



## International Covenant on Civil and Political Rights

Advance unedited version

Distr.: General  
21 April 2017

Original: English

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### Human Rights Committee

#### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2681/2015\* \*\*

<i>Submitted by:</i>	Y.A.A. and F.H.M. (represented by the Danish Refugee Council)
<i>Alleged victim:</i>	The authors
<i>State Party:</i>	Denmark
<i>Date of communication:</i>	11 November 2015 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 18 November 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	10 March 2017
<i>Subject matter:</i>	Degrading and inhuman treatment, deportation to Italy
<i>Procedural issues:</i>	-
<i>Substantive issues:</i>	Torture, cruel, inhuman or degrading treatment or punishment
<i>Articles of the Covenant:</i>	7
<i>Articles of the Optional Protocol:</i>	-

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\* Adopted by the Committee at its 119th session (6-29 March 2017).

\*\* The following members of the Committee participated in the examination of the communication: Tania María Adbo Rocholl, Koita Bamariam, Yadh Ben Achour, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Ilze Brands Kehris, Marcia Kran, Duncan Laki Muhumuza, Photini Pazartzis, José Manuel Santos Pais, Anja Seibert-Fohr, Yuval Shany, 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.

## Views under article 5 (4) of the Optional Protocol

1.1 The authors of the communication are Y.A.A., born on [REDACTED] 1983, and F.H.M, born on [REDACTED] 1980, a couple of Somali nationals. The authors submit the communication on their own behalf and on behalf of their four minor children: A was born in 2009 in Italy; S was born in 2011 in Italy; SI was born in 2013 in Denmark; and AM was born in 2014 in Denmark. The authors are Somali nationals seeking asylum in Denmark and were scheduled, at the time of the submission of the communication, to be transferred from Denmark to Italy within the Dublin II procedure.<sup>1</sup> The authors claim that their deportation to Italy would put them and their children at a risk of inhuman and degrading treatment in violation of article 7 of the International Covenant on Civil and Political Rights. The authors are 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 18 November 2015, 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 to refrain from deporting the authors to Italy, while their case was under consideration by the Committee.

1.3 On 13 July 2016, the Committee, acting through its Special Rapporteur on new communications and interim measures, denied the State party's request to lift the interim measures.

### Factual background

2.1 The authors originate from Mogadishu, Somalia. The female author, F.H.M., originates from the [REDACTED] minority clan and the male author, Y.A.A., from the [REDACTED] clan, both are Muslims. They have four children, the two oldest children were born in Italy, and the two youngest were born in Denmark.

2.2 The authors fled together Somalia in 2008. The female author fled Somalia after being subjected to serious harassment due to her belonging to a minority clan. The female author claims that her family was contacted and harassed by clan militia, police and government forces. The male author fled Somalia due to a conflict with the Somali authorities and Ethiopian military. He worked for a Somali TV-station and on one occasion edited video recordings and pictures of killed Ethiopian soldiers, which were to be broadcasted on the news. Subsequently, he was threatened by an unknown person on several occasions to be killed or imprisoned, and accused of being responsible for the broadcasting. The authors also fear that their daughters will be subjected to female genital mutilation upon return.

2.3 The authors arrived in Italy in October 2008. Upon arrival to Lampedusa, the authors were accommodated in asylum reception facilities in Bari for few months. The authors were granted subsidiary protection in January 2009. Their residence permit, which expired on [REDACTED] March 2013, has not been renewed, since the authors were in Denmark.

2.4 After being granted residence permit, the authors were ordered to leave the reception facilities in Bari and hand in their asylum ID cards, which gave them access to food in the reception facilities. They were not given any assistance or advice regarding how or where to go and settle on a temporary or permanent basis in Italy and they were advised to leave for other European countries.<sup>2</sup> Facing homelessness, the authors travelled to Finland in

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<sup>1</sup> At the time of the communication, the counsel of the authors was informed that the family is planned to be deported to Italy "within few weeks".

<sup>2</sup> In the authors' submission it was stated that the authors asked the staff for help and were advised to

early 2009.<sup>3</sup> After four months, the Finnish authorities returned them to Rome, Italy.<sup>4</sup> Upon arrival at the airport they were given no assistance or guidance from the Italian authorities.

2.5 Facing homelessness once again, they took advice from other Somalian refugees and went to Torino to live in an abandoned clinic occupied by homeless refugees and asylum seekers. The conditions were very poor and lacked basic facilities: no water, no electricity, or heat and bad sanitary facilities. Many of the residents were often under the influence of alcohol and drugs, and the authors, especially during the female author's pregnancy in 2009, felt unsafe.

