United Nations CCPR/C/132/D/2651/2015

International Covenant on Civil and Political Rights

Distr.: General
28 July 2022

Original: English

Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2651/2015*, **, ***

Communication submitted by:	A.M.F. and A.M. (represented by counsel, Daniel Nørrung)
Alleged victims:	The author and her son
State party:	Denmark
Date of communication:	25 September 2015 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 28 September 2015 (not issued in document form)
Date of adoption of Views:	22 July 2021
Subject matter:	Deportation to Ethiopia
Procedural issues:	Level of substantiation of claims; exhaustion of domestic remedies
Substantive issues:	Non-refoulement; torture; right to life
Articles of the Covenant:	6, 7 and 24 (1)
Articles of the Optional Protocol:	2 and 5 (2) (b)

1.1 The author of the communication is A.M.F., an Ethiopian national born in 1987. She submits the communication on behalf of herself and her son, A.M., born in 2010. She claims that the State party has violated their rights under articles 6, 7 and 24 (1) of the Covenant. The Optional Protocol entered into force for the State party on 23 March 1976. The author and her son are represented by counsel.

1.2 On 28 September 2015, pursuant to rule 94 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided not to issue a request for interim measures.

* Adopted by the Committee at its 132nd session (28 June–23 July 2021).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja and Gentian Zyberi.

*** A joint opinion by Committee members Furuya Shuichi, Photini Pazartzis and Vasilka Sancin (dissenting) is annexed to the present Views.

Facts as submitted by the author

2.1 On 3 September 2013, the author came to Denmark with her son and applied for asylum. She is an ethnic Oromo from Ethiopia and the daughter of an outspoken leader of the Oromo Liberation Front (OLF), who died in prison in 2002 or 2003 after being tortured. She escaped with her sister to the Sudan three weeks after his death. Her other siblings and her mother later also fled to the Sudan, where the family were recognized as refugees by the Office of the United Nations High Commissioner for Refugees (UNHCR). The author participated in an OLF fraction in the Sudan through practical assignments and cultural events, but the Sudanese police interrupted these meetings on three occasions. She therefore fled to Europe in 2006 and came to Italy, where she was granted refugee status. In Italy, she mostly lived on the streets, where she contracted tuberculosis and was sexually abused. She conceived her son as a result of this abuse and gave birth to him after escaping to Norway. However, she was returned to Italy, where she continued to live on the streets for another two years before travelling to Denmark in 2013.

2.2 When she arrived in Denmark, the author was initially asked to return to Italy in accordance with Regulation No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the member State responsible for examining an application for international protection lodged in one of the member States by a third-country national or a stateless person (Dublin Regulation). This request was repealed when it became known that she already had refugee status there. In November 2013, she was asked again to return to Italy. In April 2015, following the introduction of a new practice, her removal was cancelled and she was informed that her asylum application would be examined on the merits. On 14 July 2015, the Danish Immigration Service rejected her application, firstly because she had not been persecuted in Ethiopia and secondly because if her statements were accepted, then Italy should serve as her country of asylum. The Danish Immigration Service therefore decided that she should be removed to Italy.

2.3 In a decision on appeal, dated 4 September 2015, the Refugee Appeals Board accepted the credibility of the author's account. However, the Board rejected her appeal because it did not accept that she would be exposed to a concrete and individual risk if returned, as she had stayed in Ethiopia for three weeks following her father's death without being persecuted. Moreover, several of her family members had stayed there even longer, including her mother, who had stayed in the country until 2010, about four years after the author's activities in the Sudan had ceased. Furthermore, it did not appear that the author played a prominent role in OLF. The Board's decision stated that she and her child could be removed to Ethiopia.

2.4 The author submits, inter alia, copies of her health records from 2013 to 2014, a letter dated 30 August 2015 from the chair of the OLF committee in the United Kingdom of Great Britain and Northern Ireland[1] and a letter from the Ministry of the Interior of Italy confirming her refugee status in Italy.

Complaint

3.1 The author claims that the removal of herself and her son to Ethiopia would breach their rights under article 6 of the Covenant as, given her family's and her own activities for OLF, it would result in an immediate risk of losing her life at the hands of the authorities. According to the author, this risk was acknowledged when Italy granted her refugee status.

