



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

Advance unedited version

Distr.: Restricted*
13 August 2021

Original: English

Committee against Torture

**Decision adopted by the Committee under article 22 of the
Convention, concerning Communication No. 792/2016****

<i>Communication submitted by:</i>	H. S. (represented by the Danish Refugee Council)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Denmark
<i>Date of complaint:</i>	19 December 2016 (initial submission)
<i>Document references:</i>	Decisions taken pursuant to Rules 114 and 115 of the Committee's Rules of procedure, transmitted to the State party on 20 December 2016 (not issued in document form).
<i>Date of present decision:</i>	19 July 2021
<i>Subject matter:</i>	Deportation to Uganda
<i>Procedural issue:</i>	Admissibility – manifestly ill-founded
<i>Substantive issues:</i>	Non-refoulement; torture
<i>Article of the Convention:</i>	3

- * Adopted by the Committee at its seventy-first session (12-30 July 2021).
 ** The following members of the Committee participated in the examination of the communication: Essadia Belmir, Claude Heller, Erdogan Iscan, Liu Huawen, Ilvija Puce, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé and Bakhtiyar Tuzmukhamedov. Pursuant to rule 109, read in conjunction with rule 15, of the Committee's rules of procedure, and paragraph 10 of the guidelines on the independence and impartiality of members of the human rights treaty bodies (the Addis Ababa guidelines), Peter Vedel Kessing did not participate in the examination of the communication.



1.1 The complainant is H. S., a Ugandan national born in 1977 whose asylum claim was rejected in Denmark and she risks deportation. She claims that by deporting her to Uganda, Denmark would violate article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention). The State party made the declaration pursuant to article 22 (1) of the Convention on 27 May 1987. The complainant is represented by the Danish Refugee Council.

1.2 On *vinter 2016/2017*, she requested that the Committee grant interim measures. On *vinter 2016/2017*, pursuant to Rule 114 of its Rules of Procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party to refrain from returning the complainant to Uganda while her communication was under consideration by the Committee. On 21 March 2019, the Committee denied the State party's request to lift interim measures.

The facts as submitted by the complainant

2.1 The complainant understood that she is a lesbian since she was 14 years old and she has had sexual relationships with girls since the age of 19. She attended school between 1981 and 1996. In this period, she had relationships with two girls, M. and R. In 1996, her family found her with R. The complainant's father called R. "Satan" and threw her out of the house. From this moment on, the complainant was kept at home as her family tried to hide her homosexuality. Nonetheless, some local people found out about it. They spat and yelled at the complainant and told her to stay away from other girls. In 1998, the complainant was raped by a man who repeatedly told her that a woman should be with a man. The complainant told her father about this incident but he did not react. The complainant's family expelled her from their home and she has not been in contact with her family since then.

2.2 The complainant moved to the town of Z., where she lived with a lesbian friend B. for nine years. She hid her sexual orientation in order to avoid attacks. She and B. sold second-hand clothes at the local market. Some men suspected the complainant of being a lesbian and called her "bisiyaga".¹ The complainant tried to avoid encountering this group of men by changing her route to and from the market, hiding and running away from them. She only left her home when necessary and, when at home, locked the doors to avoid being attacked. She feared being outed as a lesbian and being raped.

2.3 The complainant was not in a relationship in Z. due to the risk of being exposed as a lesbian. Occasionally she and B. went to a bar frequented by other homosexuals. When going to the bar and returning, the complainant was very discrete and careful. She had sexual encounters with women she met at the bar and sometimes went home with them but they never stayed overnight because it increased the risk of someone finding out.

2.4 In *forår 2007*, the complainant met a woman called A. in a bar in Z and entered into a relationship with her. In *sommer 2007*, the complainant fled Uganda for Denmark with A. because she was not free to live as a homosexual in Uganda and feared being raped and imprisoned due to her sexual orientation.²

2.5 At her arrival in Denmark, the complainant did not apply for asylum because she did not know that she had to actively do something to be allowed to stay in Denmark. She refers to two statements by independent psychiatrists in Denmark³ according to which she is happy to leave important decisions about her life to other people. The complainant put her full trust in A., who did not explain to her that she would have to apply for asylum or a residence permit in Denmark. A. told her that she was now safe in a country where she had rights. While living with A., the complainant remained isolated, did not meet A.'s family, relatives or friends and only rarely had any form of social contact

2.6 After living with A. for five or six months, the complainant was left in a bar with her passport, which had previously been in A.'s possession. Following that, she lived around the

¹ A negative word for homosexuals.

² The complainant legally entered Denmark with a Schengen visa valid from *sommer 2007* to *sommer 2007*. She stated to Danish authorities that all formalities related to the visa application had been performed by A.

