



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2464/2014\*, \*\*

<i>Communication submitted by:</i>	A.A.S. (represented by counsel, Helle Holm Thomsen)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Denmark
<i>Date of communication:</i>	2 October 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 7 October 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	4 July 2016
<i>Subject matter:</i>	Deportation to Somalia
<i>Procedural issue:</i>	Non-substantiation of claims
<i>Substantive issues:</i>	Torture, cruel, inhuman or degrading treatment or punishment; non-refoulement
<i>Articles of the Covenant:</i>	7
<i>Articles of the Optional Protocol:</i>	2

\* 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, Ahmed Amin Fathalla, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Victor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujlall Seetulsingh, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval. A joint opinion by Committee members Yuval Shany, Yuji Iwasawa and Konstantine Vardzelashvili is appended to the present Views.



1.1 The author of the communication is A.A.S., a Somali national from Mogadishu, born in 1986. He is subject to deportation to Somalia, following the rejection of his application for asylum in Denmark. The author claims that by, forcibly deporting him to Somalia, Denmark would violate his rights under article 7 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the State party on 23 March 1976. The author is represented by counsel.

1.2 On 7 October 2014, 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 to refrain from deporting the author to Somalia while his case was under consideration by the Committee. The State party acceded to this request.

1.3 On 29 January 2016, the Committee, acting through its Special Rapporteur on new communications and interim measures, denied the State party's request to lift interim measures.

#### **The facts as presented by the author**

2.1 In 1992, at the age of five, the author left Somalia with his family because of the civil war there. He lived in Yemen with his family until September 2011, when the author and his brother, M.A., left for Greece owing to conflicts with a resistance cell called Balatika that pursued Somalis and was in opposition to the Yemeni authorities. They arrived in Greece by boat from Turkey on 2 October 2011. The author was arrested on arrival, fingerprinted and then released with "a paper", requesting him to leave Greece in one month. On 26 September 2012, the author was arrested and imprisoned in Greece. He contracted tuberculosis and was under a hospital treatment for about eight months. On 26 September 2012, i.e. the date of the author's arrest, his brother left Greece, entered Denmark and applied for asylum. On 20 March 2013, the author's brother was granted protection status by the Danish Immigration Service under section 7 (2) of the Aliens Act.

2.2 The author entered Denmark on 24 August 2013 without valid travel documents. He flew from Italy to Copenhagen, where he was arrested at the airport because he held a false Italian passport that showed the author's photograph but was issued in the name of a third person. The author was detained for four days and then released. He applied for asylum on 29 August 2013. As his grounds for asylum, he referred to his fear of the general security situation in case of return to Somalia. The author also referred to the fact that he had no family network in Mogadishu. He also stated that his father had told him that he could not return to Somalia, without explaining the reason. He later learned that his family had fled from Mogadishu because they belonged to an oppressed minority clan named Bagadi. During the civil war in Somalia, the larger clans had oppressed the minority clans in the country. Two of the author's paternal uncles, one of whom was a pilot and the other one a lawyer, had been killed in Somalia. Due to the ongoing ethnic cleansing of the Bagadi clan, the author's larger family had decided to flee Somalia and had been split up on the way, with his parents' family ending up in Yemen.

2.3 On 19 March 2014, the Danish Immigration Service rejected the author's application for residence under section 7 of the Aliens Act. On 4 September 2014, the Refugee Appeals Board upheld the decision of the Danish Immigration Service. Both the author's brother and their paternal aunt, who lives in Denmark, testified during the proceedings. Although the Board had found the author's statements to be facts, the majority of its members had concluded that the individual circumstances relied upon by him, including his language skills,<sup>7</sup> clan affiliation and lack of social network, had not been of such a nature as to justify

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<sup>7</sup> The author speaks and understands Somali but has difficulty reading and writing.

residence under section 7 of the Aliens Act. The fact that his family had had to leave Somalia in 1992 as a consequence of its affiliation with Siad Barre<sup>8</sup> could not lead to a different assessment. The majority of the Board's members emphasized that the incident had taken place a long time ago and that the author had appeared to be a low-profile individual. The majority of the Board's members also observed that the general situation in Somalia, including in Mogadishu, could not independently justify residence under section 7. Consequently, the majority of the Board's members found that the author had failed to substantiate that the conditions of section 7 of the Aliens Act had been satisfied. The author submits that he has exhausted all available domestic remedies.

