



International Covenant on Civil and Political Rights

Distr.: General
7 January 2022

Original: English

Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2816/2016*, **

<i>Communication submitted by:</i>	A.F. (represented by counsel, Niels-Erik Hansen)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Denmark
<i>Date of communication:</i>	29 August 2016 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 3 October 2016 (not issued in document form)
<i>Date of adoption of decision:</i>	5 November 2021
<i>Subject matter:</i>	Deportation to Somalia
<i>Procedural issue:</i>	Level of substantiation of claims
<i>Substantive issues:</i>	Right to life; torture; cruel, inhuman or degrading treatment or punishment
<i>Articles of the Covenant:</i>	6 and 7
<i>Article of the Optional Protocol:</i>	2

1.1 The author of the communication is A.F., a national of Somalia born in 1963. His application for asylum has been rejected. The author claims that his deportation to Somalia would amount to a violation of his rights under articles 6 and 7 of the Covenant. The Optional Protocol entered into force for Denmark on 23 March 1976. The author is represented by counsel.

1.2 On 30 August 2016, pursuant to rule 94 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, rejected the author's request for interim measures, which consisted of a request that the State party refrain from deporting the author to Somalia while his case was under consideration by the Committee.

* Adopted by the Committee at its 133rd session (11 October–5 November 2021).

** The following members of the Committee participated in the examination of the present communication: Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Imeru Tamerat Yigezu, Kobayuh Tchamdja Kpatcha, Hélène Tigroudja and Gentian Zyberi.



1.3 On 25 April 2017, the Committee, acting through its Special Rapporteur on new communications and interim measures, rejected the request of the State party to discontinue the communication.¹

Facts as submitted by the author

2.1 The author is from the town of Mishra, Dinsoor district, Somalia. He left Somalia for Denmark in 2004.² In 2008, he was elected as a Member of Parliament in Somalia as a representative of the Somali diaspora. The author claims that his son was killed by al-Shabaab in 2015.

2.2 In his role as a Member of Parliament, the author visited Mogadishu in 2010 and 2011 to assess the security situation in the country. During those visits, he was protected by African Union Mission in Somalia (AMISOM) personnel, who would meet him at the airport and drive him to the secure zone in Mogadishu. He was not able to visit his hometown, as it was controlled by al-Shabaab at the time, he therefore stayed in safe areas in Mogadishu. His nephew was Minister of Defence in Somalia at the time. In 2011, the author submitted his resignation as a Member of Parliament.

2.3 The author has a wife and children in Denmark. However, he also has another wife and children who live in Somalia. As the situation for his family in Somalia worsened, the author decided to move to Sweden and apply for asylum. His hope was to get a residence permit in Sweden and subsequently apply for family reunification for his wife and children in Somalia while in Sweden, as it would not be possible to apply for asylum in Denmark due to the fact that he already had a family residing there.

2.4 In 2011, the author was granted a residence permit in Sweden. However, in 2012, the Swedish authorities discovered that the author already had a residence permit in Denmark and his Swedish residence permit was withdrawn. By that time, his Danish residence permit was no longer valid.

2.5 In accordance with the decision of the Danish Refugee Appeals Board, the author entered Denmark on 8 June 2004 after having been granted a residence permit based on family reunification. The permit was extended several times and was valid until 8 June 2011. On 7 May 2013, the Danish Immigration Service decided that the author's residence permit should be considered invalid. On 23 October 2014, the author applied for asylum in Denmark. His application was rejected by the Immigration Service on 16 November 2015. That decision was upheld by the Refugee Appeals Board on 17 March 2016.

2.6 According to the decision of the Refugee Appeals Board of 17 March 2016, the author was appointed as a Member of Parliament in Somalia in 2008 by his clan. In 2010, he travelled to Mogadishu in order to attend a parliamentary meeting about the security situation in the country. The author stayed in Mogadishu for about two months. In 2011, he again travelled to Mogadishu to attend a similar meeting and stayed for about 30 to 40 days. He was accompanied by a security guard or AMISOM personnel when he moved around Mogadishu. In its decision, the Refugee Appeals Board found that the author could be at risk of persecution if he returned to his hometown as it was likely that the town was controlled by al-Shabaab. The Refugee Appeals Board therefore examined the question as to whether the author could be required to take up residence in Mogadishu as an internal flight alternative. The Board found that the author had not substantiated that his public role in Somalia had been so prominent that he would be at risk of persecution upon return to Mogadishu, given that it had been several years since he had ceased his activities as a Member of Parliament. The Board also noted that the author's brothers lived in Mogadishu without problems and

¹ The State party submitted that the author had voluntarily left Denmark on 28 November 2016 and argued that he had therefore waived his application for residence in the State party, as well as his communication before the Committee. The author informed the Committee that he did not wish to withdraw his complaint and that he had only left Denmark out of fear of having to spend months in immigration detention.