³ The first statement is undated. The second one is dated *sommer 2015*

central station in Copenhagen before an African couple offered her shelter in return for household duties. She collected bottles on the streets to earn some money. She never talked to the couple about residence permits.

2.7 She only became aware of her illegal situation on *förår 2013* when the police found her in the couple's apartment and arrested her for staying illegally in Denmark. The complainant was placed in custody where she applied for asylum and was interviewed by Center Mod Menneskehandel (CMM), the Danish Centre against Human Trafficking, which recognized her as a victim of human trafficking. The complainant was released from custody the following day.

2.8 On *efterår 2013*, the Danish Immigration Service concluded that the complainant was not a victim of human trafficking. On *förår 2014*, the Danish Immigration Service rejected the complainant's request for asylum. On *förår 2014*, the complainant contacted LGBT Asylum, an organization which defends rights of lesbian, gay, bisexual and transgender asylum seekers, and became an active member. On *efterår 2014*, the Danish Refugee Appeals Board (RAB) upheld the Danish Immigration Service's rejection of the complainant's request for asylum, founding that the complainant's account of facts was not credible.

2.9 CMM conducted a new in-depth interview on *efterår 2014*, due to a mistake in the English translation of the *efterår 2013* decision of the Danish Immigration Service. CMM concluded that there was a suspicion of human trafficking which could not be fully assessed. On *efterår 2014*, the Danish Immigration Service recognized the complainant as a victim of human trafficking.

2.10 On *sommer 2016*, Danish Refugee Council requested the RAB to reopen the complainant's case as she had been diagnosed with post-traumatic stress disorder (PTSD) and dissociative amnesia and she had been identified as a victim of human trafficking. On *sommer 2016*, the RAB reopened the case and accepted the complainant's account of facts but found that the risk of persecution was not sufficient for granting asylum. On *vinter 2016/2017*, it rejected the complainant's request for asylum.

2.11 As a member of LGBT Asylum, the complainant has given a number of public statements and participated in pride parades and debates. She has also given anonymous interviews to Danish media. On *vinter 2016/2017*, an article appeared in a Ugandan gossip publication featuring the complainant's name and photo. The article presented her as "a top Ugandan lesbian" to be deported from Denmark.

2.12 On *sommer 2017* the complainant informed the Committee that her asylum application had been reviewed by the RAB. On *sommer 2017*, the RAB again rejected her request for asylum.

The complaint

3.1 The complainant claims that in Uganda, she will be subjected to persecution by local population and the Ugandan authorities on the basis of her sexual orientation. She argues that her previous experience of serious ill-treatment due to her homosexuality taken in conjunction with the general human rights conditions facing homosexuals in Uganda give rise to a real, personal and present risk for her being subjected to torture if deported to Uganda, in violation of article 3 of the Convention.

3.2 She maintains that her situation is similar to the circumstances in *J.K. v. Canada*⁴ as regards her previous experience of serious ill-treatment on the basis of her sexual orientation, her level of profile and activism in LGBTI advocacy organizations and the general human rights situation for LGBTI persons in Uganda.

3.3 Concerning her experience of ill-treatment, the complainant refers to the "curative rape" she was subjected to and to threats received from her family and local community in Uganda because of her sexual orientation. She claims that prior to fleeing from Uganda, she had lived in a constant fear of being raped and had hidden her sexuality in order to avoid

⁴ Communication No. 562/2013, *J.K. v. Canada*, decision adopted on 23 November 2015.

further ill-treatment. In this regard, the complainant notes, with a reference to the judgment of the Court of Justice of the European Union *X.Y.Z. v. Minister voor Immigratie en Asiel*,⁵ that a possibility for a homosexual person to conceal or exercise restraint in expression of their sexual orientation is irrelevant to determination of prosecution.

3.4 The complainant submits that since 2014, she has actively engaged in LGBTI advocacy in Denmark, which increases a real and personal risk for her to be subjected to ill-treatment contrary to article 3 of the Convention if deported.

3.5 She claims that LGBTI persons in Uganda face a risk of systematic ill-treatment contrary to article 3 of the Convention, particularly LGBTI activists. She cites a number of 2014 to 2016 reports by non-governmental organizations, governmental organizations⁶ and media, according to which LGBTI persons in Uganda experience discrimination, harassment and attacks even after the Anti-Homosexuality Act was nullified by the Ugandan Constitutional Court in August 2014. According to the reports, lesbian women face arrest and incarceration under Section 145 of the Ugandan Penal Code, are subjected to physical and verbal abuse and may endure "corrective rape". Abuses of rights of LGBTI persons were also reportedly committed or condoned by Ugandan police, even if on some occasions the police protected LGBTI persons. The complainant submits against this background that she runs an ongoing risk of being subjected to "curative" rape she has already fallen victim to.