2.6 During the female author's first pregnancy in 2009 she had no access to health care. When she went into labor, the hospital rejected her since they do not have a health card due to the lack of official address, as the authors were living at the time in an abandoned building in Torino. A woman from a local communist party who was assisting refugees helped them and arranged with the hospital that the female author could be admitted during delivery. After the birth of their eldest son, the authors once again faced homelessness and sought shelter in abandoned houses again in Torino. Due to lack of basic facilities and the apparent use of drugs in the house, the authors found it difficult and unsafe to stay there with a toddler.

2.7 When the female author got pregnant again in 2010, the authors were assisted by the woman from the communist party, who arranged for them a room in a student's dormitory in Torino. The authors lived in the dormitory for some months. The female author gave birth to their second child in a hospital during this period. Access to the hospital was arranged again by the woman from the communist party. Shortly after the birth of the second child, the authors were asked to leave the dormitory as it was not meant for families with children. Later on, the authors spent the nights in churches and were asked during day time to leave.

2.8 During the three years in Torino, the authors were not offered access to housing, social benefits or an integration program by the Italian authorities. The authors received help from local branch of the communist party and food from churches. The male author searched for employment without any success. On his own initiative, he attended free language courses and courses on communication at an institute in Torino for six months.

2.9 After facing homelessness and no access to an integration program or employment, the authors with their two children travelled to Sweden and applied for asylum in April 2012. Their applications were rejected as they had been granted a residence permit by the Italian authorities. When the Swedish authorities planned to deport them to Italy, the authors travelled to Denmark and applied for asylum on August 2012. Upon arrival in Denmark the authors' residence permits in Italy were still valid. The female author gave birth to the authors' third child in February 2013 in Denmark.

2.10 On November 2013, the Danish Immigration Service (DIS) rejected their application for asylum. The case was appealed to the Refugees Appeals Board (RAB). On February 2014, the RAB upheld the decision by the DIS, stating that the female author, and consequently the male author, were in need of subsidiary protection due to the risk of prosecution in Somalia, however, the authors could be returned to Italy in accordance with the principle of first country of asylum. The RAB stated in its decision that even though the

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leave for other European countries. No information available on the staff.

<sup>3</sup> In the authors' submission the date was not specified, however, in the translated version of the Danish Refugee Appeals Board decision, dated on 25 February 2014, it was stated that the authors were registered on 20 January 2009.

<sup>4</sup> No information available on the reason behind their deportation to Italy from Finland.

residence permit of the authors was no longer valid, the RAB expected them to be able to enter and stay legally in Italy, while applying for renewal of their expired residence permit.<sup>5</sup>

2.11 As the decision of RAB is final, the authors were ordered to leave Denmark. On April 2014, the Danish National police attempted to deport the authors and their three children to Italy. The authors arrived at the airport in Rome together with six Danish police officers. The Danish police contacted the Italian authorities in the airport and presented the names of the authors and their children and a copy of the Italian confirmation of the subsidiary protection granted to the authors in Italy. After a while, the Italian authorities informed the Danish police that they had not been informed of the arrival, and that they would not readily accept the entry of the authors. The Italian police informed the Danish police that Italy found it strange that Denmark had not been in contact with Italy regarding the case since a Dublin request in June 2013. Furthermore, the subsidiary protection had expired and had not been renewed. The authors and their children were returned to Denmark the same day.

2.12 Subsequently, the Danish police made no other attempts to deport the authors to Italy. Upon return to Denmark, the male author contacted the DIS for help, and his request was forwarded to the RAB as a request to reopen the case. On July 2014, the RAB requested the police to comment on whether the police regarded a deportation of the authors to Italy as possible. On September 2014, the female author gave birth to the authors' fourth child in Denmark.

2.13 On March 2015, the Danish Refugees Council (DRC) requested the RAB to reopen the case. The DRC made reference to the fact that the authors had been denied entry in Italy, and that the Danish police had not made any efforts to deport the authors in the past year.

2.14 On April 2015, the Danish police informed the RAB that they found it difficult to imagine that a deportation to Italy would become possible. On 1 June 2015, the RAB once again requested the Danish police whether or not deportation of the authors would be possible or should be regarded as pointless. On 8 June 2015, the police requested the Ministry of Justice to assist the police in their reply to the RAB. On 30 June 2015, the police informed the RAB that on 11 June 2015 the Ministry of Justice had sent a request for consultation to the Italian authorities regarding the issue of return of foreign nationals to Italy and the possibility of renewing expired residence permits in Italy. On July 2015, the RAB decided not to reopen the case, and made reference to the fact that the Ministry was now in contact with the Italian authorities. The decision of the RAB is final and cannot be appealed before a court.

