the examination of her case, there was any procedural defect or arbitrariness in that process.

7. The Committee therefore decides that:

- (a) The communication is inadmissible under article 4 (2) (c) of the Optional Protocol;
- (b) This decision shall be communicated to the State party and to the author.

¹⁴ See general recommendation No. 19, para. 7.

¹⁵ See general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, para. 21.

¹⁶ See, for example, *R.P.B. v. Philippines* (CEDAW/C/57/D/34/2011), para. 7.5.

¹⁷ See, for example, *N.Q. and S.A. v. United Kingdom of Great Britain and Northern Ireland* (CEDAW/C/63/D/62/2013), para. 6.6; and *N.M. v. Denmark* (CEDAW/C/67/D/78/2014), para. 8.6.