



# International Covenant on Civil and Political Rights

Advance unedited version

Distr.: General  
22 July 2016

Original: English

## 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; 9
<i>Article of the Optional Protocol:</i>	2

1.1 The author of the communication is Mr. A.H.A a Somalian 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 violate his rights under articles 7 and 9 of the International Covenant on Civil and Political Rights. The author is represented by counsel. The first Optional Protocol entered into force for Denmark on 23 March 1976.

1.2 On 9 December 2014, pursuant to rule 92 of the Committee's rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim

\* 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 present communication: Yadh Ben Achour, Lazhari Bouzid, Olivier de Frouville, Ahmed Amin Fathalla, Yuji Iwasawa, Ivana Jelic, Photini Pazartzis, Mauro Politi, Victor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujall Seetulsingh, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

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 to lift the interim measures request.

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

2.1 The author belongs to the minority Asharaf clan and was born in Qoryooley, Somalia. The area where 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, Habar Gidir, some 12 years before Al-Shabaab came to that area. In February 2011, Al-Shabaab invited the author's father to pay a large amount of money not to be disturbed. When his father did not pay the amount, he was killed by Al-Shabaab.

2.3 On an unspecified date, 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 or at 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. He was accused of being a traitor because he was new in town and refused "to follow them to their whereabouts". The brother was considered to be a spy sent by the government. Shortly after his brother's death, Al-Shabaab again twice asked the author to join the movement. The author reiterated that he had to help his mother, but as he could not 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 stock building in Boosaaso. The owner of the stock building who accused him was a member of the Majeerten clan, the most powerful clan in Boosaaso. This clan has always conflicted with the Asharaf clan. The author was imprisoned for about one year without ever been brought before a judge. While in prison, he was ill-treated by police who accused him of being a terrorist based on the clan he belonged to. He was hit, 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 elderly people in Boosaaso, who are 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. This decision was upheld by the Refugee Appeals Board on 6 August 2014. The Board found the author's claims and story unconvincing and lacking 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 Asharaf 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 merits**

4.1 On 9 June 2015, the State party submitted that the present communication is inadmissible and without merit. The State party recalls the facts of the case and refers to the decision of the Refugee Appeals Board (RAB) of 6 August 2014. It notes that the RAB considered that the author has made vague statements concerning Al-Shabaab’s approaches, including, his attempted escape after he had been approached for the fourth time, and that the information he gave on this matter appeared to be “fabricated for the occasion”. Further, the Board noted that his father’s conflicts with the Habar Gidir clan date back a long time, and that the author himself had had no conflicts with this clan. Nor has he had any other problems due to his clan affiliation. The RAB also concluded that the author, who appeared to be a very low-profile individual, was unable to substantiate his grounds for asylum before the RAB. Therefore, the RAB rejected his statement that he was allegedly pursued by Al-Shabaab. According to the most recent background information on Qoryooley, the RAB 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 nature that everybody returning to Qoryooley may be deemed to be at a real risk of abuse. Consequently, the RAB found that the author did not establish that he was persecuted at the time when he left Somalia or that he would risk persecution falling 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 Next, the State party proceeds 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>

4.3 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* where it 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 European Convention.<sup>2</sup> In that case, the European Court assessed that the deterioration in the security situation and the increase in human rights violations in a specific country did not independently create a general risk to all persons of a specific 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 will be of a sufficient level of intensity as to entail that any removal to that country would necessarily breach article 3 of the European Convention. 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 European Court has considered that the protection of article 3 of the European Convention enters into play, and the Court will not then insist that

---

<sup>1</sup> For 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.

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

the applicant show the existence of further special distinguishing features to substantiate that he would be at risk of ill-treatment on return to his country of origin.<sup>4</sup>

4.4 The State party further refers to the Court's judgment in the case *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.<sup>5</sup> The State party observes article 3 of the European Convention is very similar to articles 6 and 7 of the Covenant and that in this case the Court employed very specific criteria when examining the case. 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 directly targeting civilians; whether the use of such methods and/or tactics was widespread among the parties to the conflict; whether the fighting was localised or widespread; and the number of civilians killed, injured and displaced as a result of the fighting. The State party notes that the RAB also does not exclude the possibility that, due to random, generalised violence, the general security situation in a given country may be of such serious and extreme nature that it would breach article 3 of the European Convention 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.

