



# Convention on the Elimination of All Forms of Discrimination against Women

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## Committee on the Elimination of Discrimination against Women

### Decision adopted by the Committee under article 4 (2) (c) of the Optional Protocol, concerning Communication No. 94/2015<sup>\*,\*\*</sup>

<i>Communication submitted by:</i>	A.N.A. (represented by counsel, Rabih Azad-Ahmed)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Denmark
<i>Date of communication:</i>	14 September 2015 (initial submission)
<i>References:</i>	Transmitted to the State party on 16 September 2015 (not issued in document form)
<i>Date of adoption of decision:</i>	15 July 2019

\* Adopted by the Committee at its seventy-third session (1–19 July 2019).

\*\* The following members of the Committee participated in the examination of the present communication: Gladys Acosta Vargas, Hiroko Akizuki, Tamader Al-Rammah, Nicole Ameline, Gunnar Bergby, Marion Bethel, Louiza Chalal, Esther Eghobamien-Mshelia, Naéla Mohamed Gabr, Hilary Gbedemah, Nahla Haidar, Dalia Leinarte, Rosario G. Manalo, Lia Nadaraia, Ana Peláez Narváez, Bandana Rana, Rhoda Reddock, Elgun Safarov, Wenyan Song, Genoveva Tisheva, Franceline Toé-Bouda and Aicha Vall Verges.



**Background**

1.1 The author is A.N.A., a Somali national born in 1988. She sought asylum in Denmark, her application was rejected and she risks deportation to Somalia. She claims that, if Denmark proceeds with her deportation, it would violate articles 3, 5 and 16 (b) of the Convention. The Convention and the Optional Protocol thereto entered into force for the State party on 21 May 1983 and 22 December 2000, respectively. The author is represented by counsel, Rabih Azad-Ahmed.

1.2 In her initial submission, the author asked the Committee to request Denmark to halt her deportation. On 16 September 2015, when registering the communication, the Committee asked Denmark not to deport her, pending the consideration of her case. On 25 September 2015, the Refugee Appeals Board of Denmark suspended the author's deportation.

**Facts as submitted by the author**

2.1 The author is a Somali citizen from Masagaway, in the Galguduud region of central Somalia. She is married with three children. In July 2014, a member of Al-Shabaab asked her father to allow her to marry him, but the father refused; the request was repeated on several occasions. Owing to her father's refusal, the family was persecuted. On one occasion, when the author returned from the village market, a member of Al-Shabaab tried to forcibly take her away from her father. The author managed to escape but, when she returned later, she learned that her father had been murdered.

2.2 Al-Shabaab members returned 10 days after her father's murder. While the author was not at home, her husband, mother-in-law and children were there. The members took the author's husband away. When she returned, it became clear to her that she would need to flee with her husband and children or risk either being killed or forcibly married.

2.3 The author sought asylum in Denmark in August 2014.<sup>1</sup> Her first asylum claim was rejected by the Immigration Service of Denmark, and she was informed of the refusal in a letter dated 21 July 2015. The decision was confirmed by the Refugee Appeals Board on 4 September 2015. The rejection by the authorities was based on credibility issues. The Board found that it seemed unlikely that Al-Shabaab would wait until six years<sup>2</sup> after the author's marriage to visit her and that the author seemed to have provided diverging versions of the rationale behind the Al-Shabaab members' visits and was evasive about the circumstances surrounding her father's death, failing to reveal whether she or anyone else was present when it happened. The authorities also doubted that she had lived her whole life in central Somalia and therefore whether she was actually from Masagaway. In addition, they doubted that the author was being truthful, given that she seemed to be evasive with regard to the rationale for Al-Shabaab representatives coming to see her after her father's death.

2.4 The author highlights that Denmark has an agreement with the Somali authorities regarding the obligation of Somalia to take back its own citizens, notwithstanding objections from the United Nations regarding forced returns to southern and central Somalia, which are still under the influence of military war and fighting by the terrorist group. It is not verified whether author's area of origin has been liberated, and the Refugee Appeals Board may have overlooked the possibility that the region is still under the influence of the terror group.

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<sup>1</sup> No information was provided on how the author had arrived in Denmark.

<sup>2</sup> According to the documents on file, Al-Shabaab took control of the region following a major civil war around 2007.