2.15 Subsequently, the RAB has informed the DRC by phone that they received a reply from the Italian authorities through the Danish police, dated August 2015, that the Italian authorities now will accept the entry of the family.

### **The complaint**

3.1 The authors allege that their deportation to Italy will put them and their four children at risk of inhuman and degrading treatment contrary to the best interest of the child, in violation of article 7 of the Covenant, as they would face homelessness, destitution and limited access to health care. The authors further indicate that they must be regarded as extremely vulnerable as they have four children, the youngest of whom is two years old.

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<sup>5</sup> In the decision, the RAB refers to the information on Italian immigration rules as reproduced in: ECHR, *Mohammed Hussein and Others v. the Netherlands and Italy*, application 27725/10, 2 April 2013.

3.2 The authors submit that since they were granted subsidiary protection in January 2009, they have not been able to find shelter, work or any durable humanitarian solution in Italy for them and their children. They have had great difficulties to find medical care during the pregnancy and birth. Facing homelessness, they have been living in abandoned buildings with other refugees and asylum seekers without sanitary facilities and with open consumption of alcohol.

3.3 The authors further allege that reception conditions in Italy for refugees and asylum seekers with valid or expired residence permits do not comply with international obligations of protection.<sup>6</sup> Furthermore, the authors submit that international protection seekers returning to Italy who had already been granted a form of protection and benefitted from the reception system when they were in Italy were not entitled to accommodation in the reception facilities in Italy.<sup>7</sup> They state that their experience indicates systemic failures regarding basic support for asylum seekers and refugees in Italy, especially members of vulnerable groups. They indicate that asylum seekers in Italy experience severe difficulties accessing health services.<sup>8</sup>

3.4 The authors further submit that their circumstances are in contrast with those in the case of *Mohammed Hussein and Others v. the Netherlands and Italy*,<sup>9</sup> because they have already experienced being transferred from Finland to Italy, and they did not, neither upon arrival nor later, have any assistance from the Italian authorities in securing the basic needs of the family, namely, shelter, food, medical assistance at birth, nor were they provided with any assistance to find work, housing and to integrate into Italian society.

3.5 The authors state that the decision by the European Court of Human Rights (ECHR) in *Tarakhel v. Switzerland*<sup>10</sup> is relevant for the present case, as it refers to the living conditions and difficulties in finding shelter for asylum seekers and beneficiaries of international protection in Italy. The authors note that in its decision, the ECHR required Switzerland to obtain assurances from its Italian counterparts that the applicants (a family) would be received in facilities and conditions adapted to the age of the children; and that if such assurances were not made, Switzerland would be violating article 3 of the European Convention on Human Rights by transferring them there. The authors argue that, in the light of this finding, the harsh conditions faced by asylum seekers and beneficiaries of international 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. They therefore

<sup>6</sup> The authors refer to the Swiss Refugee Council (OSAR), *Reception conditions in Italy: Report on the current situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees* (October 2013), p. 11; Asylum Information Database (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.

<sup>7</sup> The authors refer to the European Network for technical cooperation of the application of the Dublin II Regulation, *Dublin II Regulation - National report on Italy*, 19 December 2012, available from [www.dublin-project.eu/dublin/Dublin-news/New-report-Dublin-II-regulation-lives-on-hold](http://www.dublin-project.eu/dublin/Dublin-news/New-report-Dublin-II-regulation-lives-on-hold); AIDA, *Country report: Italy*, May 2013, p. 37; United States of America, Department of State, "Country Reports on Human Rights Practices for 2012: Italy, April 2013; OSAR, *Reception conditions in Italy* (see note 5), pp. 4-5; and Jesuit Refugee Service Europe, *Protection Interrupted: The Dublin Regulation's impact on asylum seekers' protection*, June 2013, pp. 152 and 161.

<sup>8</sup> The author refer to 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", p. 143 and 160; AIDA, *Country report: Italy*, p. 45-46; and AIDA, *Country report: Italy*, May 2013, p. 4-5.

<sup>9</sup> The author refers to European Court for Human Rights, *Mohammad Hussein and Others v. the Netherlands and Italy*, application No. 27725/10, decision adopted on 2 April 2013.