4.5 In 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.

4.6 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 further 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 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 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

---

<sup>4</sup> *Ibid.*, paras 115-117; in this respect, the State party also refers to the Court's judgment in the case *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 the communication No.2007/2010, *J.J.M. v. Denmark*, Views adopted on 26 March 2014, para. 9.2.

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

admissibility of his communication under article 9, and, therefore, this part of the communication is also manifestly unfounded and should be considered inadmissible.

4.7 Should the Committee find 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 the author's claim under article 7 of the Covenant, the State party observes that in his communication to the Committee, the author has not provided any new or specific information on his situation beyond the information that has already been assessed and applied as the basis for the decision made by the RAB 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 grant of asylum are met. It further notes that according to paragraphs 195 and 196 of the *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status* "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>

4.8 The State party adds that in the present case the RAB found that the author has failed "to render probable his grounds for asylum". The Board could not accept as a fact the author's statement that he is persecuted by Al-Shabaab, nor could it accept as a fact that prior to his departure the author has had conflicts due to his clan affiliation. The RAB emphasised in this respect, *inter alia*, that the author's statements on the approaches from Al-Shabaab, including concerning 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 Service, the author stated that he had been at a friend's home the last time he had been contacted by Al-Shabaab. Further, during "the substantive asylum interview" on 23 April 2014, he 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 managed to escape as he had slept in one of the rooms in the house, and his friend and the representative had slept in the other room. Al-Shabaab representative had come to the home of the author's friend sometime between noon and 1 pm. He had kept an eye on the author during the rest of the day and the whole night. In this regard, the State party notes that only at the hearing before the RAB did the author state that he had been locked in a storage room, while the representative of Al-Shabaab had gone to sleep by the entrance to prevent the author from escaping. At the RAB hearing, the author also stated for the first time that he had managed to escape by jumping out of a window in the room in which he had stayed. Al-Shabaab representative had not known that the room had a window as he had not been familiar with the house. Finally, the author stated at the Board hearing, contrary to his statement at the asylum screening interview, that Al-Shabaab representative had arrived at the house when it was dark outside and not at 1pm as claimed earlier.

---

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

4.9 In its decision, the RAB considered it as a fact that the author has had no conflicts with the Habar Gidir clan himself, or any other problems due to his clan affiliation. In this regard, the State party notes that at “the substantive asylum interview” on 23 April 2014, the author was asked whether he was wanted by anyone solely because he belonged to the Ashraf clan, to what he replied that he was not, but it would not be possible for him to obtain protection from his clan. The author further stated that the reason for his problems with the Habar Gidir clan was that part of his family’s land had been taken from them 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 ago. He stated that he had no other problems with the Habar Gidir clan. Accordingly, the State party submits that the RAB could not accept the author’s statements as a fact, including that he would be persecuted by Al-Shabaab or have on-going conflicts in his home region due to his clan affiliation.

4.10 As regards the author’s statement before the Committee that he has been 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 RAB 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 the 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 further 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 it cannot independently form the basis for asylum. The State party reiterates that the RAB considered it a fact that the author had no clan-related conflicts himself and that he appears to be “a very low-profile individual”.

4.11 The author has also submitted that the physical and mental consequences for him as a result of the killing of his father and the brother and 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 characterised by inconsistencies, changing statements, expansions or omissions, the RAB will attempt to clarify the reasons. When assessing the credibility of an asylum-seeker, the RAB will take into account the relevant 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 the benefit of doubt should be applied. The State party observes in this context that the RAB made its decision on 6 August 2014 on the basis of a procedure during which the author had an opportunity to present his views, both in writing and orally, to the Board 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 RAB included all relevant information in its decision and that the present communication has not disclosed any information substantiating that the author will risk being subjected to torture or to inhuman or degrading treatment or punishment or being killed if returned to Somalia.

