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Human Rights Committee

Communication No. 2360/2014

Views adopted by the Committee at its 114th session (29 June–24 July 2015)

Submitted by:	*[W]* (represented by the Danish Refugee Council)
Alleged victim:	The author
State Party:	Denmark
Date of communication:	17 March 2014 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 19 March 2014 (not issued in document form)
Date of adoption of Views:	22 July 2015
Subject matter:	Deportation from Denmark to Italy
Procedural issues:	-
Substantive issues:	Prohibition of torture or cruel, inhuman or degrading treatment
Articles of the Covenant:	7
Articles of the Optional Protocol:	-

Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (114th session)

concerning

Communication No. 2360/2014*

Submitted by:	*[W]* (represented by the Danish Refugee Council)
Alleged victim:	The author
State Party:	Denmark
Date of communication:	17 March 2014 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 22 July 2015,

Having concluded its consideration of communication No. 2360/2014, submitted to the Human Rights Committee on behalf of Ms. *[W]* under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication, and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The author of the communication, received on 17 March [1] is *[W]*, born on *[…]* 1990. She brings the complaint on behalf of herself and her three minor children: S., S.U. and F. They are Somali nationals residing in Denmark and are subject to deportation to Italy, following the rejection of *[W's]* application for refugee status in Denmark.[2] The author

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Ahmed Amin Fathalla, Yuji Iwasawa, Ivana Jelic, Duncan Muhumuza Laki, Photini Pazartzis, Sir Nigel Rodley, Victor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval. In accordance with article 90 of the Committee's rules of procedure, Mauro Politi did not participate in the consideration of the communication.
The texts of an individual opinion of Committee member Dheerujlall Seetulsingh (dissenting) and individual opinion of Committee members Yuval Shany and Konstantine Vardzelashvili (concurring) are appended to the present Views.

1 Not dated.

2 At the time of the submission, the author's counsel was informed that deportation was scheduled to take place "at some point within the next few weeks".

claims that by forcibly deporting her and her children to Italy, Denmark would violate their rights under article 7 of the International Covenant on Civil and Political Rights ("the Covenant"). The author is represented by the Danish Refugee Council. The first Optional Protocol to the Covenant entered into force for Denmark on 23 March 1976.

1.2 On 19 March 2014 pursuant to rule 92 of the Committee's Rules of Procedure, the Committee, acting through its Special Rapporteur on New Communications and Interim Measures, requested the State party not to deport the author and her children to Italy while their case was under consideration by the Committee.

1.3 On 4 December 2014, the Committee, acting through its Special Rapporteur on New Communications and Interim Measures, decided to deny the State party's request of lifting the interim measures.[3]

The facts as presented by the author

2.1 The author is from Kismayo, Somalia, born on *[...]* 1990. She belongs to the Shekhal clan, and is Muslim. She has three children: S. (born in 2007 in Libya), SU. (born in 2010 in Italy), and F. (born in 2013 in Denmark).

2.2 The author fled Somalia due to fear of her former husband, a powerful 70-year-old local clansman, to whom she was forcibly wed at age 17. The marriage was agreed upon by two rival clans as part of a settlement of a clan conflict. The author was subjected to continuous and serious acts of violence, rape and harassment from her husband, and tried to escape, several times, before she succeeded. As she has run away from a marriage arranged by her own clan, she cannot seek the Shekhal clan's protection from her former husband.

2.3 After fleeing Somalia and her former husband, the author discovered that she was pregnant. When she entered Libya, she was held in a detention centre for four months, where she gave birth to her daughter S.

2.4 Upon release, on an unspecified date, the author fled Libya and sailed for four days by ship towards Europe. After four days at sea, the ship ran out of fuel and the author and other passengers ran out of food and water. They were rescued by the Italian coastguard in *the spring of* 2008, and were brought to Lampedusa. There, the author was given food and medical assistance and her fingerprints were registered. Thereafter, the author and her daughter were flown by the Italian authorities to Sicily, along with other asylum seekers. Upon arrival, the author and her daughter were offered shelter in a reception facility, where they stayed with eight other women in one room. They were given food, shelter and access to sanitary facilities during their four-month stay there, and the author was interviewed regarding her asylum application.

2.5 *In the fall of* 2008, the author and her daughter were given subsidiary protection by the Italian authorities and were issued a residence permit valid from *the fall of* 2008 to *the end of* 2011. The residence permit has not been renewed, and is thus no longer valid.

2.6 The day after the author was issued a residence permit, she was informed by the staff that she could no longer stay at the reception center. She was also informed that she could not be offered any assistance in seeking alternative temporary shelter, finding work or more permanent housing.

[3] Communicated as part of the State party's observations on admissibility and merits dated 31 October 2014, see infra par. 4.1 and following.

