



**Convention on the Elimination
of All Forms of Discrimination
against Women**

Advance unedited version

Distr.: General
24 November 2016

Original: English

**Committee on the Elimination of Discrimination
against Women**

Communication No. 71/2014

**Decision on admissibility adopted by the Committee at its sixty-fifth
session (24 October – 18 November 2016)**

<i>Submitted by:</i>	K.S. (represented by counsel, Mr.Niels-Erik Hansen)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Denmark
<i>Date of communication:</i>	20 August 2014 (initial submission)
<i>References:</i>	Transmitted to the State party on 21 August 2014 (not issued in document form)
<i>Date of adoption of decision:</i>	11 November 2016



Decision on admissibility

1.1 The author of the communication is Ms. K.S., a Somali national born in 1964, who risks a deportation to Somalia as her asylum application in Denmark has been rejected. She claims that her deportation would constitute a violation by Denmark of articles 1, 2, 12 and 15 of the Convention on Elimination of All Forms of Discrimination against Women – “the Convention”. The author is represented by counsel, Mr. Niels-Erik Hansen. The Convention and the Optional Protocol thereto entered into force for the Denmark on 21 May 1983 and 22 December 2000, respectively.

1.2 When registering the communication on 20 August 2014, and pursuant to article 5 (1) of the Optional Protocol and rule 63 of its rules of procedure, the Committee decided to accede to the author’s request for interim measures of protection in order to stop her deportation pending the examination of her case. Subsequently, on 27 April 2015, the Working Group lifted its request for interim measures in light of the State party’s observations of 23 February 2015, and the author’s comments thereon.

The facts as presented by the author

2.1 The author originates from the village of Q., Somalia. Several years ago, she was sexually assaulted by four men who tried to rape her. She suffered a sharp blow to her head and a severe shock leading to subsequent physical and psychological problems. Because of this incident she was considered not suitable for marriage. In 1998, she went through an arranged wedding and, in 2000 gave birth to a daughter.

2.2 In 2013, the author started working as cleaner for a widower in her village. On 20 January 2014, she was informed by a woman who is her next door neighbour that rumours were being spread to the effect that the author was having a relationship with her employer. As a consequence, she was beaten by her husband on several occasions. At the end of January 2014, she was on her way home when the next door neighbour threatened her and told her it would be better if she died. On the same day, when she arrived at her home, she overheard a conversation between a man whom she assumed to be from Al-Shabab as he had a long beard and wore special clothing and her husband and the former requested her husband to kill her, failing which they would kill her themselves. Fearing for her life, the author immediately ran away to her maternal uncle who also lived in Qoryooley. On 2 February 2014, she left Somalia illegally with the assistance of her uncle.

2.3 On 10 February 2014, the author arrived in Denmark and on 12 February 2014, requested asylum there. On 22 May 2014, the Danish Immigration Service rejected the author’s request for and the decision was referred to the Danish Refugee Board. On 6 August 2014, the Refugee Appeal Board –RAB- upheld this refusal. According to the RAB, the author provided imprecise explanations about the rumours concerning her alleged infidelity, about inquiries from the local community thereof, about the extent of time during which the “rumour” was spread and about the al-Shabab inquiry to her spouse. The RAB also noted that al-Shabab has been displaced from the author’s village and the overall security situation was not of such a nature that any return in the area would lead to a real risk of persecution.

2.4 The author affirms that she has exhausted all domestic remedies and notes that the RAB’s decision is final and not subject to further appeal.

Complaint

3.1 The author claims that by deporting her to Somalia, Denmark would breach its obligations under articles 1 and 2 of the Convention and that there are substantial grounds to believe that her life would be in danger, if returned to Somalia in the light of the background information on the situation of women there. Adultery is punishable by

stoning, and by fleeing, she de facto “confessed” that she had been unfaithful. Even if al-Shabab was displaced from the area, the author claims that she is at a risk of being stoned by the local people, and the Somali authorities would not protect her.

3.2 The author also claims a violation of articles 12 and 15 of the Convention without providing any substantiation.

State party’s observations on admissibility and the merits

4.1 By Note verbale of 23 February 2015 the State party provided its observations on admissibility and merits. The State claims that the complaint should be declared inadmissible. Should the Committee find the communication admissible, the State party believes that no violation of the Convention will occur in case of the author’s return to Somalia.

