



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

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## Committee on the Elimination of Discrimination against Women

### Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning communication No. 144/2019\*\*\*

<i>Communication submitted by:</i>	D.N.S. (represented by counsel, Niels-Erik Hansen)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Denmark
<i>Date of communication:</i>	24 June 2019 (initial submission)
<i>References:</i>	Transmitted to the State party on 26 June 2019 (not issued in document form)
<i>Date of adoption of views:</i>	23 February 2022

\* Adopted by the Committee at its eighty-first session (7–25 February 2022).

\*\* The following members of the Committee participated in the examination of the communication: Gladys Acosta Vargas, Hiroko Akizuki, Nicole Ameline, Leticia Bonifaz Alfonzo, Corinne Dettmeijer-Vermeulen, Naéla Gabr, Hilary Gbedemah, Nahla Haidar, Dalia Leinarte, Lia Nadaraia, Aruna Devi Narain, Ana Peláez Narváez, Bandana Rana, Rhoda Reddock, Elgun Safarov, Genoveva Tisheva and Franceline Toé-Bouda.



**Background**

1.1 The communication is brought by D.N.S., a national of Somalia born in 1987. She sought asylum in Denmark, and her request was rejected. She claims that her deportation would amount to a violation by the State party of her rights under articles 2, 3 and 12 of the Convention. The Optional Protocol entered into force for Denmark on 22 December 2000. The author is represented by counsel.

1.2 On 20 March 2018, the Danish Immigration Service withdrew the author's residence permit and set 12 June 2019 as the deadline for her to leave Denmark. On 26 June 2019, the Committee, acting through the Working Group on Communications under the Optional Protocol, requested the State party to refrain from deporting the author to Somalia pending the consideration of her case by the Committee, pursuant to article 5 (1) of the Optional Protocol and rule 63 of the Committee's rules of procedure.

**Facts as submitted by the author**

2.1 The author is a single woman, from the town of Daydoog that remains under the control of the Al-Shabaab militant group.

2.2 The author was raised by her father and mother in Somalia, and she has one brother. Her father worked with herbs used for medical purposes. However, when Al-Shabaab took control over the author's hometown, the militia threatened her father on several occasions, demanding that he quit his activities because medicines could not heal people, according to the Qur'an. Given that the author's father feared for himself and his family, he stopped working with herbal medications for a period. He later decided to continue his business because it was his only means of livelihood. One day following that decision, the author's father was shot dead by Al-Shabaab for not having followed the militant group's orders. The author, who was present at the time, fainted because of what she had seen. She woke up alone in a room in a camp controlled by Al-Shabaab. She had flashbacks of her father's killing. After being detained for five days, she was forced to marry a man belonging to the militant group. She asserts that, during her detention, she was given drugs that made her powerless to defend herself and dizzy. It happened every time she ate the food that she was served. She was held in the same room for about a month. She submits that the events occurred in 2013.<sup>1</sup>

2.3 The author managed to escape with the help of one of her friends, during an open-air Eid al-Fitr ceremony, while men were standing and praying at the front of the group with their heads down. She escaped to an unspecified African country, and from there she travelled by air to Denmark.

2.4 The author arrived in Denmark in September 2013. She applied for asylum on 1 October 2013, claiming that she feared being killed by Al-Shabaab, given that she had fled Somalia after being forced to marry a local leader of Al-Shabaab. She was granted a residence permit on 24 February 2014 on the basis of the general conditions in southern and central Somalia at the time.