2.7 The author tried without success to find housing and employment, and was living in the streets with her one-year-old daughter. They slept at railway stations and market places, and received food from churches or by begging in the streets.

2.8 Because the author's situation had become desperate in Italy, on an unspecified date, she travelled to the Netherlands and applied for asylum there. During her stay there, she became pregnant by a man of Somali origin. In *the fall of* 2009, the author and her daughter were returned to Italy by the Dutch authorities, while the author's residence permit in Italy was still valid. The author was informed by the Dutch authorities that she would be offered humanitarian assistance from the Italian authorities upon arrival in Rome. However, upon arrival, she was not provided with any assistance, and the airport personnel asked her to leave the airport. Thus, the author, who was pregnant at the time, stayed in the streets of Rome with her two-year-old daughter. They slept at railway stations or on occasion in informal settlements with other refugees of Somali origin. On one occasion, the author took the train to Milan to seek work and housing, without any luck.

2.9 On an unspecified date, the author returned to Sicily with her daughter and asked for humanitarian assistance at a CARITAS office. She was offered a meal and clothes for her daughter, but she was informed that CARITAS could not help her find temporary or permanent housing solutions. The author lived in the streets in Sicily with her daughter, surviving by begging and receiving food from churches. During her pregnancy, the author and her daughter slept at railway stations, or when possible as guests with other persons of Somali origin. The author did not receive any medical assistance or examinations during her pregnancy, because she was informed that in order to get an appointment with medical staff, she would need an address.

2.10 When the author was nine months pregnant, a woman of Somali origin offered her shelter in her apartment. When she went into labour, her hostess called for an ambulance, but when the staff at the emergency call centre heard the address, they did not send an ambulance to the neighbourhood, as many persons from Somalia were known to live there illegally. The author thus gave birth at home without any professional assistance. The morning after, the author went to the hospital to have her newborn child examined, but was turned away. After two weeks, the author and her two children, along with their hostess, were evicted from the apartment.

2.11 Thereafter, the author, as a single mother with two small children, was living in the streets or on occasion with other persons of Somali origin, whom she didn't know very well. The author and her children were fully dependent on the chance of receiving food from churches or begging. The author feared everyday that she would be unable to provide food for her children and safe shelter at night.

2.12 The author could not afford the fee of 250 Euros for renewing her residence permit, as she had no income. *In the fall of* 2011, she travelled to Sweden seeking asylum. When the Swedish authorities planned to return her to Italy, she travelled onwards to Denmark, where she applied for asylum *in the summer of* 2012.

2.13 *In the winter of* 2013, the Danish Immigration Service determined that because of her situation in Somalia, the author was in need of subsidiary protection but should be transferred to Italy, as Italy was her first country of asylum. The decision was appealed to the Refugee Appeals Board. *In the end of* 2014, the author gave birth to her third child, F.

2.14 *In the beginning of* 2014, the Refugee Appeals Board upheld the decision of the Danish Immigration Service stating that the author was in need of subsidiary protection but should be returned to Italy in accordance with the principle of first country of asylum (Dublin Regulation).

2.15 The author suffers from asthma, a condition she developed staying in the streets in Italy. She is dependent on medicine for this condition, and has been hospitalized in Denmark when she failed to inhale her medicine in time.

2.16 The author claims she has exhausted domestic remedies in Denmark by obtaining a negative decision, dated *in the beginning of* 2014, from the Danish Refugee Appeals Board. The decision is final and cannot be appealed. According to the author, the Danish Refugee Appeals Board based its negative decision on the fact that the author was given a temporary residence permit in Italy as a consequence of her conflicts in Somalia, and can enter Italy and reside there legally while applying to renew her residence permit. The Board states that there is not a "fully sufficient basis" for not referring to Italy as the first country of asylum in the author's case. However, the Board noted that "the majority of the Refugee Appeals Board [found] that the background information regarding the conditions for asylum seekers that have obtained temporary residence permits in Italy, to some extent support that the humanitarian conditions for this group are coming close to a level where it no longer will be secure to refer to Italy as first country of asylum."

The complaint

3.1 The author submits that Denmark, by forcibly returning her and her children to Italy, would violate their rights under article 7 of the Covenant.[4] She submits that reception conditions in Italy and basic human standards for refugees with valid or expired residence permits do not comply with international obligations of protection.[5] On this issue, the author cites a report stating that if international protection seekers returning to Italy have already been granted a form of protection and already enjoyed the reception system when they were in Italy, they have no more right to be accommodated in reception facilities in Italy.[6] She maintains that her experience indicates systemic failures regarding basic support for asylum seekers and refugees in Italy, especially members of vulnerable groups, and that she and her children will likely face, upon transfer to Italy, homelessness, destitution and very limited access to medical care. She asserts that asylum seekers in Italy experience severe difficulties accessing health services.[7] The author asserts that in view of this situation, Italy does not currently meet the necessary humanitarian standards for the principle of first country asylum to be applied.