### **The complaint**

3.1 The author claims that his forcible return to Somalia would constitute a breach of article 7 of the Covenant, as he would be at risk of being subjected to torture and to inhuman or degrading treatment. He also claims he is to be considered a member of a particular social group within the meaning of article 1 A (2) of the 1951 Convention Relating to the Status of Refugees, as he belongs to the Bagadi minority clan. He refers to his aunt's statement to the Refugee Appeals Board that his family had fled from their village in Somalia to Mogadishu because they had been oppressed by the Al-Hawiye clan, which had been dominant in the area. This statement is consistent with the background information available in the 2009 report of the Austrian Centre for Country of Origin and Asylum Research and Documentation on Somali clans.<sup>10</sup> According to the report, the Bagadi clan, which is connected to the Digil clan and belongs to the Rahanweyn group, is politically oppressed in Somalia.

3.2 The author claims that he has no family left in Somalia. Furthermore, he refers to a report on Somalia by the Office of the United Nations High Commissioner for Refugees (UNHCR)<sup>11</sup> and alleges that it is very difficult to survive in Mogadishu for persons belonging to minority clans and for newcomers, i.e. "foreign Somalis", without a support network. He states he would lack knowledge of how to behave and manage in the country, from which he fled at the age of five.

3.3 The author further submits that he will be considered an internally displaced person in the event of his return to Somalia. With reference to a January 2013 report of the Danish Immigration Service and the organization Landinfo,<sup>12</sup> he adds that children and young people who are internally displaced persons are considered to be the most vulnerable groups in Mogadishu in terms of malnutrition and lack of medical treatment. In this respect, he observes that he contracted tuberculosis during his stay in Greece for which he received treatment for eight months and that, without proper follow-up care, the illness could come back. Finally, he submits that in the event of his return to Mogadishu he risks being subjected to forced recruitment to al-Shabaab.

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<sup>8</sup> Mohamed Siad Barre was the President of the Somali Democratic Republic from 1969 to 1991.

<sup>10</sup> See Austrian Centre for Country of Origin and Asylum Research and Documentation, "Clans in Somalia" (December 2009), available from [www.ecoi.net/file\\_upload/90\\_1261130976\\_accord-report-clans-in-somalia-revised-edition-20091215.pdf](http://www.ecoi.net/file_upload/90_1261130976_accord-report-clans-in-somalia-revised-edition-20091215.pdf).

<sup>11</sup> "International Protection Considerations with Regard to People Fleeing Southern and Central Somalia" (January 2014), available from [www.refworld.org/pdfid/52d7fc5f4.pdf](http://www.refworld.org/pdfid/52d7fc5f4.pdf).

<sup>12</sup> The author refers to "Update on security and human rights issues in South-Central Somalia, including Mogadishu" (January 2013), available from [www.refworld.org/docid/511ca6b12.html](http://www.refworld.org/docid/511ca6b12.html).

**State party's observations on the admissibility and merits**

4.1 On 7 April 2015, the State party submitted that the author has failed to establish a prima facie case for the purpose of admissibility. Therefore, the present communication is manifestly unfounded and should be considered inadmissible. Should the Committee find the communication admissible, the State party submits that the author has not sufficiently established that his return to Somalia would constitute a violation of article 7 of the Covenant.

4.2 The State party describes the structure and jurisdiction of the Refugee Appeals Board. 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 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status.<sup>13</sup> The Board's decisions are final. Aliens may, however, bring an appeal before the ordinary courts, which have the authority to adjudicate any matter concerning the limits to the competence of a public authority. As established by the Supreme Court, reviews by the ordinary courts' of decisions made by the Board are limited to those on points of law, and the Board's assessment of evidence is not subject to review.

4.3 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. Section 7 (1) incorporates article 1 (a) of that 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 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 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 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). This obligation is absolute and protects all aliens.

