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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2379/2014*, **

<i>Communication submitted by:</i>	Ms. Obah Hussein Ahmed (represented by the Danish Refugee Council)
<i>Alleged victims:</i>	The author and her four children
<i>State party:</i>	Denmark
<i>Date of communication:</i>	11 April 2014 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 17 April 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	7 July 2016
<i>Subject matter:</i>	Deportation to Italy
<i>Procedural issues:</i>	Substantiation of claims
<i>Substantive issues:</i>	Torture; cruel, inhuman or degrading treatment or punishment
<i>Article of the Covenant:</i>	7
<i>Article of the Optional Protocol:</i>	2

1.1 The author of the communication is Ms. Obah Hussein Ahmed, a Somali national¹ from Qalimow, Somalia, who was 36 years old when the communication was submitted.

* Adopted by the Committee at its 117th session (20 June-15 July 2016).

** The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Ahmed Amin Fathalla, Yuji Iwasawa, Ivana Jelić, Photini Pazartzis, Sir Nigel Rodley, Fabián Omar Salvioli, Dheerujlall Seetulsingh, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval. Two individual opinions signed by six Committee members are appended to the present Views.



She submits the communication on her behalf and on behalf of her four daughters, Ayaan Hirsi Abdi, Ikraan Hirsi Abdi (twin sisters who were 16 years old when the communication was submitted), Maida Hirsi Abdi and Anisa Hirsi Abdi (who were 13 and 10 years old respectively when the communication was submitted).² The author and her daughters risk being deported to Italy following the rejection of their asylum request by the Danish authorities. The author claims that, by forcibly deporting her and her daughters to Italy, Denmark would violate their rights under article 7 of the International Covenant on Civil and Political Rights. The author is represented by the Danish Refugee Council. The first Optional Protocol entered into force for Denmark on 23 March 1976.

1.2 On 17 April 2014 and 24 May and 13 June 2016, pursuant to rule 92 of the Committee's rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party not to deport the author and her daughters to Italy while their case was under consideration by the Committee.

1.3 On 19 March 2015, the Committee, acting through the Special Rapporteur, denied the State party's request to lift the request.

The facts as presented by the author

2.1 The author has six children. Two of them are currently residing in Somalia and four are with her in Denmark. She belongs to the Hawyie clan and is Muslim. She fled Somalia in 2008 as she feared the family members of her late husband, who had been killed by Al-Shabaab in 2012, and the family of her late husband's second wife.

2.2 The author married in 1997. From the outset, her husband's family had been opposed to the marriage, as the author belonged to a sub-clan, Galjal, with a lower status than Abgal, the sub-clan of her husband's family. When her husband married a new wife in 2006, he refused to divorce from the author. From that moment, the author suffered increased harassment and mistreatment from her husband's family and the family of her husband's new wife. Because of this, she fled Somalia in 2008, leaving her children with her mother. After being imprisoned in Libya for two months, the author entered Italy by boat on 28 or 29 March 2009. She was registered as asylum seeker and housed in reception facilities. Four months later, she was granted a residence permit valid for three years, which was later renewed until 29 May 2015.

2.3 Upon the issuance of her residence permit, the author was informed that she could no longer stay at the reception centre. No assistance was offered in seeking alternative temporary shelter, finding work or more permanent housing. The author unsuccessfully tried to find housing and employment and was living on the streets, sleeping alternatively at railway stations, churches or informal settlements. Her attempts at finding employment in various places in Italy all failed because she did not speak Italian well enough or because she was wearing a headscarf.

2.4 Feeling desperate, the author travelled to Finland and sought asylum. Her application was rejected and she was returned to Italy in May 2010. She was informed by the Finnish authorities that she would be offered reception arrangements from the Italian authorities upon arrival in Milan. Upon her arrival in Italy, however, she was offered no assistance; she was registered by the police and told to leave the airport. Consequently, she became homeless again and could not find employment despite repeated attempts.

¹ No date of birth indicated.

² No precise dates of birth was provided.

2.5 The author's daughter Ikraan had been forced to enter a marriage, arranged by the author's brother-in-law, who was associated with Al-Shabaab. On 12 August 2013, Ikraan and her three other sisters Ayaan, Maida and Anisa, arrived in Italy having fled Somalia because of the risk of forced marriage. The author fears that her daughters would be forcibly married and states that her brother-in-law is still making threatening demands to the author's mother in Somalia that Ikraan and her sisters be brought back. The author did not arrange their travel. The daughters were not registered by the Italian authorities and do not hold any residence permit in Italy. The author and her daughters stayed in Italy for five days, "living on food from churches".

2.6 Facing destitution and homelessness, the author decided to travel with her daughters to Denmark, where she arrived on 18 August 2013 and applied for asylum. On 16 December 2013, the Danish Immigration Service considered that, because of her situation in Somalia, the author was in need of subsidiary protection, but noted that she should be transferred to Italy, as it was her first country of asylum. On an unspecified date, an appeal was made against that decision to the Refugee Appeals Board, which upheld the decision of the Danish Immigration Service on 11 March 2014. The Board stated that the author was in need of subsidiary protection but that the family should be returned to Italy in accordance with the principle of the first country of asylum. The Board noted that the author could enter and stay in Italy legally as she had been granted asylum there. As to the humanitarian conditions, the Board noted that "the background information regarding the conditions for asylum seekers that have obtained temporary residence permits in Italy, to some extent supports that the humanitarian conditions for this group are coming close to a level where it no longer will be secure to refer to Italy as first country of asylum". The Board further considered that, according to a decision of the European Court of Human Rights,³ there was no fully sufficient basis for not referring to Italy as the first country of asylum for the author and her minor children. The Board highlighted in particular the fact that the author held an Italian identification card, an Italian alien passport and an Italian health insurance card.

2.7 The author claims that she has exhausted all available domestic remedies in the State party. The decision of 11 March 2014 of the Danish Refugee Appeals Board is final and cannot be appealed.