2.5 On 20 March 2018, the Danish Immigration Service decided to withdraw the author's fixed-term residence permit. The author appealed against the decision, claiming that she still faced persecution, should she be returned to her region of Somalia, which remained under the control of Al-Shabaab. On 14 May 2019, the Refugee Appeals Board affirmed the decision of the Service. The national authorities held that: (a) there were inconsistencies in the author's statements during the hearings,

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<sup>1</sup> At one point, the author also asserted that she suffered female genital mutilation, however, no further details have been provided in relation to that claim.

as a result of which the Board could not accept the author's allegations in relation to the killing of her father or that she had no male network in Somalia;<sup>2</sup> (b) conditions had improved in the author's home area, since her departure; and (c) current country information revealed that Al-Shabaab seemed to have changed their methods, i.e. rather than carrying out arbitrary attacks on civilians, they targeted people of a certain profile, but the author did not seem to belong to any of the targeted vulnerable groups. The Board stated that her unsuccessful refugee status application did not render her vulnerable either. Therefore, considering the author's individual circumstances, the withdrawal of her residence permit could not be assumed to place her at any particular risk.

2.6 The author has had two long-term internships in Denmark, and she was a childcare worker between February and August 2017. She has no close family ties in Denmark.

### **Complaint**

3.1 The author claims that she faces a real risk of torture and other ill-treatment should she return to Somalia, in breach of articles 2, 3 and 12 of the Convention. She submits that she was persecuted by Al-Shabaab when she was residing in Somalia and that her persecution would continue upon her return, given that her hometown is in an area currently under the control of the militant group.

3.2 In particular, she claims that, as a single woman, she would face the risk of sexual violence, forced marriage and other forms of gender-based violence upon her return. She submits that sharia law is applied by the terrorist group in an abusive way and that her life would be in danger not only because she would be returning from a Western country, but also because women are subjected to the most serious forms of gender-specific discrimination in that particular territory of Somalia.

3.3 She argues that, even if one accepts that the methods employed by Al-Shabaab have become more humane recently, it does not make the author's claim any weaker in relation to the risk that she faces as a woman with no male support network in Somalia.

3.4 The author contends that she has exhausted all available domestic remedies.

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

4.1 By a note verbale of 20 December 2019, the State party submitted its observations on admissibility and the merits and requested that the Committee lift its request for provisional interim measures of protection.

4.2 The State party submits that the communication should be considered inadmissible for being manifestly ill-founded. It argues that the author did not provide new information concerning her situation, but only referred to her circumstances as explained in her original request for asylum. However, as indicated in the Danish Immigration Service's decision of 20 March 2018, the author's account was not accepted as factual, due to several inconsistencies detected in her statements. In particular, during her asylum interview conducted by the Service on 15 November

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<sup>2</sup> For example, the author's allegations relating to how long she stayed in Al-Shabaab custody, the date of her marriage, how long she was hiding in the village prior to her escape, whether it was her mother or brother who stayed with her while she hid in the village, how long it took to drive from the village to the airport, whether there were both a man and a woman in the car and how many nights she spent in a hotel before reaching the airport. In addition, the author stated, in her submission of 9 November 2017, that her mother and brother were dead, whereas she later asserted that, in 2015, she had been informed that they were staying in a refugee camp in Kenya, which is still the case, and that the last time she had had contact with them was in April 2019.

2013, the author stated that she had been forced to marry an Al-Shabaab leader the day after her father's death. In subsequent interviews, however, she stated that she had been forced to marry a man five days after her father's death. Furthermore, during her asylum interview on 15 November 2013, the author stated that she had been hiding with her mother and brother in a friend's home after her escape from detention. In subsequent interviews, however, she stated that she had been in hiding alone and that her family members only came to see her once, on the night prior to her departure. During her asylum interview on 27 January 2014, the author stated that the journey from the village to the airport lasted for about 10 to 15 days, whereas on other occasions, she stated that it lasted for only two hours. In a questionnaire dated 9 November 2017, the author stated that both her mother and brother were dead, whereas at the hearing before the Refugee Appeals Board, she claimed that she had been told in 2015 that her close family members were staying in a refugee camp in Kenya and that she had managed to contact them in April 2019.