[1] Among other things, in the letter, the chair states that the author was a known supporter of OLF. Following her registration as a member of OLF with Oromo community members in Khartoum, the author had a good record of participation in Oromo meetings and interacted with Oromo individuals to discuss Oromo political problems. She regularly attended Oromo meetings and sung many Oromo songs praising OLF and raising awareness of the Oromo people so that they would take a stand against the current Government of Ethiopia. The author also supported OLF financially by selling Oromo cultural dresses. The chair notes that any participation in Oromo movements abroad was used as a pretext for agents of the Government of Ethiopia to arrest Oromo persons if they went back to Ethiopia. The chair then expands on the risks for Oromo people in Ethiopia, including for returnees under surveillance abroad.

3.2 The author notes that the Danish Immigration Service decided that she could be returned to Italy. However, she lived on the streets in that country, contracted tuberculosis and was sexually abused, resulting in the birth of her son. Therefore, her return to Italy would amount to a breach of article 7 of the Covenant.

3.3 The author also submits that a removal to Italy would violate article 24 of the Covenant. Her son would be exposed to living on the streets in Italy and she would be at risk of further sexual abuse. If returned to Ethiopia, her son would suffer from a high risk of detention and harm to his single mother due to her and her family's affiliation with OLF.

State party's observations on admissibility and the merits

4.1 On 24 March 2016, the State party submitted its observations on admissibility and the merits. It notes that the Danish Immigration Service rejected the author's asylum application on 14 July 2015. On 4 September 2015, the Refugee Appeals Board upheld this decision.

4.2 The State party provides a description of its relevant domestic law and procedures, the legal basis for the decisions taken by the Refugee Appeals Board, the proceedings before it and the legal standards applied, including the principle of the country of first asylum.

4.3 The State party submits that the author argues incorrectly that the Danish Immigration Service decided that Italy was to serve as the country of first asylum for her and her son. Indeed, the Danish Immigration Service did not consider that the author or her son would risk persecution in Ethiopia, as it considered the author's statements not to be credible. The Danish Immigration Service also found her to be a low-profile individual, as it was unlikely that she was persecuted by the Ethiopian authorities due to her family's or her own support for OLF. Only if the Refugee Appeals Board were to accept her statements as facts and found that she fell within section 7 of the Aliens Act, which incorporates article 1 (A) of the Convention relating to the Status of Refugees into Danish law, could Italy serve as the country of first asylum. The Board also examined her alleged risk if returned to Ethiopia rather than Italy. The State party submits that the author and her son are to be removed to Ethiopia and that their claims concerning Italy are therefore irrelevant and inadmissible as manifestly unfounded under rule 99 (b) of the Committee's rules of procedure.

4.4 The State party adds that the author has also failed to substantiate sufficiently her claims under articles 6 and 7 of the Covenant in relation to her and her son's removal to Ethiopia.[2]

4.5 The State party observes that the author's claim under article 24 of the Covenant contains no allegations of violations arising out of treatment that she and her son experienced in Denmark, or where the Danish authorities are in effective control, or that are due to their conduct. The Committee does not appear to have ever considered the merits of a communication regarding the removal of a person who feared a violation of provisions other than articles 6 or 7 of the Covenant in the receiving State. Furthermore, it follows from the Committee's general comment No. 31 (2004) that the obligation under article 2 of the Covenant requiring States parties to respect and ensure the Covenant rights for all persons in their territory and under their effective control entails an obligation not to extradite, deport, expel or otherwise remove a person from their territory where there are sufficient grounds for believing that there is a real risk of irreparable harm such as that contemplated by articles 6 and 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 removal of a person fearing a violation of his or her rights under, for example, article 24 of the Covenant by another State party will not cause such irreparable harm as contemplated in articles 6 and 7 of the Covenant. This claim is therefore incompatible *ratione loci* and *ratione materiae* with the provisions of the Covenant, and the Committee lacks jurisdiction over it.[3]

[2] The State party notes that it understands the communication as also claiming a breach of article 7 of the Covenant upon the author's and her son's removal to Ethiopia, even if no such claim is made explicitly.

[3] The State party refers, inter alia, to the decision of 22 June 2004 the European Court of Human Rights in *F. v. United Kingdom* (application No. 17341/03), in which the Court found inadmissible an application claiming a violation of article 8 of the Convention for the Protection of Human Rights and

4.6 The State party submits that the removal of the author and her son to Ethiopia would not be contrary to articles 6 or 7 of the Covenant. It observes that the communication contains no new information, except for the letter dated 30 August 2015 from the chair of the OLF committee in the United Kingdom. The Refugee Appeals Board accepted that the author had been able to stay in Ethiopia up to about three weeks after her father's death in 2003, without having been contacted by the Ethiopian authorities. It also accepted that several of her family members had remained there for a long time, including her mother, who left Ethiopia only in 2010, around four years after the author's activities in the Sudan had ceased. Moreover, the author did not play a prominent role in OLF. The Board thus found that a specific and individual risk of persecution was improbable.