The complaint

3. The author submits that Denmark, by forcibly returning her and her four children to Italy, would violate their rights under articles 7 of the Covenant.⁴ She is a single mother with four minor daughters. From the time the author was told to leave the Italian reception facilities when she was granted subsidiary protection in 2009, she was not able to find housing, work or any other durable humanitarian solution. Therefore, taking into account the reported shortcomings concerning the Italian reception conditions for asylum seekers and refugees with temporary residence permit,⁵ the author maintains that there is a real risk

³ *Samsam Hussein and Others v. the Netherlands*, European Court of Human Rights decision of 2 April 2013, Application No. 27725/10, available from www.refworld.org/docid/517ebc974.html.

⁴ The author cites European Court of Human Rights, *M.S.S. v. Belgium and Greece*, application No. 30696/09, judgement adopted on 15 December 2010; and *Mohammad Hussein and Others v. the Netherlands and Italy*, application No. 27725/10, decision adopted on 2 April 2013.

⁵ The author refers to several reports on the situation of returnees in Italy, including Swiss Refugee Council (OSAR), "Reception conditions in Italy: Report on the current situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees" (Bern, October 2013); European Council on Refugees and Exiles, "Dublin II Regulation National Report: Italy" (December 2012); Asylum Information Database, "Country report: Italy" (May 2013); United States of America Department of State, "Country Reports on Human Rights Practices" (April 2013); Jesuit Refugee

that expulsion to Italy would expose her and especially her children to inhuman and degrading treatment, i.e. “living in the streets, in destitution, with no access to housing and food and with no prospect of finding a durable humanitarian solution”. In that regard, the author adds that she found no assistance in finding temporary shelter upon her return to Italy from Finland and that she is no longer eligible for housing if returned from another European country.

State party’s observations on admissibility and merits

4.1 On 17 October 2014, the State party submitted that the communication is inadmissible, or, alternatively, without merit. In describing the structure and composition of the Danish Refugee Appeals Board, the State party submitted that the activities of the Board are based on section 53 (a) of the Aliens Act. Negative decisions of the Danish Immigration Service are automatically appealed to the Board unless the application has been considered manifestly unfounded by the Service. The Board is an independent, quasi-judicial body and is considered a court within the meaning of article 39 of the Council of the European Union Directive on minimum standards on procedures for granting and withdrawing refugee status (2005/85/EC).⁶ Under the Aliens Act, the Board members are independent and cannot seek directions from the appointing or nominating authority. The Board’s decisions are final. Aliens may, however, bring an appeal before the ordinary courts that can adjudicate any matter concerning the limits to the competence of a public authority. As established by the Supreme Court, the ordinary courts’ review of decisions made by the Board is limited to a review on points of law, and the Board’s assessment of evidence is not subject to review.

4.2 Under section 7 (1) of the Aliens Act, a residence permit can be granted to an alien if the person’s circumstances fall within the provisions of the 1951 Convention relating to the Status of Refugees. That section incorporates article 1 (A) of the Convention so that, in principle, refugees are legally entitled to a residence permit. A residence permit will further be issued to an alien upon application if he or she risks the death penalty or being subjected to torture or other serious ill-treatment or punishment in case of return to his country of origin. Section 7 (2) of the Aliens Act is very similar to article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and, according to the explanatory notes on that section, the immigration authorities must comply with the case law of the European Court of Human Rights and the State party’s international obligations when applying that provision. In practice, the Refugee Appeals Board will generally consider the conditions for issuing a residence permit to be met when there are specific and individual factors substantiating that the asylum seeker would be exposed to a real risk of the death penalty or ill-treatment upon return. Furthermore, pursuant to section 31 (1) of the Aliens Act, an alien may not be returned to a country where he or she would be at risk of the death penalty or of being subjected to serious ill-treatment, or where the alien would not be protected against being sent on to such country (the principle of non-refoulement). That obligation is absolute and protects all aliens. The State party notes in that connection that the Board and the Danish Immigration Service have jointly drafted a number of memorandums describing in detail the legal protection of asylum seekers afforded by international law, in particular the 1951 Convention relating to the Status of Refugees, the Convention against Torture and Other

Service Europe, “Protection Interrupted the Dublin Regulation’s Impact on Asylum Seekers Protection” (June 2013).

⁶ Article 39 deals with the right of asylum seekers to have a decision taken in their case reviewed by a court or tribunal.

Cruel, Inhuman or Degrading Treatment or Punishment, the European Convention and the Covenant.

4.3 Under section 7 (3) of the Aliens Act, issuance of a residence permit may be refused if the alien has already obtained protection in another country or if the alien has close ties with another country where he or she must be deemed able to obtain protection. Section 7 of the Act is structured so that it must first be considered whether an asylum seeker is deemed to have a need for protection and, if so, a decision will then be made as to whether another country has a stronger obligation than Denmark to offer him or her protection. The 2013 annual report of the Executive Committee of the Refugee Appeals Board describes the criteria to be applied in the assessment of whether a country is able to afford protection to an asylum seeker. The paramount requirement is that the asylum seekers will be readmitted to the country and that they are able to stay there legally. In that regard, the State party submits that it cannot be required that they will have completely the same social living standards as the country's own nationals, but their personal integrity must be protected. The core of the concept of protection is that the individuals must enjoy personal safety both when they enter and stay in the country. The report also mentions a detailed review of the case law of the Board and the concept of protection. In that regard, the State party notes that the condition for refusing a residence permit under section 7 (3) of the Act is that there is a well-founded prospect that the asylum seeker will be able to enter and also in the future to stay in the country of first asylum without suffering attacks on his or her personal integrity. In addition, it is a mandatory minimum requirement that the asylum seeker is protected against being returned to the country of persecution or to a country in which he or she is not protected against return to the country of persecution. The State party further provides a detailed description of the proceedings before the Board and its principles related to the assessment of evidence in the asylum case brought before it.