2.5 The author was subjected to a language test by the Immigration Service, which did not believe that she was from Central Somalia. The author rejects the analysis. She adds that, according to a report by an independent authority analysing refugee dialects, the results of the test were not accurate. The Refugee Appeals Board did not take that information into account and declined any objections against the language test. Thus, the author submits that her right to a fair trial was violated.

2.6 The Refugee Appeals Board also indicated that the author's claim appeared to have been constructed for the occasion and not personally experienced. The author notes that she was under a lot of stress during her interview with the Immigration Service, owing to the imminent risk of retribution if asylum was refused, which is why her explanations may have seemed unconvincing. The author also notes that she faces a real risk of persecution in Somalia, given that she evaded being forcibly married to a high-ranking Al-Shabaab member. Furthermore, there was no consideration of the psychological and physical effects of her experience in Somalia by the Board. It also did not assess the extent of the danger that she was in.

2.7 The author also fears persecution in her home town by Al-Shabaab forces or being forcibly married.

2.8 The author indicates that, because the decisions by the Refugee Appeals Board could not be appealed in court under the Aliens Act, she has exhausted the available domestic remedies.

2.9 On 23 September 2015, the author provided evidence of a Refugee Appeals Board decision in which the asylum request of another woman facing similar circumstances<sup>3</sup> had been granted.

### **Complaint**

3.1 The author claims that the authorities failed to assess her asylum application pursuant to their obligations under the Convention.

3.2 The author further claims that Denmark would be in violation of articles 3, 5 and 16 (b) of the Convention in the event of her deportation to Somalia.

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

4.1 The State party presented its observations on admissibility and the merits in a note verbale dated 15 March 2016. It informs the Committee that, on 25 September 2015, the Refugee Appeals Board suspended the time limit for the author's deportation, following the Committee's request for interim measures. The State party hereby recalls the facts: the author, a Somali national born in 1988, entered Denmark on 13 August 2014 without valid documents and applied for asylum. On 21 July 2015, the Immigration Service rejected her application. On 4 September 2015, the Board confirmed that decision.

4.2 The State party examines the reasoning of the Refugee Appeals Board in its decision of 20 August 2015. It notes that the Board could not accept as a fact the author's statement on her grounds for asylum, as it appeared inconsistent, and doubted the credibility of the author's story. The author, when interviewed by the Immigration

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<sup>3</sup> The woman was raised by a foster family in the south of Somalia that treated her very badly and wanted to marry her to an elderly man when she turned 15 years of age. The marriage was aimed at settling a conflict between rival clans, and they threatened to kill her if she refused. The woman first fled to Syria and then, because of the civil war there, to Denmark. The Refugee Appeals Board seemed to have placed more weight on the fact that she was born in Mogadishu, had suffered from a clan conflict and was being forced to marry against her will. She also had no support network and hence was at risk of persecution.

Service, on 10 October 2014, stated that her father had first been contacted by members of Al-Shabaab in July 2014 and had been told that her marriage was “forbidden” because the author’s husband did not work for Al-Shabaab, and he was therefore to be stoned. The author at the time stated that her father had been shot on the same day by Al-Shabaab members. However, in her interview of 10 July 2015, she stated that her father had been killed about two days after the visit because he had refused to let her go. When asked by the Immigration Service, she confirmed that her father had not been killed at the time of the first visit. The author presented different versions of the time at which her sister and nephew had been taken away by Al-Shabaab and the reason therefor. She first stated that they had intended for her to marry an Al-Shabaab member and subsequently stated that her sister was taken away because she had been mistaken for the author. There were also inconsistencies regarding whether the author had been home when her husband was taken away. In the first version, she stated that she had been present, but in the second version, she said that she had not been at home and that she had been informed about her husband by her mother-in-law. Regarding the injuries sustained by her husband, in one version, she stated that he had been injured in connection with his detention and, in another version, she said that she had been informed by her mother-in-law that he had been beaten while being taken away. Furthermore, in her initial interview, she stated that the Al-Shabaab member whom she was supposed to marry was a high-ranking official, but she provided no evidence in that regard. She also stated several times that she did not know any members of Al-Shabaab.