4.7 The State party observes that it appears from the author's statements in the asylum proceedings that she, her mother and her siblings had not experienced any kind of conflict with the Ethiopian authorities as a consequence of her father's circumstances, except for several house searches both before and after his death, despite his longstanding commitment to OLF, and the fact that he had been imprisoned several times in that connection and died as a result of torture. Her mother and siblings were also politically active members of OLF in Ethiopia, without experiencing any reprisals, and her mother was able to continue living there until around 2010. Moreover, the author herself was not involved with OLF while still in Ethiopia.

4.8 The State party further observes that the author stated that her mother had often been summoned for interviews with the Ethiopian authorities because they wanted information on the whereabouts of her children, and that the summonses had become more frequent after her departure. The State party notes that the author's mother was only asked about the departure and whereabouts of her children and that she had not been subjected to abuse on these occasions. When asked why her mother had been summoned, the author replied that there was no real answer to this question, but that she guessed that the authorities suspected her and her siblings of performing illegal political activities.

4.9 Concerning the author's stay in the Sudan for around two years between 2003 and 2006, the State party notes that it results from her own statement that she did not have any contact with the Sudanese authorities at any time, nor was she identified or known in connection with her OLF activities in the Sudan. Some 600 to 700 people had been present at the OLF meetings that she attended. Furthermore, she does not appear to have played a prominent role; as she worked as a cleaner and in a cafeteria, her financial contributions were small and she was active for OLF only by singing, cooking and receiving tuition. Additionally, she was active for OLF only in the Sudan and only for two years and ceased these activities in 2006. The author was never identified as an OLF supporter nor had any problems with the Ethiopian authorities on account of her activities.

Fundamental Freedoms (European Convention on Human Rights) on the ground that a law in the Islamic Republic of Iran, the country to which the applicant was to be returned, criminalized adult consensual homosexual acts. The Court stated that compelling considerations arising out of a risk of treatment contrary to articles 2 and 3 of the Convention "do not automatically apply under the other provisions of the Convention. On a purely pragmatic basis, it cannot be required that an expelling Contracting State only return an alien to a country which is in full and effective enforcement of all the rights and freedoms set out in the Convention". The State party also refers to a decision of 28 February 2006, *Z. and T. v. United Kingdom* (application No. 27034/05), in which the European Court of Human Rights observed: "Where however an individual claims that on return to his own country he would be impeded in his religious worship in a manner which falls short of those proscribed levels, the Court considers that very limited assistance, if any, can be derived from article 9 by itself. Otherwise, it would be imposing an obligation on Contracting States effectively to act as indirect guarantors of freedom of worship for the rest of the world". The State party submits that, in a few special cases, the European Court of Human Rights has presumed that responsibility could attach to a Contracting State in respect of circumstances outside of its own territory in relation to article 8 of the European Convention on Human Rights. However, those cases presented territorial ties with the Contracting State, contrary to the present case.

4.10 The State party notes with concern reports of human rights violations in Ethiopia, including against actual and suspected dissidents in Oromia Region.[4] Over the past few years, a large number of Oromo continue to be arrested or detained for the peaceful expression of dissent or their suspected opposition to the Government. Following protests against the planned expansion of Addis Ababa into Oromo territory, the number of arrests of actual or suspected dissenters increased. However, the background information does not lead to the conclusion that any contact or affiliation with the Oromo people or involvement in their struggle would justify granting asylum.[5] Moreover, there are no reports of Ethiopian nationals who have been imprisoned or subjected to other abuse following a forcible return, with some sources having indicated that they would have been informed of such incidents. Persons most likely to attract attention are those perceived as threats, those willing to use military power and the leaders and the most prominent members of opposition groups. However, anonymous participation in demonstrations with hundreds of participants will not in itself lead to persecution.

4.11 The State party further notes that the author has not returned to Ethiopia and that there are no specific reasons to assume that the Sudanese authorities have any information or documentation concerning her involvement in OLF activities in the Sudan from 2003 to 2006 that could have been transmitted to the Ethiopian authorities. The State party argues that this perception is exclusively based on her own assumptions. Furthermore, the letter dated 30 August 2015 from the chair of the OLF committee in the United Kingdom cannot lead to a different assessment, as it only relates to the author's limited activities in Khartoum and provides only general information on the monitoring of Oromo activities outside of Ethiopia, without being linked specifically to the author. Additionally, the State party has not been able to confirm in a general Internet search, including on the OLF website, that the author of the letter chairs the OLF committee in the United Kingdom or can otherwise be associated with it. Thus, neither the general situation of the Oromo in Ethiopia nor the information provided by the author can lead to the conclusion that the author risks being imprisoned, tortured, abducted or killed upon return to Ethiopia. The information on her health cannot lead to a different assessment, and she has been cured of tuberculosis.