[4] The author also cites the following decisions of the European Court of Human Rights: *M.S.S. v. Belgium and Greece* (30696/09); *Samsam Mohammad Hussein and Others v. the Netherlands and Italy* (27725/10).

[5] The author refers to the Organisation Suisse d'aide aux réfugiés, Reception Conditions in Italy – Report on the Current Situation of Asylum Seekers and Beneficiaries of Protection, in Particular Dublin returnees, October 2013, s. 5., p. 11; AIDA, Country Report – Italy, May 2013, p. 34; Council of Europe, Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, Following his visit to Italy from 3 to 6 July 2012, 18 September 2012, p. 150.

[6] The author cites European Network for technical cooperation of the application of the Dublin II Regulation, "Dublin II Regulation National Report on Italy", available at: http://www.dublin-project.eu/dublin/Dublin-news/New-report- Dublin-II-regulation-lives-on-hold. Regarding resettlement conditions in Italy for asylum seekers, the author also cites the AIDA Country Report on Italy (May 2013), s. 37; and the United States Department of State, 2012 Country Report on Human Rights Practices – Italy (19 April 2013); and Organisation Suisse d'aide aux réfugiés, note 9, s. 4-5; and Jesuit Refugee Service, Protection Interrupted – The Dublin Regulation's Impact on Asylum Seekers' Protection, June 2013, s. 152, 161.

[7] The author cites the Report by Nils Muiznieks, note 9, p. 143; and Organisation Suisse d'aide aux réfugiés, Reception Conditions in Italy.

3.2 The author states that her circumstances are in contrast with those in the case of *Samsam Hussein and Others v. The Netherlands*,[8] because she has already experienced being transferred from Holland to Italy, and she did not on arrival nor later find any assistance from the Italian authorities in securing the basic needs of the family: shelter, food, medical assistance at birth, nor was she offered any assistance in finding work, more permanent housing and integration into Italian society.

3.3 The author adds that if they were to return to Italy, she and her children would be at a real risk of facing inhuman and degrading treatment because, based on their prior experience and subsequent developments, they would be exposed to destitution and homelessness, with no prospects of finding a durable humanitarian solution. The author draws attention to her status as a single mother with three small children, the youngest of whom is two and a half months old. She notes that ever since she was told to leave the Italian reception facilities, when she was granted subsidiary protection in *the spring of* 2008, she has not been able to find shelter, access to medical care, work or any durable humanitarian solution for her and her children. The author states that her Italian residence permit expired two years ago and that she does not have the funds to renew it or find shelter or food while awaiting application for renewal.

State party's observations on the admissibility and the merits

4.1 In its observations dated 31 October 2014, the State party informs that in a decision *from the summer of* 2014, the Refugee Appeals Board (RAB) rejected the author's application to reopen asylum proceedings. The State party considers that the communication is manifestly ill-founded and should therefore be declared inadmissible, and for the same reasons, is wholly without merit. Specifically, the State party considers that the author did not produce any essential new information or views on their circumstances beyond the information already relied upon during asylum proceedings, and that the RAB already considered this information in its decisions from *the beginning of* 2014 *and summer* 2014, The RAB found that the author had previously been granted subsidiary protection in Italy, and was able to enter Italy and stay there lawfully with her children, and that Italy could therefore be considered a "country of first asylum" so as to justify the refusal to grant asylum, in accordance with section 7, paragraph 3 of the Aliens Act. When applying the country of first asylum principle, the RAB requires at a minimum that the asylum-seeker be protected against *refoulement*, and that he or she be able to enter legally and take up lawful residence in the relevant country.

4.2 According to the State party, this concept of protection also includes certain social and economic elements, as asylum-seekers must be treated in accordance with basic human

[8] European Court of Human Rights Case 27725/10. The case concerned a female Somali national and her two minor children, born in 2009 and 2011, respectively. The applicant argued that her deportation from the Netherlands to Italy, where she had previously been granted residence for the purpose of subsidiary protection, would constitute a breach of article 3 of the European Convention on Human Rights, and that she had already been subjected to a breach of this article during the time she spent in Italy due to the living conditions there. The Court noted that the mere fact of return to a country where one's economic position will be worse than in the expelling Contracting State is not sufficient to meet the threshold of ill-treatment proscribed by article 3 of the Convention. The Court further determined that "aliens who are subject to expulsion cannot in principle claim any entitlement to remain in the territory of a Contracting State in order to continue to benefit from medical, social or other forms of assistance and services provided by the expelling State. In the absence of exceptionally compelling humanitarian grounds against removal, the fact that the applicant's material and social living conditions would be significantly reduced if he or she were to be removed from the Contracting State is not sufficient in itself to give rise to breach of article 3."

standards, and their personal integrity must be protected. The core of the protection concept is that the relevant persons must enjoy personal safety, both when they enter and when they stay in the country serving as country of first asylum. However, it cannot be required that the relevant asylum-seekers will have completely the same social living standards as the country's own nationals.

