United Nations CCPR/C/124/D/2734/2016

International Covenant on Civil and Political Rights

Advance unedited version

Distr.: General
5 December 2018

Original: English

Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2734/2016*, **, ***

Submitted by:	Fahmo Mohamud Hussein (represented by counsel)
Alleged victims:	The author and her son
State party:	Denmark
Date of communication:	15 February 2016 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure transmitted to the State party on 18 February 2016 (not issued in document form)
Date of adoption of Views:	18 October 2018
Subject matter:	Deportation to Italy
Procedural issue:	Level of substantiation of claims
Substantive issues:	Risk of torture, cruel, inhuman or degrading treatment or punishment
Article of the Covenant:	7
Article of the Optional Protocol:	2

* Adopted by the Committee at its 124th session (8 October – 2 November 2018).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Ilze Brands Kehris, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, José Manuel Santos Pais, Yuval Shany, Margo Waterval and Andreas B. Zimmermann.

*** Individual opinions (dissenting) by Committee members Tania María Abdo Rocholl, Olivier de Frouville and José Manuel Santos Pais are annexed to the present Views.

Please recycle

1.1 The author of the communication is Ms. Fahmo Mohamud Hussein, born on 7 November 1991. She presents the communication on her own behalf and on behalf of her son, X, born on 27 November 2015. The author is a national of Somalia seeking asylum in Denmark and subject to deportation to Italy following the Danish authorities' rejection of her asylum application on the grounds that she already had a residence permit in Italy. The author claims that by forcibly deporting her and her child to Italy, Denmark would violate their rights under article 7 of the Covenant. The author was initially represented by the Danish Refugee Council and subsequently by Marie Louise Frederiksen. The Optional Protocol entered into force for Denmark on 23 March 1976.

1.2 On 18 February 2016, pursuant to rule 92 of the Committee's rules of procedure, the Special Rapporteur on new communications and interim measures requested the State party to refrain from deporting the author and her child to Italy while their case was under consideration by the Committee. On 8 December 2017, the Special Rapporteur decided to deny the State party's request to lift interim measures.

The facts as presented by the author

2.1 The author fled Somalia in 2008 and applied for asylum upon arrival to Lampedusa (Italy), on 23 August 2008. She was transferred to an asylum centre, where she stayed for approximately one year during the processing of her asylum case. In 2009, the author was granted subsidiary protection by the Italian authorities and issued a residence permit valid for three years. The residence permit expired in 2012, but was renewed until 9 April 2015.

2.2 When the author received the residence permit, she was informed by the staff that she could no longer stay at the reception centre. She was only 17 years old. For a long period of time, she spent the night at a shelter "help centre", where she could stay at night if they had a place for her. But if she arrived too late and there was no more room, she had to sleep on the streets. The author actively sought for help from the Italian authorities, and tried to find a job, but without any success.[1] She was therefore completely dependent on the help from volunteers and the one meal she received at the help centre.

2.3 The author allegedly experienced harassment from young persons on the streets.[2] She also witnessed how other young women fell victims to violence if they tried to defend themselves when confronted with harassments and slurs. Despite several years in Italy, the author's situation was in no way sustainable. In the absence of lasting solutions, when she became aware in 2015 that her family resided in Denmark, she left Italy to go to Denmark.

2.4 The author entered Denmark on 7 June 2015 and applied for asylum three days later. She was already pregnant when she arrived in Denmark, and on 27 November 2015 she gave birth to a boy.[3] The author's mother, father and six siblings have all residence permits in Denmark. They have all been a great support to the author in Denmark and help her in taking care of her baby.

2.5 On 22 December 2015, the Danish Immigration Service dismissed the author's asylum application, because she had a residence permit in Italy. On 11 February 2016, the Danish Refugee Appeals Board upheld that decision.

[1] No further information provided in that sense.

[2] They allegedly told her "Why don't you go back home, you monkey" or threw soda cans at her when they passed by on their motorcycles.

[3] The author submits that she does not have a good relationship with the father of her son – who is still in Italy – because he does not want to assume the role of father. He feels that he is not able to live up to his responsibilities when he cannot provide for the family. He does not have a job or a home. Sometimes he sleeps in a shelter, other times on the streets, and when possible at some acquaintances' place. In her asylum screening interview of 23 July 2015, the author declared that she was married with the father of her son since 17 December 2014. Her spouse was also from Mogadishu, but they met in Italy, as they were living in the same neighbourhood. The interview minutes also mention that the author had regular telephone contact with her spouse.

The complaint

3.1 The author submits that, by forcibly returning her and her child to Italy, the Danish authorities would violate their rights under article 7 of the Covenant. She fears that upon return to Italy, she will end up alone with her son, which will be extremely difficult to manage. She does not know how she will be able to provide for her son when she is not even able to provide for herself. She will face even harder challenges than the first time, because she now has a baby to support. Her residence permit has expired and her son is not registered in Italy because he was born in Denmark. Based on her experience, it will be even harder for her to access support from the Italian authorities.

3.2 Since she was told to leave the Italian reception facilities in 2009, the author has not been able to find housing, work or any durable humanitarian solution in Italy. Conclusion No. 58 (XL) adopted by the Executive Committee of the Programme of the Office of the United Nations High Commissioner for Refugees stated that the principle of first country of asylum should only be applied if the applicant is permitted to remain there upon return and is treated in accordance with recognized basic human standards until a durable solution is found.[4] Reception conditions in Italy and basic human standards for refugees with valid or expired residence permits do not comply with international obligations of protection.[5] Different reports state that international protection seekers returning to Italy who had already been granted a form of protection and benefitted from the reception system when they were in Italy are not entitled to accommodation in the reception facilities in Italy.[6] There is also no statutory procedure for identifying vulnerable persons – neither in the Italian reception system nor in the asylum system – and asylum seekers in Italy experience severe difficulties accessing health services.[7]

3.3 In general comment No. 20,[8] the Committee held that it is the duty of the State party to afford everyone protection against the acts prohibited by article 7 of the Covenant, and they must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of extradition, expulsion or refoulement. The European Court of Human Rights, in particular in its judgment in *M.S.S. v. Belgium and Greece*, considered that it was the responsibility of the Belgian authorities not merely to assume that the applicant would be treated in conformity with the standards of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) in the first country of asylum – Greece – but, on the contrary, they should have first verified how the Greek authorities applied their legislation on asylum in practice. Had they done this, they would

[4] "Problem of refugees and asylum seekers who move in an irregular manner from a country in which they had already found protection", 13 October 1989, available from: http://www.unhcr.org/excom/exconc/3ae68c4380/problem-refugees-asylum-seekers-move-irregular-manner-country-already-found.html.