4.12 The State party notes the Committee's jurisprudence according to which considerable weight should be given to the assessment conducted by the domestic authorities, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice, and that it is generally for the organs of the States parties to the Covenant to review or evaluate facts and evidence in order to determine whether such a risk exists.[6] The State party argues that the author benefited from due process guarantees, that she has not provided any new, specific details about her situation and that the communication does not identify any irregularity in the decision-making process or any risk factors that the authorities failed to properly consider.

[4] Amnesty International, "Because I Am Oromo: Sweeping Repression in the Oromia Region of Ethiopia", October 2014; Human Rights Watch, "Ethiopia: Lethal Force Against Protestors", 18 December 2015, available from https://www.hrw.org/news/2015/12/18/ethiopia-lethal-force-against-protesters; United State of America, Department of State, "Country Report on Human Rights Practices 2014 – Ethiopia", 25 June 2015; Human Rights Watch, "World Report 2015: Ethiopia"; and Amnesty International, "Report 2014/15 – Ethiopia", 25 February 2015.

[5] The State party notes that the Committee against Torture, in a case concerning the removal of a female ethnic Oromo who claimed that her father had carried out political activities and who claimed to have been tortured on account of her and her father's activities for OLF, concluded that the complainant's removal to Ethiopia would not constitute a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (*X v. Denmark* (CAT/C/53/D/458/2011), para. 9.8). The State party also refers to *H.K. v. Switzerland* (CAT/C/49/D/432/2010), where the Committee against Torture also found that the forced return of a female Ethiopian complainant, who claimed to have been active for another Ethiopian opposition party in Ethiopia and Switzerland, would not violate article 3 of the Convention against Torture.

[6] *P.T. v. Denmark* (CCPR/C/113/D/2272/2013), para. 7.3; *K v. Denmark* (CCPR/C/114/D/2393/2014), paras. 7.3–7.4; *A.A.S. v. Denmark* (CCPR/C/117/D/2464/2014), para. 7.3; *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.

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

5.1 In her comments of 22 September 2016, the author agrees that article 24 of the Covenant is irrelevant, as it has not previously proven to have extraterritorial effect. However, the fact that she has a child, born because of her sexual abuse in Italy, renders her and her child more vulnerable to serious harm covered by articles 6 and 7 if removed to Ethiopia, where they no longer have any family.

5.2 The author notes that the decision of the Danish Immigration Service is purely administrative and no legal counsel or independent third party is required to intervene. During the interview, the Danish Immigration Service representative expressed a negative opinion of her chances of receiving a positive decision. Apart from the decision of the Danish Immigration Service, there is no other domestic remedy, as the Aliens Act prohibits an appeal to an ordinary court, despite the crucial matters in asylum procedures. According to the author, this constitutes a fair trial and discrimination problem. The Refugee Appeals Board also lacks the attributes of a real court, as the meetings remain closed. Additionally, one of the five members is appointed by the Ministry of Justice and that person is usually an employee of that Ministry, which is the superior administrative body to the Danish Immigration Service. Furthermore, the quality of interpretation varies greatly. Finally, no audio recordings have been made available.

5.3 The author notes that the Danish Immigration Service assessed that Italy could serve as her first country of asylum, pursuant to the Aliens Act, section 7 (3). It concluded that, consequently, the police could deport the author to Italy if she does not leave voluntarily, in accordance with the Aliens Act, section 32a. Thus, in her appeal, she focused on a return to Italy, where she was forced to live on the streets, contracted tuberculosis and was sexually abused. As Italy is known to lack resources for taking care of refugees, she and her son would be in imminent risk of repeated abuse and exposure to disease. If there was a doubt concerning her statements, the authorities should have requested her files from the Sudan and Italy. The Refugee Appeals Board accepted her credibility, but decided that she and her son could be removed to Ethiopia. She reiterates that she has made a prima facie case against removal, whether to Ethiopia or Italy.

5.4 The author notes that the State party does not dispute that the Italian authorities and UNHCR have recognized her refugee status. Given the history of the handling of her case in Denmark, including frustrating alternating decisions after her arrival in Denmark following her escape from Ethiopia as a 16-year-old girl, it would be legally and humanly unfair to remove her to Ethiopia. She reiterates her arguments concerning the risks of such a removal and confirms that she claims that this would also breach article 7 of the Covenant.