4.2 The State party recalls the facts of the case; the author, a Somalian national born in 1964, entered Denmark on 10 February 2014 without valid travel documents and applied for asylum on 12 February 2014. On 22 May 2014, the Danish Immigration Service refused to grant her asylum. On 6 August 2014, the Danish Refugee Appeals Board upheld this decision. The majority of the members of the RAB found the author’s statements in support of her grounds of asylum vague and inconsistent. In relation to the current background information on the author’s village, the RAB accepted as facts that Al-Shabab has now been driven out and thus the general security situation in the area was not of such nature that anybody returning there could be deemed to be at real risk of abuse contrary to article 3 of the European Convention of Human Rights. On this basis, the RAB could not find as facts that the author, who has close family in her village, was persecuted at her departure or that she risks persecution upon return, nor that it could be assumed that she would be at a real risk of being subjected to treatment or punishment falling within section 7(2) of the Aliens Act upon return.

4.3 The evidence and information on the specific facts of the case and the background information have been assessed in accordance to the provisions of the Aliens Act. The State party submits that, according to section 7 (2) of the Aliens Act, a residence permit will be issued to an applicant if the applicant is at risk of the death penalty or of being subjected to torture or inhuman or degrading treatment or punishment should he or she return to his or her country of origin. The conditions for such residence permit are met if the individual factors render it probable that the asylum seeker runs a real risk of torture in case of return.

4.4 The State party submits that such an assessment is made by the Refugee Appeals Board, which makes a decision on the basis of all relevant evidence, including information on the situation in the asylum seeker’s country of origin. The Board has a comprehensive collection of general background material on the situation in the countries from which the State party receives asylum seekers. The Board makes its decisions in accordance with the international obligations of Denmark.

4.5 The State party notes that the communication concerns only circumstances that the author may risk if she is returned to Somalia. The State party notes that from the views of the Committee, the Convention has extraterritorial effect only when the woman to be returned will be exposed to a real, personal and foreseeable risk of serious form of gender-based violence.¹ In the present case, the author did not sufficiently establish that she would be exposed to such a risk, and therefore the communication should be declared inadmissible as the author has failed to establish a *prima facie* case for the purpose of admissibility.

¹ The State party refers to *M.N.N v Denmark* communication No. 30/2011, CEDAW/C/55/D/33/2011 (2013).

4.6 Should the Committee find the author's communication admissible, the State party submits that the author has not sufficiently established that she would be at risk of persecution if returned to Somalia. During the asylum proceedings, she made vague statements about the existence of rumours on her infidelity on the manner how the rumours were spread², how she learned about these rumours and the way that her husband had learned about them. Moreover, the author made inconsistent statements about her spouse's alleged violence against her and his reaction to the rumours in general. At the asylum screening interview on 3 March 2014, the author stated that she ignored how her spouse had learnt about the rumours, that he had become angry when he had learnt of the accusations of her special relationship with her employer and that her spouse had asked her directly whether it was true, which she had denied, but he however remained angry. At the interview conducted by the Danish Immigration Service on 15 May 2014, the author first stated that her spouse had learned about the rumours in late December 2013 or in early January 2014. Later during the same interview, she stated that she was not sure but it had been around 25 January 2014 and that she did not know how her husband learned about this. Moreover, she stated that her spouse who had become angry; had not threatened her, but had just walked out and she ignored where he had gone. Her spouse had changed after the rumours and he neither slept nor ate together with her because he believed the rumours to be true. At the Board's hearing on 6 August 2014, the author stated that some time had elapsed since he had first heard the rumours to the time when she had told her spouse about them and that he had become very angry when he first heard of them. She further denied the statement reproduced in the interview report of 15 May 2014 and contended that her spouse had threatened to kill her and had beaten her three times on three different occasions within a period of one month, which was the real reason why she had left Somalia. When informed that she had never made such statements previously, the author stated that the translation was incorrect.

4.7 The author has been unable to give a convincing explanation on why she has made elaborating and inconsistent statements about her grounds for asylum despite the fact that these statements concerned crucial parts of her grounds for asylum and that she has been given the opportunity to do so. The author claimed that her statements appear vague and elaborating because they were translated incorrectly and because the Danish immigration authorities did not ask her directly about the various circumstances. In this connection, the State party observes that when the author was interviewed by the Danish Immigration Service on 3 March and 15 May 2014, the representative of the Danish Immigration Service asked her to spell out her grounds for asylum, and that, at the conclusion of the interviews, the interview reports were reviewed with her and she was given the opportunity to comment thereon, that the author made no comments on either the interview report of 3 March or of 15 May 2014, and she signed the final interview reports after her review.