[5] The author refers to the Swiss Refugee Council (OSAR), *Reception conditions in Italy: Report on the current situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees* (October 2013), p. 11; Asylum Information Database (AIDA), *Country report: Italy*, May 2013, p. 34; Council of Europe, "Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to Italy from 3 to 6 July 2012", 18 September 2012 (CommDH(2012)26), p. 150.

[6] European Council on Refugees and Exiles, *"Dublin II Regulation: National Report": European network for technical cooperation on the application of the Dublin II Regulation – Italy*, 19 December 2012, available from: http://www.refworld.org/docid/514054492.html; AIDA, *Country report: Italy*, p. 37; United States Department of State, *2014 Country Reports on Human Rights Practices – Italy*, 25 June 2015, available from: http://www.refworld.org/docid/559bd55f28.html; OSAR, *Reception conditions in Italy*, pp. 4-5; and Jesuit Refugee Service Europe, *Protection Interrupted: The Dublin Regulation's impact on asylum seekers' protection*, June 2013, available from: https://www.jrs.net/assets/Publications/File/protection-Interrupted_JRS-Europe.pdf, pp. 152 and 161.

[7] The author cites CommDH(2012)26, pp. 143 and 160; AIDA, *Country report: Italy*, pp. 45-46; UNHCR, *UNHCR Recommendations on Important Aspects of Refugee Protection in Italy*, July 2013, available from: http://www.refworld.org/docid/522f0efe4.html, p. 12, and OSAR, *Reception conditions in Italy*, pp. 4-5.

[8] General Comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment.

have seen that the risks faced by the applicant were real and individual enough to fall within the scope of article 3 of the European Convention.[9]

3.4 In its inadmissibility decision in the case of *Samsam Mohammed Hussein and Others v. the Netherlands and Italy*,[10] the European Court stated that the return of the applicant, a single Somali woman with two children, from the Netherlands to Italy would not amount to a violation of article 3 of the European Convention. However, the Court noted that the Netherlands authorities would give prior notice to their Italian counterparts of the transfer of the applicant and her children, thus allowing the Italian authorities to prepare for their arrival. The Court further noted that the applicant, as a single mother of two small children, remained eligible for special consideration as a vulnerable person, as to admission to reception facilities for asylum seekers.[11] In *Tarakhel v. Switzerland*, the European Court considered that if the family was to be returned to Italy without the Swiss authorities having first obtained individual guarantees from the Italian authorities that the applicants would be taken charge of, especially the children, there would be a violation of article 3 of the European Convention.[12]

3.5 Therefore, if the author and her son were to return to Italy, they would be at a real risk of facing inhuman and degrading treatment contrary to the best interest of the child because, based on her previous experience and subsequent developments, they would be exposed to destitution and homelessness, with no prospects of finding a durable humanitarian solution. The author draws attention to her status as a single mother with a new-born child and recalls that she did not receive any assistance or support from the Italian authorities in securing basic needs such as food, housing, finding work or being integrated into the Italian society.

State party's observations on admissibility and the merits

4.1 On 18 August 2016, the State party submitted its observations on admissibility and the merits of the communication. It submits that the communication is not substantiated, as the author has not demonstrated any possible breach of the Covenant if deported to Italy.

4.2 The State party describes the structure, composition and functioning of the Refugee Appeals Board,[13] as well as the legislation applying to asylum proceedings.[14] Regarding the admissibility of the communication, the author has failed to establish a *prima facie* case for the purpose of admissibility under article 7 of the Covenant, in the absence of substantial grounds for believing that she is in danger of being subjected to inhuman or degrading treatment if deported to Italy.

4.3 Regarding the merits of the communication, the author has failed to establish that her return to Italy would constitute a violation of article 7 of the Covenant. According to the Committee's jurisprudence, 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.[15]

4.4 The State party recalls that it cannot be required that the relevant asylum seekers will have exactly 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

[9] Application No. 30696/09, judgment of 21 January 2011, para. 359.
[10] Application No. 27725/10, judgment of 2 April 2013.
[11] Ibid., para. 77.
[12] Application No. 29217/12, judgment of 4 November 2014, para. 119.
[13] *Obah Hussein Ahmed v. Denmark* (CCPR/C/117/D/2379/2014), paras. 4.1-4.3.
[14] Sections 7(1) − (3) and 31(1) and (2) of the Aliens Act.
[15] *X v. Denmark* (CCPR/C/110/D/2007/2010), para. 9.2.

in the first country of asylum. Moreover, it follows from both the jurisprudence of the Committee and the case law of the European Court of Human Rights that conditions in Italy are not generally of such nature that it will be contrary to article 7 of the Covenant to deport individuals to Italy in pursuance of the principle of the country of first asylum.

4.5 The author claimed that, upon her return to Italy, she and her son will not have access to accommodation and will consequently be faced with homelessness and destitution. This submission has not been specifically substantiated or rendered probable and is also inconsistent with the background information available on living conditions of recognized refugees in Italy,[16] as well as with the author's own experience. After assessing the relevant background material on Italy, the Refugee Appeals Board found that the general socio-economic conditions of refugees granted residence could not independently lead to the conclusion that the author could not be referred to take up residence in Italy as her country of first asylum.