5.5 The author notes that, in the period leading up to and about three weeks after her father's death, she was only 16 years old. Her mother was interrogated several times after her escape concerning her and her siblings' whereabouts. She came of age in the Sudan and started to express support for her family's cause. However, her refugee camp was attacked by the military, in a joint operation by the Ethiopian and Sudanese authorities. Many Oromo refugees were arrested, but she managed to escape. She fears being imprisoned, subjected to ill-treatment, and losing her life like her father because of his activities and her own public loyalty to OLF. She would be an obvious target, as she is no longer a child, and would be without family protection. Moreover, she stated in her interview that the situation of the Oromo people was worse than when she left, and that people were executed simply for being OLF members. If returned, her illegal escape would become evident and her record and activities for OLF in the Sudan could become known, given the cooperation between the Ethiopian and Sudanese authorities and in light of the interrogations of her mother. Even if she was not in personal contact with the Sudanese authorities, it is still likely that she was recognized or monitored because she was a frequent performer in public events against the Government of Ethiopia, which closely cooperates with the Sudanese authorities. Furthermore, the sources cited by the State party mention that "the Ethiopian Government's response to the Oromia protests has resulted in scores dead and a rapidly rising risk of greater bloodshed".[7] She submits that, given her struggle of many years to escape the oppression of

[7] Human Rights Watch, "Ethiopia: Lethal Force Against Protestors", 18 December 2015.

the Oromo people, she should be given the benefit of the doubt concerning the question as to whether the Ethiopian authorities have known about her activities.

Additional observations

From the State party

6.1 By note verbale of 20 February 2017, the State party provided additional observations, noting that the author's comments contain no new information on the situation in Ethiopia. The State party observes that article 13 of the Covenant does not contain a right to appeal[8] or to a court hearing in cases involving the expulsion of an alien.[9] The author's case has been examined at two instances, and essential new information may give rise to a reopening of the proceedings. Decisions of the Refugee Appeals Board, which is a quasi-judicial body, are final. However, aliens may bring an appeal before the ordinary courts, whose review is limited to points of law. Members of the Refugee Appeals Board are independent and cannot accept or seek directions from, or discuss a case with, the appointing or nominating authority, including the central administration of the Ministry of Immigration and Integration (previously the Ministry of Justice). On the closed nature of hearings before the Board and the absence of educational requirements for interpreters, the State party notes that the author did not request that others be allowed to attend her hearing, and did not identify any interpretation errors. Moreover, the Danish Immigration Service and the Refugee Appeals Board are very attentive to the adequacy of interpretation and will suspend a hearing if problems arise. As for the benefits of audio recordings, the State party notes that a case officer makes a written report of the asylum-seeker's statements before the Danish Immigration Service and that after the interview the record is read to the asylum-seeker, who can comment on and correct it and elaborate. A summary record is also made of the asylum-seeker's statements before the Refugee Appeals Board, and any issues are clarified during the hearing.[10] In the present case, the author has not claimed that any errors or misunderstandings affected the Board's decision.

6.2 Concerning the author's claim that it would be unfair to enforce her removal given the alternating decisions on her case, the State party notes that the fact that it took almost two years for the Danish Immigration Service to decide does not imply that she must be considered as falling within section 7 of the Aliens Act. Moreover, the Refugee Appeals Board accepted her account, and she has not explained how her files from Italy or UNHCR would have contributed to her case. Furthermore, she has not explained how the negative comment made by the representative of the Immigration Service affected the decision of the Refugee Appeals Board or the Committee's consideration of the present communication.

6.3 The State party submits that the author has incorrectly argued that the Danish Immigration Service decided that she must be deported to Italy. In fact, it concluded that it could not consider as established that she would risk persecution in Ethiopia. As the Refugee Appeals Board confirmed this conclusion, it was irrelevant to assess whether Italy could serve as her first country of asylum. In cases where the Immigration Service found that an asylum seeker did not fall within section 7 of the Aliens Act, it was the usual practice, at the time of the submission of an asylum application, to make an alternative assessment of the existence of an internal flight alternative or another country of first asylum for the purpose of a subsequent hearing before the Refugee Appeals Board. The author's counsel who filed the initial submission in the present communication also represented her before the Board and it was clear from her brief that they were aware that the case focused on her grounds against returning to Ethiopia. Given her expertise in domestic proceedings, the counsel could not have been in doubt about the meaning of the decision of the Refugee Appeals Board.