4.3 In response to the author's allegations concerning the humanitarian situation in Italy, the State party refers to the 2013 inadmissibility decision delivered by the European Court of Human Rights in *Samsam Mohammed Hussein*. The Court found that concerning then-current conditions in Italy, taking into account the reports drawn up by both governments and NGOs, "while the general situation and living conditions in Italy of asylum seekers, accepted refugees and aliens who have been granted a residence permit for international protection or humanitarian purposes may disclose some shortcomings, it has not been shown to disclose a systemic failure to provide support or facilities catering for asylum seekers as members of a particularly vulnerable group of people, as was the case in *M.S.S.* v. *Belgium and Greece*." The Court found that the applicant's allegations were therefore manifestly ill-founded and inadmissible, and that the applicant could be returned to Italy. The State party considers that although the author has relied upon the Court's finding in *M.S.S.* v. *Belgium and Greece* (2011), the Court's decision in the *Hussein* case (2013) is more recent and specifically addresses the conditions in Italy. Indeed, the Court's decision in *Hussein* noted that those who have been granted subsidiary protection in Italy will be provided with a three-year renewable residence permit that allows the holder to work, to obtain a travel document for aliens, to benefit from family reunification and from the general schemes for social assistance, health care, social housing and education.

4.4 As concerns the Council of Europe report cited by the author and published in 2012, the said report was already available when the Court issued its decision in *Hussein*. Regarding the 2012 US Department of State Country Report on Italy, also relied upon by the author, the information that some aliens live in abandoned buildings in Rome and have limited access to public services was included in the *Hussein* decision (in para. 43). Finally, the AIDA Country Report - cited by the author as stating that some asylum-seekers have no access to asylum centres and therefore may be forced to stay in "self-organised settlements" which are often overcrowded- was updated in December 2013, and relates to reception conditions in Italy for asylum-seekers and not for aliens who have been given residence. The author has primarily relied on reports and other background material concerning *reception conditions* in Italy that are only relevant to asylum-seekers, including Dublin Regulation returnees to Italy, and not to persons who, like the author, have already been granted subsidiary protection. Moreover, although the author informs that she suffers from asthma and requires medication for this condition, the background information available indicates that the author must be assumed to have access to healthcare.[9]

4.5 Consequently, the State party concludes that it will not constitute a breach of article 7 to deport the author and her children to Italy, and the author has failed to substantiate a risk of irreparable harm in Italy.

Author's comments on the State party's observations

5.1 In her comments dated 3 December 2014, the author asserts that the living conditions in Italy for asylum seekers *and* beneficiaries of international (subsidiary) protection are similar, since no effective integration scheme is in function in Italy. Asylum seekers and recipients of subsidiary protection thus often face the same severe difficulties in

[9] The State party cites Samsam Mohammed Hussein and Others v. the Netherlands and Italy, para. 38.

Italy finding basic shelter, access to sanitary facilities, and food.[10] The author references a Jesuit Refugee Service report from June 2013 stating that "the real problem concerns those who are sent back to Italy and who already have some kind of protection. Probably they would have already stayed in at least one of the accommodation options available and, if they left the centre voluntarily before the established time, they have no right to go back to the accommodation system. Most people occupying abandoned buildings in Rome fall in this last category. The findings show that the lack of places to stay is a big problem especially for returnees who are, in most cases, holders of international or humanitarian protection. […]. If returnees, who have already been granted a form of protection, had already enjoyed the reception system when they were in Italy, they have no more right to be accommodated in CARAs. […]."[11]

5.2 The author also disputes the interpretation of the ECHR jurisprudence relied on by the State party. The *Hussein* decision is based on an assumption that the Italian authorities would prepare a suitable solution for the arrival of the applicant's family in Italy.[12] In contrast, the author submits that she has *already* experienced being transferred from the Netherlands to Italy, and after this transfer did not find any assistance from the Italian authorities in securing the basic needs of the family: shelter, food, medical assistance, employment, permanent housing, or integration into Italian society. Thus, based on her own experience, there is no basis for the assumption that the Italian authorities will prepare for her return in accordance with basic human rights standards.