4.3 The State party provides detailed information on the organization, jurisdiction, composition, prerogatives, functioning and independence of the Refugee Appeals Board, as well as the legal basis for its decisions and decision-making process, the assessment of evidence and the availability of background information. It explains that, under section 7 (1–2) of the Aliens Act, a residence permit is issued to an alien upon application if the alien is covered under the Convention relating to the Status of Refugees of 1951 or if the alien risks receiving the death penalty or being subjected to torture or inhuman and degrading treatment or punishment in the case of return to his or her country of origin. The Board generally considers the conditions under section 7 (2) of the Act to be met when there are specific and individual factors substantiating that the asylum seeker will be exposed to those risks.

4.4 The State party adds that any refusal of an asylum claim must be accompanied by a decision on whether the alien in question can be removed from Denmark if he or she does not voluntarily leave the country pursuant to articles 31 and 32 (a) of the Aliens Act. It follows from section 31 (2) that no alien may be returned to a country where he or she will be at risk of persecution on the grounds set out in article 1 of the Convention relating to the Status of Refugees or if the alien will not be protected against being sent to such a country. The decisions of the Refugee Appeals Board are based on an individual and specific assessment of each case. It is for the asylum seeker to substantiate that the conditions of asylum are being met.

4.5 The State party notes that, from the case law of the Refugee Appeals Board, in order for the Board to grant residence under section 7 (2) of the Aliens Act, there must be specific and individual conditions rendering it probable that the relevant asylum seeker will be exposed to a real risk of the death penalty or of being subjected to

torture or to other inhuman or degrading treatment or punishment if returned to the country of origin.<sup>4</sup>

4.6 The Refugee Appeals Board had at no time excluded the possibility that, owing to generalized violence in a given country, the general security situation of that country might be of such a serious nature that it would constitute a violation of article 3 of the European Convention on Human Rights to send the asylum seeker back to the country and, for that reason alone, the asylum seeker would satisfy the conditions for being granted residence under article 7 of the Aliens Act.

4.7 On admissibility, the State party is of the view that the author has failed to establish a prima facie case for the purposes of admissibility before the Committee. Accordingly, the communication has not been sufficiently substantiated and it was not established that she would be exposed to a real, personal and foreseeable risk of any serious form of gender-based violence in Somalia. The communication should therefore be declared inadmissible as manifestly ill-founded under article 4 (2) of the Optional Protocol.

4.8 The State party recalls the author's claim that her deportation would constitute a breach of articles 3, 5 and 16 (b) of the Convention on the Elimination of All Forms of Discrimination against Women, because she feared being killed or forcibly married to an Al-Shabaab member on her return to Somalia, and, in addition, that it would constitute a breach of article 14 of the International Covenant on Civil and Political Rights and article 3 of the European Convention on Human Rights. It also recalls her claim that Al-Shabaab members are known to behave violently against people who disobey them and to consider failed asylum seekers as traitors; for that reason alone, she may face torture. The State party further recalls that the author has claimed that the alleged inconsistency in her statements was caused by the pressure she faced. The State party notes that the author submitted that Danish lawyers frequently complain that the Refugee Appeals Board denies applications on the basis of minor discrepancies among the multiple interviews conducted by the Immigration Service, inevitably concluding that the asylum seeker is lying.

4.9 The State party refers to the alleged secret agreement between Denmark and Somalia (see para 2.4 above), the information provided by the Office of the United Nations High Commissioner for Refugees regarding the return of asylum seekers to the part of Somalia from which the author originates and the comments of the Asylum Research Consultancy and the Dutch Council for Refugees on the country of origin information report of the European Asylum Support Office, published by the Asylum Research Consultancy and the Council on 21 November 2014, in which it is confirmed that central Somalia is still very much under the control of Al-Shabaab. The State party acknowledges the author's claim that the Board overlooked the fact that Galguduud was under the control of Al-Shabaab.

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<sup>4</sup> The State party cites the judgment of 17 July 2008 of the European Court of Human Rights in *N.A. v. United Kingdom* (application No. 25904/07), indicating that the mere possibility of ill-treatment because of an unstable situation or a general situation of violence in the applicant's country of origin would not in itself amount to a breach of article 3 of the European Convention on Human Rights should the asylum seeker be returned to his or her country of origin. It remarked that the Court in this case assessed that the deterioration of the security situation in a country did not independently create a risk for all persons of a specific ethnic group returning to that country. The Court indicated that, while it had never excluded the possibility that a general situation of violence would be of such a level of intensity as to entail that any removal would be in breach of article 3, such an approach would only be pursued when there was a real risk of ill-treatment by the mere virtue of the individual's presence. The Court reiterated that reasoning in its judgment of 20 January 2009 in *F.H. v. Sweden* (application No. 32621/06). Applying that reasoning, the Court, in its judgment of 28 June 2011 in *Sufi and Elmi v. United Kingdom* (application Nos. 8319/07 and 11449/07), found that the removal of applicants who were Somali nationals to Mogadishu would be contrary to article 3.