4.4 As to the admissibility and merits of the communication, the State party argues that the author has failed to establish a prima facie case for the purpose of admissibility of her communication under article 7 of the Covenant. In particular, it has not been established that there are substantial grounds for believing that she would be in danger of being subjected to torture or to cruel, inhuman or degrading treatment or punishment in Italy. The communication is therefore manifestly unfounded and should be declared inadmissible. In the alternative, the State party submits that that the author has not sufficiently established that article 7 would be violated in the event that she and her four children are returned to Italy. It follows from the Committee's jurisprudence that States parties are under an obligation not to extradite, deport, expel or otherwise remove a person from their territory where the necessary and foreseeable consequence of the deportation would be a real risk of irreparable harm, such as that contemplated by article 7 of the Covenant, whether in the country to which removal is to be effected or in any country to which the person may subsequently be removed. The Committee has also indicated that the risk must be personal, and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.⁷

4.5 The State party observes that, in her communication, the author did not provide any essential new information regarding her circumstances beyond the information already relied upon in connection with her asylum proceedings and that the Refugee Appeals Board has already considered these circumstances in its decision of 11 March 2014. The Board found that the author fell within section 7 (2) of the Aliens Act (protection status); however, she had been granted asylum in Italy in 2009 and her residence permit was valid until 29 May 2015. Moreover, the majority of the Board found as a fact that the author was able

⁷ See communication No. 2007/2010, *X v. Denmark*, Views adopted on 26 March 2014, para. 9.2.

to enter Italy and stay there lawfully. It therefore refused to grant asylum to the author with reference to section 7 (3) of the Act (the country of first asylum principle). The State party adds that, when considering whether a country may serve as a country of first asylum, the Board requires as a mandatory minimum that the asylum seeker is protected against refoulement. It must also be possible for the asylum seeker to enter legally and to get lawful residence in the country of first asylum involved, and the asylum seeker's personal integrity and safety must be protected there. This concept of protection also includes a certain social and economic element since asylum seekers must be treated in accordance with basic human standards.⁸ However, it cannot be required that the relevant asylum seekers will have completely the same social living standards as the country's own nationals. The core of the protection concept is that the persons must enjoy personal safety both when they enter and when they stay in the country of first asylum.

4.6 As to the author's allegations that, if returned to Italy, she and her four children would risk having to live on the streets without access to accommodation, food or sanitary facilities, the State party refers to the European Court of Human Rights decision on admissibility of 2 April 2013 in *Samsam Mohammed Hussein and Others v. the Netherlands and Italy*. That case concerned a female Somali national and her two minor children who had entered Italy in August 2008 and had been granted residence for the purpose of subsidiary protection in March 2009. In April 2009, she left the reception centre for asylum seekers in Italy and, in May 2009, applied for asylum in the Netherlands. The Netherlands refused asylum to the applicant in March 2010 with reference to Italy being responsible for the processing of her asylum application pursuant to the Dublin II Regulation. In her application to the European Court, the applicant submitted that, on account of her living conditions in Italy, she had been subjected to treatment contrary to article 3 of the European Convention and that, owing to the risk of similar treatment upon return, her transfer from the Netherlands to Italy would violate of her rights under the said provision. The Court found that the application had been manifestly ill-founded and therefore inadmissible. In that regard, the State party observes that article 3 of the European Convention corresponds to article 7 of the Covenant.

4.7 The State party further notes that, concerning the treatment of asylum seekers in Italy, the Court noted that a person granted subsidiary protection would be provided with a residence permit with a validity of three years that can be renewed by the territorial commission that granted it. This permit can further be converted into a residence permit for the purposes of work in Italy, provided such a request is made before the expiry of the validity of the residence permit and provided the person concerned holds an identity document. A residence permit granted for subsidiary protection entitles the person concerned, inter alia, to a travel document for aliens, and allows the person to work, seek family reunification and benefit from the general schemes for social assistance, health care, social housing and education under Italian law. Furthermore, a person who has been granted a residence permit for compelling humanitarian reasons will be provided with a residence permit with a validity of one year that can be converted into a residence permit for the purposes of work in Italy, provided the person concerned holds a passport. A residence permit granted on humanitarian grounds entitles the person concerned to work, health care and, in case he or she has no passport, to a travel document for aliens.⁹

⁸ The State party notes that the assessment includes, inter alia, parts II-V of the 1951 Geneva Convention and conclusion No. 58 (XL) of the Executive Committee of the Office of the United Nations High Commissioner for Refugees (1989).

⁹ See *Samsam Mohammed Hussein and Others v. the Netherlands and Italy* (note 3 above), paras. 38 and 39.

4.8 The State party notes that the European Court further stated¹⁰ that the assessment of whether there are substantial grounds for believing that the applicant faces a real risk of being subjected to treatment in breach of article 3 must necessarily be a rigorous one and inevitably requires that the Court assess the conditions in the receiving country against the standard of the article. The Court concluded¹¹ that the mere fact of return to a country where one's economic position would be worse than in the expelling State is not sufficient to meet the threshold of ill-treatment proscribed by article 3, and that article 3 cannot be interpreted as obliging the States parties to provide everyone within their jurisdiction with a home; this provision does not entail any general obligation to give refugees financial assistance to enable them to maintain a certain standard of living. The Court noted that aliens who are subject to expulsion cannot in principle claim any entitlement to remain in the territory of a State and continue to benefit from medical, social or other forms of assistance and services provided by the expelling State. Accordingly, the Court concluded that, in the absence of exceptionally compelling humanitarian grounds against removal, the fact that the applicant's material and social living conditions would be significantly reduced if he or she were to be removed is not sufficient.

4.9 Concerning the conditions in Italy, taking into account reports of governmental and non-governmental organizations, the Court considered that, while the general situation and living conditions in Italy of asylum seekers, accepted refugees and aliens who have been granted a residence permit for international protection or humanitarian purposes may disclose some shortcomings, it has not been shown to disclose a systemic failure to provide support or facilities catering for asylum seekers as members of a particularly vulnerable group of people.¹² The Court found the applicant's allegations manifestly ill-founded and inadmissible and concluded that the applicant with her children could be returned to Italy.

4.10 In the light of the above, the State party submits that the author in the present case, who has been granted subsidiary protection in Italy, would be provided with a renewable residence permit valid for three years allowing her to work, obtain a travel document for aliens, family reunification and benefit from the general schemes for social assistance, health care, social housing and education.