5.3 Further, the author argues that the more recent ECHR decision in *Tarakhel* v. *Switzerland* (4 November 2014), involving similar facts, supports her claim that she should not be sent back to Italy.[13] The author notes that in *Tarakhel*, the ECHR stated that the presumption that a State participating in the Dublin system will respect the fundamental rights in the European Convention on Human Rights is not irrebuttable. The ECHR further found, regarding the current situation in Italy, that "the possibility that a significant number of asylum seekers may be left without accommodation or accommodated in overcrowded facilities without any privacy, or even in insalubrious or violent conditions, cannot be dismissed as unfounded." The ECHR found that Switzerland was required to obtain assurances from their Italian counterparts that the applicants (a family) would be received

[10] The author references her complaint and the various sources cited therein.

[11] CARAs are the government reception centers for asylum seekers. Jesuit Refugee Service, *Protection Interrupted – The Dublin Regulation's Impact on Asylum Seekers' Protection*, June 2013, p. 152.

[12] The author cites para. 77 of the *Samsam Mohammed Hussein* decision.

[13] In *Tarakhel* v. *Switzerland* (Application no. 29217/12, judgment of 4 November 2014), the ECHR found that the deportation of an Afghan family from Switzerland to Italy (where they had not received subsidiary protection) would constitute a violation of article 3 of the Convention. This case concerned the refusal of the Swiss authorities to examine the asylum application of an Afghan couple and their six children and the decision to send them back to Italy. The applicants alleged in particular that if they were returned to Italy "in the absence of individual guarantees concerning their care", they would be subjected to inhuman and degrading treatment linked to the existence of "systemic deficiencies" in the reception arrangements for asylum seekers in Italy. They also submitted that the Swiss authorities had not given sufficient consideration to their personal circumstances and had not taken into account their situation as a family. The Court held that there would be a violation of article 3 (prohibition of inhuman or degrading treatment) of the Convention if the Swiss authorities were to send the applicants back to Italy under the Dublin Regulation without having first obtained individual guarantees from the Italian authorities that the applicants would be taken charge of in a manner adapted to the age of the children and that the family would be kept together. The Court found in particular that, in view of the current situation regarding the reception system in Italy, and in the absence of detailed and reliable information concerning the specific facility of destination, the Swiss authorities did not possess sufficient assurances that, if returned to Italy, the applicants would be taken charge of in a manner adapted to the age of the children.

in facilities and conditions adapted to the age of the children, and that if such assurances were not made, Switzerland would violate article 3 of the European Convention by sending them to Italy. The author argues that in light of this finding, the acute homelessness facing recipients of subsidiary protection returning to Italy would fall within the scope of article 3 of the European Convention on Human Rights and article 7 of the Covenant. Accordingly, the author reiterates that the deportation of her children and herself to Italy would constitute a violation of article 7 of the Covenant.

Additional observations by the State party

6.1 On 17 February 2015, the State party commented upon the European Court of Human Rights decision *Tarakhel* v. *Switzerland*. The State party notes that referring to its case-law, the Court reiterated in that decision (para. 95) 'that article 3 cannot be interpreted as obliging the High Contracting Parties to provide everyone within their jurisdiction with a home', and that article 3 does not 'entail any general obligation to give refugees financial assistance to enable them to maintain a certain standard of living'. In the opinion of the State party, the *Tarakhel* case– which concerned a family with the status of asylum-seekers in Italy – does not deviate from the findings in previous case-law of the Court on individuals and families with a residence permit for Italy, as expressed in, *inter alia*, *Samsam Mohammed Hussein* decision. Accordingly, the State party expresses the view that it cannot be inferred from the *Tarakhel* decision that States are required to obtain individual guarantees from the Italian authorities before returning to Italy individuals or families in need of protection, who have already been granted residence in Italy.

6.2 The State party further reiterates in this respect, that it appears from the judgment in *Samsam Mohammed Hussein* (paras. 37-38), that persons recognised as refugees or granted subsidiary protection in Italy are entitled to benefit from the general schemes for social assistance, health care, social housing and education under Italian domestic law.

6.3 Accordingly, the State party reiterates that Article 7 of the Covenant does not prevent Denmark from enforcing the Dublin Regulation on individuals or families granted residence in Italy, like the author.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with article 93, of its Rules of Procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

7.2 As required under article 5, paragraph 2 (a), of the Optional Protocol, the Committee has ascertained 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 she has exhausted all effective domestic remedies available to her. In the absence of any objection by the State party in this connection, the Committee considers that the requirements of article 5, paragraph 2 (b), of the Optional Protocol have been met.

7.4 The Committee notes the State party's challenge to the admissibility of the communication on the ground that the author's claims under article 7 of the Covenant are manifestly ill-founded. The Committee however considers that the inadmissibility argument adduced by the State party is intimately linked to the merits and should thus be considered at that stage.