4.4 The Board assigns a counsel free of charge in all cases and all the case materials and documents are sent to counsel well in advance before the hearing. Proceedings are oral and, inter alia, an asylum seeker, his or her counsel and an interpreter are present. At the hearing, an asylum seeker is allowed to make a statement and answer questions. After the closing statements of the counsel and the representative of the Danish Immigration Service, an asylum seeker can make a final statement. The Board's decision will normally be served on the asylum seeker immediately after the hearing and the chairman of the hearing will briefly explain the reasoning of the decision. The State party notes that decisions are based on an individual and specific assessment of the relevant case and that an asylum seeker's statements regarding his grounds for asylum are assessed in the light of all relevant evidence, including in the light of the background information on the respective country of origin. An asylum seeker must provide all required information in order to enable the authorities to decide whether he or she falls within section 7 of the Aliens Act and it is thus

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<sup>13</sup> Article 39 deals with the right of asylum seekers to have a decision taken in their case reviewed by a court or tribunal.

incumbent upon an asylum seeker to substantiate that the conditions for granting asylum are met.

4.5 The information available to the Board includes the asylum seeker's own statements to the police and the Danish Immigration Service. That information is available in police reports made in connection with the asylum seeker's entry or application for asylum; reports of the asylum screening interview conducted by the Danish Immigration Service; the family information sheet completed by the asylum seeker in his native language or in another language mastered; and reports of the additional interview(s) conducted by the Danish Immigration Service. The Board may also hear witnesses. If an asylum seeker's statements appear coherent and consistent, the Board will normally consider them as facts, while, in cases in which an asylum seeker's statements throughout the proceedings are inconsistent, the Board will seek clarifications. However, inconsistent statements about crucial parts of an asylum seeker's grounds for seeking asylum may weaken his or her credibility. In case of doubts as to the credibility of an asylum seeker's story, the Board will always assess the extent to which the principle of the benefit of doubt could be applied. In addition, background reports are obtained from various sources, including the Danish Refugee Council, other Governments, UNHCR and organizations such as Amnesty International and Human Rights Watch.

4.6 The State party then recalls the facts on which the present communication is based and refers to the decision of the Refugee Appeals Board of 4 September 2014. The State party observes that the author's communication to the Committee did not produce new and specific information about his situation. All background reports referred to by the author were known to the Refugee Appeals Board at the date of its latest decision in the case and were taken into account in the assessment of the matter. The Board accepted the author's statement on the reason for his departure from Somalia in 1992 as a fact, but found that his individual circumstances did not justify asylum or protection status under section 7 of the Aliens Act. It also found that the author would not be presently at risk of being subjected to persecution justifying asylum in the event of his return to Somalia. The State party observes in this respect that the basis for the assessment of whether an alien risks persecution or abuse justifying asylum in case of return to his country of origin is the information available at the time of the decision.

4.7 According to the current background information available, the situation in Mogadishu is not at present of such nature that everybody returning to the area in and around Mogadishu may be deemed to be at a real risk of abuse contrary to section 7 (2) of the Aliens Act and article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, solely as a result of his presence in the area.

4.8 Like the Refugee Appeals Board, the State party cannot accept as a fact that the author presently risks being subjected to torture and to inhuman or degrading treatment in the event of his return to Somalia owing to his clan affiliation. It appears from the background information available that clan affiliation no longer plays the same role in Mogadishu as it previously did and that no one in Mogadishu is at risk of attacks or persecution owing solely to his or her clan affiliation. As regards the author's statement that in the event of his return to Mogadishu he would have no clan protection because he belonged to the Bagadi clan, the State party finds that this cannot lead to a different assessment. According to the same background information available,<sup>17</sup> the protection of individuals no longer depends on a person's clan affiliation.

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<sup>17</sup> See "Update on security and protection issues in Mogadishu and South-Central Somalia" (March 2014), pp. 35 and 36. Available from [http://landinfo.no/asset/2837/1/2837\\_1.pdf](http://landinfo.no/asset/2837/1/2837_1.pdf).

4.9 The fact that the author's family, prior to its departure from Somalia in 1992, was perceived to support Siad Barre because of its clan affiliation cannot lead to a different conclusion, nor can the author's claim that revenge killings still happen. The conflicts of the author's family with persons in opposition to Siad Barre and his supporters occurred a very long time ago and the author had not been personally involved in his family's previous conflicts, which means that he appears to be a low-profile individual in connection with these conflicts. The author stated at the hearing before the Refugee Appeals Board on 4 September 2014 that his father had never spoken with the author about his family's conflicts in Somalia, including his family's close affiliation with Siad Barre, and the author stated that he had no deep knowledge of Somalia, including the political situation in the country.