4.6 The background information invoked by the author[17] does not contain new information on the general conditions in Italy for persons already granted residence that was not available to the European Court when it ruled in *Samsam Mohammed Hussein and Others* that the applicants' return to Italy would not amount to treatment proscribed by article 3 of the European Convention. Moreover, the author relies primarily on reports and other background material relating to reception conditions in Italy that were relevant to asylum seekers, including returnees under the Dublin Regulation, and not to persons – like herself – who had already been granted subsidiary protection.[18]

4.7 As to the author's social background, the report of the asylum screening interview conducted by the Danish Immigration Service on 23 July 2015 reveals that the author stayed partially at reception centres and partially at a "help centre" in Cartegna during her stay in Italy from 2008 to 2015, she had a job during some periods of her stay in Italy, her residence permit was renewed at least once and she received medical treatment. She also had no problems with the authorities, nor with private individuals or groups during her stay in Italy.

4.8 Regarding the author's reference to the decision of the European Court in *Samsam Mohammed Hussein and Others*, in that ruling, the Court reiterated that the mere return to a country where one's economic position will be worse than in the expelling State party is not sufficient to meet the threshold of ill-treatment proscribed by article 3. It stated that article 3 cannot be interpreted as obliging the States parties to provide everyone within their jurisdiction with a home, and that it does not entail any general obligation to give refugees financial assistance to enable them to maintain a certain standard of living.[19] Moreover, the Court indicated 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 from the contracting State is not sufficient in itself to give rise to a breach of article 3.[20] Furthermore, it cannot be inferred from the judgment of the Court in *Tarakhel v. Switzerland*, which concerned a family with the status of asylum seekers in Italy, that States are required to obtain individual guarantees from the Italian authorities before deporting individuals or families in need of protection who have already been granted residence in Italy.

4.9 The Danish authorities consulted the Italian authorities in the summer of 2015 about the possibility of asylum seekers to enter Italy as their country of first asylum. The Italian authorities confirmed that an alien with a residence permit for 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, even after the expiry of the residence permit. Also, an alien whose residence permit has expired may

[16] Including material published by the UNHCR, AIDA and the Swiss Refugee Council (OSAR).

[17] In particular the OSAR report of October 2013 and the June 2015 report published by the United States Department of State.

[18] The December 2012 report published by the European Council on Refugees and Exiles, the AIDA report of May 2013, and the June 2013 report published by the Jesuit Refugee Service Europe.

[19] *Samsam Mohammed Hussein and Others v. the Netherlands and Italy*, para. 70.

[20] Ibid., para. 71.

lawfully enter Italy for the purpose of having his or her residence permit renewed. However, during the asylum screening interview of 23 July 2015, the author declared that she considered it a bothersome process to renew her residence permit because she had to go to the immigration office and queue up for a long time. When the author was asked why she had not had her most recent Italian residence permit renewed, she replied that she should have applied for a new residence permit on 6 July 2015, but she had other plans for that day. The European Court of Human Rights has also ruled on several occasions that Italy can serve as the country of first asylum for persons whose residence permits have expired and for persons with children.[21]

4.10 The Refugee Appeals Board also found that the circumstance that the author's son had not been registered in Italy because he was born in Denmark could not lead to a different evaluation of her case. There was no basis for assuming that it would not be possible for the author to have her son registered in Italy. The author herself declared at the asylum screening interview that her pregnancy had been confirmed by a general practitioner in Italy, reason for which it must be assumed that it is not unknown to the Italian authorities that the author was about to give birth to a child.

4.11 Based on background information on Italy available to the Refugee Appeals Board and the information provided by the author to the Danish Immigration Service, the State party contests the author's allegations that she had not received assistance or support from the Italian authorities in securing basic needs like food, finding work or being granted residence at any time since she received her residence permit. A December 2015 update of the AIDA country report on Italy indicates that refugees and aliens granted subsidiary protection – as in the author's case – have the same right to medical treatment as Italian nationals.[22] It further appears that asylum seekers and beneficiaries of international protection benefit from free of charge health services on the basis of a self-declaration of destitution. It also appears that the right to medical assistance is acquired at the moment of the registration of the asylum request and that this right remains applicable even in the process of the renewal of the permit of stay. This background information is confirmed by the author's own information on her stay in Italy, given that she declared at the asylum screening interview that she had braces fixed to her teeth while in Italy, free of charge through the public dental health service. She also declared that she was in good health, that she did not suffer from any chronic diseases, and that she had not received treatment for any diseases during her stay in Italy. However, she mentioned that she received medical assistance in connection with her pregnancy.

4.12 As to the author's possibility of becoming integrated in the Italian society, the author stated during her screening interview that she had passed elementary school at a single annual course in Italy and had subsequently studied for one year at the Hotel School in Italy. As regards the author's fear of living on the streets, she mentioned during that interview that she had registered with a help centre in Cartegna, where it was possible to achieve accommodation as from 7 pm until 7 am the following day. She also declared that she imagined that it would have been troublesome for her to find other accommodation if she failed to make it to the help centre by 7 pm. In her communication to the Committee, the author also referred to the harassment experienced on the streets, but during the screening interview she stated that she had no conflicts with the Italian authorities, private individuals or groups during her stay in Italy.

4.13 As to the author's assumption that she and her new-born son are in a vulnerable situation, the State party observes that being a beneficiary of subsidiary protection in Italy gives her the option to look for work to make a living and support herself and her son. While the author has mentioned in her communication to the Committee that she applied for jobs in vain in Italy, she declared at the asylum screening interview that she had worked for an old lady for four months, until that person passed away. She cannot be considered a single mother either because, according to her own statement, she is married, and her husband, who is also the father of her son, is still in

[21] Besides *Samsam Mohammed Hussein and Others*, the State party also refers to the Court's inadmissibility decision in *A.T.H. v. the Netherlands*.

[22] Available from: https://www.asylumineurope.org/reports/country/italy, pp. 83 ss.