7.5 The Committee declares the communication admissible insofar as it appears to raise issues under article 7 of the Covenant, and proceeds to their consideration on the merits.

Consideration of 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, as required under article 5, paragraph 1, of the Optional Protocol.

8.2 The Committee notes the author's claim that her deportation, as well as that of her three minor children to Italy by the State party, on the basis of the Dublin Regulation principle of "first country of asylum", would expose them to a risk of irreparable harm, in violation of article 7 of the Covenant. The author relies, inter alia, on the actual treatment she received after she was granted a residence permit in *the fall of* 2008, and on the general conditions of reception for asylum seekers and refugees entering Italy.

8.3 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 risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed.[14] The Committee has also indicated that the risk must be personal[15] and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.[16] The Committee recalls that, generally speaking, it is for the organs of States parties to the Covenant to review or evaluate facts and evidence in order to determine whether such risk exists.

8.4 The Committee notes that according to the uncontested submissions by the author, after her initial four month stay in a reception centre for asylum seekers in Sicily, she and her eldest daughter were granted subsidiary protection and a residence permit in Italy. However, the day after the residence permit was issued, the author was informed that she could no longer stay at the reception centre. She was thus left without shelter nor means of subsistence, including during her pregnancy. After she left Italy, the author was returned to Italy from the Netherlands in *the fall of* 2009 with her minor child, and was again left to fend for herself without any social or humanitarian assistance, even though she then held a valid residence permit in Italy. Because of her indigence and her state of vulnerability, she was unable to renew her residence permit in 2011. Today, the author, as an asylum-seeker and a single mother of three minor children, suffering from asthma, finds herself in a situation of great vulnerability.

8.5 The Committee took note of the various reports submitted by the author, and further observes that recent reports continue to point to a lack of available places in reception structures for asylum seekers and returnees in Italy. The Committee noted, in particular, the author's submission that if returnees like her, who have already been granted a form of

[14] See General Comment No. 31, the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev. 1/Add. 13, 29 March 2004, par. 12.

[15] Communications no. 2007/2010, *J.J. N. 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.

[16] Communications no. 2007/2010, J.J. N. 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.

protection, have already enjoyed the reception system when they were in Italy, they have no more right to be accommodated in CARAs.[17]

8.6 The Committee further observes that the majority of the Danish Refugee Appeals Board itself determined *in the beginning of* 2014 that "the background information regarding the conditions for asylum seekers that have obtained temporary residence permits in Italy, to some extent support that the humanitarian conditions for this group are coming close to a level where it no longer will be secure to refer to Italy as first country of asylum" (para 2.16 above).

8.7 The Committee takes note of the finding of the Refugee Appeals Board that Italy could be considered a "country of first asylum," as well as the position of the State party that a country of first asylum is obliged to provide asylum seekers with certain social and economic elements in accordance with basic human standards, although it does not require that such persons have completely the same social living standards as the country's own nationals (Paras. 4.1 and 4.2 above).The State party has also relied on decisions of the European Court of Human Rights to submit that the situation in Italy, while suffering from some shortcomings, did not disclose a systemic failure to provide support or facilities catering for asylum seekers. (Para. 4.3).[18]

8.8 The Committee however considers that such conclusion did not adequately take into account the detailed information provided by the author, who presented extensive information, based on her own experience, that despite being granted a residence permit, she was faced on two occasions with indigence and extreme precarity. Furthermore, the State party does not explain how the author's residence permit, which has now expired, would protect her and her three minor children from the hardship and state of destitution already experienced in Italy if she and her children were to be returned in this country.

8.9 The Committee recalls that States parties need to give sufficient weight to the real and personal risk a person might face if deported.[19] It was incumbent upon the State party to undertake an individualized assessment of the risk faced by the author, rather than rely on general reports and on the assumption that, having beneficiated from subsidiary protection in the past, she would be in principle entitled to work and to receive social benefits. The State party has failed to devote sufficient analysis to the author's personal experience and to the foreseeable consequences of her forcible return to Italy, and has failed to consider seeking from Italy a proper assurance that the author and her three minor children would be received in conditions compatible with their status as asylum seekers entitled to temporary protection and the requirements of article 7 of the Covenant, by requesting from Italy to undertake that (i) the author and her children's residence permits would be renewed and that they would not be deported from Italy; and (ii) that they would be received in Italy in conditions adapted to their age and vulnerable status, which would enable them to remain in Italy.

8.10 Accordingly, the Committee is of the view that under the circumstances of the present case, removing the author to Italy on the basis of decisions taken would be in violation of article 7 of the Covenant.