² According to the observations of the State party, the residence permit was granted on the basis of family reunification (see para. 4.2).

that it could therefore not be assumed that the author's family would be at risk of being targeted due to his nephew's previous role as Minister of Defence.

2.7 Finally, the author notes that, in its decision rejecting his application for asylum, the Immigration Service found that he would not be at risk of persecution in Somalia, for which reason the Immigration Service did not consider the issue of an internal flight alternative. He argues that, as the Refugee Appeals Board considered this to be the main point of its decision, it should have remitted his case to the Immigration Service in order that the matter of an internal flight alternative could be considered by both bodies.

Complaint

3. The author claims that, as a former Member of Parliament in Somalia, he would be at risk of persecution on return to Somalia and also claims that he may be killed or subjected to torture or inhumane treatment on return to his hometown, which is controlled by al-Shabaab. Moreover, he claims that he is at risk of persecution not only in his hometown but also in Mogadishu, where al-Shabaab is targeting Members of Parliament and journalists. He claims that as he is no longer a Member of Parliament he is no longer entitled to the protection of AMISOM or the right to stay in the secure zone in Mogadishu, as was the case during his previous visits to Mogadishu.

State party's observations on admissibility and the merits

4.1 On 25 August 2017, the State party submitted its observation on the admissibility and the merits of the communication.

4.2 The State party notes that the author was granted residence in the State party on 6 April 2004, on the basis of family reunification. From 2004 to 2014, he entered and left Denmark on several occasions. On 7 May 2013, the Danish Immigration Service decided that the author's residence permit should be deemed to have lapsed. On 26 June 2014, the author once again applied for family reunification in the State party. The application was refused by the Immigration Service on 3 September 2014. On 23 October 2014, the author applied for asylum in Denmark. On 16 November 2015, the Immigration Service rejected the application. On 17 March 2016, the Refugee Appeals Board upheld the decision of the Immigration Service rejecting the author's application for asylum.

4.3 The State party notes that, in its decision of 17 March 2016, the Refugee Appeals Board observed that the author belonged to the Rahan Weyh clan. His father and paternal grandfather were former leaders of the Ahlu Suna group in the Dinsoor district. Until his departure, the author acted as a mediator between the clans of four different districts. In 2008, he was appointed as a Member of Parliament because of his clan affiliation, and in 2010 he attended a meeting of Parliament in Mogadishu. As grounds for asylum, it noted that the author referred to his fear of being killed by al-Shabaab if he returned to Somalia because he belonged to a well-known family and because he had been a Member of Parliament. The Board found that, based on information on conditions in the author's hometown, which was assumed to be under the control of al-Shabaab, in conjunction with the information on his clan affiliation and profile, it could not rule out the possibility that author would risk persecution in case of his return to that town. It also found, however, taking into account that some of the author's brothers lived in Mogadishu without experiencing any problems, that it could not be accepted as a fact that the author's family, as a whole, had such a high-profile that the author could not be advised, for security reasons, of the possibility of living in Mogadishu. In the assessment of whether the author himself was an individual of such a high-profile that it would be contrary to international conventions to advise him of the possibility of seeking refuge in Mogadishu, the Board noted that the author himself had initially stated that he had occupied a very modest position in Parliament and had only attended few meetings about non-controversial issues. It was only at a later point that he stated that he had had a prominent position, making him a high-profile individual. Against this background, while also noting that the author had previously given incorrect information to both the

Danish and Swedish authorities,³ the Board found that the author had failed to present an argument convincing the members that his position was so prominent that he would risk persecution in case of his return to Mogadishu several years after ceasing his activities in Parliament.

4.4 The State party submits that the author has not established that the assessment made by the Refugee Appeals Board was arbitrary or amounted to a manifest error or denial of justice. It also submits that the author has failed to identify any irregularity in the decision-making process or any risk factors that the Board had failed to take properly into account. It notes that the Board considered all elements of the author's grounds for asylum in its decision of 17 March 2016.

4.5 The State party submits in this respect that the Committee should give considerable weight to the evaluation of facts and evidence made by the Refugee Appeals Board in order to determine whether a real risk of irreparable harm exists in the case at hand. It argues that the Board is better placed to assess not just the facts but, more particularly, the credibility of asylum seekers since the Board has the opportunity to see, hear and assess the demeanour of the individuals concerned. It submits that there is no basis for doubting the assessment made by the Board, according to which the author has failed to establish that there are substantial grounds for believing that he would be in danger of being subjected to inhuman or degrading treatment or punishment on his return to Somalia. The State party submits that the author is trying to use the Committee as an appellate body for the purpose of a reassessment of the factual conclusions reached in his asylum case. It notes that the author's claims have already been examined by two instances in the State party, the Board and the Danish Immigration Service, and that the final decision was made by the Board on the basis of a procedure during which the author had the opportunity to present his views, both in writing and orally, with the assistance of legal counsel.