4.11 The State party further notes that the author in her initial submission referred, inter alia, to the decisions of the European Court in *M.S.S. v. Belgium and Greece*, and to the report of the Commissioner for Human Rights of the Council of Europe following his visit to Italy from 3 to 6 July 2012.¹³ However, the decision and report were already available at the time when the inadmissibility decision was adopted by the Court in the case of *Samsam*. Furthermore, the author has mainly referred to reports and other background material concerning reception conditions in Italy that are only relevant to asylum seekers, including returnees under the Dublin Regulation, and not to persons who, like the author, have already been granted subsidiary protection. The State party finally observes that, before her entry in Denmark, the author had lived for more than three years in Italy, and currently holds an Italian identification card, residence permit, alien's passport and health insurance card. The State party thus submits that the author has failed to render it probable that, in Italy, she and her four children would be at risk of suffering irreparable damage.

¹⁰ Ibid, para. 68.

¹¹ Ibid, paras. 70 and 71.

¹² Ibid, para.78.

¹³ Available from <https://wcd.coe.int/ViewDoc.jsp?p=&id=1975447&direct=true>.

Author's comments on the State party's observations

5.1 On 28 January 2015, the author submitted her comments on the State party's observations. She asserts that the living conditions in Italy for asylum seekers and beneficiaries of subsidiary protection are similar, since there is no effective integration scheme in place. Asylum seekers and recipients of subsidiary protection thus often face the same severe difficulties in finding basic shelter, access to sanitary facilities and food. The author refers to a 2013 report by the Jesuit Refugee Service, which states that the real problem concerns those who are sent back to Italy and who were already granted some kind of protection. It is claimed that those returnees may have already stayed in at least one of the accommodation options available upon initial arrival but, if they left the centre voluntarily before the established time, they are no longer entitled to accommodation in the government reception centres for asylum seekers.¹⁴ Most people occupying abandoned buildings in Rome fall in this last category. The findings show that the lack of places to stay is a big problem, especially for returnees who are, in most cases, holders of international or humanitarian protection.¹⁵

5.2 The author further disputes the interpretation of the jurisprudence of the European Court of Human Rights referred to by the State party. In particular, in the *Samsam* case, the applicant and her children had not yet been returned to Italy at the time of the adoption of the Court's decision, and the Court noted that the Dutch authorities would give prior notice to their Italian counterparts of the transfer of the applicant and her children, allowing the Italian authorities to prepare for their arrival.¹⁶ Accordingly, the decision that a return to Italy would not constitute a breach of article 3 of the European Convention had been based on the assumption that the Italian authorities would actually prepare a suitable solution for the arrival of the family. In contrast to the *Samsam* case, the author in the present case has already experienced being transferred from Finland to Italy. She had her residence permit renewed but she still, and especially after being reunited with her children in 2013, found the living conditions desperate.

5.3 The author considers that more relevant for the present case is the European Court judgment in the case of *Tarakhel v. Switzerland*,¹⁷ in which the Court stated that the presumption that a State participating in the Dublin system would respect the fundamental rights guaranteed under the European Convention on Human Rights is not "irrebuttable".¹⁸ The Court noted that, in the current situation in Italy, the possibility that a significant number of asylum seekers may be left without accommodation or accommodated in overcrowded facilities without any privacy, or even in insalubrious or violent conditions, could not be dismissed as unfounded.¹⁹ It emphasized that children in particular had specific needs and extreme vulnerability, and that reception facilities for children must be adapted to their age, to ensure that those conditions do not create for them situation of stress

¹⁴ See Jesuit Refugee Service, *Protection Interrupted: The Dublin Regulation's Impact on Asylum Seekers' Protection* (Brussels, June 2013), p. 152.

¹⁵ *Ibid.*, p. 161. In addition, the author quotes another report indicating that persons with protection status have no access to the European Fund for Refugees (FER) accommodation either, because they are only for asylum seekers. Therefore, according to this report, it is extremely difficult for people who have been granted protection status who are returned to Italy to find accommodation; OSAR. Reception conditions in Italy-Report on the current situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees, October 2013, p.5.

¹⁶ *Ibid.*, para. 77.

¹⁷ *Tarakhel v. Switzerland*, European Court of Human Rights judgment of 4 November 2014, Application No. 29217/12.

¹⁸ *Ibid.*, para. 33.

¹⁹ *Ibid.*, para. 115.

and anxiety, with particular traumatic consequences.²⁰ The Court required Switzerland to obtain assurances from its Italian counterparts that the applicants (a family) would be received in facilities and conditions adapted to the age of the children; if such assurances were not made, Switzerland would be in violation of article 3 of the European Convention by transferring them to Italy.²¹ The author argues that, in the light of that finding, the harsh conditions faced by recipients of subsidiary protection returning to Italy would fall within the scope of article 3 of the European Convention, which corresponds to article 7 of the Covenant.²²

5.4 The author submits that the *Tarakhel* decision seems to indicate that the assumption premise laid out in the *Samsam* decision can no longer be regarded as sufficient. On the contrary, individual guarantees especially securing returning children from destitution and harsh accommodation conditions are required according to the European Convention. In that connection, the author notes that the issue of the *Tarakhel* case was not the risk of refoulement but the living conditions in the overcrowded reception facilities for asylum seekers. Thus, the *Tarakhel* decision indicates that the fact that a person is protected from refoulement in Italy does not exclude violations of article 3 of the European Convention due to harsh living conditions, especially for families with children. Accordingly, the fact that the author in the present case has been able to renew her residence permit in Italy and holds formal Italian papers does not exclude the risk of her and her children being faced with harsh living conditions, homelessness and destitution with no realistic prospect of improvement, constituting a breach of article 7 of the Covenant.