<sup>10</sup> European Court of Human Rights, *Tarakhel v. Switzerland*, application No. 29217/12, judgment adopted on 10 September 2014.

reiterate that their deportation to Italy would amount to a violation of article 7 of the Covenant. They further submit that the Tarakhel decision indicates that individual guarantees, such as securing returning children from destitution and harsh accommodation conditions, are necessary.

#### State Party's observations

4.1 On 18 May 2016, the State party submitted its observations on the admissibility and merits of the communication. The State party describes the structure, composition and functioning of RAB, as well as the legislation applying to cases related to the Dublin Regulation.<sup>11</sup>

4.2 With regard to the admissibility and merits of the communication, the State party argues that the authors have failed to establish a *prima facie* case for the purpose of admissibility under article 7 of the Covenant. In particular, it has not been established that there are substantial grounds for believing that the authors and their children will be in danger of being subjected to torture or to cruel, inhuman or degrading treatment or punishment in Italy. The communication is therefore manifestly unfounded and should be declared inadmissible. It follows from the Committee's jurisprudence that States parties are under an obligation not to extradite, deport, expel or otherwise remove a person from their territory where the necessary and foreseeable consequence of the deportation would be a real risk of irreparable harm, such as that contemplated by article 7 of the Covenant, whether in the country to which removal is to be effected or in any country to which the person may subsequently be removed. The Committee has also indicated that the risk must be personal, and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.<sup>12</sup>

4.3 The State party notes that the authors did not provide any essential new information or views on their circumstances, beyond the information already relied upon during the asylum proceedings, and the RAB had already considered that information in its decision of February 2014. The State party sustains that the Committee cannot be an appellate body which reassesses the factual circumstances advocated by the authors in their asylum application before the Danish authorities and it must give considerable weight to the findings of fact made by the RAB which is better placed to assess the factual circumstances of the authors' case. The State party further makes reference to the Committee's jurisprudence according to which "it is generally for the organs of State parties to examine the facts and evidence of the case, unless it can be established that such an assessment was arbitrary or amounted to a manifest error or denial of justice".<sup>13</sup>

4.4 The State party further submits that the RAB found that the authors had previously been granted subsidiary protection in Italy and could return to Italy and stay there lawfully with their children; therefore, Italy is considered the "country of first asylum", which justifies the refusal of the Danish authorities to grant them asylum, in accordance with section 7 (3) of the Aliens Act. The State party further submits that the RAB requires as an

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<sup>11</sup> See Communication 2379/2014, *Ms Obah Hussein Ahmed v. Denmark*, Views adopted on 8 July 2016, paras. 4.1-4.3.

<sup>12</sup> The State party refers to the communication No. 2007/2010, *J.J.M. v Denmark*, Views adopted on 26 March 2014, para. 9.2.

<sup>13</sup> The State party refers to Communications 2426/2014, *N. V. Denmark*, Views adopted on 23 July 2015, para. 6.6; 2272/2013, *P.T v. Denmark*, Views adopted on 1 April 2015, para. 7.3; 2393/2014, *K v. Denmark*, Views adopted on 16 July 2015, paras. 7.4 and 7.5; 2186/2012, *Mr. X and Ms. X v. Denmark*, Views adopted on 22 October 2014, para. 7.5; and 2329/2014, *Z v. Denmark*, Views adopted on 15 July 2015, para. 7.4.

absolute minimum that the asylum seeker or refugee is protected against *refoulement* from the country of first asylum. It also must be possible for him/her to enter lawfully and to take up lawful residence in the country of first asylum, and his/her personal integrity and safety must be protected. This concept of protection also includes a certain social and economic element since asylum seekers must be treated in accordance with basic human standards. However, it cannot be required that the relevant asylum seekers will have completely the same social living standards as the country's own nationals. The core of the protection concept is that the persons must enjoy personal safety both when they enter and when they stay in the country of first asylum. Moreover, the State party notes that Italy is bound by the European Convention on Human Rights and the International Covenant on Civil and Political Rights.

4.5 Furthermore, the State party observes that the female author's alleged lack of access to healthcare and medical treatment in Italy is based solely on the authors' unsubstantiated information. The State party indicates that asylum seekers and beneficiaries of international protection enjoy the same right to medical treatment as Italian nationals as they must enrol in the National Health Service in Italy and that they benefit from free-of-charge healthcare services on the basis of self-declaration of destitution to be presented to local health board.<sup>14</sup>

4.6 The State party notes that the authors' claims that they risk homelessness and will not receive the necessary assistance for the Italian authorities if deported to Italy, appear unsubstantiated and the information does not accord with the general background information available on living conditions for asylum seekers and refugees in Italy. The State party observes that, according to their statements, the authors were offered a room in a hall of residence for some months and the male author attended language classes free of charge and studied at the University of Turin for six months.