6.4 The State party reiterates that the author cannot be considered a high-profile individual for the Ethiopian authorities, that she carried out all of her OLF activities outside of Ethiopia and that she was never identified in this regard. Therefore, there is no reason to assume that the Ethiopian authorities have any information, much less documentation, on these activities.

[8] *Mr. X and Ms. X v. Denmark*, para. 6.3.
[9] *Maroufidou v. Sweden* (CCPR/C/12/D/58/1979).
[10] *K v. Denmark*, para. 7.6.

Furthermore, she does not justify her argument that the benefit of the doubt should be accorded to her in respect of this claim. Neither has she explained how her status as a single mother of a child born out of wedlock would lead to a risk of a violation of articles 6 or 7 under the Covenant. Moreover, despite the general security situation and the difficult conditions of the Oromo people in Ethiopia, including increasing numbers of anti-government demonstrations in the Oromia and Amhara Regions and the declaration of a state of emergency in October 2016, it cannot be concluded that any contact or affiliation with the Oromo people would justify granting asylum.

From the Author

7.1 On 8 June 2017, the author submitted additional comments. She confirms that she did not make any request for others to be present at her hearing before the Refugee Appeals Board and that she made no complaint against the interpretation. She only intended to illustrate general weaknesses in the domestic asylum system.

7.2 She reiterates her fear for her and her son's lives upon removal to Ethiopia because of her young age when she fled Ethiopia, her father's activities for OLF that led to his torture and death, her own support for OLF, the lack of family support and the fact that her son was born out of wedlock. She also reiterates the authorities' acceptance of her asylum account and the State party's acknowledgment of the difficult conditions of the Oromo in Ethiopia. She refers to an article according to which "in some Ethiopian villages, children considered 'mingi', or cursed, are killed. A child can be mingi because of physical deformities, illegitimate birth or superstitions."[11] She notes that public information also states that Oromo are often arbitrarily arrested and accused of belonging to OLF,[12] which, she submits, underlines her personal risk in light of her individual circumstances.

From the State party

8. In its additional observations of 8 August 2017, the State party observes that the author did not claim a risk arising out of her son's illegitimate birth in the domestic proceedings. Neither has she substantiated why he would be at a particular risk. Moreover, she comes from the city of Jima, which has 160,000 inhabitants, whereas the article invoked, written in 2011, describes the situation in villages. Furthermore, she claimed a risk of persecution by the Ethiopian authorities, whereas the article mentions that children are killed by tribal leaders. Information gathered by the Refugee Appeals Board states that gender-based and "honour-related" violence often occurs in rural and conflict-ridden areas in Ethiopia.[13] It is also more common now in large towns and cities for young men and women to date openly and engage in premarital sexual relations. The State party concludes that the claim concerning her son's illegitimate birth cannot lead to a different assessment, including as considered together with the other circumstances of the case.

Issues and proceedings before the Committee

Consideration of admissibility

9.1 Before considering any claim 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.

9.2 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.

[11] CNN, "Is the tide turning against the killing of 'cursed' infants in Ethiopia?', story highlights, 5 November 2011.

[12] Human Rights Watch, "Ethiopia: Lethal Force Against Protestors"; Amnesty International, "Because I Am Oromo"; and Human Rights Watch, "'Such a Brutal Crackdown'; Killings and Arrests in Response to Ethiopia's Oromo Protests", 15 June 2016.

[13] See Landinfo, *Etiopia: kvinners situasjon*, Temanotat (Ethiopia: the situation of women, thematic report), 11 May 2016.

9.3 The Committee notes that the State party does not submit that the author has not exhausted all available domestic remedies, except insofar as she did not raise the issue of a risk of harm arising out of her son's illegitimate birth in the domestic proceedings. The author has not contested this. Accordingly, the Committee considers that it is not precluded under article 5 (2) (b) of the Optional Protocol from examining the communication, except insofar as it concerns the author's claim of a risk of harm arising out of her son's illegitimate birth.

9.4 The Committee notes the State party's submission that the author's claims under articles 6 and 7 of the Covenant are inadmissible on the ground that she has failed to make a prima facie case. With regard to the author's contention that she has made a prima facie case against the removal of herself and her son to Italy, the Committee notes that the stipulation by the Danish Immigration Service that they could be removed to Italy was an alternative assessment for the purpose of a subsequent hearing before the Refugee Appeals Board, and that the State party has clarified the intention of its authorities to remove the author and her son to Ethiopia, not Italy. Therefore, the Committee finds that these claims as presented by the author are not relevant for the case at hand, and decides not to consider them.