5.5 The author adds that returning families who have already been granted international protection might even face greater difficulties in finding shelter, access to sanitarian facilities and food than returning asylum seekers, as the latter enjoy a minimum of protection within the Dublin Regulation system and, if fortunate, have access to reception facilities supported by the European Union. Returning families with international protection do not have access to reception facilities and thus face the risk of homelessness immediately upon return with little prospect of improving their situation owing to the malfunction of the Italian integration scheme for beneficiaries of international protection. The author does not contest that lack of financial assistance and housing does not, in all cases, constitute inhuman and degrading treatment. However, she reiterates that she is a single mother with minor children and that her deportation would leave her in a desperate situation where basic rights, as described above, are not met. The author emphasizes that in the *Tarakhel* case the Court stated that the extraditing State should perform an individualized examination of the person concerned to preclude the risk of inhuman and degrading treatment in the receiving country.²³ The present case, like the *Tarakhel* case, involves minor children. The author reiterates that in the *Tarakhel* case the Court emphasized that children must be viewed as extremely vulnerable and as having specific needs.²⁴ In these circumstances, in the present case there is a substantial risk that the author and her children would not have any housing and therefore are destined to homelessness.

²⁰ Ibid., para. 119.

²¹ Ibid. paras. 120 and 122.

²² Ibid., para. 119.

²³ Ibid, para. 104

²⁴ Ibid., para. 119.

Further submissions by the parties

State party

6.1 In reply to the author's comments, on 12 June 2015, the State party noted that the *Tarakhel* case concerned the refusal by the Swiss authorities to examine the asylum application of an Afghan couple and their six children and the decision to send them back to Italy because the applicants had already applied for asylum in Italy and their application was still pending there. The Court found that, in view of the current situation concerning the reception system of asylum seekers in Italy, and in the absence of detailed and reliable information concerning the specific facility of destination, the Swiss authorities did not possess sufficient assurances that, if returned to Italy, the applicants would be taken charge of in a manner adapted to the age of the children. The majority of the judges of the Grand Chamber held that there would be a violation of article 3 of the European Convention if the Swiss authorities were to send the applicants back to Italy under the Dublin Regulation without having first obtained individual guarantees from the Italian authorities that they would be treated in a manner adapted to the age of the children and that the family would remain together. However, at the same time, referring to its case law, the Court reiterated that article 3 could be interpreted as obliging the High Contracting Parties to provide everyone within their jurisdiction with a home, and that article 3 did not entail any general obligation to give refugees financial assistance to enable them to maintain a certain standard of living.²⁵

6.2 According to the State party, *Tarakhel v. Switzerland*, which concerned a family with the status of asylum seekers in Italy, did not deviate from the findings in previous case law of the Court on individuals and families with a residence permit for Italy, as expressed in, inter alia, *Samsam*. Accordingly, the State party finds that it cannot be inferred from *Tarakhel* case that Member States are required to obtain individual guarantees from the Italian authorities before returning to Italy individuals or families in need of protection who have already been granted residence there. In that regard, the State party reiterates that, according to the judgment in the case of *Samsam*, those recognized as refugees or who have been granted subsidiary protection in Italy are entitled to benefit from the general schemes for social assistance, health care, social housing and education under Italian domestic law.²⁶

6.3 In the light of the above, the State party maintains that the communication should be rejected by the Committee as inadmissible because the author has failed to establish a prima facie case for the purpose of admissibility of her communication under article 7 of the Covenant and that the communication therefore is manifestly unfounded. In the alternative, the State party maintains that article 7 of the Covenant will not be violated if the author and her four children are returned to Italy.

Author

7. On 15 December 2015, the author submitted further comments. She refers to her comments of 28 January 2015 and notes the Committee's conclusions in a previous case in which the Committee noted that various reports continued to point to a lack of available places in reception structures. Moreover, the Committee in particular noted that returnees who had already enjoyed the reception system, which is the case for the author, had no more right to be accommodated in government reception centres for asylum seekers.²⁷

²⁵ Ibid, para. 95.

²⁶ *Samsam Mohammed Hussein and Others v. the Netherlands and Italy* (application No. 27725/10), decision of 2 April 2013, paras. 37-38.

²⁷ See communication No. 2360/2014, *Jasin et al v. Denmark*, Views dated 22 July 2015, para. 8.5.

In that case, the author notes that the Committee had found that removing to Italy the individual, who was also a single woman with minor children who had been granted subsidiary protection in Italy, would be a violation of article 7 of the Covenant. Accordingly, the author submits that removing her and her children to Italy risks constituting a violation of article 7 of the Covenant.

State party

8.1 On 19 April 2016, the State party reiterated its previous observations and recalls that the author had previously been granted subsidiary protection in Italy in 2009 and that her residence permit had been renewed in 2012 and had expired on 29 May 2015. It also reiterated that people who had been granted subsidiary protection in Italy were provided with a residence permit with a validity of three years, renewable. A residence permit entitled the person concerned, inter alia, to a travel document for aliens, to work, to family reunion and to benefit from the general schemes for social assistance, health care, social housing and education under Italian domestic law.

8.2 The State party further submits that, according to a consultation response received from the Italian authorities in the summer of 2015, an alien with a residence permit in Italy who is recognized as a refugee or has protection status can apply for a renewal of the residence permit upon re-entry into Italy, also after the expiration of the residence permit. In February 2016, the Italian authorities confirmed to the Danish authorities that at present an alien who has been granted residence in Italy as a refugee or has been granted protection status may submit a request for renewal of his or her residence permit upon re-entry into Italy if, as in the case at hand, the residence permit has expired when the person was abroad. The State party submits that the author will be able to enter Italy and submit a request for renewal of her residence permit even though her residence permit has expired and that no further obligations can be imposed on Denmark to ensure the author's entry, and basis for stay, in Italy. In that respect, the State party notes that, according to the author's own statements, she has already had her residence permit renewed once before.

8.3 With reference to the Committee's findings in the case of *Jasin et al v. Denmark*, the State party notes that in the present case the Refugee Appeals Board adequately took into account the information provided by the author. The general background information available to the Board was obtained from a wide range of sources and was compared with the statements made by the relevant asylum seekers, including their past experiences. The State party observes that in the present case the author has had the opportunity to make submissions in writing and orally before the domestic authorities and that the Board has thoroughly examined her case on the basis of those submissions. In addition, the State party notes that case of *Jasin*, concerned an asylum seeker,²⁸ while in the present case the author had already been issued with a residence permit in Italy when she applied for asylum in Denmark in 2013. In that connection, the State party reiterates its argument that an alien with a residence permit in Italy who was recognized as a refugee or has protection status can apply for a renewal of the residence permit upon re-entry in Italy, after the expiry of the residence permit.