4.7 The State party further refers to the ECHR's judgement on *Mohammed Hussein and Others v. the Netherlands and Italy*,<sup>15</sup> and states that it is applicable to the present communication. In that ruling, the Court stated that the assessment of a possible violation of article 3 of the European Convention must be rigorous and should analyse the conditions in the receiving country against the standards established by this provision of the Convention, in particular the Court indicated that "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".<sup>16</sup> Furthermore, the State party considers that it cannot be inferred from the ECHR's judgement on *Tarakhel v. Switzerland*<sup>17</sup> that individual guarantees must be obtained from Italian authorities in the case at hand, as the authors have already been granted subsidiary protection in Italy, while in *Tarakhel v. Switzerland* the authors' application for asylum in Italy was still pending when the case was reviewed by the ECHR.

4.8 The State party also submits that the authors' circumstances are in contrast with those in the Views adopted by the Committee *Warda Osman Jasin et. al. v. Denmark*.<sup>18</sup> The State party notes that the present authors were already in possession of residence permits

<sup>14</sup> The state party refers to AIDA, *National Country report: Italy*, January 2015.

<sup>15</sup> ECHR, *Mohammed Hussein and Others v. the Netherlands and Italy*, application 27725/10, 2 April 2013.

<sup>16</sup> *Ibid.* para. 71.

<sup>17</sup> ECHR, *Tarakhel v. Switzerland*, application No. 29217/12, judgment adopted on 10 September 2014.

<sup>18</sup> Communications 2426/2014, *Warda Osman Jasin et. al. v. Denmark*, Views adopted on 25 September 2015.

for Italy, which expired on March 2013, when they applied for asylum in Denmark on August 2012. The State party further submits that the circumstances that, by leaving Italy, the authors have placed themselves in a situation in which their residence permits have expired do not mean that they can be considered asylum seekers today.<sup>19</sup>

#### Author's comments on the State Party's observations

5.1 On 4 July 2016, the authors submitted their comments on the State Party's observations. The authors submit that they have adequately explained the reasons for which they fear that their deportation to Italy would result in a breach of article 7 of the Covenant and consider that their claims in this regard have been fully substantiated. The authors further submit that the RAB assessment falls short of the requirements of an individualized assessment of the risk that they would face if deported to Italy. The authors note that during their stay in Italy, when they had residence permits, they lived in an abandoned clinic, which lacked the most basic facilities, such as water and electricity. Only for some months during the female author's second pregnancy were the family offered a room in a student dormitory. When the female author first went into labour she was rejected by the hospital, and only with the intervention of an influential local person, was she accepted into the hospital for giving birth. During pregnancy, she had no access to health care. The authors lived off food provided by the church. For three years, the authors were not offered access to housing, social benefits or integration programmes from the Italian authorities, although the male author did attend language and communication courses for a while, and they were faced with intolerable living conditions during almost their entire time in Italy.

5.2 The authors further indicate that asylum seekers and beneficiaries of international protection in Italy often face the same severe difficulties in finding basic shelter, access to healthcare facilities and food. The authors quote a report by the US Department of State (2016) on Italy, which states "Authorities set up temporary centers to house mixed-migrant populations, including refugees and asylum seekers but could not keep pace with the high number of arrivals. NGOs reported thousands of legal and irregular foreigners, including migrants and refugees, lived in abandoned buildings in Rome and other major cities and had limited access to public services. The press reported limited health care, inadequate and over-crowded facilities, and a lack of access to legal counselling and basic education. Representatives of UNHCR, the International Organization for Migration, and other humanitarian organizations denounced inhuman living conditions, in particular overcrowding, in reception centers".<sup>20</sup> The authors also refer to a report by Medecins Sans Frontieres (2016) which states that "Although according to Italian legislation asylum seekers and refugees are entitled to the registration with the National Health Service and to medical assistance in the same way as Italian citizens, the access to this right is seriously limited by the conditions of social marginalization that this population experiences in our country, in particular inside informal settlements. [...] The renewal of the permit to stay, especially for humanitarian reasons, is made difficult by the police stations, which request municipal residence registration or domicile, even though no legal norm dictates it. According to police, domicile must be demonstrated through a renting contract, or at least a letter of hospitality by the owner or the tenant of the property. Lacking one and the other, and if the police refuses a letter of fictitious domicile by supporting organizations, migrants can only resort to "buy" a fake renting contract or another domicile document, or renew their permit in less restrictive police stations, sometimes in provinces or regions other than the actual living area: in this way access to general practitioners and paediatrician in the

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<sup>19</sup> The State party refers to *Warda Osman Jasin et. al. v. Denmark*, (see note 17) para. 8.4.