4.12 As 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 RAB found that it could not be assumed that the general security

situation in the area surrounding Qoryooley is of such nature that everybody returning there may be deemed to be at a real risk of abuse contrary to article 3 of the European Convention. It notes that the RAB 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. Like the RAB, the State party finds that the continued unrest in the region cannot independently be taken to find that the author, who is from a government-controlled area and appears to be a very low-profile individual, would risk abuse falling within articles 7 or 9 of the Covenant. In this respect, the State party observes that according to the available background information, including the Report of the United Nations Secretary-General on Somalia,<sup>9</sup> the AMISOM and Somali forces pushed Al-Shabaab out of ten towns, including Qoryooley, in March and April 2014. Qoryooley has been controlled by the Somali government since then. It further observes that according to the article *Somali Forces Repel Al-Shabaab Attacks in Qoryooley, Mahas*,<sup>10</sup> the government forces have managed to repel the attacks of 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 RAB has made no investigation into the dangerous situation in the area at issue.

4.13 As 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 this 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>

4.14 In conclusion, the State party maintains that the RAB has assessed all the relevant information and the author has not presented before the Committee any new information substantiating 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 European Court of Human Rights judgment in the case *R.C. v. 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 further refers to the European Court’s judgment in the case *M.E. v. Denmark*,<sup>14</sup> wherein the Court inter alia concluded that the examination of the respective asylum case by the Danish Immigration Service and the RAB was characterised as adequate and that due process guarantees had been observed. The State party notes that similar conclusions were reached also by the Committee in the case *Mr. X and Ms. X v. Denmark*<sup>15</sup> where the Committee found inter alia that the authors’ refugee claims were thoroughly assessed by the State party’s authorities.

---

<sup>9</sup> Published by the United Nations Security Council on 25 September 2014.

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

<sup>11</sup> See para 4.9 above.

<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> Views of 22 October 2014, CCPR/C/112/D/2186/2012), para. 7.5.

4.15 In light of the above, the State party submits that the same guarantees of due process were applied also in the present case. The decision to uphold the refusal of the Danish Immigration Service to grant asylum was adopted by the RAB, which is a collegial and independent body of a quasi-judicial nature. This 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 he had failed to render it probable that he would risk being subjected to torture or to inhuman or degrading treatment or punishment or being killed in case of his return to Somalia. Consequently, according to the State party, the present communication merely reflects that the author disagrees with the assessment of his credibility and the background material made by the RAB. 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 RAB had 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 RAB, 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 would stay, the "Al-Shabaab will find him and he will not be able to live in peace"; that "in the rest of Somalia, he will always be persecuted because his clan is suppressed"; that he has recently spoken with his mother for the first time since he fled Somalia and that she told him that Al-Shabaab had been still looking for him; and that they have unsuccessfully tried to kidnap the author's younger brother, but he had escaped and that the author's family has now left their hometown. The author also submits that his burnt leg has been operated twice because of severe pain and soreness. Further, he reiterates that his father and brother were killed by Al-Shabaab "when they were trying to flee from their hometown. Al-Shabaab thought the father and brother were traitors" and shot them. Finally, the author submits that the situation in Somalia "severely aggravated in the past years" and that (he) will be in great risk of being killed there. He notes that "Al-Shabaab force is still very active, and has just recently killed 75 Amisom troops from Bundi in Leego near Qoryoleyey."

5.2 On 21 August 2015, the author submits that "the Government of Somalia has reinforced its efforts in fighting Al-Shaabab, but is yet to gain control over the specific region and area", from where he originates and, therefore, he is in great risk to suffer inhuman or degrading treatment or death if returned to Somalia. "Due to the present situation in the Qoryooley area, there should be no doubt, that [he] has 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 lifted any reason for the commination to be inadmissible."<sup>16</sup>

---

<sup>16</sup> The author also refers to the judgment, invoked by the State party, of the European Court of Human Rights in the case *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, see also FN 23 above.