Italy. Moreover, according to her communication to the Committee, she had established contact with and received support from local relief organizations. The author also stated to the Danish Immigration Service that the reason why she chose to leave Italy after having stayed in the country for several years was that she had learned that she had family members living in Denmark. For the State party, the circumstance that some of the author's family members are living in Denmark cannot lead to the conclusion that she risks being subjected to ill-treatment in Italy contrary to article 7 of the Covenant.

4.14 In conclusion, Italy can serve as the country of first asylum for the author and her child and, accordingly, their deportation to Italy would not entail a violation of article 7 of the Covenant. The communication has not brought to light any new, specific information about the author's situation. Her allegations that she has been subjected to harassment and that she fears to become homeless and not being able to receive assistance from the Italian authorities are unsubstantiated. Such a fear is not supported by her prior experience in Italy nor by the background information. In addition, according to the Committee's established jurisprudence,[23] important weight should be given to the assessment conducted by the State party, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice.

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

5.1 In her comments of 12 October 2016, the author maintains that her return to Italy with her minor son would constitute a breach of article 7 of the Covenant and submits that the State party has failed to provide sufficient grounds to consider the communication as being manifestly ill-founded. According to the UNHCR position on the standard of proof, "[t]he 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."[24] That view was later adopted by other international organs, most recently by the Committee on the Elimination of Discrimination against Women, which held in its general recommendation No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women that "[t]he threshold for accepting asylum applications should be measured not against the probability but against the reasonable likelihood that the claimant has a well-founded fear of persecution or that she would be exposed to persecution on return."[25]

5.2 The Refugee Appeals Board has failed to assess whether the author's child can be registered in Denmark and if the Italian authorities know about him. It has also not sufficiently substantiated whether the author and her minor son can enter lawfully and take up lawful residence in Italy. She emphasizes that her stay in Italy was insecure and inconsistent. She was only offered accommodation from 2008 to 2009, when she was 17 years old and an asylum seeker. After being granted residence permit, she was asked to leave the centre. The work she performed in Italy was illegal and offered to her by the Somalian network to which she has no longer connection. She stayed at shelters which were open only from 7 pm to 7 am and she was never offered any help by the authorities. If she goes back to Italy, she will be more vulnerable with her minor son. Those shelters are not suitable for a small child, and the State party has not sufficiently proved that they will not be faced with homelessness and destitution upon return.

[23] *P.T. v. Denmark* (CCPR/C/113/D/2272/2013), para. 7.3; *K. v. Denmark* (CCPR/C/114/D/2393/2014), paras. 7.4 and 7.5; *N. v. Denmark* (CCPR/C/114/D/2426/2014), para. 6.6; *Mr. X and Ms. X v. Denmark* (CCPR/C/112/D/2186/2012), para. 7.5; and *Z. v. Denmark* (CCPR/C/114/D/2329/2014), para. 7.4.

[24] UNHCR, "An Overview of Protection Issues in Europe Legislative Trends and Positions Taken by UNHCR", *European Series* 1, no. 3 (1995), p. 87 (also available from: http://www.unhcr.org/publications/euroseries/46e65e1e2/overview-protection-issues-europe-legislative-trends-positions-taken-unhcr.html).

[25] Para. 50(g).

5.3 In the author's case, it is not a question of the author's material and social conditions being reduced, but simply a question of access to minimum standard living conditions. The Committee also stressed in *Jasin* that States parties should give sufficient weight to the real and personal risk a person might face if deported 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 work and receive social benefits.[26] Also regarding her son's registration in Italy, the State party should have undertaken a necessary and individualized examination of the risks.

5.4 As to the fact that she has not renewed her residence permit, the author submits that she was every day struggling to find a job and housing. Whenever possible, she worked illegally as a cleaning lady, thus money for food was more important than the renewal of a residence permit that had not helped her during her stay in Italy.

5.5 As to her previous experience in Italy, the author mentions that she received braces for her teeth when she was 17 years old and only because her teacher helped her. This does not amount to a personal and general guarantee that she will receive the necessary medical treatment upon return. Moreover, the State party's assumption that she received medical treatment, was integrated and was eligible for housing refers to her early years in Italy, when she was 17 years old and thus taken care of as a minor. It does not mean that she will receive the same assistance at present, when the Italian asylum system is flawed due to the mass influx of refugees. This information is thus irrelevant.

5.6 As to her vulnerability, the author invokes the *Jasin* precedent to claim that the Danish authorities should have taken all circumstances into account instead of basing their decision on the assumption that, having lived in Italy for several years, she is likely able to take care of herself and her son. The author has not had any contact with her husband, who has not shown any interest in herself or in their son. Even if she does not wish any longer to be married, religious and cultural traditions prevent her from filing for divorce.

5.7 Finally, as to the State party's denial of her fear of becoming homeless and not being able to receive assistance from the Italian authorities, the author invokes the UNHCR position in the sense that "[a] fear must be well-founded, but this does not mean there must have been actual persecution".[27]

Additional submission from the State party

6.1 On 13 June 2018, the State party provided further observations to the Committee, generally referring to its observations of 18 August 2016.

6.2 While in a number of cases against Denmark, the Committee has found that decisions of the Refugee Appeals Board in respect of transfer of authors with minor children to Italy amounted to a violation of the Covenant,[28] those findings cannot lead to a different outcome in the present case. The case law of the Refugee Appeals Board and the Board's assessment of the conditions of authors with minor children to be transferred to Italy are consistent with the case law of the European Court of Human Rights. Thus, according to its inadmissibility decision in *E.T. and N.T. v. Switzerland and Italy*,[29] the European Court does not require individual guarantees from the Italian authorities. The State party observes that the National Operational Aliens Centre (*Udlændingecenter Nordsjælland*) of the North Zealand Police (*Nordsjællands Politi*) will notify

[26] *Warda Osman Jasin et al. v. Denmark* (CCPR/C/114/D/2360/2014), para. 8.9.

[27] UNHCR, "An Overview of Protection Issues in Europe Legislative Trends and Positions Taken by UNHCR", p. 87.