State party's observations on admissibility and merits

4.1 In its observations dated 19 January 2018, the State party observes that following the complainant's communication to the Committee, the RAB, reopened the case and adopted a new substantive decision on *sommar 2017*. The State party submits that the complainant's communication contains no new information about her personal circumstances or her grounds for asylum, in addition to information considered by the RAB in its decisions of *eftir 2014*, *vinter 2016/2017* and *for 2017*. In its decision of *for 2017*, the RAB took into account background information on Uganda referred to by the complainant as well as additional and more recent background information. The State party concludes that the merits of all of the complainant's claims have been thoroughly examined by the RAB. In its assessment of whether the complainant is at risk of abuse under article 3 of the Convention if deported, the RAB considered the following: 1) the abuse to which the complainant was subjected in Uganda and the risk of abuse if deported; 2) the complainant's activities for LGBTI organizations in Denmark; 3) the article on a Ugandan website which reveals the complainant's name and photo and 4) general conditions for lesbians in Uganda, both *per se* and combined with the complainant's specific circumstances.

4.2 The State party maintains that due to this thorough consideration of the complainant's case by domestic authorities and for the reasons stated further in its observations on the merits, the complainant has failed to establish a *prima facie* case for the purpose of admissibility. The State party considers that the complainant has not established substantial grounds for believing that she would be in danger of being subjected to torture or other cruel, inhuman or degrading treatment or punishment if deported.

4.3 Should the Committee find the communication admissible, the State party submits that the complainant has not sufficiently established that her return to Uganda would constitute a violation of article 3 of the Convention.

4.4 The State party observes that its obligations under article 3 of the Convention are reflected in section 7 (1) and (2) of the Danish Aliens Act and that when assessing the risk of violation of article 3 of the Convention, the domestic authorities rely on criteria elaborated by the Committee in its General comment No. 1 (paras 5 to 7) and in its jurisprudence. The complainant did not meet the criteria of article 3 violation as she did not present an arguable

⁵ CJEU, *X.Y.Z. v. Minister voor Immigratie en Asiel*, C-199/12 to C-201/12, judgment of 7 November 2013, paras 70 and 71.

⁶ Reports by Human Rights Watch, Amnesty International, Freedom House, Chapter Four, Organization for Refuge, Asylum & Migration, Bertelsmann Stiftung, the United States Department of State, the United Kingdom Home Office and the Finnish Immigration Service.

case establishing that she would face a 'foreseeable, real and personal' risk of being subjected to torture.

4.5 Referring to para. 9 of the Committee's General Comment No. 1, the State party submits that the Committee is not an appellate, a quasi-judicial or an administrative body and that considerable weight should be given to findings of fact that are made by organs of the State party. The State party draws the Committee's attention to the fact that the complainant's case has been examined by two instances, including three times by the RAB at oral hearings before three different panels. During the procedure before the RAB, the complainant could present her views, in writing and orally, assisted by counsel.

4.6 The State party adds that the RAB conducted a comprehensive and thorough examination of the complainant's statements and of all other information available in the case, including the complainant's communication to the Committee and that the Board's assessments are clearly and thoroughly justified and substantiated by background material from reliable and objective sources. The State party also notes that the medical records produced on the complainant's mental health were taken into account by the Refugee Appeals Board. As a result, the Board did not accord any value to inconsistencies and unlikely elements in the complainant's statements. On the contrary, in its decisions of *vinter 2016/2017* and *forår 2017*, the RAB essentially accepted the complainant's account of her grounds for asylum. The State party considers that the complainant fails to identify any irregularity in the RAB's decision-making. The State party concludes that the complainant's communication to the Committee merely reflects her disagreement with the assessment of her specific circumstances and background information by the RAB in an attempt to use the Committee as an appellate body.

4.7 The State also submits that the account of facts given by the complainant to the Committee "paints a different picture" compared to the statements she made at two interviews by the Danish Immigration Service on *eftvær 2013* and *forår 2014* and at three oral hearings at the RAB on: *eftvær 2014*, *vinter 2016/2017* and *forår 2017*.

4.8 As regards her stay in town C., during the asylum proceedings, she stated that she and B. were afraid of being reported to the authorities, were occasionally asked by turned down men if they were lesbians, were suspected and spoken ill of by people and the village. However, the nature of approaches from men described by the complainant in no way resembles the information she submitted to the Committee. At no point did she mention to Danish authorities, as to the Committee, that she had 'feared being outed as a lesbian and being raped' or that she 'only left her home [...] when necessary and, when at home, locked the doors to prevent being attacked in her home'.

