



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2493/2014\*, \*\*

<i>Communication submitted by:</i>	A.H.A. (represented by counsel, Tage Gottsche)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Denmark
<i>Date of communication:</i>	1 December 2014 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 9 December 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	8 July 2016
<i>Subject matter:</i>	Deportation to Somalia
<i>Procedural issues:</i>	Substantiation of claims
<i>Substantive issues:</i>	Torture; cruel, inhuman or degrading treatment or punishment
<i>Articles of the Covenant:</i>	7 and 9
<i>Article of the Optional Protocol:</i>	2

1.1 The author of the communication is A.H.A., a Somali national from Qoryooley, born in 1986. The author is subject to deportation to Somalia, following the rejection of his application for asylum in Denmark. The author claims that by forcibly deporting him to Somalia, Denmark would be violating his rights under articles 7 and 9 of the Covenant. The

\* Adopted by the Committee at its 117th session (20 June-15 July 2016).

\*\* The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Lazhari Bouzid, Olivier de Frouville, Ahmed Amin Fathalla, Yuji Iwasawa, Ivana Jelić, Photini Pazartzis, Mauro Politi, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvio, Dheerajlall Seetulsingh, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

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author is represented by counsel. The Optional Protocol entered into force for the State party on 23 March 1976.

1.2 On 9 December 2014, pursuant to rule 92 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party not to deport the author to Somalia while his case was under consideration by the Committee.

1.3 On 8 October 2015, the Committee, acting through its Special Rapporteur on new communications and interim measures, denied the State party's request for the interim measures request to be lifted.

#### **The facts as submitted by the author**

2.1 The author belongs to the minority Ashraf clan and was born in Qoryooley, Somalia. The area in which Qoryooley is located has been attacked by Al-Shabaab for a long period of time. Even though Qoryooley was officially liberated from Al-Shabaab in March 2014, the author states that the attacks and violence still continue.

2.2 The author's father owned several plots of land. One of the plots was taken from the father by another clan, the Habar Gidir, some 12 years before Al-Shabaab came to the area. In February 2011, Al-Shabaab invited the author's father to pay a large amount of money in order not to be disturbed. When his father did not pay the amount, he was killed by Al-Shabaab.

2.3 On an unspecified date, members of Al-Shabaab contacted the author at his house and asked him to join the movement. The author told them that he could not because he had to help his mother. In total, he was contacted by Al-Shabaab twice, at his house and at his workplace, between February and October 2011.

2.4 In October 2011, the author's brother was killed by Al-Shabaab shortly after returning from Mogadishu where he had spent several years. The brother was accused of being a traitor because he was new in town and refused "to follow them to their whereabouts". He was considered to be a spy sent by the Government. Shortly after the death of the author's brother, Al-Shabaab asked the author twice again to join the movement. The author reiterated that he had to help his mother, but as he would not be able to avoid being taken as a fighter for Al-Shabaab, in November 2011 he fled to Boosaaso in the Bari region.

2.5 In January 2013, he was accused of stealing money from a building in Boosaaso. The building owner who accused him was a member of the Majeerteen clan, the most powerful clan in Boosaaso. This clan has always been in conflict with the Ashraf clan. The author was imprisoned for about one year without ever being brought before a judge. While in prison, he was ill-treated by police, who accused him of being a terrorist on the basis of the clan he belonged to. He was hit and his leg was burned, and he was threatened with death if he did not acknowledge his membership in Al-Shabaab.

2.6 The author was released in December 2013 because his mother contacted a council of elders in Boosaaso who were not concerned with clan relations and who helped her to collect money for the author's release. The author contacted his mother in February 2014 to tell her that he wanted to leave Somalia. His mother informed him that some friends had told her that Al-Shabaab was still looking for him.

2.7 The author arrived in Denmark on 22 March 2014 without valid travel identification documents. In March 2014, he applied for asylum in Denmark, but the application was rejected by the Danish Immigration Service on 27 May 2014 on the grounds that his story and claims lacked credibility. That decision was upheld by the Refugee Appeals Board, on

6 August 2014. The Board found the author's claims and story unconvincing and lacking in credibility. The author submits that he has exhausted all available domestic remedies.