[28] *Jasin et al. v. Denmark*; *Abdilafir Abubakar Ali and Mayul Ali Mohamad v. Denmark (CCPR/C/116/D/2409/2014)*; *Y.A.A. and F.H.M. v. Denmark* (CCPR/C/119/D/2681/2015); *Raziyeh Rezaifar v. Denmark* (CCPR/C/119/D/2512/2014); and *Hibaq Said Hashi v. Denmark* (CCPR/C/120/D/2470/2014).

[29] Application no. 79480/13, 30 May 2017.

the Italian authorities of the deportation in advance and collaborate with the Italian authorities on the deportation of the author and her son. The European Court has previously approved this practice.[30]

6.3 In its observations of 18 August 2016, the State party addressed the issue of renewal of an expired residence permit. In its decision in *E.T. and N.T.*, the European Court considered that the fact that the second applicant was born outside of Italy was not a barrier to his removal to Italy. The Refugee Appeals Board also took into account the author's previous experience in Italy. The author has thus not identified any procedural defects in the Board's decision.

6.4 The State party finally refers to a recent judgment of the European Court, which recalled the general principles that it is for the domestic authorities to assess the evidence before them.[31] In the present case, no information has been adduced which would be new when compared to the information available when the Refugee Appeals Board made its decision.

Additional submission from the author

7. On 10 September 2018, the author reiterated her observations and referred to the Views cited by the State party,[32] arguing that the State party's analysis of this jurisprudence was not thorough, and that it should rather be interpreted in her favour.

Issues and proceedings before the Committee

Consideration of admissibility

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

8.2 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.

8.3 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.

8.4 The Committee notes the State party's challenge to the admissibility of the communication on the grounds that the author's claim under article 7 of the Covenant is unsubstantiated. However, the Committee considers that, for the purpose of admissibility, the author has adequately explained the reasons for which she fears that her forcible return to Italy would result in a risk of treatment in violation of article 7 of the Covenant. As no other obstacles to admissibility exist, the Committee declares the communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

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

[30] See, *inter alia*, European Court's decision in *F.M. and Others v. Denmark*, Application no 20159/16, 13 September 2016.

[31] European Court of Human Rights, *X v. Sweden*, Application no. 36417/16, 9 January 2018, paras. 47-51.

[32] See note 30 above.

9.2 The Committee notes the author's claim that deporting her and her new-born child 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.

9.3 The Committee recalls its general comment No. 31,[33] 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 article 7 of the Covenant. The Committee has also indicated that the risk must be personal[34] and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.[35] Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.[36] The Committee recalls that it is generally for the organs of States parties to examine the facts and evidence of the case in order to determine whether such a risk exists,[37] unless it can be established that the assessment was clearly arbitrary or amounted to a manifest error or denial of justice.[38]

9.4 The Committee notes the author's allegation that Italy granted her subsidiary protection in 2009 including a residence permit valid for three years, following which she was asked to leave the asylum center, and that despite having allegedly sought assistance from the local authorities, she did not receive any social or housing support and was left without shelter or means of subsistence. The Committee further notes the author's previous experience of an unsafe environment and violence, typical in terms of the living conditions of homeless asylum seekers in Italy.

9.5 Furthermore, the Committee notes that the author has relied on various reports on the general situation of asylum seekers and refugees in Italy, highlighting the chronic lack of available places in the reception facilities for asylum seekers and beneficiaries of international protection. 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 are no longer entitled to accommodation in the public reception centers for asylum seekers and experience severe difficulties accessing health services (para. 3.2).

9.6 The Committee also notes the finding of the Danish 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 such a country is obliged to provide asylum seekers with basic human rights standards, although it is not required that such persons have the same social and living standards as nationals of the country (para. 4.4). The Committee further notes the State party's submission that the prohibition of torture and inhuman or degrading treatment or punishment cannot be interpreted as obliging States parties to provide everyone within their jurisdiction with a home nor as entailing any general obligation to give refugees financial assistance to enable them to maintain a certain standard of living.[39] The Committee finally notes the information submitted by the State party according to which refugees granted subsidiary protection have access to health-care services on the same terms as Italian nationals and benefit from free of charge health services on the basis of a self-declaration of destitution.

9.7 The Committee recalls that States parties should, when reviewing challenges to decisions to remove individuals from their territory, give sufficient weight to the real and personal risk such

[33] General Comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.
[34] *K. v. Denmark*, para. 7.3; *P.T. v. Denmark*, para. 7.2; and *X. v. Denmark*, para. 9.2.
[35] *X v. Sweden* (CCPR/C/103/D/1833/2008), para. 5.18.
[36] Ibid. Also see *X. v. Denmark*, para. 9.2.
[37] *Pillai et al. v. Canada* (CCPR/C/101/D/1763/2008), para. 11.4, and *Lin v. Australia* (CCPR/C/107/D/1957/2010), para. 9.3.
[38] See, for example, *K. v. Denmark*, para. 7.4.
[39] *Tarakhel v. Switzerland*, para. 95.

individuals might face if deported.[40] In particular, any evaluation of whether individuals are likely to be exposed to conditions constituting cruel, inhuman or degrading treatment in violation of article 7 of the Covenant must be based not only on an assessment of the general conditions in the receiving country, but also on the individual circumstances of the persons in question. Those circumstances include factors that increase the vulnerability of such persons and that could transform a situation that is tolerable for most into an intolerable one for others. They should also take into account, in cases considered under the Dublin Regulation, the previous experiences of the removed individuals in the first country of asylum, which may underscore the special risks that they are likely to face and may thus render their return to the first country of asylum a particularly traumatic experience for them.[41]

9.8 The Committee notes the information provided to the State party by the Italian authorities in 2015, according to which an alien who has been granted residency in Italy as a recognized refugee or has been granted protection status may submit a request to renew his or her expired residence permit upon re-entry into Italy. The Committee further notes the author's claims, based on her personal circumstances, that despite being previously granted residency in Italy, she would face intolerable living conditions there. It also observes that in her asylum screening interview of 23 July 2015, the author declared that she wanted to apply for asylum in Denmark rather than in Italy because her parents, whom she had not seen for six years, were in Denmark and because she could not find a job in Italy.