9.5 The Committee also notes the author's argument that she has made a prima facie case against her and her son's removal to Ethiopia, owing to the security conditions for Oromo persons in Ethiopia, her father's torture and death because of his activities for OLF, her own OLF activities in the Sudan, the interrogations of her mother, her lack of family protection and her young age when she left Ethiopia. She has additionally argued that the State party has accepted her account of what happened to her, and that UNHCR and the Italian authorities have recognized her as a refugee. The Committee considers that, for the purposes of admissibility, the author has sufficiently substantiated her allegations under articles 6 and 7 of the Covenant. In light of the above, the Committee declares the communication admissible insofar as it raises issues under articles 6 and 7 and proceeds to its consideration of the merits.

Consideration of the merits

10.1 The Committee has considered the 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.

10.2 The Committee recalls its general comment No. 31 (2004), in which it refers 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 an irreparable harm, such as those contemplated by articles 6 and 7 of the Covenant.[14] The Committee has also indicated that the risk must be personal, with a high threshold for establishing substantial grounds for the existence of a real risk of irreparable harm.[15] Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin. The Committee further recalls its jurisprudence that significant weight should be given to the assessment conducted by the State party, and 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, unless it can be established that the assessment was arbitrary or amounted to a manifest error or denial of justice.[16]

10.3 The Committee notes the information according to which the State party's authorities do not have the intention to remove the author and her son to Italy, as first country of asylum, but to Ethiopia as her country of origin. The Committee notes the State party's assertion that the author's claims are not sufficiently substantiated to show a risk of death or torture, if the author and her son are returned to Ethiopia. The State party claims that the author was able to stay in Ethiopia for three weeks after her father's death in 2003, and that several members of her family, including her mother, were able to live in Ethiopia for a long time. The State party further claims that the author does not appear to have played a prominent role in OLF. and that she herself was not involved in OLF activities while residing in Ethiopia. Regarding the author's OLF activities in the Sudan, the State party claims that she was a cleaner and worked in a cafeteria, that her financial contributions were small and that her activities for

[14] Para. 12.

[15] *X v. Denmark* (CCPR/C/110/D/2007/2010), para. 9.2; *A.R.J. v. Australia* (CCPR/C/60/D/692/1996), para. 6.6; and *X v. Sweden* (CCPR/C/103/D/1833/2008), para. 5.18.

[16] *X v. Denmark*, para. 9.2; and *X v. Sweden*, para. 5.18.

OLF were only singing, cooking and receiving tuition. While the State party acknowledges concerns about human rights violations in Ethiopia, including against actual and suspected dissidents in Oromia Region, it submits it cannot accept that mere contact or affiliation with the Oromo people or involvement in their struggle would justify granting asylum. The State party submits that the findings of domestic authorities must be given considerable weight, and that the author benefited from due process guarantees, whereas she has not provided any new, specific details about her situation in the communication nor identified any irregularity in the decision-making process or any risk factors that the authorities failed to properly consider.

10.4 The Committee notes the author's claim that, if returned to Ethiopia, she and her son face a risk of torture and death due to the activities of her family and herself. The author claims that her father was an outspoken OLF leader who was tortured and died in prison because of his activities for OLF when she was young. She claims that it is also due to these events and subsequent threats that not only her but her siblings and her mother were also forced to flee the country at some point (see para. 2.1 above). The author further claims that before her mother fled the country she was interrogated several times concerning the author's and her siblings' whereabouts (see para. 5.5 above), and that their home was searched several times (see para. 4.7 above). The author claims that she actively participated in OLF activities in the Sudan. The author further claims, as an additional element, a risk due to her son being born out of wedlock, since such children are considered cursed and may be killed (para. 7.2).

10.5 The Committee reiterates that it is the organs of the State that are best placed to make findings of fact based on the evidence and testimony before them, unless such findings are arbitrary or amount to a manifest error or denial of justice. In this connection, the Committee finds that the author provided sufficient explanations and substantiation where possible to demonstrate that she and her son would face risks of death and torture, by providing sufficient details that she had to flee Ethiopia three weeks after the torture and death of her father, an OLF leader, that not only she, but her siblings and her mother faced threats and had to flee as well. These factors, taken each separately and cumulatively, required an in-depth examination in order to determine whether the author faced a real and personal risk of treatment contrary to the Covenant.