4.3 Given that the national authorities questioned the author's narrative about the death of her close family members, the State party could not accept that the author would not have a male network in her country of origin or that she would be exposed to a risk of gender-based persecution, due to her status as a single woman. The likelihood of the author's having substantial connections in Somalia is substantiated by the fact that she was able to escape Somalia by plane within a relatively short time frame after her escape from detention.

4.4 Furthermore, the State party recounts the pertinent domestic legislation, the facts of the case and the decisions taken at the domestic level. It underlines that, in the most recent set of proceedings, although the author was invited for an interview by the Danish Immigration Service, she refused to attend but instead submitted comments in writing. At the end of those proceedings, the national authorities concluded that the author's residence permit should be revoked in the light of the State party's position that the general human rights situation in Somalia had improved.

4.5 The State party submits that, even though the author is from Daydoog, situated in the southern part of Somalia, which remains under the control of Al-Shabaab, it concurs with the Refugee Appeals Board's assessment that the general security situation in southern and central Somalia is no longer of such a serious nature as to justify, on its own, the granting of residence status under section 7 of the Aliens Act.

4.6 The State party maintains that the author's communication merely reflects her disagreement with the Refugee Appeals Board's assessment of her specific circumstances and the available country information. However, she has failed to identify any irregularities in the decision-making process or any risk factors that the Board failed to take properly into account. The author is in fact trying to use the Committee as an appellate body to have the circumstances that she advocated in support of her claim for asylum reassessed by the Committee. In that respect, the State party reiterates that the Committee must give considerable weight to the findings of fact made by the Board, which is better placed to assess the factual circumstances in the case at hand.

4.7 The State party submits that the author has failed to establish a *prima facie* case for the purpose of admissibility of her communication. Should the Committee find the communication admissible, the State party submits that it has not been substantiated that there are substantial grounds for believing that the author's deportation would constitute a violation of the Convention.

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

5.1 In her comments dated 9 June 2020, in response to the State party's arguments, the author contested the assertion that she had not been able to demonstrate that she would face a risk of persecution, including gender-based violence, upon her return to Somalia. She argues that, by granting her temporary residence status, the State party had already acknowledged the risks she would be facing in Somalia, due to the general country situation coupled with her personal circumstances. Accordingly, the main question before the authorities is whether those risks of general and gender-specific violence have ceased to exist, and the burden of proof lies with the State party in that respect.

5.2 The author argues that she was granted residence status in February 2014 only because of the European Court of Human Rights judgment in the case of *Sufi Elmi v. the United Kingdom*, according to which the State party was found in breach of its obligations under article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Subsequently, however, the Refugee Appeals Board changed its practice on granting refugee status to all Somalians from southern and central Somalia because the Court had changed its practice following the improvement in the security situation in Mogadishu. Although the Court limited its assessment to the situation in Mogadishu at that time, the decision led the Danish authorities to return asylum seekers to Somalia, irrespective of whether the territory that they had come from was still under the de facto control of Al-Shabaab.

5.3 The author maintains that she would be considered a Western spy and that she would be exposed to a greater risk of persecution due to her vulnerable status as a single woman, should she be returned to Somalia. She argues that she would not receive protection from the local authorities against "generalized violence", nor against the gender-specific violence that she would be exposed to as a single woman.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

6.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol.

6.2 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.

6.3 The Committee notes that the author claims to have exhausted all domestic remedies and that the State party has not challenged the admissibility of the communication on those grounds. The Committee observes that the Refugee Appeals Board functions in practice as a court of appeal, in view of its nature as an independent, competent and quasi-judicial body and that therefore no appeals against its decisions can be lodged. Accordingly, the Committee considers that it is not precluded by the requirements of article 4 (1) of the Optional Protocol from considering the communication.