9.9 The Committee observes that the material before it, as well as general information on the situation of refugees and asylum seekers in Italy, indicate that there may be a lack of available places in the reception facilities for asylum seekers and returnees and that they are often in poor sanitary conditions. According to those sources, the returnees like the author may not be entitled to accommodation in the centres for asylum seekers as she already benefited from the reception facilities when in Italy. Although beneficiaries of protection are generally entitled to work and enjoy social rights in Italy, the Committee observes that its social system is in general insufficient to attend to all persons in need. The Committee also observes that the Board held that during her previous stay in Italy, the author was able to find work and accommodation for periods of time, to access medical and educational services, and that she is in good health. Also her husband, who is the child's father, lives in Italy. Furthermore, the Committee notes that the author has not explained why she would not be able to seek the protection of the Italian authorities in case of her eventual unemployment. Notwithstanding the fact that it is difficult in practice for refugees and beneficiaries of subsidiary protection to have access to the labor market or to housing, the author has failed to substantiate a real and personal risk upon return to Italy. The fact that she may possibly be confronted with serious difficulties upon return by itself does not necessarily mean that she would be in a special situation of vulnerability – and in a situation significantly different to many other refugee families – such as to conclude that her return to Italy would constitute a violation of the State party's obligations under article 7 of the Covenant.[42]

9.10 The Committee further considers that although the author disagrees with the decision of the State party's authorities to return her to Italy as her country of first asylum, she has failed to explain why that decision is manifestly unreasonable or arbitrary. Nor has she pointed out any procedural irregularities in the procedures before the Danish Immigration Service or the Refugee Appeals Board. Accordingly, the Committee cannot conclude that the removal of the author to Italy by the State party would constitute a violation of article 7 of the Covenant.

9.11 Without prejudice to the continuing responsibility of the State party to take into account the present situation of the country to which the author would be deported, in the light of the available information regarding the author's personal circumstances, the Committee considers

[40] See, e.g., *Pillai et al. v. Canada*, paras. 11.2 and 11.4; and *Abdilafir Abubakar Ali and Mayul Ali Mohamad v. Denmark*, para. 7.8.

[41] See, e.g., *Y.A.A. and F.H.M. v. Denmark*, para. 7.7.

[42] See *R.I.H. and S.M.D. v. Denmark* (CCPR/C/120/D/2640/2015), para. 8.6, and *B.M.I. and N.A.K. v. Denmark* (CCPR/C/118/D/2569/2015), para. 8.6.

that the information before it does not show that the author would face a personal and real risk of treatment contrary to article 7 of the Covenant if she were removed to Italy.

10. The Committee, acting under article 5(4) of the Optional Protocol to the Covenant, is of the view that the author's removal to Italy would not violate her rights under article 7 of the Covenant. The Committee, however, is confident that the State party will duly inform the Italian authorities of the author's removal, in order for the author and her child to be kept together and to be taken charge of in a manner adapted to their needs, especially taking into account the age of the author's son.

Individual Opinion of Mr. José Santos Pais (dissenting)

1. I regret not being able to share the Committee's decision, according to which removal of the author and her son to Italy would not violate their rights under article 7 of the Covenant. Quite surprisingly, circumstances in this case are very similar to those of recent communication 2575/2015, Araya v Denmark, in which the Committee concluded instead for a violation of article 7.

2. The author, who fled Somalia and applied for asylum in Italy in 2008, presents the communication on her own behalf and on behalf of her son. Granted subsidiary protection by Italian authorities and issued a residence permit, author was then informed she could no longer stay at a reception centre. She was only 17 years old and therefore for a long period of time spent the night at a shelter "help centre", where she could stay at night if they had a place for her. But if she arrived too late and there was no more room, she had to sleep on the streets. Author, for several years, sought for help from Italian authorities, and tried to find housing or a regular job, but without success. She therefore faced destitution and was completely dependent on the help from volunteers and the one meal she received at the help centre. She also experienced repeated harassment from young persons on the streets. When she became aware, in 2015, that her family (mother, father and six siblings, all with residence permits) resided in Denmark, she left Italy to go to Denmark, where she arrived pregnant. Her son was born there in 2015.

3. Her family has been a great support to author ever since and helped her in taking care of her baby. She has thus an all-encompassing and reliable family environment in Denmark. On the contrary, if returned to Italy, such family environment would cease to exist, since author does not have a good relationship with her husband, who stayed in Italy and does not want to assume the role of father of the born child.

4. Author and her son would thus face, if returned to Italy, intolerable living conditions, exceptional hardship and destitution, similar to the ones the author has previously experienced there, amounting to a real and personal risk of irreparable harm. There is indeed a real risk of ending up living on the streets or in precarious and unsafe conditions, particularly unsuitable for young children.

5. In the present case, Denmark has failed to adequately assess both author's personal past experience in Italy, where she has faced homelessness and destitution, and the foreseeable consequences of forcibly returning her there, not giving due consideration to her particular and increased vulnerability, a single mother, with a new-born child. It also failed to verify whether author and her son would have effective access to financial, medical and social assistance, as well as being protected from risks of attempts for their personal safety. It would however be relevant to determine whether author would actually be able to find accommodation and provide for herself and her child in the absence of assistance from Italian authorities, in particular as she is a single parent who will have to look for a job and yet to look after her child, given that the father has not shown any interest or resources in providing for them, has no home or job, and often lives on the streets.

6. In particular, Denmark failed to seek effective assurances from Italian authorities that author and her son would be received in conditions compatible with their status as asylum seekers entitled to temporary protection and guarantees under article 7 of the Covenant and it also did not request Italy to undertake: (a) to renew author's residence permit as part of subsidiary protection and to issue a permit to her child; and (b) to receive author and her son in conditions adapted to the child's age and the family's vulnerable status enabling them to be kept together if remaining in Italy.