### **The complaint**

3. The author claims that his deportation to Somalia would violate his rights under articles 7 and 9 of the Covenant as he is at risk of being tortured or killed in Somalia. He claims that citizens who refuse to join Al-Shabaab are at high risk of being killed. In addition, he would always be persecuted and subjected to human rights abuses and discrimination in Somalia because his minority clan is "suppressed". He was falsely accused of a theft and was imprisoned because he belongs to the minority Ashraf clan. He also considers that the Refugee Appeals Board did not examine the possible psychological and physical effects on him as a result of the murder of his father and his brother, his imprisonment and the severe situation in Somalia. The Board made no investigation to clarify the extent of the dangerous conditions in Somalia.

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

4.1 On 9 June 2015, the State party submitted that the present communication was inadmissible and without merit. The State party recalls the facts of the case and refers to the decision of the Refugee Appeals Board of 6 August 2014. It notes that the Board considered that the author had made vague statements about Al-Shabaab's approaches, including about his attempted escape after he had been approached for the fourth time, and considered that the information he gave on that matter appeared to be "fabricated for the occasion". Furthermore, the Board noted that his father's conflicts with the Habar Gidir clan dated back a long time, but that the author himself had had no conflicts with that clan. Nor had he had any other problems due to his clan affiliation. The Refugee Appeals Board also concluded that the author, who appeared to be a very low-profile individual, was unable to substantiate his grounds for asylum before the Board. Therefore, the Board rejected his statement that he had allegedly been pursued by Al-Shabaab. According to the most recent background information on Qoryooley, the Board considered it a fact that Al-Shabaab had been driven out from that town, and that regardless of the generally difficult conditions in the area, it could not be assumed that the general security situation in the area was of such a nature that everybody returning to Qoryooley may be deemed to be at a real risk of abuse. Consequently, the Board found that the author did not establish that he was persecuted at the time when he left Somalia, or that he would risk persecution giving rise to protection under section 7 (1) of the Aliens Act, or that he would risk treatment or punishment under section 7 (2) of that Act.

4.2 The State party then proceeded to provide a detailed description of its refugee status application proceedings, the legal basis and the functioning of the Refugee Appeals Board.<sup>1</sup> As regards the general conditions in a country, the State party refers to the judgment of the European Court of Human Rights in *NA. v. the United Kingdom*, in which it was stated 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 Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).<sup>2</sup> In that case, the Court assessed that a deterioration in the security situation and an increase in human rights violations in a specific country did not independently create a general risk to all persons of a specific

<sup>1</sup> For a full description, see communication No. 2379/2014, *Obah Hussein Ahmed v. Denmark*, Views adopted on 7 July 2016, paras. 4.1-4.4.

<sup>2</sup> Application No. 25904/07, judgment of 17 July 2008, para. 114.

ethnic group returning to that country.<sup>3</sup> Furthermore, the Court stated that it had never excluded the possibility that a general situation of violence in a specific country of origin would be of a sufficient level of intensity as to mean that any removal to that country would necessarily breach article 3 of the European Convention on Human Rights. The Court would adopt such an approach only in the most extreme cases of general violence, where there was a real risk of ill-treatment simply by virtue of an individual's presence in the area. Where it is established that an applicant is a member of a group systematically exposed to a practice of ill-treatment in his country of origin, the Court has considered that the protection of article 3 of the European Convention on Human Rights enters into play, and it will not then insist that the applicant show the existence of further special distinguishing features to substantiate an assertion that he would be at risk of ill-treatment on return to his country of origin.<sup>4</sup>

4.3 The State party further refers to the Court's judgment in *Sufi and Elmi v. the United Kingdom*, where the Court found that the removal of the applicants, Somali nationals, to Mogadishu would be contrary to article 3 of the European Convention on Human Rights.<sup>5</sup> The State party observes that article 3 of the European Convention on Human Rights is very similar to articles 6 and 7 of the Covenant, and that the Court employed very specific criteria when examining the case of *Sufi and Elmi v. the United Kingdom*. In particular, it assessed whether the parties to the conflict were either employing methods and tactics of warfare which increased the risk of civilian casualties or were directly targeting civilians; whether the use of such methods and/or tactics was widespread among the parties to the conflict; whether the fighting was localized or widespread; and the number of civilians killed, injured and displaced as a result of the fighting. The State party notes that the Refugee Appeals Board also does not exclude the possibility that, due to random, generalized violence, the general security situation in a given country may be of such a serious and extreme nature that it would breach article 3 of the European Convention on Human Rights to return an asylum seeker to that country and that, for this reason alone, an asylum seeker would satisfy the conditions of residence under section 7 of the Aliens Act.