4.9 During the asylum proceedings, the complainant reported that other than advances made by men, she experienced no problems in the town Z. She provided no information about any actual gossip or any other kind of problems caused by her lifestyle. When asked whether she had been subjected to physical abuse in town Z., she responded in the negative. The State party further observes that her statements in her communication to the Committee about the risks she faced because of going to bars frequented by other homosexuals and coming back home with other women differ from the statements she made to Danish immigration authorities. When asked whether any problems had arisen because she had frequented homosexual bars, she replied in the negative and stated that even if people were not open about their homosexuality, they knew who was homosexual. The State party stresses that the complainant and B. indisputably managed to live together in town C. for nine years, although this was known by the surroundings, and they were not subjected to abuse or the like at any point during this long period.

4.10 The State party further contests the statements given by the complainant to the Committee according to which she had "fled Uganda for Denmark" because "she was not free to live as a homosexual" and "feared being raped and imprisoned". The State party refers to the complainant's statements before the RAB according to which she had never attempted to leave Uganda before meeting A. and their departure was A.'s initiative. The complainant stated that she and A. had been together for a month before deciding to leave and that they had talked about the journey as lovers. When asked why she had travelled to Denmark, the complainant replied that A. had shown her love. When asked whether the reason for her

departure with A. was that people in the village had spoken ill of her, the complainant replied that she had not wanted to go to prison, that their love had been strong and that they had been harassed.

4.11 The State party contests the complainant's statement to the Committee, according to which she had lived in town C. "avoiding further ill treatment from the Ugandan authorities". At no time did the complainant state to the domestic authorities that she had had problems with or had been harassed by Ugandan authorities. It appears from the complainant's statement given to the RAB on *ette 2014* that she believed that the local council in her parents' village had come to know about her homosexuality before she moved away from her parents, but that she had not been contacted by the police or by local authorities. Against this background, the State party cannot accept the complainant's account of the facts to the Committee. This also applies to the complainant's statement to the Committee according to which she had 'lived in constant fear of being raped before fleeing Uganda' and "hid her sexuality and took precautions to avoid further ill treatment".

4.12 Regarding the complainant's previous ill-treatment in Uganda in the form of "corrective rape" and threats from her family and the local community, the State party observes that the RAB agrees with the complainant that without being a decisive indicator of future risk, information on previous ill-treatment is an important factor when assessing whether there is an actual risk of ill-treatment. In accordance with para. 8 of the Committee's General Comment No. 1, the Board made a thorough assessment of whether the abuse and treatment to which the complainant had been subjected by other people in the village of her parents imply that, if returned to Uganda, she would be at risk of treatment contrary to article 3 of the Convention. The Board's findings against this hypothesis are partly based on the fact that a long time has passed since she was subjected to the treatment in question⁷ and partly on the fact that, despite her particular vulnerability and mental state resulting from her traumatic experience, the complainant subsequently managed to live for nine years in town C. and had had a homosexual relationship with A. there until she departed for Denmark in 2007 due to this relationship. and on A.'s initiative.

4.13 The State party observes that in compliance with the jurisprudence of the Court of Justice of the European Union *X.Y.Z. v. Minister voor Immigratie en Asiel*, cited by the complainant, and in line with article 3 (2) of the Convention, the RAB conducted a thorough assessment of whether the complainant would be at risk of abuse contrary to article 3 of the Convention in case of her return to Uganda due to the general situation for lesbians in Uganda. The State party refers to the RAB's decision of *forår 2017* in which it examines Ugandan law and the actual situation of LGBTI persons, relying on more recent background information than that referred to by the complainant.

4.14 The State party also refers to the RAB's decision of *vinter 2016/2017* in which it finds that the applicant was neither a high-profile homosexual individual nor in conflict with anyone at the time of her departure from Uganda. Regarding the complainant's advocacy activities in Denmark, the State party is of the opinion that the circumstances in *J.K. v. Canada* differ from the circumstances in this case. J.K. participated actively in LGBTI advocacy in Uganda, was charged by Ugandan authorities with "having carnal knowledge against nature" and could be detained upon his return to Uganda pursuant to these charges. Unlike J.K., the complainant did not engage in any LGBTI activities in Uganda and her political activities for LGBTI organizations in Denmark appear to be anonymous or at least of a nature that has not made her a high-profile individual to such an extent that she would risk circumstances justifying asylum under section 7 of the Aliens Act. The State further submits that the situation in Uganda has changed in recent years and continues to change. The situation in 2010-2012, when there were assumptions that the Anti-Homosexuality Act could be brought before the Parliament again at any time, cannot be compared with the current situation.