4.10 The State party notes that the allegations pertaining to articles 3, 5 and 16 (b) of the Convention on the Elimination of All Forms of Discrimination against Women only concern the circumstances that the author may face should she be returned to Somalia. The author thus relies on those provisions in an extraterritorial manner. Citing the Committee's decision in *M.N.N. v. Denmark* (CEDAW/C/55/D/33/2011), the State party acknowledges a State's positive obligation to protect women from being exposed to a real, personal and foreseeable risk of serious forms of gender-based violence, irrespective of whether such violence would occur outside the territorial boundaries of the sending State party: if a State party takes a decision relating to a person within its jurisdiction, and the necessary and foreseeable consequence is that that person's rights under the Convention will be violated in another jurisdiction, the State party itself may be in violation of the Convention. For example, a State party would be in violation of the Convention if it were to send a person to another State in circumstances in which it was foreseeable that serious gender-based violence would occur.

4.11 The State party also notes that article 3 of the European Convention on Human Rights and article 14 of the International Covenant on Civil and Political Rights fall outside the scope of the competence of the Committee and hence must be considered inadmissible.

4.12 On the merits, the State party indicates that, in the present communication, the author has not submitted any new information other than what was submitted earlier to the Immigration Service and the Refugee Appeals Board. The author's deportation would not amount to a violation of the Convention on the Elimination of All Forms of Discrimination against Women. With regard to the author's credibility, the State party observes that the Board's evaluation of the credibility of asylum seekers is based on an overall assessment comprising, inter alia, an assessment of the asylum seeker's statements and demeanour at the Board hearing in conjunction with the other information on the case, including country background material and information gathered for the purpose of the case. If the asylum seeker's statements appear coherent, the Board usually accepts them as fact. If the statements are inconsistent or changeable or contain expansions or omissions, the Board will seek clarification.

4.13 In its decision on the case, the Refugee Appeals Board took into account in its assessment of the author's credibility the fact that the author has only attended Qur'an school and was homeschooled by her father, who taught her to read and write. It also took into account the fact that she is a young woman with no social network in Somalia. Pertaining to her health, in her interviews, the author stated that she was healthy and that she only suffered from allergies. Her allegation that she was under pressure when interviewed by the immigration authorities is also unsubstantiated, given that she had not indicated the same during the interview. During the lengthy interview process and hearings, the author was represented by counsel and was allowed to make closing remarks. Her inconsistencies were pointed out during the interview, and she was given an opportunity to elaborate on them.

4.14 According to the decision of the Refugee Appeals Board of 5 September 2015, the author's statements on the grounds for asylum could not be accepted as facts. The present communication has not provided any new information on the author's credibility and, accordingly, the State party cannot accept the author's statements as facts. In addition, in her communication to the Committee, the author has not disputed the credibility assessment carried out by the Board and did not object to the Board's decision. According to rule 48 of the Board's rules of procedure, an asylum seeker can ask for a case to be reopened at any time after the decision. The author did not draw the Board's attention to any errors or omissions in the report on her oral statement.

4.15 The State party also finds it unlikely that that Al-Shabaab would wait until six years after taking control of the town, which the author described as a very small village, to challenge the marriage and that it would choose to postpone the author's detention twice. Furthermore, with regard to the secret agreement, the National Police was in charge of returning unsuccessful asylum seekers and may have concluded an agreement with the Somali authorities to repatriate nationals not entitled to stay in Denmark. That is irrelevant to the case at hand, however.

4.16 In connection with the general human rights situation in Somalia, the State party notes that the author has claimed that, as a single woman without a social network, and owing to her clan affiliation, she would be at risk of gender-based persecution in Somalia. The State party notes that the information provided in June 2014 by the Office of the United Nations High Commissioner for Refugees regarding its position on returns to southern and central Somalia was known to the Refugee Appeals Board at the time of its decision of 5 September 2015 and was taken into account in the Board's assessment, as were other background documents. However, the State party finds that none of the background information currently available can lead to the conclusion that the general situation in the Galguduud region of Somalia is of such a nature that, for that reason alone, the author would face a risk of persecution if returned there that would justify asylum.