<sup>20</sup> United States of America, Department of State, "Country Reports on Human Rights Practices in Italy, April 2016".



areas where refugees actually live is prevented as registration to National Health Service depends on the domicile listed in the permit to stay.”<sup>21</sup>

5.3 The authors also refer to the Committee’s Views on *Warda Osman Jasin et al. v. Denmark*,<sup>22</sup> in which the Committee emphasized the need to give sufficient weight to the real and personal risk a person might face if removed. The authors indicate that the State party has failed to obtain specific assurances from Italy vis-à-vis the following: a) acceptance of the authors’ return; b) renewal of the authors’ residence permits; c) guarantee against deportation of the authors to Somalia; and d) conditions adapted to the authors’ family and children. The authors submit that this requires an individualized assessment of the risk faced by the person, rather than reliance on general reports and on the assumption that, having been granted subsidiary protection in the past, s/he would in principle be entitled to work and receive social benefits. They further claim that the RAB failed to make a sufficiently individualized assessment of the risk that the authors will face in Italy. Moreover, the application of an unreasonably high threshold for substantial grounds for establishing that a real risk of irreparable harm exists renders the RAB’s decision both unreasonable and arbitrary. Furthermore, the authors claim that they already experienced intolerable living conditions in Italy while they held a valid residence permit. The available background information substantiates the existence of intolerable living conditions for both refugees and asylum seekers and the lack of support from the Italian authorities, and gives substantial reasons to believe there is a real risk that the authors will again face such conditions if they are deported to Italy.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

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

6.2 The Committee notes, as required by article 5, paragraph 2 (a) of the Optional Protocol, that the same matter is not being examined under any other international procedure of investigation or settlement.

6.3 The Committee notes the authors’ claim that they have exhausted all effective domestic remedies available to them. In the absence of any contrary information by the State party in that connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

6.4 The Committee notes the State party’s challenge to the admissibility of the communication on the ground that the authors’ claim under article 7 of the Covenant is unsubstantiated. The Committee however considers that, in light of its past jurisprudence on the ‘Dublin II Procedure’,<sup>23</sup> the real difficulties encountered by the authors when they lived in Italy before, the very young age of their four children and the information before the Committee on the limited nature of the assurances issued by the authorities in Italy, it cannot regard the communication as clearly lacking in substance. Accordingly, the

<sup>21</sup> Medcenis Sana Frontières, “*Out of Sight: Asylum seekers and refugees in Italy: Informal settlement and social marginalization*”, March 2016, p. 14.

<sup>22</sup> Communication 2360/2014, *Warda Osman Jasin et al. v. Denmark*, Views adopted on 22 July 2015.

<sup>23</sup> See e.g., Communication 2360/2014, *Warda Osman Jasin et al. v. Denmark*, Views adopted on 22 July 2015; Communication No.2409/2014, *Abdilafr Abubakar Ali et al v. Denmark*, Views of 29 March 2016; Communication No 2608/2015, *R.A.A. and Z. M. v. Denmark*, Views of 28 October 2016.

Committee declares the communication admissible insofar as it raises issues under article 7 of the Covenant, and proceeds to its consideration on the merits.

*Consideration of the merits*

7.1 The Human Rights Committee has considered the communication in light of all the information made available to it by the parties, as provided for under article 5, paragraph 1, of the Optional Protocol.

7.2 The Committee notes the authors' claim that deporting them and their four children to Italy, based on 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 authors base their arguments, *inter alia*, on the actual treatment they received after they were granted a residence permit in Italy, and on the general conditions of reception for asylum seekers and beneficiaries of international protection in Italy, as found in various reports. The Committee notes the authors' argument they would face homelessness, destitution and limited access to health care, as demonstrated by their experience after they were granted subsidiary protection in January 2009. The Committee further notes the authors' submission that since they had already benefitted from the reception system when they first arrived in Italy, and as they were granted a form of protection, they would have no access to accommodation in the reception facilities.<sup>24</sup>