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

6.1 In response, by note verbale of 25 January 2016, the State party reiterates that the information provided by the author in this case cannot lead to a different assessment of the author's asylum case as already carried out by the RAB. As 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 before the Danish Immigration Service on 2 April 2014, he stated that he 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 to the transcript of his medical records, submitted by the author to the Committee, the State party observes that the medical records do not substantiate in any way that he was subjected to torture when he was imprisoned in Somalia. In this regard, the State party notes that according to the transcript of the author's medical records, the reason for the author's pain in his leg was that he has been diagnosed with tuberculosis and that, therefore, he had a surgery as his leg was affected by the infection.

6.2 The State party reiterates that the general conditions in Somalia are not of such nature that the author would risk being subjected to abuse falling under articles 7 or 9 of the Covenant if returned to Somalia. It notes that the Danish authorities are aware that the security situation in South Somalia is precarious. However, the RAB 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 Somali government and AMISOM. Accordingly, the State party reiterates that the present communication should be declared as 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.

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

#### *Consideration of admissibility*

7.1 Before considering any claims contained in a communication, the Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

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 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. However, the Committee observes that the author has failed to provide any substantiation whatsoever in that regard. The Committee, therefore, considers that the author has failed to sufficiently substantiate his

claim for purposes of admissibility and that, accordingly, declares this part of the communication inadmissible pursuant to article 2 of the Optional Protocol.<sup>17</sup>

7.5 The Committee further 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 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 Human Rights Committee has considered the present 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 its general comment No. 31 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 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 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 risk being subjected to ill-treatment by Al-Shabaab and because he belongs to a minority clan that has always been "supressed". He claims that he has been threatened by Al-Shabaab with ill-treatment because he refused to join them, as well as that he was imprisoned in 2013 when he was falsely accused for theft, and he was beaten and his leg was burnt 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, i.e., the Danish Immigration Service and the RAB, 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-

---

<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 general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, 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; and No. 344/2008, *A.M.A. v. Switzerland*, decision adopted on 12 November 2010. 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; no. 1833/2008, *X. v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

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

treatment in prison in Somalia because he belongs 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 the author's statements concerning the approaches from Al-Shabaab and his escape from them in November 2011 vague and inconsistent; that his father's conflict with the Habar Gidir clan dated back a long time, 17 or 18 years ago; that the author himself had never had a conflict with this clan and that even though he claims that he was falsely accused of theft and imprisoned because he belonged to a minority clan, nevertheless he was released with an assistance of the council of elderlies who helped to pay for his release.

8.5 In this connection, the Committee notes that the author claims that he underwent surgeries on two occasions because his leg was 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 has been medically treated due to a tuberculosis infection and not because of ill-treatment he claims to have suffered in prison in Somalia. In addition, the Committee notes that the State party's immigration authorities assessed also the general conditions in Qoryooley regarding 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 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 whether such a risk exists.<sup>24</sup> In the instant case, the Committee observes that the Danish Immigration Service refused the author's asylum request, the author appealed that decision and the RAB reviewed his case.

8.7 The Committee is aware of the existence of concerns regarding the Al-Shabaab's continuing presence in Southern and Central Somalia.<sup>25</sup> However, the Committee notes that in examining the author's asylum request, the RAB reviewed the author's allegations making a specific and individual risk assessment, also taking into due consideration the information concerning the situation in the Qoryooley area. In addition, the Committee notes that, in fact, the author challenges the assessment of evidence and factual conclusions reached by the RAB, without however adducing any element in support which would permit to demonstrate that they are 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>

---

<sup>23</sup> 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, and No. 1833/2008, *X. v. Sweden*, Views adopted on 1 November 2011, para. 5.18; communication No.2347/2014, *K.G. v. Denmark*, Views adopted on 22 March 2016, para. 7.4.

<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, *Lin v. Australia*, Views adopted on 21 March 2013, para. 9.3.

<sup>25</sup> See for example UNHCR Position on Southern and Central Somalia (Update 1), UNHCR May 2016, para.6

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

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

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.

---