6.4 The Committee takes note of the State party's view that the claims in the communication are manifestly ill-founded and contrary to article 4 (2) (c) of the Optional Protocol. The Committee takes note of the author's claim that she fears that she would be at risk of violence from Al-Shabaab if she is deported to Somalia because she fled from Somalia after being forced to marry a local leader of Al-Shabaab. The author also claims that, if the State party deports her to Somalia, she will be personally exposed to serious forms of gender-based violence as a single

woman without a male support network, in violation of her rights under articles 2, 3 and 12 of the Convention.

6.5 The Committee recalls that, under international human rights law, the non-refoulement principle imposed a duty on States to refrain from returning a person to a jurisdiction in which he or she might face serious violations of human rights, notably arbitrary deprivation of life or torture or other cruel, inhuman or degrading treatment or punishment.<sup>3</sup>

6.6 The Committee, however, recalls that it is generally for the authorities of States parties to the Convention to evaluate the facts and evidence and the application of national law in a particular case, unless it can be established that the evaluation was conducted in a manner that was biased or based on gender stereotypes that constitute discrimination against women, was clearly arbitrary or amounted to a denial of justice.<sup>4</sup> In that regard, the Committee notes that, in substance, the author is challenging the manner in which the State party's asylum authorities assessed the factual circumstances of her case, applied the provisions of legislation and reached their conclusions. The issues before the Committee are, therefore, whether there was any irregularity in the decision-making process regarding the author's asylum application and whether the State party's authorities failed to properly assess the risk of serious gender-based violence in the event of the author's return to Somalia.

6.7 The Committee notes that, after a thorough assessment of the author's claims, the State party authorities found that her account lacked credibility owing to a number of factual inconsistencies and a lack of substantiation and that it appeared to have been fabricated. The Committee also notes that the State party took into consideration the general situation in Somalia.

6.8 The Committee takes note of the author's claims that the immigration authorities of Denmark have failed to consider her case from the perspective of the Convention or to mention the Convention in their decision, even though the matter was raised by her counsel during the Refugee Appeals Board hearing. The Committee observes that the author's counsel requested the immigration authorities to consider her asylum claim in the light of the Convention, without, however, referring to specific provisions and without substantiating the claims in relation to any specific articles of the Convention.

6.9 The Committee observes that, although the author disagrees with the findings of the national authorities, she has not identified any elements that the authorities failed to duly take into account or that would otherwise signal any manifest arbitrariness or denial of justice in the assessment of the facts and evidence presented to them.

6.10 In addition, the Committee considers that the author has not provided sufficient information to substantiate her claims that, based on her past experience and personal circumstances, she would face a personal risk of being subjected to gender-based violence should she be returned to Somalia. In particular, she has failed to establish that she would be unable to live together with relatives from her own family or that she would be left with no network in Somalia. In that connection, the Committee notes that the author gave contradictory information concerning her close family, whether her mother and brother are alive and whether she was in contact with them in 2019. In that regard, the Committee takes note of the State party's argument that

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<sup>3</sup> See para. 21 of general recommendation No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women.

<sup>4</sup> See, for example, *N.Q. and S.A. v. United Kingdom of Great Britain and Northern Ireland* (CEDAW/C/63/D/62/2013); *H.D. v. Denmark* (CEDAW/C/70/D/76/2014), para. 7.7.; and *S.A.O. v. Denmark* (CEDAW/C/71/D/101/2016), para. 6.9.

the author's having substantial connections in Somalia is also substantiated by the fact that she was able to escape Somalia by a plane within a relatively short time frame after her escape from detention.

6.11 In the light of the foregoing, the Committee considers that, in the absence of irregularities in the assessment by the domestic authorities of the author's asylum case, the author has failed to sufficiently substantiate her claims that, if deported to Somalia, she would be exposed to a real, personal and foreseeable risk of serious forms of gender-based violence.

7. The Committee therefore decides that:

- (a) The communication is not sufficiently substantiated and is therefore inadmissible under article 4 (2) (c) of the Optional Protocol;
  - (b) The decision shall be communicated to the State party and to the author.
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