4.10 As to the author's statement on his individual circumstances, including that he has no family and social network in Somalia and that he has no knowledge of the community and the traditions in Somalia, the State party observes that this in itself does not justify asylum.

4.11 The State party cannot accept as a fact that the author will be considered an internally displaced person in the event of his return to Somalia. It appears from the details of the case, including the interview report made by the Danish Immigration Service on 28 January 2014 and the author's statement to the Refugee Appeals Board on 4 September 2014, that he was born in Mogadishu and that he lived there until he was five years old. The circumstance that the author's family fled from its original village to Mogadishu is of no significance to the assessment of whether the author is to be considered an internally displaced person.

4.12 As regards the author's statement that he should be considered as belonging to a particularly vulnerable group of persons in Somalia because he only received tuberculosis treatment for eight months, the State party finds that this circumstance cannot lead to a different assessment. In this respect, the State party has emphasized that, during the proceedings before the Refugee Appeals Board, the author produced a medical certificate Greek dated 21 January 2013. At the request of the Refugee Appeals Board, that medical certificate was translated into Danish on 25 July 2014. It appears from the certificate that the author was admitted to hospital where he received tuberculosis treatment from 15 April 2012 to 15 January 2013, and that he received full tuberculosis treatment during his hospitalization. In addition, during the proceedings before the Refugee Appeals Board, a medical certificate was obtained from the health department at the Jelling Accommodation Centre on 14 April 2014. According to this medical certificate, the author has had no symptoms of acute tuberculosis during his stay in Denmark.

4.13 The State party also finds that it cannot accept as a fact that the author would risk forced recruitment to al-Shabaab in the event of his return to Somalia. It appears from the background information available<sup>18</sup> that forced recruitment to al-Shabaab no longer takes place in Mogadishu. It further appears that "recruitment to al-Shabaab in Mogadishu only takes place on an individual basis, and such recruitment is voluntary".<sup>19</sup>

4.14 The State party observes in conclusion that the Refugee Appeals Board, which is a collegial body of a quasi-judicial nature, made its decision of 4 September 2014 based on a procedure during which the author had the opportunity to present his views, both in writing

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<sup>18</sup> See European Asylum Support Office, *Country of Origin Information report: South and Central Somalia Country overview* (Luxembourg, August 2014), p. 88. Available from <http://reliefweb.int/sites/reliefweb.int/files/resources/COI-Report-Somalia.pdf>.

<sup>19</sup> See "Update on security and protection issues in Mogadishu and South-Central Somalia" (note 7 above), p. 30.

and orally, with the assistance of legal counsel. The Board conducted a comprehensive and thorough examination of the evidence in the communication.

#### **Author's comments on the State party's observations**

5.1 In his comments of 25 January 2016 on the State party's observations on admissibility and merits, the author reiterates that his communication is admissible for the reasons explained in his initial submission and that the State party has failed to substantiate why it should be considered manifestly ill-founded.

5.2 As to the State party's observations on the merits, the author refers to the position of UNHCR on the standard of proof, according to which the decision-maker needs to decide if, based on the evidence provided as well as the veracity of the applicant's statements, there is a "reasonable likelihood" that the claimant has a well-founded fear of persecution.<sup>21</sup> The same position has later been adopted by other international bodies, most recently by the Committee on the Elimination of Discrimination against Women.<sup>22</sup> The author further refers to UNHCR's position that, although the fear must be well-founded, it does not mean that there must have been actual persecution.<sup>23</sup>

5.3 With reference to the UNHCR Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees,<sup>24</sup> the author submits that the Refugee Appeals Board has failed to assess the cumulative effect of his experience. The Board's decision is vitiated with procedural irregularities, because he has a well-founded fear owing to the following cumulative factors: his family's conflicts in the past; his clan affiliation; his lack of family and social network in Somalia; the risk of internal displacement; his health issues; and the risk of forced recruitment by al-Shabaab.