4.15 Finally, regarding the article containing the complainant's name and photo in a Ugandan gossip web publication, the State party observes that following the complainant's request to reopen her case to the RAB on *sommer 2016*, the Board received an email from the

⁷ The State party refers to para. 8 (b) of the Committee's General comment No. 1.

complainant on *summer 2016* with a link to a Ugandan publication. The article dealt with the Danish authorities' decision to remove two Ugandan lesbian women. Neither the complainant's name nor her photo appeared in the article. In its decision of *vinster 2016/2017* the RAB emphasized that the applicant was not identified in the article. On *vinster 2017/2017*, the complainant once again requested the RAB to reopen her case referring to another article, published on *vinster 2016/2017*, featuring her name and photo. In its decision of *för år 2017*, the Board concluded that the fact that the complainant's name and photo had appeared in an article on a Ugandan website cannot lead to a different assessment because in its previous decision, the Board had taken into account background information according to which "a number of organizations, mainly in Kampala, [were] actively and openly discussing LGBT rights and pursuing rights cases before the courts, that support networks for homosexuals ha[d] been set up, and that LGBT issues [were] discussed openly in large towns". The State party considers that the RAB has taken into account the general situation for homosexuals in Uganda and the complainant's specific profile.

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

5.1 In her comments dated 28 February 2019, the complainant refers to several reports by international NGOs on the general situation of LGBTI persons in Uganda. She quotes the "World Report 2018 – Uganda" by Human Rights Watch, published on 18 January 2018, according to which "[s]ame-sex conduct remained criminalized under Uganda's colonial-era law" and "[c]oncerns remain that the 2016 NGO law effectively criminalizes legitimate advocacy on rights of lesbian, gay, bisexual, and transgender (LGBT) people". The report refers to cancellation of Pride celebrations in Kampala and Jinja following threats of arrest and violence to organizers by the Minister of ethics and integrity. It also alerts on the police's failure to end the practice of forced anal examinations of men and transgender women accused of consensual same sex-conduct.

5.2 The complainant further cites an extract from the "Freedom on the Net 2018 – Uganda" report by Freedom House, published on 1st November 2018, which alerts on reported hack attacks against homosexuals for the purpose of blackmailing and a hack attack against a social worker at the Most at Risk Populations Initiative, which, according to activists, "may have been perpetrated by the government given the sheer amount of information the social worker possessed about the LGBTI community through their work and private communications". The complainant also invokes the report "Freedom in the World 2018 – Uganda" by Freedom House, published on 5 April 2018, according to which the LGBT community "continues to face overt hostility from the government and much of society", homosexuality "remains effectively criminalized under colonial law and men and transgender women accused of consensual same-sex conduct may be forced to undergo an anal exam". Finally, the complainant refers to the article "Uganda: Human Rights Group Targeted in Violent Break-In", published on 9 February 2018 by Human Rights Watch, which describes how human rights NGOs, including those which defend rights of LGBTI persons, have been subjected to a string of break-ins, burglaries and attacks without the police having identified or arrested the suspects. The complainant observes that this recent background information confirms that LGBTI persons in Uganda are facing a difficult situation and NGOs working to protect the rights of LGBTI persons in Uganda are subject to harassment.

5.3 The complainant submits that the last RAB's decision was based on background information and did not consider the risks she could be facing after her photo and name were exposed in a web media article.

5.4 The complainant contests the State party's assertion about discrepancies between the account of facts to the Committee and the information she provided during the asylum proceedings. First, she notes that "being repeatedly questioned and called derogatory names by men, couriers, seems very consistent" with her statement that she and B. were approached by men who wanted to date them and when turned down asked them if they were lesbians. Second, she submits that it is possible that her underlying reason for going to Denmark with A. was the opportunity to flee Uganda and avoid risk of being raped and imprisoned due to her sexual orientation. In this respect, she recalls her medical diagnosis according to which she does not take any kind of initiative and leaves it to others to make important decisions

regarding her life. She also recalls that she has been identified as a victim of human trafficking. She concludes that “due to her particular vulnerability and her mental state she cannot be expected to necessarily explain underlying reasons on her own account” and therefore, “it cannot be regarded as ‘painting a different picture of the actual facts’, when she expresses deeper reasons for her behaviour”.

State party’s additional observations

6.1 On 20 June 2019, the State party submitted additional observations stating that the complainant’s observations dated 28 February 2019 did not provide new information. Therefore, the State party reiterates its observations of 19 January 2018.

6.2 The State party acknowledges that according to recent background information available to the RAB, LGBTI persons face a difficult situation in Uganda. However, this does not imply that the complainant, if deported, would face ill-treatment in violation of article 3 of the Convention. The State party notes that the decisive issue is whether the complainant, with her specific profile, would face a real risk of ill-treatment upon return. The State party maintains that the complainant failed to establish substantial grounds for believing that she would be in danger of being subjected to torture or to inhuman or degrading treatment or punishment in Uganda.