7. Denmark has most importantly failed to take into consideration the need to respect the right of author's son, under art. 24 of the Covenant, to adequate measures of protection, since he was born in Denmark and has several relatives residing there. Returning the child to Italy, where he has never been, fails completely to have the bests interests of the child as a primary consideration, as imposed by art. 3 of the Convention on the Rights of the Child to which Denmark is a party.

8. Finally, Denmark has failed to consider present general human rights and political situation in Italy, especially anti-migration policies set-up after last general elections and the particular difficult economic conditions that country is facing within the European Union.

9. I would therefore have concluded for a violation of article 7 of the Covenant, since Denmark has failed to conduct a thorough and sufficient evaluation of whether author and her son would be exposed to conditions constituting cruel, inhuman or degrading treatment if returned to Italy, thus rendering this return a particularly traumatic experience for them, especially for the child.

Opinion individuelle (dissidente) de M. Olivier de Frouville

1. Ces constatations s'inscrivent dans la lignée d'une jurisprudence du Comité des droits de l'Homme désormais bien établie, qui concerne les renvois de personnes demandeurs du statut de réfugié ou bénéficiant d'une protection subsidiaire entre deux pays de l'Union européenne. Toutes les affaires présentées au Comité concernent un seul Etat partie, le Danemark. Dans une majorité de cas le pays de renvoi est l'Italie. Le Comité a fixé un certain nombre de principes applicables à ces affaires à partir de ses constatations dans l'affaire Warda Osman Jasin c. Danemark, adoptées le 22 juillet 2015[431]. Ces principes sont acceptés par la majorité des membres du Comité, mais l'application à certains cas d'espèce continue de diviser ses membres.

2. Conformément à sa jurisprudence générale en matière d'éloignement du territoire, le Comité accorde un poids considérable à l'appréciation par les autorités nationales d'un risque réel et personnel de préjudice tel qu'envisagé aux articles 6 et 7 du Pacte. Le Comité considère qu'il appartient généralement aux organes de l'Etat d'apprécier les faits et les preuves en vue d'établir l'existence de ce risque, à moins que cette évaluation ne soit clairement arbitraire ou ne soit constitutive d'un déni de justice.

3. Par ailleurs, pour ces affaires en particulier, le Comité a défini quatre éléments d'appréciation. Le premier élément concerne la situation dans le pays de renvoi s'agissant de l'accueil et de la prise en charge des demandeurs d'asile ou des personnes bénéficiant de la protection subsidiaire. Le second élément a trait à l'expérience passée des personnes concernées dans le pays de renvoi et par conséquent au traitement auquel ces personnes peuvent s'attendre en cas de retour dans ce pays. Le troisième élément porte sur la situation de vulnérabilité dans laquelle l'auteur se trouve au moment de l'examen de la demande par le Comité, situation à laquelle participe le fait d'être responsable d'enfants mineurs, dont l'intérêt supérieur doit être dûment pris en compte dans la décision. Enfin, le quatrième et dernier élément est la question de savoir si l'Etat partie a ou non cherché à obtenir de la part de l'Etat de renvoi des assurances que les personnes concernées seront prises en charge dans des conditions compatibles avec leur situation mais aussi, lorsque les auteurs sont accompagnés d'enfants mineurs, qu'ils soient accueillis dans des conditions adaptés à l'âge des enfants et à la situation de vulnérabilité de la famille, sans les exposer à un risque de refoulement indirect.

4. Lorsque le Comité parvient à la conclusion que l'appréciation des autorités nationales est clairement arbitraire dans le cas d'espèce, il juge qu'il y aurait violation si l'Etat renvoyait les auteurs sans demande d'assurance telles que spécifiées par le Comité dans les motifs de ses constatations. Autrement dit, il s'agit toujours d'une violation potentielle, que l'Etat pourrait éviter en procédant à une demande d'assurances personnalisées, selon les conditions fixées par le Comité. Il faut remarquer que, malheureusement, depuis que le Comité est saisi de ce type d'affaires, le Danemark n'a jamais formulé de telles demandes.

5. J'estime que le Comité n'a pas correctement appliqué sa jurisprudence au cas particulier de l'espèce. Au titre des conditions dans le pays, le Comité prend note des différents rapports présentés par l'auteur et mentionnés dans le paragraphe 3.2., dont il ressort que les personnes qui retournent en Italie alors qu'elles y ont déjà reçu une forme de protection n'ont pas droit à un hébergement dans les structures d'accueil et qu'il n'existe pas de procédure légale pour identifier les personnes vulnérables. Des rapports plus récents montrent qu'il n'y a pas eu d'amélioration à cet égard et qu'au contraire, des problèmes systémiques persistent[442]. L'expérience passée de l'auteur est malheureusement comparable à celle d'autres cas que le Comité a eu à examiner : après avoir reçu son permis de séjour, l'auteur a été informée qu'elle ne pouvait plus rester dans le centre d'accueil pour réfugiés, alors même qu'elle était encore mineure. Entre 2009 et 2015, elle a donc vécu dans une situation d'extrême précarité, dormant dans la rue ou dans des centres d'hébergement et travaillant de temps à autres illégalement. Sur le plan personnel, l'auteur se trouverait particulièrement vulnérable si elle devait retourner en Italie, en tant que mère isolée d'un enfant en bas-âge né au Danemark, alors même que le reste de sa famille réside légalement

[1] Comm. n°2360/2014.

[2] Cf. OSAR et Danish Refugee Council, Is Mutual Trust Enough ? The situation of persons with special reception needs upon return to Italy, 9th February 2017.

dans ce pays (part. 2.4.) L'auteur a par ailleurs clairement expliqué qu'elle n'a aucun contact avec son mari, resté en Italie, que celui-ci n'a pas montré le moindre intérêt pour elle ou pour leur fils et que seul le poids des traditions l'empêche de demander le divorce (par. 5.6.)