5.4 The author refers to the judgment of the European Court of Human Rights in *Sufi & Elmi v. United Kingdom*, in which the Court concluded:

[I]n view of the humanitarian crisis and the strain that it has placed both on individuals and on the traditional clan structure, in practice the Court does not consider that a returnee could find refuge or support in an area where he has no close family connections [...]. If a returnee either has no such connections or if he could not safely travel to an area where he has such connections, the Court considers it reasonably likely that he would have to seek refuge in an [internally displaced persons] settlement or refugee camp.<sup>25</sup>

Furthermore, the Court considered it:

[U]nlikely that a Somali with no recent experience of living in Somalia would be adequately equipped to "play the game", with the risk that he would come to the attention of al-Shabaab, either while travelling through or having settled in an al-

<sup>21</sup> See UNHCR, "An Overview of Protection Issues in Europe: Legislative Trends and Positions Taken by UNHCR", European Series, Vol. 1, No. 3 (Geneva, September 1995), p. 87.

<sup>22</sup> The author refers to the Committee on the Elimination of Discrimination against Women general recommendation No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, para. 50.

<sup>23</sup> See "An Overview of Protection Issues in Europe" (note XX above), p. 87.

<sup>24</sup> See UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* (Geneva, 2011), para. 201. Available from [www.unhcr.org/3d58e13b4.pdf](http://www.unhcr.org/3d58e13b4.pdf).

<sup>25</sup> See *Sufi and Elmi v. United Kingdom* (applications Nos. 8319/07 and 11449/07), Judgment of the European Court of Human Rights, 2011, para. 267.

Shabaab controlled area. The Court considers that this risk would be even greater for Somalis who have been out of the country long enough to become “westernized”, as certain attributes, such as a foreign accent, would be impossible to disguise.<sup>26</sup>

Although the European Court of Human Rights in its later decision in *K.A.B. v. Sweden* found that the available country information did not indicate that the situation was of such a nature as to place everyone who is present in Mogadishu at a real risk of treatment contrary to article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms,<sup>27</sup> the Court emphasized the importance of including the applicant’s personal situation in its assessment. In its most recent decision regarding the situation in Mogadishu, *R.H. v. Sweden*,<sup>28</sup> the Court upheld its viewpoint in *K.A.B. v. Sweden*, emphasizing however that the general security situation in Mogadishu remained serious and fragile and stressing the importance of including the applicant’s personal situation in the assessment.

5.5 Taking into consideration the accepted facts that he fled Somalia with his family when he was only five years old, that he has no family or social network in Mogadishu and that he lacks experience of living in Somalia, he has a well-founded fear of persecution. Furthermore, the author is particularly vulnerable to forced recruitment by al-Shabaab and risks being exposed to violence and abuse owing to his lack of understanding of the Somali culture and traditions.

5.6 The author recalls that he belongs to the Bagadi clan, part of the Rahanweyne clan, associated with the clan family of Digil and Mirifle, which traces back their ancestry to Saab. Neither is prevalent in any of the Mogadishu districts and the Saab speak Maay-tiri, a dialect distinct from Maxaa-tiri, the dialect used by the other clan families.<sup>32</sup> The author submits that the lack of social network and clan protection in conjunction with his distinct dialect and cultural understanding would inevitably expose him to the risk of irreparable harm. The author refers to several sources cited by the Home Office of the United Kingdom of Great Britain and Northern Ireland, that:

Somalia has long been dominated by clan-politics, though the clan system broke down in Mogadishu while al-Shabaab [was] in power. Following the withdrawal of al-Shabaab from Mogadishu in August 2011, a power vacuum was left which the Transitional Federal Government [...] did not fill. Instead, clan-based politics re-emerged with powerful individuals and militias, often from dominant clans, filling the void. Clan rivalries are evident, and many militias who have now been integrated into the Somali National Armed Forces continue to owe their loyalty to their clan leaders and groups. Clan identity is essential to access protection in Somalia. If clan protection is not available, civilians are more vulnerable to discrimination and/or targeted human rights abuses [...] People returning to Somalia from overseas are extremely vulnerable unless they have strong clan and family connections, as well as the economic means to establish a life. Somalis that have left, particularly those that have been in western countries, tend to be viewed as foreigners, and may be perceived to have western agendas. This in itself puts them at an increased risk of persecution [...] It is unlikely that those who return to Somalia will be able to

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<sup>26</sup> Ibid, para. 275.