10.6 In the absence of an assessment, which takes into consideration the consequences of the author's activities, the activities of her late father, the treatment that her siblings and mother received, and the situation and the potential treatment that her son might face if returned, the Committee considers that the State party has failed to demonstrate that the administrative and/or judicial authorities have conducted an individualized assessment of the author's case sufficient to determine whether there are substantial grounds for believing that there is a real risk of irreparable harm, as contemplated by articles 6 and 7 of the Covenant, if the author and her son are removed to Ethiopia.

11. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the author's and her son's removal to Ethiopia, if implemented in the absence of a procedure which guarantees a proper assessment of the real and personal risk that she and her son might face if deported, would violate the rights of the author and her son under articles 6 and 7 of the Covenant.

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

13. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State party.

Annex

Joint opinion of Committee members Furuya Shuichi, Photini Pazartzis and Vasilka Sancin (dissenting)

1. We are unable to concur with the conclusion in the present Views that the removal of the author and her son to Ethiopia, if implemented, would violate their rights under articles 6 and 7 of the Covenant.

2. According to the jurisprudence of the Committee, it is generally for the organs of a State party to examine the facts and evidence of the case in question in order to determine whether a real risk of irreparable harm exists when a person is deported to the country of his or her origin, unless it can be established that the assessment was clearly arbitrary or amounted to a manifest error or denial of justice.[1] This means that, in deportation cases, the Committee departs from the assessment by the State party of the risks only when it establishes on the basis of the evidence and information submitted to it that the State party's assessment was substantively or procedurally clearly arbitrary, manifestly erroneous or constituted a denial of justice. Furthermore, it is the author who bears the burden of proof to establish that the assessment by the State party was such as to fail the above-mentioned standard.

3. In the present case, the State party provided the author with sufficient occasions to explain her and her son's situation and then made an individualized assessment in light of the factual background. In fact, the author does not identify any irregularity in the decision-making process or any risk factors that the authorities of the State party failed to consider. At variance between the authors and the State party is the assessment of those factors they recognized.

4. The Committee's Views, supporting the authors' claim, find that "the author provided sufficient explanations and substantiation where possible to demonstrate that she and her son would face risks of death and torture, by providing sufficient details that she had to flee Ethiopia three weeks after the torture and death of her father, an OLF leader, that not only she, but her siblings and her mother faced threats and had to flee as well". In our opinion, however, this is not an appropriate finding. The author has provided no detailed explanation on what happened in the three weeks after her father's death nor the reason why she decided to leave Ethiopia. Nor has she explained clearly why her mother was summoned for an interview with the Ethiopian authorities, as well as the reason her mother and other family members had not decided to leave Ethiopia with her and were able to live there for a long time if they actually faced threats and abuse. As the State party observed, one of the main grounds for risk assessment was that she could stay in Ethiopia for three weeks without having been contacted by the Ethiopian authorities (see para. 4.6 above) and her mother was able to continue living there until 2010 without experiencing any reprisals (see para. 4.7). The author must have known that these factors were crucial points for assessment. Nevertheless, as far as we read the author's comments on the State party's observations (see paras. 5.5 and 7.2 above), there is no convincing explanation that, contrary to the State party's observations, she and her family members were in reality under the threat of death or ill-treatment in Ethiopia.

5. In addition, the author has not provided sufficient information to demonstrate, as a matter of her specific and individual risk, that she would be at risk of death or torture or ill-treatment because of her involvement in OLF activities in the Sudan. The State party observes that she had no contact with the Sudanese authorities at any time during her stay in the Sudan, nor was she identified or known in connection with OLF activities in the Sudan. Some 600 to 700 people had been present at the OLF meetings she attended and, according to the State party, anonymous participation in demonstrations with hundreds of participants may not itself lead to persecution (see para. 4.9 above). The State party also observes that there are no specific reasons to assume that the Sudanese authorities have any information or

[1] *K v. Denmark* (CCPR/C/114/D/2393/2014), para. 7.4; *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.

documentation concerning her involvement in OLF activities that could have been transmitted to the Ethiopian authorities (see para. 4.11 above). Furthermore, the author has not provided any clear rebuttal to these observations of the State party.

6. As recognized in the present Views, the organs of the State are best placed to make findings of facts based on the evidence and testimony before them (see para. 10.5 above). For this very reason, the Committee has taken the position that it respects the assessment by the State party unless the author sufficiently and convincingly demonstrates that the State party's assessment was clearly arbitrary or amounted to a manifest error or denial of justice. In the present case, we consider, in the absence of pertinent information provided by the author, that she failed to demonstrate that the assessment by the authorities of the State party was clearly arbitrary or amounted to a manifest error or denial of justice. Accordingly, we conclude that the removal of the authors, if implemented, would not constitute a violation of articles 6 and 7 of the Covenant.