4.4 In the light of the above, with reference to rule 96 (b) of the Committee's rules of procedure, the State party submits that the author has failed to establish a prima facie case for the purpose of admissibility of his claim under article 7 of the Covenant, as it has not been established that there are substantial grounds for believing that the author is in danger of being subjected to torture or cruel, inhuman or degrading treatment or punishment in Somalia.<sup>6</sup> Thus, his claim under article 7 of the Covenant is manifestly unfounded and should be considered inadmissible.

4.5 The author has further merely claimed that his return to Somalia would breach article 9 of the Covenant. The author has failed to establish in any way how he risks treatment contrary to article 9 of the Covenant if returned to Somalia. The State party submits that it is not aware of any findings made by the Committee that article 9 of the Covenant can be deemed to have extraterritorial effect. It notes that the European Court of Human Rights held, in its judgment of 17 January 2012 in *Othman v. the United Kingdom*,<sup>7</sup> concerning article 5 of the Convention (similar to article 9 of the Covenant), that "a contracting State would be in violation of article 5 if it removed an applicant to a State

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<sup>3</sup> Ibid., para. 125.

<sup>4</sup> Ibid., paras. 115-117; in this respect, the State party also refers to the Court's judgment in *F.H. v. Sweden*, application No. 32621/06, judgment of 20 January 2009, para. 90.

<sup>5</sup> Applications Nos. 8319/07 and 11449/07, judgment of 28 June 2011, para. 241.

<sup>6</sup> The State party refers to the Committee's Views in communication No. 2007/2010, *X v. Denmark*, Views adopted on 26 March 2014, para. 9.2.

<sup>7</sup> Application No. 8139/09, para. 233.

where he or she was at real risk of a flagrant breach of that article. However, as with article 6, a high threshold must apply. A flagrant breach of article 5 would occur only if, for example, the receiving State arbitrarily detained an applicant for many years without any intention of bringing him or her to trial. A flagrant breach of article 5 might also occur if an applicant would be at risk of being imprisoned for a substantial period in the receiving State, having previously been convicted after a flagrantly unfair trial.” The State party submits in this connection that the crucial factor when assessing whether article 5 of the European Convention on Human Rights can be deemed to have extraterritorial effect is whether there is a real risk of a flagrant breach of that article, however a high threshold applies. Accordingly, given that the author in the present case has failed to establish in any way how he risks treatment contrary to article 9 of the Covenant if returned to Somalia, the State party maintains that the author has failed to establish a *prima facie* case for the purpose of the admissibility of his communication under article 9, and therefore this part of the communication is also manifestly unfounded and should be considered inadmissible.

4.6 If the Committee finds the author’s communication admissible, the State party submits that the author has not sufficiently established that his return to Somalia would amount to a breach of articles 7 or 9 of the Covenant. In particular, with regard to his claim under article 7 of the Covenant, the State party observes that in his communication to the Committee he did not provide any new or specific information on his situation beyond the information that had already been assessed and applied as the basis for the decision made by the Refugee Appeals Board on 6 August 2014. Under Danish law, an asylum seeker must provide such information as is required for deciding whether he falls within section 7 of the Aliens Act. It is incumbent upon asylum seekers to substantiate their grounds for seeking asylum and to show that the conditions for granting asylum are met. The State party also notes that according to paragraphs 195 and 196 of the *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status*, published by the Office of the United Nations High Commissioner for Refugees (UNHCR), “the relevant facts of the individual case will have to be furnished in the first place by the applicant himself”, and that “it is a general legal principle that the burden of proof lies on the person submitting a claim”. The State party further notes that the principle that it is normally incumbent upon asylum seekers to substantiate their grounds for seeking asylum has also been expressed in the case law of the Human Rights Committee.<sup>8</sup>