<sup>27</sup> See *K.A.B. v. Sweden* (application No. 886/11), Judgment of the European Court of Human Rights, 2013, para. 91.

<sup>28</sup> See *R.H. v. Sweden* (application no. 4601/14), Judgment of the European Court of Human Rights, 2015, paras. 67-69.

<sup>32</sup> See *Country of Origin Information Report* (note 8 above), p. 44.

establish an acceptable standard of living unless they have access to economic resources and powerful individuals or network within the city.<sup>33</sup>

5.7 Furthermore, the author argues that, although clan affiliation has lost its importance in terms of protection in Mogadishu, affiliation matters, for example, to people in power, and for several clans it is still decisive. For members of the Hawiye groups originating from Mogadishu, clan issues do not matter. But for members of other Somali clans, such as Darod, and for internally displaced persons, clan protection remains very important.<sup>34</sup> As to the prevalence of clans in the districts of Mogadishu, the author recalls that:

[A]s many neighbourhoods in Mogadishu are reportedly dominated by one clan and sometimes affiliated armed militia, presence in such areas could, depending on the specific circumstances, put a member of another clan at risk. There continue to be reports of clan tensions in the context of a struggle for control of districts, and clan militias are an additional source of insecurity.<sup>35</sup>

5.8 The author refers to a report from the Norwegian Organisation for Asylum Seekers, according to which three criteria must be fulfilled to access clan protection in Mogadishu: (a) being a member of a dominant clan; (b) being from Mogadishu; and (c) having close family connections.<sup>36</sup> In that context, he recalls that he belongs to a distinct clan, with no prevalence in Mogadishu, has not lived in Mogadishu since he was five years of age and has no family connections in Mogadishu.

5.9 The author concludes that, taking into consideration his individual circumstances and their cumulative effect, he has established that a real risk exists of being exposed to irreparable harm in Somalia.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

6.1 Before considering any claim contained in a communication, the Committee must, in accordance with rule 93 of its rules of procedure, decide whether the claim is admissible under the Optional Protocol.

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

6.3 The Committee takes note of the author's claim that domestic remedies have been exhausted. In the absence of any objection by the State party in this connection, the Committee considers that the requirements of article 5 (2) (b), of the Optional Protocol have been met.

6.4 The Committee further notes the State party's argument that the author's claims under article 7 of the Covenant should be declared inadmissible owing to the failure to establish a prima facie case. However, the Committee considers that the author has adequately explained the facts on which his allegations are based and that he has

<sup>33</sup> See Home Office of the United Kingdom of Great Britain and Northern Ireland "Country Information and Guidance — South and Central Somalia: Majority clans and minority groups" (March 2015), p. 15.

<sup>34</sup> See *Country of Origin Information Report* (note 8 above), p. 56.

<sup>35</sup> See "Country Information and Guidance" (note 19 above), p. 15.

<sup>36</sup> See Norwegian Organisation for Asylum Seekers "Persecution and Protection in Somalia" (April 2014), p. 40. Available from [www.noas.no/wp-content/uploads/2014/04/Somalia\\_web.pdf](http://www.noas.no/wp-content/uploads/2014/04/Somalia_web.pdf).

sufficiently substantiated, for the purposes of admissibility, his claims under article 7 of the Covenant.<sup>37</sup>

6.5 Accordingly, the Committee considers that the communication is admissible as far as it raises issues under article 7 of the Covenant, and it proceeds to its examination on the merits.

*Consideration of the merits*

7.1 The Human Rights 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.

7.2 The Committee recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory when 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.<sup>38</sup> The Committee has also indicated that the risk must be personal<sup>39</sup> and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists. Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.<sup>40</sup>

7.3 The Committee also recalls its jurisprudence that important weight should be given to the assessment conducted by the State party's authorities and that it is generally for the organs of States parties to the Covenant to examine the facts and evidence of the case in order to determine whether such a risk exists, unless it can be established that the assessment was arbitrary or amounted to a manifest error or denial of justice.<sup>41</sup>

7.4 The Committee notes the author's claim that he has a well-founded fear of being subjected to torture and to inhuman or degrading treatment in the event of his return to Somalia owing to the following cumulative factors: (a) his family's conflicts in Somalia in the past; (b) the family's affiliation with the minority clan of Bagadi; (c) his lack of family and social network in Somalia; (d) the risk of becoming an internally displaced person; (e) his health issues; and (f) the risk of forced recruitment by al-Shabaab. It also takes note of the author's claim that the Refugee Appeals Board, in upholding the rejection by the Danish Immigration Board of his asylum application, failed to assess his individual circumstances and their cumulative effect on the risk of being exposed to treatment contrary to article 7 of the Covenant in case of his return to Somalia.