7.3 The Committee recalls its general comment No. 31,<sup>25</sup> in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by article 7 of the Covenant which prohibits cruel, inhuman or degrading treatment. The Committee has also indicated that the risk must be personal and that the threshold for providing substantial grounds to establish that a real risk of irreparable harm exists is high.<sup>26</sup> The Committee further recalls its jurisprudence that considerable weight should be given to the assessment conducted by the State party, and that it is generally for the organs of the States parties to the Covenant to review and evaluate facts and evidence in order to determine whether such risk exists,<sup>27</sup> unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice.<sup>28</sup>

7.4 The Committee notes that according to the authors, after they received their subsidiary protection, they faced homelessness and they lived in an abandoned building with other refugees without adequate sanitary facilities and where alcohol was openly consumed, and were not able to find work. The Committee also notes the authors' submissions that the female author had serious difficulties in accessing health care during

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<sup>24</sup> See the European Network for technical cooperation of the application of the Dublin II Regulation, *Dublin II Regulation - National report on Italy*, 19 December 2012, available from [www.dublin-project.eu/dublin/Dublin-news/New-report-Dublin-II-regulation-lives-on-hold](http://www.dublin-project.eu/dublin/Dublin-news/New-report-Dublin-II-regulation-lives-on-hold); AIDA, *Country report: Italy*, May 2013, p. 37; United States of America, Department of State, "Country Reports on Human Rights Practices for 2012: Italy, April 2013; OSAR, *Reception conditions in Italy*, pp. 4-5; and Jesuit Refugee Service Europe, *Protection Interrupted: The Dublin Regulation's impact on asylum seekers' protection*, June 2013, pp. 152 and 161.

<sup>25</sup> See the Committee's general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

<sup>26</sup> See communications No. 2007/2010, *X v. Denmark*, Views adopted on 26 March 2014, para. 9.2; No. 692/1996, *A.R.J. v. Australia*, Views adopted on 28 July 1997, para. 6.6; and No. 1833/2008, *X v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

<sup>27</sup> See communication No. 1957/2010, *Lin v. Australia*, Views adopted on 21 March 2013, para. 9.3.

<sup>28</sup> See, *inter alia*, *ibid.* and communication No. 541/1993, *Errol Simms v. Jamaica*, inadmissibility decision adopted on 3 April 1995, para. 6.2.

her pregnancy and birth of their two children in Italy, and that when the author went into labor, the hospital rejected her since the authors did not have a health card due to the lack of official address. The female author could be admitted in the hospital only after the arrangement with the hospital made by a third person who was assisting refugees. The Committee further notes that after the authors went to Finland and were returned to Italy, they were not offered access to housing, medical care, social benefits or an integration program by the Italian authorities. The Committee takes note that, in 2012, the authors went to Sweden and then to Denmark where they requested asylum in August 2012.

7.5 The Committee notes the various reports submitted by the authors. It also notes that recent reports highlight the lack of available places in the reception facilities in Italy for asylum seekers and returnees under the Dublin II Procedure. The Committee notes in particular the authors' submission that returnees, like them, who had already been granted a form of protection and benefited from the reception facilities when they were in Italy, are not entitled to accommodation in the CARAs.<sup>29</sup>

7.6 The Committee notes the finding of the Refugee Appeals Board that Italy should be considered the "country of first asylum" in the present case and the position of the State party that the country of first asylum is obliged to provide asylum seekers with certain social and economic elements in accordance with basic human standards, although it is not required that such persons have exactly the same social and living standards as nationals of the country. The Committee further notes the reference made by the State party to a decision of the European Court of Human Rights according to which the fact that the applicants' material and social living conditions would be significantly reduced if they were to be removed from the Contracting State –Denmark- is not sufficient in itself to give rise to breach of article 3 of the European Convention of Human Rights.<sup>30</sup>

7.7 The Committee recalls that States parties should, when reviewing challenges to decisions to remove individuals from their territory, give sufficient weight to the real and personal risk such individuals might face if deported.<sup>31</sup> In particular, the evaluation of whether or not the removed individuals are likely to be exposed to conditions constituting cruel, inhuman or degrading treatment in violation of article 7 of the Covenant must be based not only on assessment of the general conditions in the receiving country, but also on the individual circumstances of the persons in question. These circumstances include vulnerability-increasing factors relating to such persons, which may transform a general situation which is tolerable for most removed individuals to intolerable for some individuals. They should also include, in 'Dublin II Procedure' cases, indications of the past experience of the removed individuals in the 'country of first asylum', which may underscore the special risks they are likely to be facing and may render their return to the 'country of first asylum' a particularly traumatic experience for them.