² At the asylum interview on 3 March 2014, the author stated that a friend of the author's employer had started the rumour, and that al-Shabab had learned the rumours of her infidelity in January 2014 and that a representative of al-Shabab had contacted her uncle after a prayer at the mosque and had told him about the author's extramarital affair. At the interview conducted by the Danish Immigration Service on 15 May 2014, the author stated that it was another person who started the rumours, that she had been told on about 20 January 2014 that there were all over town rumours about the relationship with her employer, and that she received threats by this person on her way home in late January 2014. When informed that she had stated nothing about this person or the threats received at the asylum screening interview on 3 March 2014, the author stated that she had not been asked about that at the interview and that she had not been herself at the interview on 3 March 2014. At the Board hearing on 6 August 2014, the author stated that she had been confronted with the rumours by different people for several days and that she feared everyone in her hometown as they considered her a prostitute.

4.8 Moreover, during the asylum proceedings, the author has made inconsistent and incoherent statements about al-Shabab's inquiry to her spouse. At her interview on 3 March 2014, she stated that an al-Shabab member had come to their home one night prior to her departure; she was not at home as she was bringing milk to her mother. When she returned, she discovered that the al-Shabab member was at her family's home. In contrast, at the interview of 15 May 2014, she stated that she and her spouse had said evening prayers in separate rooms during the night when al-Shabab had come to their home and that she had seen a bearded man in special clothing through the door after she had taken out the garbage. At the hearing before the RAB on 6 August 2014, she maintained that she was at home when her spouse had been contacted by the al-Shabab representative. When interviewed on 3 March 2014, she had stated that she had not been at home when the representative had contacted her spouse, but she added having a poor memory.

4.9 The State party observes in this respect that the inquiry from Al-Shabab is a crucial part of the author's grounds for asylum and – according to the author's own information – a contributory and even triggering factor for her departure from Somalia. The State party finds that the inconsistent and incoherent statements about the incident made by the author during the asylum proceedings, weakened her credibility. It further notes that the author's reference to her poor memory before RAB cannot lead to a different assessment of this matter, as the author has not previously referred to her poor memory as a reason for the inconsistency, not even when informed of the inconsistency at the interview conducted by the Danish Immigration Service on 15 May 2014.

4.10 The State party agrees with the assessment of the author's credibility made by the RAB to the effect that the author's statement in support of her grounds for seeking asylum cannot be considered as a fact. The State party therefore cannot accept as a fact that the author has had or, if returned to Somalia, will have a conflict with her family, the local population or authorities.

4.11 The State party points out that the most recent background information on the general situation in Southern and Central Somalia³ confirms the information already in possession of RAB when it made its decision on 6 August 2014. The fact that the author is a woman from the village Q. cannot in itself lead to a different assessment of the matter. The State party observes in this respect that the author cannot be considered a single woman on her return to Somalia because, according to her statement, she has several family members in the village, her hometown, including her spouse, daughter, mother, sisters and uncle.

4.12 In relation to the circumstance that the author, according to her own statement before the Board on 6 August 2014, was subjected to sexual violence many years ago and is, as a result, now mentally stressed, the State party agrees with the RAB's assessment of the author's asylum case that this cannot in itself form a basis for asylum.

4.13 As regards the submission made by the author's counsel that, in its decision of 6 August 2014, the RAB did not expressly refer to the provisions of the Convention, the State party argues that the RAB always takes into account Denmark's international obligations when making decisions in asylum cases, regardless whether this is expressly spelt out in its decisions or not.

4.14 In the opinion of the State party, the author's communication to the Committee merely reflects that the author disagrees with the assessment of her credibility made by the

³ The State party refers to the report *UNHCR Position on Return to Southern and Central Somalia* from June 2014, which has been referred to by the author's counsel, and the *Report of the Secretary-General on Somalia* submitted to the UN Security Council on 25 September 2014.

Refugee Appeals Board. The author failed to provide any new, specific, details about her situation in her communication to the Committee, and failed to identify any irregularity in the decision making process or any risk factors that the RAB had failed to take properly into account. The State party emphasizes that the national authorities are best placed to assess the credibility of the author since they have had the opportunity to see, hear and assess the demeanour of the individual concerned.