4.17 The State party adds that, taking into account the most recent information from the report of the Secretary-General on Somalia (S/2015/702) and the report of September 2015 of the Immigration Service fact-finding mission to Nairobi and Mogadishu, it appears that, although Al-Shabaab is present in the Galguduud region, it is not the main cause of conflict and violence there. The State party also makes reference to a map of the security situation, published by the Austrian Federal Office for Immigration and Asylum on 12 October 2015, in which it also appears that the Galguduud region is controlled by government forces.

4.18 The State party adds that, in its judgment in *R.H. v. Sweden*,<sup>5</sup> the European Court of Human Rights reasoned that it may be concluded that a single woman returning to Mogadishu without access to protection from a male network would face a real risk of living in conditions constituting inhuman and degrading treatment under article 3 of the Convention. The judgment, however, in the State party's opinion, cannot lead to a different assessment in the present case, because the author has failed to substantiate that she would find herself in a situation with no male support network.

4.19 According to the State party, in the present case, the Refugee Appeals Board has taken into consideration all the relevant information. The present communication has not brought to light any new information substantiating that the author would face a risk of persecution or abuse justifying the granting of asylum. The State party refers to the views of the Human Rights Committee in *P.T. v. Denmark* (CCPR/C/113/D/2272/2013, para. 7.3), in which it recalled its jurisprudence that important weight should be given to the assessment conducted by the State party, unless it was found that the evaluation was clearly arbitrary or amounted to a denial of justice, and that it was generally for the organs of States parties to the Covenant to review or evaluate facts and evidence in order to determine whether such a risk existed. The State party also draws attention to the views adopted by the Human Rights Committee in *K v. Denmark* (CCPR/C/114/D/2393/2014, para. 7.4), in which it recalled that it was generally for the organs of State parties to examine the facts and evidence of the case in order to determine whether such a risk existed, unless it could be established that the assessment was arbitrary or amounted to a manifest error or denial of justice. In the same case, the Refugee Appeals Board thoroughly examined each of the author's

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<sup>5</sup> See European Court of Human Rights, *R.H. v. Sweden* (application No. 4601/14) judgment of 10 September 2015, para. 70.

claims, analysing in particular the threats allegedly received by the author in Afghanistan, and found them to be inconsistent and implausible on several grounds (ibid., 7.5). The author challenged the assessment of evidence and the factual conclusions reached by the Refugee Appeals Board, but he did not explain why that assessment would be arbitrary or otherwise amount to a denial of justice (ibid.).

4.20 The State party also notes that, in its views in *Mr. and Ms. X v. Denmark* (CCPR/C/112/D/2186/2012, para. 7.5), the Human Rights Committee noted that the authors' refugee claims were thoroughly assessed by the State party authorities, which found that the authors' declarations about the motive for seeking asylum and their account of the events that caused their fear of torture or killing were not credible. The Committee observed that the authors had not identified any irregularity in the decision-making process, or any risk factor that the State party authorities had failed to take properly into account. In the light of the foregoing, the Committee could not conclude that the authors would face a real risk of treatment contrary to articles 6 or 7 of the International Covenant on Civil and Political Rights if they were removed.

4.21 According to the State party, the same guarantees of due process apply in the present case. The State party further refers to the decision of the Human Rights Committee in *N v. Denmark* (CCPR/C/114/D/2426/2014, para. 6.6), in which the Committee recalled that it was generally for the organs of States parties to examine the facts and evidence of a case, unless it could be established that such an assessment was arbitrary or amounted to a manifest error or denial of justice. In that case, the author had not explained why the decision by the Refugee Appeals Board would be contrary to that standard, nor had he provided substantial grounds to support his claim that his removal would expose him to a real risk of irreparable harm in violation of article 7 of the Covenant. The Committee accordingly concluded that the author had failed to sufficiently substantiate his claim of violation of article 7 for purposes of admissibility and found his communication inadmissible.

4.22 The State party emphasizes that the Refugee Appeals Board, a quasi-judicial body, made a thorough assessment of the author's credibility, the background information available and the author's specific circumstances and found that she had failed to make a convincing case that she would face a risk of persecution or abuse in Somalia. The State party endorses the finding.