Author

9.1 On 19 May 2016, the author refers to her earlier comments and notes that the fact that she had been able to renew her residence permit and that she and her four daughters had left Italy while she was holding a residence permit there, did not put her and her daughters in a different situation than the one in the case of *Jasin et al v. Denmark*. In that

²⁸ See *Jasin et al v. Denmark* (note 27 above), para. 8.4.

connection, the author reiterates that while she was holding a residence permit in Italy she was forced to live in destitution, sleep on the streets or in shelters and be dependent on food given to her from churches. When she was sent back to Italy from Finland, she again found herself facing the same living conditions that she had already experienced and again was offered no help from the authorities, while holding a valid residence permit. Hence, the living situation for the author, who no longer holds a valid Italian residence permit, and her four daughters, who at no point have held Italian residence permits, is the same regardless of the fact that the author had a residence permit that she had been able to renew and might be able to renew again. In that respect, the author adds that this time in Italy she would also have to provide for and protect her four daughters.

9.2 Furthermore, as to the State party's argument that the Refugee Appeals Board in the present case adequately took into account the information provided by the author, the author notes that, despite the fact that she specified the situation she had experienced while in Italy, i.e., her living conditions, her dependency on private donors for food and the absence of help from the Italian authorities when she approached them, the Refugee Appeals Board disregarded these circumstances. Moreover, in its reasoning, the Board made reference to the fact that the author could enter Italy and stay there legally and that she holds Italian papers; however, the Board did not explain how the possibility of a renewal of her residence permit would protect her and her daughters from the extremely harsh living conditions that she had already faced twice while holding a residence permit there. Finally, as to the State party's argument that in the present case the author is not an asylum seeker and therefore the present case differs from the case of *Jasin et al*, the author submits that: (a) that case and the present one both involve women who were at one point holders of international protection in Italy and who left Italy and applied for asylum in Denmark; and (b) in both decisions reference was made to Italy as a first country of asylum.

State party

10.1 On 3 June 2016, in reply to the author's comments, the State party referred to its previous observations and notes that the author has not advanced any new information on her and her children's situation. It further notes that in the case of *Jasin et al v. Denmark*, the Committee concluded that that States parties should give sufficient weight to the real and personal risk a person might face if deported. According to the State party, this requires an individualized assessment of the risk faced by the author, rather than reliance on general reports. Accordingly, given that the author has benefitted from the subsidiary protection in the past, she would in principle be entitled to work and receive social benefits. In addition, the State party observes that the case of *Jasin* concerned the deportation to Italy of a single mother with minor children, whose residence permit for Italy had expired. The present case also concerns a single mother with children; however, two of the author's four children today are already 18 years old (the twins born on 20 February 1998) and therefore no longer minors. In comparison, the three children in *Jasin* were considerably younger, aged 7, 5 and 1 when the Committee adopted its views. Moreover, no information is available in the present case to indicate that the author or one or more of her children suffer from any diseases requiring therapy.

10.2 Furthermore, the State party notes that, according to the information in her asylum case, from May 2010 until her entry into Denmark in August 2013, the author stayed in Italy and managed to find food and shelter. According to her own information, the author has an Italian health insurance card and she had the means to acquire a flight ticket to travel to Denmark. It also appears from the information provided in the author's asylum case that when entering Denmark she was in possession of a cash card, an Italian identification card and an Italian alien's passport. The State party maintains that the Board adequately took into account the information provided by the author, which is based on her own experiences. The author has had the opportunity to make submissions both in writing and

orally before several bodies and the Board has thoroughly examined her case on the basis of those submissions. The State party notes that on 1 September 2015 the author, her two adult children and her two minor children were registered as having failed to appear at the asylum centre at which they had been accommodated.

Author

11. On 8 June 2016, the author notes that in its further observations the State party merely reiterates information it already presented previously. As to the State party's particular statement that she managed to find food and shelter, the author notes that the fact that she actually survived cannot stand alone when assessing whether her return to Italy would be in breach of article 7 of the Covenant. More relevant is the quality of the food and shelter she found and the way she managed to find it. Similarly, the possession of a health insurance card and an identification card is less relevant than the actual value of those documents, i.e., the extent to which they actually guarantee access to services.

Issues and proceedings before the Committee

Consideration of admissibility

12.1 Before considering any claims contained in a communication, the Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol.

12.2 The Committee has ascertained, as required by article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

12.3 The Committee notes the author's claim that she has exhausted all effective domestic remedies available to her. In the absence of any objection by the State party in that connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

12.4 The Committee notes the State party's challenge to the admissibility of the communication on the ground that the author's claim under article 7 of the Covenant is unsubstantiated. The Committee however considers that the inadmissibility argument adduced by the State party is intimately linked to the merits of the case and should thus be considered at that stage. Accordingly, the Committee declares the communication admissible insofar as it raises issues under article 7 of the Covenant, and proceeds to its consideration of the merits.

Consideration of the merits

13.1 The Committee has considered the communication in the light of all the information made available to it by the parties, as provided for under article 5 (1) of the Optional Protocol.

13.2 The Committee notes the author's claim that deporting her and her four daughters to Italy, based on the Dublin Regulation principle of first country of asylum, would expose them to a risk of irreparable harm, in violation of article 7 of the Covenant. The author bases her arguments on, inter alia, the actual treatment she had received after she had been granted residence permit in Italy and on the general conditions of reception for asylum seekers and refugees entering Italy, as found in various reports.