4.15 In the State party's view there is no basis for doubting the assessment made by RAB according to which the author has failed to sufficiently substantiate that there are substantial grounds for believing that she would be at risk of being subjected to persecution or asylum-relevant abuse if returned to Somalia.

Author's comments on the State party submissions

5.1 On 10 September 2015, the author provided comments on the State party's observations. She outlines that while the majority of Refugee Board members refused to grant her asylum on 6 August 2014, a minority however voted for her protection in Denmark. She emphasizes that since the interim measures were lifted, she was living in constant fear of forcible removal, and that her fear is real in the light of the situation in Southern and Central Somalia.⁴

5.2 With regard to the admissibility, the author submits that this issue is closely linked to the merits of the communication. She claims that it is clear that taking into consideration that she is a single woman being deported to a country that have not even signed the Convention and with the background information mentioned, she has indeed a *prima facie* case under articles 1, 2, 12 and 15, of the Convention. Regarding the request that her asylum claim should have been considered in light of the Convention, the author notes that the Danish Refugee Board did not mention the Convention in its decision even though her counsel raised this issue in writing, and orally during the Board hearing.

5.3 With regard to the merits, the author agrees that she provided no additional information in her communication to the Committee. The author emphasizes that nothing guarantees that the Convention has been taken into account in the decision making process. The author emphasizes that she is unaware of decisions of the Refugee Appeal Board where the Convention has been expressly mentioned. The author submits that the Convention is not considered as a relevant international instrument for asylum process in Denmark. The decision of the Board is therefore in breach of the law, as nothing indicates that the Convention was taken into account in the decision making process.

5.4 Regarding her credibility, the author recalls that a minority of the RAB members considered that she would be at risk of being subjected to persecution if returned to Somalia. As the minority disagreed with the majority's opinion, the State party should have had relied on the principle of "benefit of the doubt", as prescribed by the UNHCR Guidelines on international protection.⁵

5.5 The author emphasizes that the fact that she is a woman and that she travelled alone to Europe, proves that she would have no protection on return to her hometown. Even if Al-Shabab may not be in power for the moment in this region, it still has an important influence. Members of Al-Shabab remain in the town, the Government troops and AMISON troops are not even able to secure themselves and therefore no adequate security

⁴ The author refers to the UNHCR Position on Return to Southern and Central Somalia from June 2014.

⁵ The author refers to *UNHCR Guidelines on international protection No.1 (7 Mai 2002) Section III Procedural issues on protection.*

can be provided to the local population ; as a single woman, it is unlikely that the author will be protected by the authorities from gender based violence. Consequently, the author claims that she would be at risk of persecution in Somalia.

State party's additional observations

6.1 On 3 February 2016, the State party provided observations in response to the author's additional comments. The State party reiterates that the author did not provide any new information so far, and failed to identify any irregularity in the decision-making process or any risk factors that the Refugee Appeals Board has failed to take properly into account. Thus, it is clear that the author is trying to use the Committee as an appellate body and have the factual circumstances of her case reassessed.

6.2 With respect to reference to the Convention in the decision making process, the State party reiterates that the Danish Immigration Service and the Refugee Appeals Board always take into consideration Denmark's international obligations, including under the Convention, in all asylum cases, regardless of whether or not a specific reference is made in the decision. The annex to which the author refers to in her latest comments is not a printout from the website of the Danish immigration authorities, and moreover the translation provided is incorrect, as a correct translation would be: "Here you can find links to some of the international conventions within the field of immigration with which Denmark has undertaken to comply". This implies that the list is not exhaustive and therefore cannot in any way be taken to mean that Danish immigration authorities do not take the Convention into account when deciding on asylum and other immigration cases in which the Convention is relevant. The State party further observes that the RAB publishes an annual report on its activities every year, which is publicly accessible. This report includes a chapter on cases brought before international bodies; this chapter comprises a general paragraph on the relevant conventions, including CEDAW, and a review of any decisions made by treaty bodies in cases against Denmark during the reporting year.