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[17] Asylum Information Database (AIDA), Country Report, Italy, January 2015, p. 54-55, available at http://www.asylumineurope.org/sites/default/files/report-download/aida_italy_thirdupdate_final_0.pdf [date accessed: 12 May 2015]

[18] *Samsam Mohammed Hussein* , European Court of Human Rights Case 27725/10.

[19] Communication No. 1763/2008, Pillai v. Canada, Views adopted on 25 March 2011, at para.11.2, at para. 11.4

8.11 The Committee concludes that the author's and her three minor children's deportation to Italy would constitute a violation of article 7 of the Covenant.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the author's and her children's deportation to Italy would violate their rights under article 7 of the Covenant.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy , including a full reconsideration of her claim, taking into account the State party's obligations under the Covenant and the present Committee's Views, and the need for assurances from Italy, as detailed in paragraph 8.9. The State party is also requested to refrain from expelling the author to Italy while her request is under reconsideration. . The State party is also under an obligation to avoid exposing others to similar risks of a violation.

11. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to its Views. The State party is also requested to publish the Committee's Views.

Appendices

Appendix I

[Original: English]

Individual opinion of Committee member Dheerujlall Seetulsingh (dissenting)

1. However much one may sympathise with the condition of the author and her three children, I do not agree with the view that there will be a likely violation by the State Party of article 7 of the Covenant in this case if they were to be deported to Italy (the country of first asylum). Such a finding would unduly widen the ambit of article 7 and make it applicable to the situation of thousands of poor and destitute people in the world, especially those who now want to move from the South to the North. There is no precedent in the jurisprudence of the Committee to support the extension of the application of article 7.

2. The author arrived in Italy alone from Somalia when she was pregnant in 2008. She obtained a residence permit valid until *the end of* 2011. And yet soon after 2008 she decided to move with her daughter to the Netherlands where she again got pregnant. They were returned to Italy where she gave birth to a second child. In *the fall of* 2011 she left Italy and proceeded to Sweden which denied her asylum and then on to Denmark. She failed to renew her residence permit in Italy expiring in *the end of* 2011, allegedly out of lack of means. However, she found a way of travelling across Europe. In *the end of* 2013 the Danish Immigration Service ruled that the author could be returned to Italy. Though she was in that predicament with two small children, the author gave birth to a third child in Denmark in *the end of* 2014, ignoring totally the existence and value of birth control and thereby exhibiting a certain degree of irresponsibility in her whole conduct and exacerbating her precarious situation and that of her small children.

3. As mentioned at paragraph 8.3 of the views of the majority of the Committee, it is for the authorities of the State Party to assess the risk which the author faces if deported to the country of first asylum. Such a decision was subject to appeal to the Danish Refugee Appeals Board (RAB) presided over by a judge. The sovereign appreciation of facts must be left to the State Party unless there is a manifest error of judgment, or an error of law or a misapplication of the law or the provisions of the Covenant to the facts. Such is not the case here. Since all these facts were taken into account by the State Party's authorities before taking a decision, it is difficult to endorse the sweeping conclusions of the majority at paragraph 8.9 where it is stated that the State Party's authorities "failed to devote sufficient analysis to the situation". The RAB did bear in mind that conditions were difficult in Italy for the author but effectively concluded that there were no substantial grounds to lead to the conclusion that the author would suffer irreparable harm if deported. The issue therefore was adequately addressed.

4. The fact that living conditions could be better in Denmark than in Italy is not sufficient ground to conclude that the author would be subjected to an inhuman and degrading treatment if deported to the country of first asylum. Nor is there any reason to believe that she would be compelled because of harsh living conditions in Italy to return to her country of origin (Somalia), or that Italy would deport her to her country of origin where allegedly she is likely to face torture. The latter course of action was never contemplated by the Italian authorities during the time she spent there between 2008 and

2011. Thus the situation envisaged and the concern expressed in the concurring individual opinion of Messrs. Shany and Vardzelashvili do not find their relevance here.

5. Finally, to presume a violation of article 7 is tantamount to introducing the concept of economic refugees within the Covenant, thus creating a dangerous precedent whereby asylum seekers and refugees would be justified in moving from one country to another, seeking better living conditions than in the country of first asylum. Subsidiary protection may vary from country to country depending on the economic resources available in each country. The decisions of the European Court of Human Rights, relied upon by the author, are not on all fours with the author's case.

6. Concerning the particular situation of the author, the State Party has the sole discretion in taking a final decision, though the author has been largely responsible for putting herself "in a situation of vulnerability" by bearing three children between 2008 and 2014.

7. Though the Covenant should be considered as a living instrument to cater for new situations which may arise some fifty years after it came into being, there is certainly a risk in extending the scope of article 7 to the situation described in the present case. This may result in dire consequences and created innumerable problems which are not for this Covenant to solve.