4.7 The State party adds that in the present case, the Refugee Appeals Board found that the author had failed “to render probable his grounds for asylum”. The Board could not accept as a fact the author’s statement that he had been persecuted by Al-Shabaab, nor could it accept as a fact that prior to his departure he had experienced conflicts due to his clan affiliation. In this respect, the Refugee Appeals Board emphasized, *inter alia*, that the author’s statements with regard to the approaches by Al-Shabaab, including with regard to his attempted escape after the fourth approach, appeared vague and fabricated for the occasion. The State party observes in this connection that during the asylum interview on 2 April 2014, the author stated that Al-Shabaab had contacted him four times in 2011, each time in the shop where he worked or at home. However, during the “substantive asylum interview” conducted by the Danish Immigration Service on 23 April 2014, the author stated that he had been at a friend’s house the last time he had been contacted by Al-Shabaab. Furthermore, during the “substantive asylum interview”, the author stated that in November 2011 a representative of Al-Shabaab had come to his friend’s house, where the author tried to hide. The representative had told the author that he would keep an eye on him until the others from Al-Shabaab came and took him to prison. The author had

<sup>8</sup> The State party refers to the decision adopted by the Committee on 10 August 2006 in *Khan v. Canada* (CCPR/C/87/D/1302/2004).

managed to escape, as he had slept in one of the rooms in the house, and his friend and the Al-Shabaab representative had slept in the other room. The Al-Shabaab representative had come to the house of the author's friend sometime between noon and 1 p.m. He had kept an eye on the author for the rest of the day and throughout the night. In this regard, the State party notes that only at the hearing before the Refugee Appeals Board did the author state that he had been locked in a storage room and the representative of Al-Shabaab had gone to sleep by the entrance to it in order to prevent the author from escaping. At the Refugee Appeals Board hearing, the author also stated for the first time that he had managed to escape by jumping out of a window in the room that he had been put in. The Al-Shabaab representative did not know that the room had a window, as he was unfamiliar with the house. Finally, the author stated at the Board hearing, contrary to his statement at the asylum screening interview, that the Al-Shabaab representative had arrived at the house when it was dark outside, and not at 1 p.m. as claimed earlier.

4.8 In its decision, the Refugee Appeals Board considered it to be a fact that the author had had no conflicts with the Habar Gidir clan himself, nor any other problems resulting from his clan affiliation. In this regard, the State party notes that at the "substantive asylum interview", held on 23 April 2014, the author was asked whether he was wanted by anyone solely because he belonged to the Ashraf clan, to which he replied that he was not but it would not be possible for him to obtain protection from his clan. The author also stated that the reason for his problems with the Habar Gidir clan was that it had taken part of his family's land 17 or 18 years ago. In addition, he stated that his sister had been forced into marriage and that his family had had to pay money to be left in peace. His family had last been charged money before Al-Shabaab took control of the town, five or six years earlier. He stated that he had had no other problems with the Habar Gidir clan. Accordingly, the State party submits that the Refugee Appeals Board could not accept the author's statements as fact, including the assertion that he would be persecuted by Al-Shabaab or would suffer ongoing conflicts in his home region on account of his clan affiliation.

4.9 As regards the author's statement before the Committee that he was imprisoned for one year due to his affiliation with the Ashraf clan, the State party observes that this statement was already taken into account in the assessment of the matter made by the Refugee Appeals Board on 6 August 2014. The Board found that, when viewed in isolation, this circumstance did not form a basis for asylum either. According to his own statement, the author's conflict, which took place in Boosaaso in the Bari region, must be considered to have ended, as he was released in December 2013 with assistance from the council of elders, against payment of an amount unknown to the author. Thus, the allegation that his imprisonment was due to his clan affiliation is based solely on the author's own assumption. The State party also observes that the Bari region is located far from the author's home town of Qoryooley. The fact that the author belongs to a minority clan cannot lead to a different assessment of the matter, as this cannot independently form the basis for asylum. The State party reiterates that the Refugee Appeals Board considered it to be a fact that the author had no clan-related conflicts himself and that he appeared to be a "very low-profile individual".