7.5 The Committee further takes notes of the State party's argument that the domestic decision-makers found that the author would not be presently at risk of being subjected to persecution justifying asylum or protection status in the event of his return to Somalia. In particular, the Refugee Appeals Board concluded that the individual circumstances relied upon by the author, including his language skills, clan affiliation and lack of social network,

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<sup>37</sup> See, for example, communication No. 2347/2014, *K.G. v. Denmark*, Views adopted on 22 March 2016, para. 6.4.

<sup>38</sup> See general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

<sup>39</sup> See, for example, communications No. 2393/2014, *K. v. Denmark*, Views adopted on 16 July 2015, para. 7.3; and No. 2272/2013, *P.T. v. Denmark*, Views adopted on 1 April 2015, para. 7.2.

<sup>40</sup> See, for example, communications No. 2007/2010, *X. v. Denmark*, Views adopted on 26 March 2014, para. 9.2; and No. 1833/2008, *X. v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

<sup>41</sup> See, for example, *X. v. Denmark* (note 26 above), para. 9.2; *P.T. v. Denmark* (note 25 above), para. 7.3; *X. v. Sweden* (note 26 above), para. 5.18; and *K.G. v. Denmark*, (note 23 above), para. 7.4.

had not been of such nature as to justify residence under section 7 of the Aliens Act. It also found that the fact that his family had had to leave Somalia in 1992 as a consequence of its affiliation with Siad Barre could not lead to a different assessment; that the incident had taken place a long time ago and that the author had appeared to be a low profile individual. The Board also observed that the general situation in Somalia, including in Mogadishu, could not independently justify residence under section 7.

7.6 On the other hand, the Committee also observes that the Refugee Appeals Board found as fact the following accounts given by the author as his grounds for asylum: (a) that he had left Somalia with his family in 1992 at the age of five owing to the civil war in that country; (b) that he belongs to the Bagadi clan; and (c) that he had lived in Yemen with his family until 2011 and had no family network in Mogadishu or elsewhere in Somalia. Although the State party's immigration authorities concluded that the author's individual circumstances were not of such nature as to justify asylum under article 7 of the Aliens Act and that the situation in Somalia was not of such nature that everybody returning to the area in and around Mogadishu may be deemed to be at a real risk of abuse amounting to torture and to inhuman or degrading treatment solely as a result of his or her presence in the area, the Committee observes that current reports in the public domain concerning the human rights situation in Somalia,<sup>42</sup> and those to which the parties refer, indicate that abuse of and discrimination against minority clans are widespread, clan militias and al-Shabaab continue to commit grave abuses throughout the country, persons returning to Somalia from abroad are extremely vulnerable unless they have strong clan and family connections, and Somalis returning from western countries tend to be regarded as foreigners, having western viewpoints, intentions and motives.

7.7 In the light of the information provided by the author, the information presently available to the Committee and the record of human rights violations in Somalia, the Committee considers that the State party's immigration authorities have not given sufficient weight to the cumulative effect of the author's individual circumstances, which make him particularly vulnerable, in assessing the risk of him being subjected to treatment contrary to article 7 of the Covenant, in case of his forcible return to Somalia. In the Committee's view, the author's situation is distinguishable from that of other Somali nationals who sought asylum abroad on the ground of the general situation in Somalia, since he left the country of origin at the age of five and does not have any remaining family or social network in Somalia, has limited literacy skills in the Somali language, belongs to a minority clan and suffered from tuberculosis in the recent past. In these circumstances, the Committee is 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 contemplated in article 7 of the Covenant,<sup>44</sup> especially given the fact that his brother has already been granted protection status by the State party's immigration authorities.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the author's deportation to Somalia would constitute a violation of article 7 of the Covenant by the State party.