7.8. In the present case, the Committee considers that the State party's position, as reflected in the decisions of DIS and RAB, did not adequately take into account the particular situation of vulnerability of the authors and their family and the information they provided about their own personal experience that, despite being granted a residence permit in Italy, they faced intolerable living conditions there. In that connection, the Committee

<sup>29</sup> See AIDA, *Country report: Italy*, January 2015, p. 54-55, available at [www.asylumineurope.org/sites/default/files/report-download/aida\\_italy\\_thirdupdate\\_final\\_0.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_italy_thirdupdate_final_0.pdf).

<sup>30</sup> ECHR, *Samsam Mohammed Hussein and Others v. the Netherlands and Italy*, application 27725/10, 2 April 2013.

<sup>31</sup> See for example, communication No. 1763/2008, *Pillai v. Canada*, Views adopted on 25 March 2011, paras.11.2 and 11.4; Communication No.2409/2014, *Abdilaafir Abubakar Ali et al v. Denmark*, Views of 29 March 2016, para.7.8.

notes that the State party does not explain how, in case of a return to Italy, the residence permits would protect them and their four children from the severe same hardship and destitution, which the authors had already experienced in Italy, if they and their children were to be returned to that country.

7.9 The Committee recalls that States parties should give sufficient weight to the real and personal risk a person might face if deported<sup>32</sup> and considers that it was incumbent upon the State party to undertake an individualized assessment of the risk that the authors and their four very young children, would face in Italy, rather than rely on general reports, which do not all support the State party's assessment, and on the assumption that, as the authors had benefited from subsidiary protection in the past, they would still, in principle, be entitled to housing, work and receive social benefits in Italy. The Committee considers that the State party failed to take into due consideration the special vulnerability of the authors and their children. Notwithstanding their formal entitlement to subsidiary protection in Italy, they faced homelessness and they lived in an abandoned building, were not able to find work, the female author had serious difficulties in accessing health care during her pregnancy and birth of their two children in Italy, and after the authors went to Finland and were returned to Italy, they were not offered access to housing, medical care, social benefits or an integration program by the Italian authorities. The Committee considers that although the State party claims that it has obtained the consent of the Italian authorities to admit the authors into Italy following the failed attempt to deport the authors to Italy in 8 April 2014, the State party have failed to seek proper assurances from the Italian authorities that the authors and their four children will be received in conditions compatible with their status as international protection seekers entitled to protection and the guarantees under article 7 of the Covenant, which include undertakings by Italy: (a) to renew the authors' and their children residence permits so that they would not to be deported them from Italy; (b) to issue resident permits to the authors two youngest children who were born in Denmark; and (c) to receive the authors and their children in conditions adapted to the children's age and the family's situation of vulnerability, which would enable them to remain in Italy and to enjoy there international protection *de facto*.<sup>33</sup> Consequently, the Committee considers that, in light of the particular circumstance of the case and given the shortcoming of the decisions of the Danish authorities, the removal of the authors and their four children to Italy, without the aforementioned assurances, would amount to a violation of article 7 of the Covenant.

8. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the deportation of the authors and their four children to Italy, without proper assurances, would violate their rights under article 7 of the International Covenant on Civil and Political Rights.

9. In accordance with article 2 (1) of the Covenant which establishes that States Parties undertake to respect and to ensure to all individuals within their territory and subject to their jurisdiction the rights recognized in the Covenant, the State party is under an obligation to proceed to a review of the claim of the authors, taking into account the State party's obligations under the Covenant, the Committee's present Views, and the need to obtain proper assurances from Italy, as set out in paragraph 7.8 above. The State party is

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<sup>32</sup> Ibid.

<sup>33</sup> See communication No. 2360/2014, *Warda Osman Jasin v. Denmark*, Views adopted on 22 July 2015, para 8.9; Communication No.2409/2014, *Abdilaqfir Abubakar Ali et al v. Denmark*, Views of 29 March 2016, para.7.8.

also requested to refrain from expelling the authors and their four children to Italy while their request for asylum is being reconsidered.<sup>34</sup>

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant 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, and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views and to have them widely disseminated in its official language.

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<sup>34</sup> See for example Communication No.2409/2014, *Abdilafir Abubakar Ali et al v. Denmark*, Views of 29 March 2016, para.9, and Communication 2379/2014, *Ms Obah Hussein Ahmed v. Denmark*, Views adopted on 8 July 2016, para. 15.