6.3 The State party submits that the RAB took into account the complainant’s vulnerability and mental state by accepting her grounds for seeking asylum, despite inconsistencies and unlikely elements in her statements. The State party maintains however that the facts of the case are interpreted differently in the submission made on behalf of the complainant and in the complainant’s statements during the asylum proceedings.

6.4 The State party concludes that the complainant’s return to Uganda would not constitute a violation of article 3 of the Convention.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claims submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.2 In accordance with article 22 (5) (b) of the Convention, the Committee shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that the State party did not contest the complainant’s assertion that she exhausted all available domestic remedies. Consequently, the Committee considers that it is not precluded by article 22 (5) (b) of the Convention from examining the communication.

7.3 The Committee notes the State party’s argument that the communication must be rejected as manifestly ill-founded because the complainant’s claims have been thoroughly examined by domestic authorities and the complainant has failed to substantiate the existence of a personal risk of torture or other cruel, inhuman or degrading treatment or punishment contrary to article 3 of the Convention upon her return to Uganda.

7.4 The Committee considers, however, that the complainant’s claims of risk of ill-treatment contrary to article 3 of the Convention on account of her sexual orientation, have been sufficiently substantiated, for the purpose of admissibility.

7.5 As the Committee finds no further obstacles to admissibility, it declares the complaint submitted under article 3 of the Convention admissible and proceeds with its consideration of the merits.

Consideration of the merits

8.1 In accordance with article 22 (4) of the Convention, the Committee has considered the communication in the light of all the information made available to it by the parties.

8.2 The issue before the Committee is whether the forced removal of the complainant to Uganda would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return ("*refouler*") a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture.⁸

8.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally at risk of being subjected to torture upon return to Uganda. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of the determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.⁹

⁸ For prior jurisprudence on *non-refoulement* claims of LGBTI persons facing removal to Uganda, see *J.K. v. Canada* (CAT/C/56/D/562/2013) (violation of article 3 in view of the author's sexual orientation, his militancy in LGBTI organizations and the fact that he could be detained pursuant to criminal charges brought against him); *Joyce Nakato Nakawunde v. Canada* (CAT/C/64/D/615/2014) (inadmissible due to non-exhaustion of domestic remedies). For other jurisprudence related to *non-refoulement* claims of LGBTI persons see *H.R.E.S v. Switzerland* (CAT/C/64/D/783/2016) (non-violation of article 3 in case of the complainant's return to Iran, despite the fact that the homosexuality is generally prohibited in this country, because the complainant did not claim that the Iranian authorities were aware of his sexual orientation or that he would express his homosexuality in the public sphere); *Utam Mondal v. Sweden* (CAT/C/46/D/338/2008) (violation of article 3 in case of the complainant's expulsion to Bangladesh in view of his past experience of torture, his former political activities and the risk of persecution on the basis of his homosexuality combined with the fact that he belongs to a minority Hindu group). For jurisprudence of other treaty bodies see Human Rights Committee, *X. v. Sweden*, (CCPR/C/103/D/1833/2008) (violation of articles 6 and 7 of the International Covenant on Civil and Political Rights because the State party's authorities focused mainly on credibility in the author's account of facts and insufficient weight was given to the author's allegations of the real risk he might face in Afghanistan in view of his sexual orientation); Human Rights Committee, *M.K.H. v. Denmark* (CCPR/C/117/D/2462/2014) (violation of article 7 of the CCPR because of arbitrary examination of the complainant's claims, *inter alia*, as regards the situation of LGBTI persons in Bangladesh); Human Rights Committee (CCPR/C/108/D/2149/2012) (violation of article 7 of the CCPR because of the authorities' failure to take into due consideration the author's allegations regarding the events she experienced in Bangladesh because of her sexual orientation — in particular her mistreatment by the police — in assessing the alleged risk she would face if returned to her country of origin). Human Rights Committee, *W.K. v. Canada*, (CCPR/C/122/D/2292/2013) (non-violation of articles 6 and 7 of the CCPR in case of the complainant's return to Egypt, notwithstanding serious human rights abuses committed against homosexuals in Egypt, because the author did not provide any specific argument that would lead to the conclusion that he would be at real and personal risk if he were to return and because the applications filed and arguments submitted by the author were thoroughly examined by the State party's authorities). CEDAW, *A.S. v. Denmark* (CEDAW/C/69/D/80/2015) (non-admissibility due to lack of substantiation and due to absence of evidence that the authorities failed to give sufficient consideration to the author's application for asylum, or that, in the examination of her case, there was any procedural defect or arbitrariness).