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<sup>42</sup> See, for example, United States of America Department of State, country reports on human rights practices for Somalia (Washington, D.C., 25 June 2015); and UNHCR, Position on Southern and Central Somalia (Update 1) (May 2016), paras. 6 and 20.

<sup>44</sup> See, for example, communication No. 2258/2013, *Rasappu v. Denmark*, Views adopted on 4 November 2015, para. 7.7.

9. In accordance with article 2 (1) of the Covenant, which establishes that States Parties undertake to respect and ensure to all individuals within their territory and subject to their jurisdiction the rights recognized in the Covenant, the State party is under an obligation to proceed to a review of the author's claims, taking into account the State party's obligations under the Covenant and the Committee's present Views. The State party is also requested to refrain from expelling the author while his request for asylum is being reconsidered.

10. 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 its 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

### Joint opinion of Committee members Yuval Shany, Yuji Iwasawa 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, Denmark would, if it implemented the decision, violate its obligations under article 7 of the Covenant.

2. In paragraph 7.3 of the Views, the Committee recalls that “important weight should be given to the assessment conducted by the State party’s authorities and that it is generally for the organs of States parties to the Covenant to examine the facts and evidence of the case in order to determine whether such a risk exists, unless it can be established that the assessment was arbitrary or amounted to a manifest error or denial of justice”. Despite this, the majority of the Committee rejected the factual conclusion of the Danish Immigration Service and the Refugee Appeals Board that the author had failed to establish grounds for asylum because his individual circumstances did not give rise to a risk of a serious harm, and, in paragraph 7.7, held that:

The State party’s immigration authorities have not given sufficient weight to the cumulative effect of the author’s individual circumstances, which make him particularly vulnerable, in assessing the risk of him being subjected to treatment contrary to article 7 of the Covenant, in case of his forcible return to Somalia. In the Committee’s view, the author’s situation is distinguishable from that of the other Somali nationals, who sought asylum abroad on the ground of the general situation in Somalia, since he left the country of origin at the age of five and does not have any remaining family or social network in Somalia, has limited literacy skills in the Somali language, belongs to a minority clan and suffered from tuberculosis in the recent past.

3. By engaging in what appears to an independent risk assessment, we are of the view that the majority on the Committee failed to properly apply the “clearly arbitrary” standard it itself identified, and did not follow the long-held tradition, according to which the Committee does not serve “a fourth instance competent to re-evaluate findings of fact”.<sup>a</sup>

4. In many past cases in which the decision of State organs to deport an individual was found by the Committee to run contrary to the Covenant, the Committee had sought to base its position on inadequacies in the domestic decision-making process, such as failure to properly take into account available evidence or the specific rights of the author under the Covenant,<sup>b</sup> serious procedural flaws in the conduct of the domestic review proceedings,<sup>c</sup> or the inability of the State party to provide a reasonable justification for its decision.<sup>d</sup> In the present case, however, no inadequacy in the domestic decision-making process has been identified.

<sup>a</sup> See, for example, communication No. 1138/2002, *Arenz et al v. Germany*, Views adopted on 24 March 2004, para. 8.6.

<sup>b</sup> See, for example, communication No. 1544/2007, *Hamida v. Canada*, Views adopted on 18 March 2010, paras. 8.4-8.6.

<sup>c</sup> See, for example, communication No. 1908/2009, *X. v. Republic of Korea*, Views adopted on 25 March 2014, para. 11.5.

<sup>d</sup> See, for example, communication No. 1222/2003, *Byahuranga v. Denmark*, Views adopted on 1 November 2004, paras. 11.3-11.4.

5. It appears that the majority on the Committee simply disagreed with the risk assessment of the Danish authorities, notwithstanding that they reached their conclusion after a serious fact-finding process that had been procedurally adequate and, in our view, far more robust than that which the Committee was able to conduct. We, however, are of the view that the information in the case file, including the long time since the events that had led the family to leave Somalia, the author's affiliation to one of the major Somali clans, his ability to speak and understand Somali and the improving security situation in Mogadishu, supports the conclusion that the risk assessment conducted by the Danish authorities had not been clearly arbitrary or amounted to a manifest error or denial of justice.

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