4.10 The author also submitted that the physical and mental consequences for him resulting from the killing of his father and brother and from his own imprisonment were not taken into account during the asylum proceedings. The State party notes that if an asylum seeker's statements in support of his case are characterized by inconsistencies, changing statements, expansions or omissions, the Refugee Appeals Board will attempt to clarify the reasons. When assessing the credibility of an asylum seeker, the Refugee Appeals Board will take into account the asylum seeker's particular situation, such as cultural differences, age and health. However, inconsistent statements made by the asylum seeker about crucial elements of his grounds for seeking asylum may weaken his credibility. If in doubt about the asylum seeker's credibility, the Board will always assess to what extent the principle of

benefit of the doubt should be applied. The State party observes, in this context, that the Refugee Appeals Board made its decision on 6 August 2014 on the basis of a procedure during which the author had the opportunity to present his views to the Board, both in writing and orally, with the assistance of his legal counsel. At the Board's hearing, the author was allowed to make a statement and answer questions. Then counsel and the representative of the Danish Immigration Service were allowed to make closing speeches, whereupon the author was again presented with the opportunity to make a final statement. In these circumstances, the State party maintains that the Refugee Appeals Board included all relevant information in its decision and that the present communication has not disclosed any information substantiating the author's risk of being subjected to torture or to inhuman or degrading treatment or punishment or being killed if returned to Somalia.

4.11 With regard to the author's claim that his return would violate his rights under article 7 of the Covenant given the general situation in Somalia, the State party submits that in its decision of 6 August 2014, the Refugee Appeals Board found that it could not be assumed that the general security situation in the area surrounding Qoryooley was of such a nature that everybody returning there may be deemed to be at a real risk of abuse contrary to article 3 of the European Convention on Human Rights. It notes that the Refugee Appeals Board carefully considered the background information concerning the country situation, and that the Board has a comprehensive collection of background material on conditions in Somalia, including all the information to which the author has referred. According to the State party, the Board made its decision on a "fully sufficient basis", and it was not necessary to collect further information on the situation in the area. In common with the Refugee Appeals Board, the State party finds that the continued unrest in the region cannot in and of itself be taken to mean that the author, who is from a government-controlled area and appears to be a very low-profile individual, would be at risk of abuse falling within articles 7 or 9 of the Covenant. In this respect, the State party observes that according to the background information available, including the report of the Secretary-General on Somalia issued on 25 September 2014,<sup>9</sup> African Union Mission in Somalia (AMISOM) and Somali forces pushed Al-Shabaab out of 10 towns, including Qoryooley, in March and April 2014. Qoryooley has been controlled by the Government of Somalia since then. The State party also observes that according to the article "Somali forces repel Al-Shabaab attacks in Qoryooley, Mahas",<sup>10</sup> government forces had managed to repel the attacks by Al-Shabaab. Accordingly, contrary to the author's statements, it is false to maintain that the situation in Somalia was not taken into account during the author's asylum proceedings and that the Refugee Appeals Board did not investigate the dangerous situation in the area at issue.

4.12 With regard to the author's claim under article 9 of the Covenant, the State party reiterates that the author has merely stated that his return to Somalia would constitute a violation of that provision. Therefore, the State party submits that the author has failed to establish that there are substantial grounds for believing that there is a real risk of a flagrant breach of article 9 if he is returned to Somalia and that the high threshold that must apply in the present case has therefore not been met.<sup>11</sup>

4.13 In conclusion, the State party maintains that the Refugee Appeals Board has assessed all the relevant information and the author has not presented before the Committee any new information to substantiate his claim that he would risk being subjected to torture or to inhuman or degrading treatment or punishment or being killed if returned to Somalia. The State party refers to the judgment of the European Court of Human Rights in *R.C. v.*

<sup>9</sup> See S/2014/699.

<sup>10</sup> Published on 5 May 2014 on [www.sabahionline.com](http://www.sabahionline.com).

<sup>11</sup> See para. 4.6 above.

*Sweden*,<sup>12</sup> where the Court stated, inter alia, that “as a general principle, the national authorities are best placed to assess not just the facts but, more particularly, the credibility of witnesses since it is they who have had an opportunity to see, hear and assess the demeanour of the individual concerned”.<sup>13</sup> The State party also refers to the Court’s judgment in *M.E. v. Denmark*,<sup>14</sup> wherein the Court, inter alia, concluded that the examination of the relevant asylum case by the Danish Immigration Service and the Refugee Appeals Board had been adequate and that due process guarantees had been observed. The State party notes that similar conclusions were also reached by the Committee, in *Mr. X and Ms. X v. Denmark*,<sup>15</sup> wherein the Committee found, inter alia, that the authors’ refugee claims had been thoroughly assessed by the State party’s authorities.