⁹ See, for example, communications No. 801/2017, *E.T. v. the Netherlands*, decision adopted on 26 November 2018, para. 7.3; No. No. 822/2017, *Y.G. v. Switzerland*, decision adopted on 26 November 2018 para. 7.3.

8.4 The Committee recalls its General comment No. 4 (2017) on the implementation of article 3 in the context of article 22, according to which the *non-refoulement* obligation exists whenever there are “substantial grounds” for believing that the person concerned would be in danger of being subjected to torture in a State to which he or she is facing deportation, either as an individual or as a member of a group that may be at risk of being tortured in the State of destination. The Committee recalls that “substantial grounds” exist whenever the risk of torture is “foreseeable, personal, present and real.”¹⁰ Indications of personal risk may include, but are not limited to: (a) the political affiliation or political activities of the complainant and/or the complainant’s family members; (b) his or her sexual orientation and (c) violence against women, including rape.¹¹

8.5 The Committee also recalls that the burden of proof is upon the author of the communication, who must present an arguable case, that is, submit substantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real. However, when complainants are unable to elaborate on their case, such as when they have demonstrated that they are unable to obtain documentation relating to their allegations of torture or have been deprived of their liberty, the burden of proof is reversed and the State party concerned must investigate the allegations and verify the information on which the complaint is based.¹²

8.6 The Committee notes the complainant’s argument that she would be exposed to a real, personal and present risk of torture if returned to Uganda in light of the generalized ill-treatment of LGBTI persons in Uganda, her level of profile and activism in LGBTI advocacy organizations in Denmark and the fact that, in the past, she was subjected to “corrective rape” because of her sexual orientation. The Committee further notes the complainant’s argument that Danish authorities did not give sufficient consideration to additional risks she was facing following the publication of an online article featuring her name and photo.

8.7 The Committee notes the State party’s observations that the complainant’s personal circumstances, including the media article disclosing her name and photo, have been thoroughly examined by domestic authorities taking into account the general human rights situation for LGBTI persons in Uganda. The Committee also notes the State party’s argument that domestic authorities took into account the complainant’s diagnosis of PTSD and accepted the account of facts she gave to asylum authorities despite inconsistencies and unlikely elements in her statements. The Committee further notes the State party’s argument that some statements submitted in the complainant’s communication to the Committee do not correspond to the account of facts given to Danish authorities during the asylum proceedings.

8.8 The Committee observes that it is not disputed that the complainant was subjected to “corrective rape” on the basis of her sexual orientation in Uganda. The Committee refers to its General comment 4 according to which when applying the principle of “*non-refoulement*”, States parties should consider whether, in the State of origin or in the State to which the person is being deported, the person has been or would be a victim of violence, including gender-based or sexual violence, in public or in private, amounting to torture, without the intervention of the competent authorities for the protection of the victim.¹³ When examining allegations of violation of article 3 of the Convention, the Committee should take into account whether the complainant has been tortured or ill-treated by, at the instigation of or with the consent or the acquiescence (tacit agreement) of a public official or other person acting in an official capacity in the past, and, if so, whether this was in the recent past.¹⁴

8.9 The Committee recalls that rape committed by private actors without the State exercising due diligence to intervene to stop, sanction and provide remedies to victims constitutes torture within the meaning of article 1 of the Convention.¹⁵ At the same time, however, the Committee notes that the complainant was aggressed by a private individual

¹⁰ See General comment No. 4 (2017) on the implementation of article 3 in the context of article 22, para. 11.

¹¹ *Ibid*, para. 45.

¹² *Ibid*, para. 38.

¹³ General comment No. 4 (2017), para. 29 (c).

¹⁴ *Ibid*, para. 49 (b).

¹⁵ General comment No. 2 (2008), Implementation of article 2 by States parties, para. 18.

and that this incident was never reported to the authorities. The complainant does not argue that the Ugandan authorities could have been aware of the rape, did not show due diligence in identifying and sanctioning the perpetrator or did not offer her an effective remedy.

8.10 The Committee further recalls that ill-treatment suffered in the past is only one element to be taken into account when assessing the risk of violation of article 3 of the Convention. The principal aim of such assessment is to determine whether the complainant currently runs the risk of being subjected to torture upon her return to her country of origin. It does not automatically follow from the complainant's former ill-treatment that she would still be at risk of being subjected to torture if she is returned to Uganda.¹⁶ The Committee notes that when assessing the complainant's asylum case, the Danish migration authorities took into account the important period of time elapsed between the complainant's rape and her departure from Uganda and the fact that during nine years prior to her departure she had lived with another woman and had had homosexual relationships without being aggressed by the local community or persecuted by the authorities. The Committee further notes that the complainant does not claim that the Ugandan authorities attempted to prevent her from leaving Uganda. Neither has she submitted any evidence suggesting that the Ugandan authorities, such as the police or other security services, have been looking for her.¹⁷