4.23 In that connection, the State party also refers to the findings of the Human Rights Committee, in *Z v. Denmark* (CCPR/C/114/D/2329/2014, para. 7.4), that, in the absence of evidence establishing that the decisions of the Refugee Appeals Board were manifestly unreasonable or arbitrary with respect to the author's allegations, the Committee could not conclude that the information before it showed that the author's removal would expose him to a real risk of treatment contrary to article 7 of the Covenant.

4.24 The State party recalls that, in the present communication, the author has not brought any new, specific information about her situation. Rather, she is seeking to use the Committee as an appellate body to have the factual circumstances of her case reviewed. The State party notes that the Committee must give considerable weight to the findings of fact made by the Refugee Appeals Board, which is better placed to assess the factual circumstances of the case. According to the State party, there is no basis for doubting, let alone setting aside, the assessment made by the Board that the author has failed to establish that there are substantial grounds to believe that she would be subjected to a real, personal and foreseeable risk of persecution in Somalia and that the necessary and foreseeable consequence of her return is that her rights under the Convention would be violated. Thus, the author's return to Somalia would not amount to a violation of articles 3, 5 or 16 (b) of the Convention.



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

5.1 The author's counsel provided comments on 27 May 2016. He first notes the State party's observation on the substantiation of the communication and claims that that issue seems closely linked to the merits of the case. He disputes the State party's argument that the author failed to establish a prima facie case for admissibility under the Convention and that there are no substantial grounds for believing that it would constitute a violation of the Convention if the author were returned to Somalia.

5.2 The author's counsel argues that the author's forced return to a situation in which her physical integrity and her life are placed in manifest danger reaches the required threshold. In support of his argument, he refers to the judgment of the European Court of Human Rights in *R.H. v. Sweden* and *Tarakhel v. Switzerland*,<sup>6</sup> in which the Court found that the return to a dysfunctional society of a single woman without access to protection from a male network would attain the threshold of severity of conditions amounting to inhuman or degrading treatment required to come within the scope of the prohibition under article 3.

5.3 The author's counsel reiterates that the Refugee Appeals Board has made no investigation to clarify the extent of the danger of the situation that the author is in and that he finds the account of the author highly credible. He adds that the author's removal to the Galguduud region of Somalia would be in violation of article 3 of the European Convention on Human Rights and that the State party has not ensured that the deportation order does not frustrate effective recourse, which in the present case constitutes a violation of the Convention.

5.4 The author's counsel maintains that the communication is admissible and that the Committee should sustain the decision on the granting of interim measures.

### **Additional observations of the State party**

6.1 The State party provided additional observations on 2 December 2016. It notes that the author, in her additional observations of 27 May 2016, seems to provide no essential new or specific information regarding her asylum case, as compared with the information included in the basis of the decision of the Refugee Appeals Board of 4 September 2015.

6.2 As to the reference of the author's counsel to *R.H. v. Sweden*, the State party refers back to its initial submission before the Committee. As for the reference to *Tarakhel v. Switzerland*,<sup>7</sup> the State party observes that the author has not described in detail the significance of the latter to her own case; in addition, that case is related to a removal to Italy and therefore has no relevance to the case at hand.

6.3 With regard to the allegation that the Refugee Appeals Board has failed to take into account the dangerous situation experienced by the author in Somalia, the State party maintains that it continues to find that the general conditions in Somalia, including the Galguduud region, are not of such a nature that any person returning to Somalia risks abuse, falling within section 7 of the Aliens Act.

6.4 The State party reiterates that the author has failed to establish a prima facie case for the purpose of admissibility under article 4 (2) (c) of the Optional Protocol, and therefore the communication should be considered inadmissible as manifestly ill-founded. Should the Committee find the communication admissible, it has not been established that there are substantial grounds for believing that it would constitute a violation of the Convention to return the author to Somalia.

<sup>6</sup> See European Court of Human Rights, *R.H. v. Sweden*; and *Tarakhel v. Switzerland* (application No. 29217/12), judgment of 4 November 2014.

<sup>7</sup> See European Court of Human Rights, *Tarakhel v. Switzerland*.