Appendix II

[Original: English]

Individual opinion of Committee members Yuval Shany and Konstantine Vardzelashvili (concurring)

1. We agree that, in the circumstances of the case, deporting the author and her children to Italy without undertaking an individual assessment of their personal circumstances and without considering the need to obtain for them proper assurances from the Italian authorities that they will be able to access the most basic social services would violate article 7 of the Covenant. Still, we wish to clarify an aspect that was not sufficiently explained in the Committee's Views. We believe that the Committee's approach should have been based more explicitly on the unique status of the author and her children as asylum seekers entitled to subsidiary protection, and not merely on the economic destitution they have experienced, and may re-experience if deported to Italy. For us, it is this unique status that gives rise to the obligation of the State party not to the deport the author and her children to Italy.

2. The status of asylum seekers entitled to subsidiary or complementary protection is specifically regulated in Executive Committee (ExCom) Conclusion No. 103(LVI)-1995 of the UN High Commissioner for Refugees[1] and, for most EU member states, including Italy, by EC Council Regulation 343/2003 (Dublin II Regulation).[2] According to these instruments, persons entitled to subsidiary protection must not be returned to their countries of origin or to 'unsafe' third countries (*non-refoulement*);[3] and, according to the relevant UNHCHR interpretative guidelines[4] and EC Council Directive 2003/9 (the Reception Directive), they should also be able to enjoy basic economic and social rights.[5] In fact, these two entitlements appear to be, at least in some cases, closely inter-related, as the inability to exercise the most basic economic and social rights, which would enable asylum seekers to stay in the country of asylum, may eventually leave them no choice but to return to their country of origin, effectively rendering illusory their right to *non-refoulement* under international refugee law.[6] The same logic applies to the *non-refoulement* obligations of State parties under the Covenant: Placing individuals who should not be deported to their countries of origin under intolerable living conditions in the country of refuge, may compel them to return despite the real risk of serious human rights violations awaiting them in their home State.

3. Although we are of the view that the very harsh conditions experienced by the author and her family in Italy may amount to a violation of a number of rights under the Covenant, they do not, in themselves, cross the high threshold for *non-refoulement* under the Covenant - a real risk of a serious violation of the most basic rights under the Covenant,

[1] ExCom Conclusion No. 103(LVI) 1995.

[2] EC Council Regulation 343/2003, OJ (L 50) 1, 25.2.2003 (Dublin II).

[3] ExCom No. 103, para. M; Dublin II, para. 2.

[4] Executive Committee of the High Commissioner for Refugee Programme, Complementary Forms of Protection: Their Nature and Relationship to the International Refugee Protection Regime, UN Doc EC/50/SC/CRP.18 (2000), para. 17.

[5] EC Council Directive 2003/9, art. 13, 17, OJ (L 31) 8, 6.2.2003 (the Reception Directive).

[6] See e.g., Penelope Mathew, Reworking the Relationship between Employment and Asylum (New York, 2012) 88; James C Hathaway and Michelle Foster, The Law of Refugee Status (2nd ed., Cambridge, 2014) 348.

such as deprivation of life or torture.[7] Hence, had the author been an Italian national, or even a foreign national whose basic rights were not at risk of being seriously violated at the country of origin, we would not consider Denmark to be under a legal obligation not to deport her and her family to Italy. In such a case, Italy would be excepted to fulfill its obligations under the Covenant towards the deported individuals upon their arrival there, pursuant to the Dublin II Regulation, and Denmark would not be required to continue to host them in its territory for an indefinite period of time.

4. Still, in the particular circumstances of the case, the exceptional combination of the following factors: (i) the unclear legal situation in Italy of the author and her children, following the expiration of her residence permit; (ii) the extreme vulnerability of the author and her family given their health situation and age; (iii) the demonstrated failure of the Italian social welfare system to address the most basic needs of the author and her children, notwithstanding their entitlement to subsidiary protection; and (iv) the lack of adequate assurances for the provision of such protection following the contemplated deportation - cast serious doubt as to whether Italy can be effectively regarded as a 'safe country' for the specific author and her children. As a result, deporting her back to a country, which does not offer her a minimum level of social protection commensurate with her protected status, without any other resettlement alternatives available to her, may eventually compel the author and her family to return to her country of origin - Somalia - despite the real risk of torture that awaits her there and notwithstanding her right to *non-refoulement* under the Covenant.

5. Since the Danish immigration did not consider the effect of their decision to deport the author and her author on their actual ability to effectively exercise the right to *non-refoulement* under the Covenant, we agree with the Committee that deporting the author to Italy would violated Denmark obligations under article 7 of the Covenant, and that Denmark is under an obligation to reconsider the author's claim for asylum.

[7] The Committee's general comment 31(2004), at para. 12.