4.14 In the light of the above, the State party submits that the same guarantees of due process were also applied in the present case. The decision to uphold the refusal of the Danish Immigration Service to grant asylum was adopted by the Refugee Appeals Board, which is a collegial and independent body of a quasi-judicial nature. The decision was made on the basis of a procedure during which the author had the opportunity to present his views to the Board with the assistance of legal counsel. The Board made a thorough assessment of the author’s credibility, the background information available and the author’s specific circumstances, but found that the author had failed to demonstrate that it was probable that he would be subjected to torture or to inhuman or degrading treatment or punishment or would be killed if he were returned to Somalia. Consequently, according to the State party, the present communication merely reflects the author’s disagreement with the assessment of his credibility and with the background material used by the Refugee Appeals Board. In this connection, the State party notes that the author has failed to identify any irregularity in the decision-making process or any risk factors that the Refugee Appeals Board may have failed to take properly into account. According to the State party, the author is in fact trying to use the Committee as an appellate body to have the factual circumstances of his asylum case reassessed by the Committee. In this respect, the State party submits that the Committee must give considerable weight to the findings of fact made by the Refugee Appeals Board, which was better placed to assess the factual circumstances of the author’s case. Thus, the author’s return to Somalia will not constitute a breach of articles 7 or 9 of the Covenant.

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

5.1 On 6 July 2015, the author submitted further information. He maintains that irrespective of where in the south of Somalia he were to stay, Al-Shabaab will find him and he will not be able to live in peace, and in the rest of Somalia, he will always be persecuted because his clan is suppressed. He also states that he recently spoke with his mother for the first time since he fled Somalia and that she told him that Al-Shabaab was still looking for him, and that members of Al-Shabaab had unsuccessfully tried to kidnap the author’s younger brother, but he had escaped and the author’s family had now left their home town. The author also submits that his burnt leg has been operated on twice because of severe pain and soreness. Furthermore, he reiterates that his father and brother were killed by Al-Shabaab “when they were trying to flee from their home town. Al-Shabaab thought the father and brother were traitors” and shot them. Finally, the author submits that the situation in Somalia has “severely aggravated in the past years” and that he will be at great

<sup>12</sup> Application No. 41827/07, judgment of 9 March 2010, para. 52.

<sup>13</sup> The State party also refers to the Court’s judgment of 26 June 2014 in *M.E. v. Sweden*, application No. 71398/12, para. 78.

<sup>14</sup> Application No. 58363/10, judgment of 8 July 2014, para. 63.

<sup>15</sup> Communication No. 2186/2012, Views adopted on 22 October 2014, para. 7.5.



risk of being killed there. He notes that the “Al-Shabaab force is still very active, and has just recently killed 75 AMISOM troops from Burundi, in Leego, near Qoryooley”.

5.2 On 21 August 2015, the author submitted that “the Government of Somalia has reinforced its efforts in fighting Al-Shaebab, but is yet to gain control over the specific region and area” from where he originates, and therefore he is at great risk of suffering inhuman or degrading treatment or being killed if returned to Somalia. “Due to the present situation in the Qoryooley area, there should be no doubt that [I] have a conflict with Al-Shabaab”. The author further states in general terms that “the State party has failed to establish a *prima facie* case for the purpose of not giving admissibility of the... communication under articles 7 and 9 of the (Covenant). The State party’s submission has not brought up any reason for the communication to be inadmissible.”<sup>16</sup>

#### **Further observations by the State party**

6.1 In response, by a note verbale dated 25 January 2016, the State party reiterated that the information provided by the author in this case could not lead to a different assessment of the author’s asylum case from that already carried out by the Refugee Appeals Board. In regard to the author’s statements concerning the information provided by his mother, the State party believes that this information is unsubstantiated and appears to be fabricated for the occasion. The author has previously made inconsistent statements concerning his contact with his mother. In particular, during the asylum screening interview with the Danish Immigration Service on 2 April 2014, he stated that he had had contact with his mother and his siblings. However, when interviewed by the Danish Immigration Service on 23 April 2014, he stated that he had had no contact with his mother since his departure from Somalia. As regards the transcript of his medical records, submitted by the author to the Committee, the State party observes that the medical records do not demonstrate in any way that he was subjected to torture while he was imprisoned in Somalia. On that matter, the State party notes that, according to the transcript of the author’s medical records, the reason for the pain in his leg was that he had been diagnosed with tuberculosis and had had surgery as his leg had been affected by the infection.