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

7.1 The author's counsel provided comments on the State party's additional observations on 25 May 2017. The counsel expresses serious concern about the State party's argument regarding the admissibility of the communication. He states that the author did establish a prima facie admissible case for the purpose of admissibility under the Optional Protocol and that she would be exposed to a real, personal and foreseeable risk of serious forms of gender-based violence if she were to be returned to Somalia, as well as the risk of being married forcibly, in violation of article 16 (b) of the Convention.

7.2 The author's counsel contends that the State party has failed to establish a prima facie case for the purpose of determining the communication to be inadmissible and has also not established why the author's circumstances of being subjected to a forced marriage would not constitute a breach of articles 3 and 16 (b) of the Convention.

7.3 The author's counsel also refers to a recent resolution of the European Parliament, adopted on 18 May 2017,<sup>8</sup> in which the Parliament indicated that, given the current circumstances of ongoing security problems in Somalia and a high risk of famine, in any scenario, returns should always be voluntary, and called for a greater sharing of responsibilities when it came to hosting refugees and establishing additional methods to help refugees to access third countries, including in the European Union.

7.4 The author reiterates that the planned deportation violates articles 3, 5 and 16 (b) of the Convention and that all domestic remedies have been exhausted, given that the decision of the Refugees Appeals Board cannot be appealed in court under the Aliens Act.

**Issues and proceedings before the Committee**

8.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol. Pursuant to rule 66 of its rules of procedure, the Committee may decide to examine the admissibility of the communication together with its merits.

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

8.3 The Committee notes that the State party challenges the admissibility of the communication under article 4 (2) (c) of the Optional Protocol on the basis that the author's claims are manifestly ill-founded and not sufficiently substantiated.

8.4 The Committee notes that, in substance, the author's claims are aimed at challenging the manner in which the State party authorities assessed the circumstances of her case, applied the provisions of national law and reached conclusions. The Committee recalls that it is generally for the authorities of States parties to the Convention to evaluate the facts and evidence or the application of national law in a given case,<sup>9</sup> unless it can be established in particular that the evaluation was biased or based on gender stereotypes that constitute discrimination

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<sup>8</sup> See European Parliament resolution of 18 May 2017 on the Dadaab refugee camp (2017/2687(RSP)), part 7.

<sup>9</sup> See, for example, *R.P.B. v. Philippines* (CEDAW/C/57/D/34/2011), para. 7.5; *N.M. v. Denmark* (CEDAW/C/67/D/78/2014), para. 8.6; and *M.K.M. v. Denmark* (CEDAW/C/71/D/81/2015), para. 10.10.

against women, was clearly arbitrary or amounted to a denial of justice.<sup>10</sup> The Committee notes that nothing on file demonstrates that any such deficiencies characterized the examination by the authorities of the author's claims regarding her fears regarding the risks that she would face if she were to return to Somalia. The Committee also notes that, notwithstanding the generalized statements made by the author's counsel regarding perceived inefficiencies in the asylum procedures of the State party, they are not alleged to have amounted to, or provoked, discrimination or to have rendered decisions made by the authorities arbitrary in the author's case. Moreover, and provided that they respect the procedural guarantees as set out under international law, sovereign States are in principle free to determine the nature, structure and procedures of their domestic systems for the determination of refugee status.

8.5 The Committee notes that it must give important weight to the assessment conducted by the national authorities, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice.<sup>11</sup> It notes that, after addressing the claims as submitted by the author, the State party's immigration authorities found that her story lacked credibility owing to both inconsistencies and a lack of substantiation. The Committee considers that nothing on file demonstrates that there were irregularities in the examination by the Danish authorities of the author's claims that could lead to the conclusion that the State party authorities failed in their duty to properly assess the risks that the author would face if deported to Somalia. Accordingly, and while remaining preoccupied by the general situation of human rights in Somalia, in the present case, the Committee considers that nothing on file leads it to conclude that the Danish immigration authorities, including the Refugee Appeals Board, have failed in their duties when examining the author's case, or that their decisions were arbitrary or amounted to a denial of justice, contrary to the provisions of the Convention.

9. The Committee therefore decides that:

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

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<sup>10</sup> See, for example, *N.Q. v. United Kingdom of Great Britain and Northern Ireland* (CEDAW/C/63/D/62/2013), para. 6.6; and *N.M. v. Denmark* (CEDAW/C/67/D/78/2014), para. 8.6.

<sup>11</sup> See, for example, CEDAW/C/72/D/96/2015.