4.6 The State party notes that the author has also contended that the Refugee Appeals Board ought to have remitted his case to the Danish Immigration Service for reconsideration. It observes in this regard that the general principle of a two-tier system normally applies to asylum proceedings in the State party. First-instance decisions of the Immigration Service refusing asylum are automatically appealed to the Board. If new or essential information comes to light during proceedings before the Board, which was not available when the Immigration Service made its decision on the application for asylum, such information is normally taken into account in the second-instance decision and appellants and their counsel are given the opportunity to comment on such information. If new information becomes available that can lead to a substantially different outcome of a case, it may be remitted to the Immigration Service for reconsideration at first instance in order to ensure that all essential information regarding the matter is considered by both bodies. The issue of applicability of the principle of an internal flight alternative is an integral part of the examination of all applications for asylum lodged by asylum seekers who are deemed to fall within section 7 of the Aliens Act. The State party argues that the fact that, in its first-instance decision on an application for asylum, the Immigration Service did not consider an internal flight alternative, but refused the application, does not impose an obligation on the Refugee Appeals Board to remit the case to the Immigration Service; rather it is the responsibility of the Board to assess whether it would be reasonable to advise the asylum seeker of the possibility of seeking refuge in the area considered an internal flight alternative. In the present case, the Board found that, based on a specific assessment, Mogadishu was an internal flight alternative for the author.

³ The Board noted that, at the asylum interview conducted by the Swedish authorities, the author stated that he had owned a business in Somalia and had been one of the highest ranking leaders within the Islamic group Ahlu Sunna Waljama'a and that he would be sentenced to death or imprisonment for life because he had been one of the top leaders of that group; this was for this reason that he left Somalia in 2010. It noted that the author had not stated to the Swedish authorities that he feared persecution due to his former membership in the Somali Parliament.

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

5.1 On 17 August 2018, the author submitted his comments on the State party's observations on admissibility and the merits. He notes that while he left Denmark on 28 November 2016 and travelled to Mogadishu, he no longer resides in Mogadishu as he considers it too dangerous. He claims that he could not move freely or work in the city as al-Shabaab has threatened to kill him on several occasions. He claims that Mogadishu cannot be considered as an internal flight alternative in his case, as it does not offer him a prospect of durable stability and safety, nor of a relatively normal life without facing undue hardship.

5.2 The author further claims that the authorities of the State party made procedural errors in the assessment of his claims because, in the first-instance decision rejecting his application for asylum, the Immigration Service did not assess the matter of an internal flight alternative, a finding only assessed by the Refugee Appeals Board, and that thus the State party authorities deprived him of an assessment of this matter in two instances.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication 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 notes the author's claims that his deportation to Somalia would expose him to a real risk of treatment contrary to articles 6 and 7 of the Covenant due to threats from al-Shabaab because of his former position as a Member of Parliament in Somalia. The Committee notes the argument of the State party that there is no reason to conclude that the decisions of the domestic authorities were inadequate or that the outcome of the domestic proceedings was in any way arbitrary or amounted to a denial of justice. It also notes the argument of the State party that, while the Refugee Appeals Board found that it could not be ruled out that the author would risk persecution in case of his return to his hometown, he had an internal flight alternative in Mogadishu. It further notes the argument of the State party that the finding by the Refugee Appeals Board on the internal flight alternative was based on the fact that some of the author's brothers lived in Mogadishu without experiencing any problems, that the author had provided conflicting information on his role within Parliament, initially stating that he had merely had a very modest position in Parliament but later stating that his role had been prominent, and that he had also submitted additional incorrect or conflicting information to the Danish and Swedish immigration authorities in his applications for asylum. In addition, the Committee notes the argument of the State party that the author's claims were examined by two instances in the State party and that the final decision was made by the Refugee Appeals Board on the basis of a procedure during which the author had the opportunity to present his views, both in writing and orally, with the assistance of legal counsel.

6.4 The Committee notes the author's claim that, following his return to Mogadishu, he had to leave the city due to fear of and threats from al-Shabaab. It also notes his claim that Mogadishu cannot be considered as an internal flight alternative in his case, as it does not offer him a prospect of durable stability and safety, nor of a relatively normal life without facing undue hardship. It further notes his statement that the State party authorities made procedural errors in its assessment of his application for asylum as the first-instance decision rejecting his application did not assess the matter of an internal flight alternative and that, as a result, it was only assessed by the Refugee Appeals Board, depriving him of an assessment of the matter in two instances.