8.11 The Committee notes the State party's argument that the complainant did not engage in LGBTI advocacy activities in Uganda and that her activities for LGBTI organizations in Denmark appeared to be anonymous or of a nature that has not made her a high-profile individual to such an extent that she would risk torture if returned to Uganda. The Committee recalls that when evaluating the risk of violation of article 3 of the Convention, it is pertinent to take into account whether the complainant has engaged in political or other activities within or outside the State concerned that would appear to make the complainant vulnerable to the risk of being subjected to torture in case of deportation.¹⁸ The Committee considers that even if her participation in LGBTI advocacy in Denmark could potentially put her at risk of ill-treatment contrary to article 3 of the Convention, the complainant has failed to adduce sufficient evidence to show that her engagement in advocacy activities was of such significance that she would attract the attention of the Ugandan authorities.

8.12 The Committee further notes the complainant's argument that the RAB failed to consider the risks she could be facing as a result of the disclosure of her name and photograph in an article in a Ugandan gossip publication. The Committee notes, however, that in its decision of 2017, the RAB examined this circumstance and concluded that it did not create a risk for the complainant to be subjected to torture if returned to Uganda because a number of organizations, mainly in Kampala, were actively and openly discussing LGBTI rights and pursuing LGBTI rights cases before courts and LGBTI issues were discussed openly in large towns.

8.13 The Committee notes that according to article 3 (2) of the Convention, in order to determine whether there are grounds for believing that a person would be in danger of being subjected to torture if returned to another State, the competent authorities shall take into account the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights, including harassment and violence against minority groups¹⁹. The Committee notes with concern the reports on human rights violations committed against LGBTI persons in Uganda. The Committee recalls however that the occurrence of human rights violations in a complainant's country of origin is not sufficient in itself to conclude that he or she runs a personal risk of torture upon return to this country. Therefore, the mere fact that human rights violations of LGBTI persons are reported in Uganda is not in itself

¹⁶ See, communications No. 61/1996, *X, Y and Z v. Sweden*, decision adopted on 6 May 1998, para. 11.2; No. 435/2010, *G.B.M. v. Sweden*, decision of 14 November 2012, para. 7.7; No. 458/2011, *X v. Denmark*, decision adopted on 28 November 2014, para. 9.5; No. 602/2014, *S.S.B. v. Denmark*, decision adopted on 28 April 2017, para. 8.7.

¹⁷ See, for example, Communications No. 683/2015, *I.E. v. Switzerland*, decision adopted on 14 November 2017, para. 7.6; No. 783/2016, *H.R.E.S. v. Switzerland*, decision adopted on 9 August 2018, para. 8.13.

¹⁸ General comment No. 4 (2017), para. 49 (f).

¹⁹ *Ibid*, para. 43.

sufficient to conclude that the complainant's removal to that country would constitute a violation of article 3 of the Convention.²⁰

8.14 The Committee recalls that it is generally for the instances of States parties to the Convention to review or evaluate facts and evidence in order to determine the existence of danger of persecution.²¹ It appears from the information available to the Committee that the Danish authorities have taken into consideration a large amount of background information and have concluded that LGBTI persons were not subjected to targeted abuse by Ugandan authorities or by the general public. The Committee further notes that while she disagrees with the factual conclusions of the State party's authorities, she has not shown that they were arbitrary, manifestly erroneous, or that they amounted to a denial of justice.²²

8.15 In the light of the above considerations, and on the basis of all the information submitted by the parties, including on the general situation of human rights in Uganda, the Committee considers that the complainant has not adequately demonstrated the existence of substantial grounds for believing that her return to Uganda would expose her to a real, foreseeable and personal risk of torture, contrary to article 3 of the Convention.

8.16 The Committee, acting under article 22 (7) of the Convention, concludes that the complainant's removal to Uganda by the State party would not constitute a violation of article 3 of the Convention.

²⁰ See Communication No. 783/2016, *H.R.E.S v. Switzerland*, decision adopted on 9 August 2018 (deportation to Iran). See for similar conclusions Human Rights Committee, Communication No. 2292/2013, *W.K. v. Canada*, views adopted on 27 March 2018 (non-violation of articles 6 (1) and 7 of the International Covenant on Civil and Political Rights in case of the author's expulsion to Egypt)

²¹ See also Human Rights Committee, communication No. 1833/2008, *X. v. Sweden*, views adopted on 1 November 2011, para. 9.2.

²² See also Human Rights Committee, communication No. 2292/2013, *W.K. v. Canada*, views adopted on 27 March 2018, para. 10.5.