6.2 The State party reiterates that the general conditions in Somalia are not of such a nature that the author would risk being subjected to abuse falling under articles 7 or 9 of the Covenant if he were returned to Somalia. It notes that the Danish authorities are aware that the security situation in South Somalia is precarious. However, the Refugee Appeals Board closely monitors the situation in Somalia, including in Qoryooley. According to the most recent background information, such as “South Central Somalia: country of origin information for use in the asylum determination process”, a report published by the Danish Immigration Service in September 2015, Qoryooley is still controlled by the Government of Somalia and AMISOM. Accordingly, the State party reiterates that the present communication should be declared manifestly unfounded and inadmissible. Alternatively, the State party maintains that it has not been established that there are substantial grounds for believing that the author’s return to Somalia would constitute a violation of articles 7 or 9 of the Covenant.

<sup>16</sup> The author also refers to the judgment, invoked by the State party, of the European Court of Human Rights, in *Sufi and Elmi v. the United Kingdom*, where the Court found that the removal of the applicants, Somali nationals, to Mogadishu, would be contrary to article 3 of the European Convention on Human Rights. See also footnote 4 above.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

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

7.2 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.

7.3 The Committee takes note of the author's claim that all domestic remedies have been exhausted. In the absence of any objection by the State party in this connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

7.4 The Committee notes the author's general claim that his deportation to Somalia would violate his rights under article 9 of the Covenant. The Committee observes, however, that the author has failed to provide any substantiation whatsoever in this regard. Therefore the Committee considers that the author has failed to sufficiently substantiate his claim for the purposes of admissibility, and accordingly it declares this part of the communication inadmissible pursuant to article 2 of the Optional Protocol.<sup>17</sup>

7.5 The Committee also notes the State party's argument that the author's claim with respect to article 7 of the Covenant should be held inadmissible owing to insufficient substantiation. However, the Committee considers that the author has adequately explained the reasons for which he fears that his forcible return to Somalia would result in a risk of treatment incompatible with article 7 of the Covenant. The Committee is therefore of the opinion that, for the purposes of admissibility, the author has sufficiently substantiated his allegations under article 7.<sup>18</sup>

7.6 Accordingly, the Committee considers that the communication is admissible as far as it raises issues under article 7 of the Covenant, and it proceeds to its examination on the merits.

### *Consideration of the merits*

8.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

8.2 The Committee recalls paragraph 12 of its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory when there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant.<sup>19</sup> The Committee has also indicated that the risk must be personal<sup>20</sup> and that

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<sup>17</sup> See, for example, communication No. 2393/2014, *K. v. Denmark*, Views adopted on 16 July 2015, para. 6.4.

<sup>18</sup> See, for example, communication No. 2347/2014, *K.G. v. Denmark*, Views adopted on 22 March 2016, para. 6.4.

<sup>19</sup> See para. 12.

<sup>20</sup> See, for example, communications No. 2007/2010, *X v. Denmark*, Views adopted on 26 March 2014, para. 9.2; No. 282/2005, *S.P.A. v. Canada*, decision adopted on 7 November 2006; No. 333/2007, *T.I. v. Canada*, decision adopted on 15 November 2010; No. 344/2008, *A.M.A. v. Switzerland*,

there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.<sup>21</sup> In making this assessment, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.<sup>22</sup>

8.3 In the present case, the Committee has noted the argument that if returned to Somalia, the author would be at risk of being subjected to ill-treatment by Al-Shabaab and also because he belongs to a minority clan that has always been "suppressed". He claims that he has been threatened by Al-Shabaab with ill-treatment because he refused to join them, and also that he was imprisoned in 2013 after being falsely accused of theft and was beaten and had his leg burned because he belonged to a minority clan.