13.3 The Committee recalls its general comment No. 31 (2004),²⁹ in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by article 7 of the Covenant, which prohibits cruel, inhuman or degrading treatment. The Committee has also indicated that the risk must be personal and that the threshold for providing substantial grounds to establish that a real risk of irreparable harm exists is high.³⁰ The Committee further recalls its jurisprudence that considerable weight should be given to the assessment conducted by the State party and that it is generally for the organs of the States parties to the Covenant to review and evaluate facts and evidence in order to determine whether such risk exists,³¹ unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice.³²

13.4 The Committee notes that, according to the uncontested submissions by the author, she lived in a reception centre between March and July 2009, when she had been granted subsidiary protection with a residence permit valid for three years, which was later renewed until 29 May 2015. When her residence permit was issued, the author had been asked to leave the reception centre without being provided with alternative accommodation. Subsequently, she lived on the streets and in railway stations and was dependent on food provided by churches. She was thus left without shelter and means of subsistence. Feeling desperate, she went to Finland; however, she was returned to Italy in May 2010. Consequently, she became homeless again as she did not receive any assistance with employment or housing. When the author's four daughters arrived in Italy, on 12 August 2013, they all stayed in Italy for five days receiving food from churches. Fearing destitution and homelessness, and in the absence of any prospect of finding a humanitarian solution to their situation in Italy, the author and her daughters went to Denmark in August 2013 and requested asylum. Today, the author and her four daughters find themselves in a situation of great vulnerability.

13.5 The Committee notes the various reports submitted by the author highlighting the lack of available places in the reception facilities in Italy for asylum seekers and returnees under the Dublin Regulations. The Committee notes in particular the author's submission that returnees like herself who had already been granted a form of protection and benefited from the reception facilities when they were in Italy were no longer entitled to accommodation in the government reception centres for asylum seekers.³³

13.6 The Committee notes the finding of the Refugee Appeals Board that Italy should be considered the first country of asylum in the present case and the position of the State party that the first country of asylum is obliged to provide asylum seekers with basic human standards, although it is not required that such persons have the same social and living standards as nationals of the country (see para. 4.5 above). The Committee further notes the reference made by the State party to a decision of the European Court of Human Rights

²⁹ See the Committee's general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

³⁰ See communications No. 2007/2010, *X v. Denmark*, Views adopted on 26 March 2014, para. 9.2; No. 692/1996, *A.R.J. v. Australia*, Views adopted on 28 July 1997, para. 6.6; and No. 1833/2008, *X v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

³¹ See communication No. 1957/2010, *Lin v. Australia*, Views adopted on 21 March 2013, para. 9.3.

³² See, inter alia, *ibid.* and communication No. 541/1993, *Errol Simms v. Jamaica*, inadmissibility decision adopted on 3 April 1995, para. 6.2.

³³ See AIDA, *Country report: Italy* (January 2015), pp. 54 and 55, available from www.asylumineurope.org/sites/default/files/report-download/aida_italy_thirduupdate_final_0.pdf.

according to which, although the situation in Italy had shortcomings, it had not disclosed “a systemic failure to provide support or facilities catering for asylum seekers”.³⁴

13.7 However, the Committee considers that the State party’s conclusion did not adequately take into account the information provided by the author, based on her own personal experience that, despite being granted residence in Italy, she faced intolerable living conditions there. In that connection, the Committee notes that the State party does not explain how, if returned to Italy, the renewable residence permit would actually protect the author and her four children from exceptional hardship and destitution, similar to the ones the author had already experienced in Italy.³⁵

13.8 The Committee recalls that States parties should give sufficient weight to the real and personal risk a person might face if deported³⁶ and considers that it was incumbent upon the State party to undertake an individualized assessment of the risk that the author and her daughters would face in Italy, rather than rely on general reports and on the assumption that, as the author had benefited from subsidiary protection in the past, she would, in principle, be entitled to the same level of subsidiary protection today. The Committee considers that the State party failed to take into due consideration the special vulnerability of the author who, notwithstanding her entitlement to subsidiary protection, faced homelessness and was not able to provide for herself in the absence of any assistance from the Italian authorities. It has also failed to seek proper assurances from the Italian authorities that the author and her four children, i.e. in a particularly vulnerable situation, would be received in conditions compatible with their status as asylum seekers entitled to temporary protection and the guarantees under article 7 of the Covenant, by requesting that Italy undertake (a) to renew the author’s residents permit,³⁷ and to issue residents permits to her children and not to deport them from Italy; and (b) to receive the author and her children in conditions adapted to the children’s age and the family’s vulnerable status, which would enable them to remain in Italy.³⁸

13.9 Consequently, the Committee considers that the removal of the author and her four children to Italy in these particular circumstances would amount to a violation of article 7 of the Covenant.

14. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the deportation of the author and her four daughters to Italy would violate their rights under article 7 of the Covenant.

15. In accordance with article 2 (1) of the Covenant, which establishes that States parties undertake to respect and to ensure that all individuals within their territory and subject to their jurisdiction are afforded the rights recognized in the Covenant, the State party is under an obligation to provide Obah Hussein Ahmed and her four daughters with an effective remedy, including full reconsideration of her claim, taking into account the State party’s obligations under the Covenant, the Committee’s present Views and the need to obtain assurances from Italy, as set out in paragraph 13.8 above, if necessary. The State party is also requested to refrain from expelling the author and her four children to Italy while their request for asylum is being reconsidered.

³⁴ See *Samsam Mohammed Hussein and Others v. the Netherlands and Italy* (note 3 above), para.78.

³⁵ See *Osman Jasin v. Denmark* (note 27 above), para. 8.8; and communication No.2409/2014, *Abdilafir Abubakar Ali et al v. Denmark*, Views adopted on 29 March 2016, para. 7.7.

³⁶ See, for example, communication No. 1763/2008, *Pillai v. Canada*, Views adopted on 25 March 2011, paras. 11.2 and 11.4; and *Abdilafir Abubakar Ali et al v. Denmark* (note 35 above), para. 7.8.

³⁷ Taking into account the author’s residence permit expired in May 2015 (see para. 2.2 above).

³⁸ See *Osman Jasin v. Denmark* (note 27 above), para. 8.9; and *Abdilafir Abubakar Ali et al v. Denmark* (note 35 above), para. 7.8.

16. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the present Views. The State party is also requested to publish the present Views and to have them translated into the official language of the State party and widely distributed.