7. Enfin, à propos des assurances, l'Etat partie invoque deux décisions de la Cour européenne des droits de l'Homme : E.T. et N.T. c. Suisse et Italie, dont il déduit que la Cour n'exigerait pas de garanties individuelles de la part des autorités italiennes, alors même que dans cette affaire, l'Italie a fait parvenir une lettre garantissant la prise en charge des auteurs, ce dont la Cour a pris bonne note ; et F.M. et autres c. Danemark, qui concerne en réalité la procédure de renvoi au titre du Règlement Dublin III et n'est donc pas applicable au cas d'espèce.

8. En définitive, l'appréciation par les autorités nationales n'a pas pris en compte de manière satisfaisante la situation personnelle de l'auteur et de son enfant au regard de la situation générale des personnes bénéficiant d'une protection subsidiaire en Italie et de l'expérience passée de l'auteur dans ce pays. La décision est donc clairement arbitraire et il est justifié que le Comité constate une violation potentielle de l'article 7 en cas de retour sans demande d'assurance.

Opinión individual (disidente) de la Sra. Tania Abdo Rocholl

1. La autora, señora Fahmo Mohamud Hussein, llegó a Italia en 2008 desde Somalia, su país de origen, y permaneció en un centro de asilo hasta 2009, cuando las autoridades italianas le otorgaron protección subsidiaria y permiso de residencia hasta 2012, por lo cual debió abandonar dicho recinto de acogida. Posteriormente su permiso de residencia fue extendido hasta 2015, aunque durante toda su estancia en Italia, a la autora le resultó imposible consolidar unas mínimas condiciones de vida digna y conseguir un trabajo legal y estable, dependiendo su supervivencia de mecanismos de ayuda, situación agravada por hechos puntuales de violencia.

2. Es relevante no perder de vista que la autora presentó la comunicación en su nombre, pero también en el de su hijo. El niño nació en Dinamarca durante 2015, luego de que la autora abandonara Italia al enterarse de que su familia – padre, madre y seis hermanos – residía legalmente en ese país; esa familia es la que ha apoyado efectivamente a la autora, brindándole contención y colaborando con el cuidado al niño, dotándole de afecto en un entorno familiar a diferencia de la conducta del padre, residente en Italia, quien nunca construyó un vínculo con su hijo. No obstante, estas circunstancias fueron obviadas por las autoridades al momento de analizar la solicitud de asilo presentada.

3. Tales hechos han generado, claramente, un estado de incertidumbre con relación al futuro de la autora y del niño, quien hoy a sus 3 años habiendo solo conocido su vida en Dinamarca con toda su familia, requiere de medidas de protección acordes a su condición según el artículo 24 del Pacto y tiene además un reconocimiento jurídico reforzado como sujeto de derechos por la Convención sobre los Derechos del Niño; consecuentemente, es merecedor de una protección diferenciada a la que reciben los adultos, con lo que se busca que su interés sea atendido como superior a cualquier otro interés legítimo para la toma de decisiones y resolución de conflictos.

4. Lamentablemente, el niño ha sido tratado como una extensión de la personalidad de la autora y no como sujeto de derechos. En el procedimiento de asilo, las decisiones administrativas relacionadas con el hijo de la autora no han considerado de manera primordial su interés superior, siendo deseable que siempre que se deba tomar una medida que afecte a un niño, ella necesariamente deba incluir una estimación de las posibles repercusiones, tanto positivas como negativas.

5. El Estado parte no ha cumplido la obligación de no extraditar, deportar, expulsar o retirar de otro modo a una persona de su territorio cuando haya razones de peso para creer que existe un riesgo real de provocar un daño irreparable, según lo estableció la observación general núm. 31[1], párrafo 12, para lo cual debería considerarse, entre varias otras circunstancias, la situación general de los derechos humanos en Italia. En efecto, las autoridades estatales obviaron verificar la situación de vulnerabilidad en la que la autora y el niño estarían en el supuesto de volver a dicho país.

6. Tampoco fueron debidamente evaluados el desarraigo inminente de la madre y del niño con la separación de la familia ampliada, la dificultad del procedimiento de ingreso y residencia legal de la autora y su hijo en Italia, la situación incierta con respecto a cuestiones socioeconómicas, el impacto negativo en el desarrollo de la identidad y personalidad del niño. Y sobre todo, se dejó de lado el análisis de la política actual en materia migratoria del gobierno italiano (protección de los inmigrantes vulnerables, figura de la protección humanitaria, criterio para las expulsiones, requisitos para permanecer en los centros de acogida de inmigrantes, etc.), con lo cual se concluye que no existen garantías mínimas para el retorno de la autora y su hijo a Italia.

7. Cabe resaltar que la presente comunicación tiene mucha similitud con casos anteriores resueltos por el Comité, en los cuales se ha constatado la violación del artículo 7 del Pacto. Sin embargo, si bien es potestad exclusiva del Comité apartarse de su jurisprudencia, hacerlo en este caso implica – a mi criterio – establecer un precedente cuanto menos preocupante.

[1] Observación general núm. 31 (2004) del Comité de Derechos Humanos, sobre la naturaleza de la obligación jurídica general impuesta a los Estados partes en el Pacto

8. Además, el hecho de que el Comité de Derechos Humanos deba velar por la aplicación del Pacto de Derechos Civiles y Políticos, no significa que deba existir una disociación con criterios dispensados por otros órganos creados en virtud de los tratados, siendo muy importante considerar aspectos neurálgicos de comités hermanos, tales como, por ejemplo, la aplicación del interés superior del niño desarrollado en los párrafos precedentes.

9. Por tanto, a partir de los fundamentos expuestos, estimo que la falta de una valoración cuidadosa por parte del Estado a propósito de la situación concreta de la autora y su hijo, con la consecuente denegación del asilo y su retorno forzoso a Italia, expondría a las víctimas a la vulneración del artículo 7 del Pacto.