8.4 The Committee notes that from the material on file it appears that the Danish immigration authorities — the Danish Immigration Service and the Refugee Appeals Board — thoroughly examined each of the author's claims, and in particular they assessed the threats allegedly received by the author in Somalia from Al-Shabaab, as well as his allegations of ill-treatment in prison in Somalia because of belonging to a minority clan. The Committee observes that the State party's immigration authorities found these allegations to be inconsistent and implausible, as well as unsubstantiated on several grounds. In particular, the State party's immigration authorities considered that the author's statements concerning the approaches by Al-Shabaab members and his escape from them in November 2011 were vague and inconsistent; that his father's conflict with the Habar Gidir clan dated back a long time, to 17 or 18 years ago; and that the author himself had never experienced conflict with that clan, and even though he claims he was falsely accused of theft and was imprisoned because he belonged to a minority clan, he was nevertheless released with the assistance of a council of elders that helped to pay for his release.

8.5 In this connection, the Committee notes that the author claims that he underwent surgery on two occasions because his leg had been burned in prison in Somalia. In support of his allegations, the author submits a copy of a medical report in Danish; however, the Committee observes that the position of the State party, which remains unrefuted by the author, is that his leg was treated medically due to a tuberculosis infection and not because of ill-treatment that he claims to have suffered in prison in Somalia. In addition, the Committee notes that the State party's immigration authorities assessed the general conditions in Qoryooley regarding the risk of harm from the conflict with Al-Shabaab, but could not reach the conclusion that the general security situation in the area was of such a nature that everybody returning there may be deemed to be at a real risk of abuse or ill-treatment.

8.6 The Committee recalls its jurisprudence that important weight should be given to the assessment conducted by the State party, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice,<sup>23</sup> and that it is generally for the organs of States parties to the Covenant to review or evaluate facts and evidence in order to determine

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decision adopted on 12 November 2010; and No. 692/1996, *A.R.J. v. Australia*, Views adopted on 28 July 1997, para. 6.6.

<sup>21</sup> See, for example, communications No. 2007/2010, *X v. Denmark*, Views adopted on 26 March 2014, para. 9.2; and No. 1833/2008, *X. v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

<sup>22</sup> *Ibid.*

<sup>23</sup> See communications No. 2007/2010, *X. v. Denmark*, Views adopted on 26 March 2014, para. 9.2; No. 2272/2013, *P.T. v. Denmark*, Views adopted on 1 April 2015, para. 7.3; No. 1833/2008, *X. v. Sweden*, Views adopted on 1 November 2011, para. 5.18; and No. 2347/2014, *K.G. v. Denmark*, Views adopted on 22 March 2016, para. 7.4.

whether such a risk exists.<sup>24</sup> In the present case, the Committee observes that the Danish Immigration Service refused the author's asylum request, the author appealed that decision and the Refugee Appeals Board reviewed his case.

8.7 The Committee is aware of the existence of concerns regarding the continuing presence of Al-Shebaab in southern and central Somalia.<sup>25</sup> However, the Committee notes that, in examining the author's asylum request, the Refugee Appeals Board reviewed the author's allegations, making a specific and individual risk assessment and taking into due consideration the information concerning the situation in the Qoryooley area. In addition, the Committee notes that the author challenges the assessment of evidence by the Refugee Appeals Board and the factual conclusions that the Board reached without however adducing any supporting element that would demonstrate that these were manifestly unreasonable or arbitrary.<sup>26</sup> In the light of the foregoing, the Committee cannot conclude that the information before it shows that there are substantial grounds for believing that there is a real risk of irreparable harm to the author, as contemplated by article 7 of the Covenant.<sup>27</sup>

9. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the author's removal to Somalia would not violate his rights under article 7 of the Covenant.

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<sup>24</sup> See communications No. 1763/2008, *Pillai et al. v. Canada*, Views adopted on 25 March 2011, para. 11.4; and No. 1957/2010, *Z.H. v. Australia*, Views adopted on 21 March 2013, para. 9.3.

<sup>25</sup> See, for example, "UNHCR position on returns to southern and central Somalia" update 1, UNHCR, May 2016, para. 6.

<sup>26</sup> See communication No. 2347/2014, *K.G. v. Denmark*, Views adopted on 22 March 2016, para. 7.4.

<sup>27</sup> See the Committee's general comment No. 31, para. 12. See also communication No. 2327/2014, *Y v. Canada*, Views adopted on 10 March 2016, para. 10.6.