6.5 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 referred to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of

irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant.⁴ The Committee has also indicated that the risk must be personal⁵ and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.⁶ All relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.⁷ The Committee recalls that it is generally for the organs of States parties to examine the facts and evidence of the case in question in order to determine whether such a risk exists,⁸ unless it can be established that the assessment was clearly arbitrary or amounted to a manifest error or denial of justice.⁹

6.6 The Committee recalls its jurisprudence that an author carries the burden of proof to support the allegations of a personal and real risk of irreparable harm if deported, including the obligation to submit evidence sufficiently in advance of the decisions of the national domestic authorities, unless the information could not have been presented before.¹⁰ In the present case and as it concerns the author's claims that he would be at risk of persecution upon return to Somalia, the Committee notes that the author has claimed that he would be at risk due to his previous role as a Member of Parliament in Somalia. It notes, however, that the author withdrew from this position 10 years ago, in 2011, and that he provided conflicting information on his role in Parliament during the domestic proceedings. It further notes the undisputed information provided by the State party that the author has also provided additional conflicting information on his grounds for asylum in his application submitted in the State party compared to the application he submitted in Sweden. The Committee notes the author's claim that since his return to Somalia, he has been unable to stay in Mogadishu, due to safety concerns. It notes, however, that the author's claims in this regard are vague and that the author has not submitted any specific information or substantiating evidence pertaining to said claims. The Committee considers that the author's allegations regarding the examination of his claims mainly reflect his disagreement with the factual conclusions drawn by the authorities of the State party. The Committee notes that the domestic authorities have considered all of the claims raised by the author and it finds that he has not demonstrated that the assessment of his allegations and evidence by domestic authorities was clearly arbitrary or amounted to a manifest error or denial of justice. The Committee therefore considers that the author has failed to sufficiently substantiate his claims for the purposes of admissibility and declares them inadmissible under article 2 of the Optional Protocol.

6.7 The Committee further notes the author's argument that, as the Refugee Appeals Board based its finding on his asylum application on the fact that he had an internal flight alternative in Mogadishu, it should have remitted the application to the Immigration Service in order to have this question examined in two instances. The Committee also notes the argument of the State party that this decision was made by the Refugee Appeals Board on the basis of a procedure during which the author had the opportunity to present his views, both in writing and orally, with the assistance of legal counsel. The Committee further notes argument of the State party that the question of an internal flight alternative is not a matter that could be considered as new essential information that could have led to a substantially different outcome of his case, requiring a remittal by the Refugee Appeals Board to the Immigration Service under domestic law, considering the fact that the Immigration Service had already found that the author had failed to substantiate that he would be subjected to

⁴ Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

⁵ *K v. Denmark* (CCPR/C/114/D/2393/2014), para. 7.3; *P.T. v. Denmark* (CCPR/C/113/D/2272/2013), para. 7.2; *X v. Denmark* (CCPR/C/110/D/2007/2010), para. 9.2; *Q.A. v. Sweden* (CCPR/C/127/D/3070/2017), para. 9.3; and *A.E. v. Sweden* (CCPR/C/128/D/3300/2019), para. 9.3.

⁶ *X v. Denmark*, para. 9.2; *X v. Sweden*, para. 5.18; *Q.A. v. Sweden*, para. 9.3; and *A.E. v. Sweden*, para. 9.3.

⁷ *Ibid.*; see also *X v. Denmark*, para. 9.2; *Q.A. v. Sweden*, para. 9.3; and *A.E. v. Sweden*, para. 9.3.

⁸ *Pillai et al. v. Canada* (CCPR/C/101/D/1763/2008), para. 11.4; and *Z.H. v. Australia* (CCPR/C/107/D/1957/2010), para. 9.3.

⁹ See for example, *K v. Denmark*, para. 7.4; *Y.A.A. and F.H.M. v. Denmark* (CCPR/C/119/D/2681/2015) para. 7.3; *Rezaifar v. Denmark* (CCPR/C/119/D/2512/2014), para. 9.3; *Q.A. v. Sweden*, para. 9.3; and *A.E. v. Sweden*, para. 9.3.

¹⁰ See, for example, *I.K. v. Denmark* (CCPR/C/125/D/2373/2014), para. 9.7; *M.P. v. Denmark* (CCPR/C/121/D/2643/2015), para. 8.7; and *A.E. v. Sweden* (CCPR/C/128/D/3300/2019), para. 9.7.

persecution if he returned to Somalia. The Committee notes that the question of the author's internal flight alternative was thoroughly considered by the Refugee Appeals Board, which found that neither the author's family, in general, nor the author, as an individual, had such a high-level profile as to expose him to a risk of persecution if removed to Mogadishu. The Committee therefore considers these claims to be insufficiently substantiated for the purposes of admissibility and declares them inadmissible under article 2 of the Optional Protocol.

6.8 The Committee concludes that the author has failed to substantiate, for purposes of admissibility, his claims under articles 6 and 7 of the Covenant and declares the communication inadmissible under article 2 of the Optional Protocol.

7. The Committee therefore decides:

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