Annex I

Joint opinion of Committee members Yuval Shany, Yuji Iwasawa, Photini Pazartzis, Sir Nigel Rodley and Konstantin Vardzelashvili (dissenting)

1. We regret that we are unable to join the majority on the Committee in finding that, in deciding to deport the author and her children to Italy, Denmark would, if it implemented the decision, violate its obligations under article 7 of the Covenant.

2. According to the well-established case law of the Committee, State parties are obliged not to deport persons from their territory where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed.^a Not every exposure to personal hardship in the country of removal would, however, fall within the scope of the removing State's non-refoulement obligations.^b

3. With the possible exceptions of those individuals who face special hardships owing to a particular situation of vulnerability^c that renders their plight exceptionally harsh and irreparable in nature, non-availability of social assistance does not constitute grounds for non-refoulement. A contrary interpretation, recognizing all economically destitute individuals as potential victims of article 7 of the Covenant, has little support in the case law of the Committee or in State practice and would extend the protections of article 7 and the non-refoulement principle (which are absolute in nature) beyond a breaking point.

4. Although we supported the Views adopted by the Committee in *Jasin et al v. Denmark*,^d the facts in that case were significantly different than the facts of the present case and do not warrant the same legal conclusion. In *Jasin*, the author was in a particularly vulnerable situation that made it nearly impossible for her to confront the exceptional hardships expected were she to be deported to Italy: a single mother of three small children who had to contend with her own health problems, who had lost her immigration status in Italy and whom the Italian welfare system has demonstrably failed to assist. Under those exceptional circumstances, we were of the view that, without specific assurances of social assistance, Italy could be considered a "safe country" of removal for the author and her children (raising, as a result, the possibility of de facto refoulement from Italy to her country of origin).

5. In the present case, the author and her two 18-year old twin girls are able-bodied adults who may, pursuant to their subsidiary protection status in Italy, lawfully work and support themselves and the two minor children accompanying them (aged 15 and 12). The facts also suggest that, unlike in the case of *Jasin*, where there had been a demonstrable failure by the Italian authorities to attend to social needs of the author and her family, in the present case the author's daughters never registered in Italy and have stayed in the country for five days only. Hence, it has not been established that Italy is unwilling or unable to provide social assistance to single-parent families like the author's, and such a conclusion

^a See general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

^b See communication No. 265/1987, *Vuolanne v. Finland*, Views adopted on 7 April 1989.

^c See communication No. 2360/2014, *Jasin et al v. Denmark*, Views dated 22 July 2015.

^d *Ibid.*

cannot be deduced from the real difficulties in accessing social assistance experienced by the author on her own, before her daughters joined her. While deportation to Italy may put the authors in a more difficult situation than the one confronting them in Denmark, we do not have before us information suggesting that their plight is expected to reach the exceptional level of harshness and irreparability that would result in a violation of article 7.

6. Under these circumstances, we cannot conclude that the decision of the Danish authorities to deport the authors to Italy was manifestly arbitrary and would entail a violation of article 7 of the Covenant by Denmark.

Annex II

Individual opinion of Committee member Dheerujall Seetulsingh (dissenting)

1. As in the case of *Jasin et al v. Denmark* (communication No. 2360/2014) I find myself once more compelled to dissent from the views of the majority on the Committee.

2. The principles applied by the Committee in dealing with communications from refugees alleging violations of article 7 of the Covenant if they were to be deported either to the country of origin or to the country of first asylum are clearly set out in paragraph 13.3 of the decision of the majority. However, one cannot help noting that the Committee, in exercising an almost quasi-judicial function in its examination of communications, may find itself in a situation where it becomes an appellate instance on facts. Actually the assessment of risk of a personal and irreparable harm is based on the factual circumstances surrounding a particular case, for example, in the present case, the situation in which the alleged victims would find themselves were they to be deported to Italy. The Refugee Appeals Board in the State party is being taxed with having made an arbitrary appreciation of the facts concerning risk and in misapplying the provisions of the Covenant, whereas the Board may be better placed, with all the materials at its disposal, to judge the seriousness of the situation in order to reach a reasonable conclusion. Does the Committee have extraneous elements or information on which to rely? It does not seem so. The reproach made to the State party is a failure to take into due consideration the special vulnerability of the author and her four children. Has the State party made an error of judgment in applying the provisions of the Covenant which has resulted in a denial of justice? They have not in fact made any error of interpretation in applying the provisions of the Covenant.

3. Ultimately, the above situation gives rise to a difficulty in terms of the remedies recommended by the majority of the Committee. In many cases of deportation the case is remitted to the authorities of the State party for reconsideration of the request for asylum and the need to obtain assurances from the country of first asylum (see *Jasin*). After sending the case to be reconsidered by the Refugee Appeals Board, the State party usually claims that it has complied with the Views of the Committee, whether or not the outcome is decided in favour of the author of the Communication. That course of action provides a leeway to the State party to re-examine the case and grants it the possibility to come to exactly the same conclusion that its immigration authorities had reached in the first instance. That may result in a virtual ineffectiveness of the remedies recommended by the Committee. Probably the wiser course would be to stop at a finding of violation without a request for reconsideration by the State party, thus ensuring a “genuine” higher rate of compliance with the Views of the Committee. Subsequently, when drawing up its report on follow-up to Views on communications, the Committee would have a better picture of State parties’ compliance with its Views.

4. As far as the present case is concerned, however much sympathy one may have regarding the sad plight of refugees, certain rules have to be applied and certain considerations borne in mind by the authorities of the State party when assessing applications for asylum. The author has two grown-up daughters and two minor daughters, who joined her in Italy — although the author claimed she was suffering hardship in that country — and who stayed only for five days in Italy. They thereafter moved to Denmark to seek asylum there. She failed to substantiate in what way Italy had not been able to provide assistance to her and to show that she and her family would suffer irreparable harm in the country of first asylum where three able-bodied adults should be able to look for work to fund themselves. The State party and its immigration authorities gave due weight to all the

circumstances surrounding the case. They did not reach a decision that would enable us to conclude that they could have made such an erroneous interpretation of the situation as to justify a reversal of the decision.

5. In the circumstances, I find that the decision of the State party was not arbitrary and did not bear the characteristics of a violation of article 7 of the Covenant.