6.3 With regard to the remarks regarding the minority of the members of the Refugee Appeals Board, the State party notes that the author repeatedly speculated about facts and findings on which the dissenting members of the RAB based their opinion. The State party observes that it follows from rule 40 of the RAB's Rules of Procedure that decisions of the Board are made by a simple majority of votes and that the Board's deliberations are confidential. Pursuant to Rule 41 of the Rules of Procedure, a case note on the result of the deliberations must be prepared immediately after the end of the deliberations and that the case note is not confidential. The State party outlines that the Convention does not impose an obligation to make public the opinion held by the minority of the Board members, and no such obligation follows from the Danish law either.

6.4 With respect to the author's situation on return to Somalia, the State party observes that the author stated during the asylum proceedings that her spouse, daughter, mother, sisters and their spouses, and her uncle remain in her hometown in Somalia; therefore it cannot be accepted as a fact that the author must be considered to be a single woman without a male network on her return to Somalia. It is further observed that, according to the author, the Sheekhaal clan, to which she has claimed to belong, is one of the three most dominant clans in her hometown.⁶ The State party thus maintains that there is no basis for

⁶ The State party outlines the difference between this case and the case of *R.H v. Sweden* (application 4601/14) of the ECtHR in which the Court stated "In the Court's view, it may be concluded that a single woman returning to Mogadishu without access to protection from a male network would face a real risk of living in conditions constituting inhuman or degrading treatment under Article 3 of the Convention".

doubting the assessment made by the RAB in its decision of 6 August 2014 on the author's asylum application.⁷

Authors' comments on the State party's additional information

7.1 The author submitted comments on the State party's additional observations on 28 April 2016. She takes note of the State party's reference to decisions reading deportation to Somalia by the Human Rights Committee and the European Court of Human Rights, and adds that a lot of asylum proceedings have been reopened so as to be assessed in the light of the "*R.C v. Sweden*" decision. Thus in January 2016, the RAB decided that: "The various reports attest the difficult situation of women in Somalia, including Mogadishu. The UNHCR has identified women and girls as a particular risk group [...]. While there has been legislative progress in the form of the development of a Sexual Offences bill, there are several concordant reports about serious and widespread sexual and gender-based violence in the country [...]. Not only civilians but also members of SNAF, AMISOM and other armed forces are perpetrators of abuse against women. Women are unable to get protection from the police and the crimes are often committed with impunity, as the authorities are unable or unwilling to investigate and prosecute reported perpetrators. It is also clear that women are generally discriminated against in Somali society and that they hold a subordinate position to men. As shown in the report of the Swedish Migration Board, women are reliant on men in many aspects of societal life (paragraph 30). In the Court's view, it may be concluded that a single woman returning to Mogadishu without access to protection from a male network would face a real risk of living in conditions constituting inhuman or degrading treatment under article 3 of the Convention". The author notes that, in this case, asylum has been granted; as the author comes from the same area, she does not understand why her case is not reopened.

7.2 The author further states that she has no network. Qoryooley is not a safe place as there is no safe transportation and one may have to cross frontlines with roadblocks set up by Government forces, AMISON or Al-Shabab. The author reiterates that even though the majority of the board members is of the view that Al-Shabab is no longer in power in her home town, Al-Shabab has the power in the country side around Qoryooley and members of the organisation remain in her hometown.

State party's additional observations

8.1 On 23 June 2016, the State party provided additional observations. It reiterates its observations of 23 February 2015 and 3 February 2016⁸. Regarding the author's submission on the judgement delivered by the European Court of Human Rights on 10 September 2015 in *R.H v. Sweden*, the State party refers to its observations of 3 February 2016. Additionally, the State party observes that the jurisprudence of RAB "relating to women from Somalia does not imply that the network is required to be in or available from Mogadishu".

8.2 With regard to the reopening of the case, the State party notes that reopening of cases occurs when essential new information or points of view have been added to the case beyond the information available at the initial hearing, which in not the case here. The State

⁷ The State party refers to the Human Rights Committee's cases in *P.T v Denmark* (Communication No. 2272/2013), §7.3; *K v. Denmark* (communication No. 2393/2014), §7.4, and *N v. Denmark* (Communication No. 2426/2014), §6.6.

⁸ The State party attached statistics on the jurisprudence of the Danish immigration authorities, which show inter alia, the recognition rates for asylum claims from the ten largest national groups of asylum seekers decided by the Refugee Appeals Board between 2013 and 2015.

party submits that the author's case is not comparable to *R.H v Sweden* or any of the cases that have been reopened by the Refugee Appeals Board.

8.3 The State party maintains that the author has failed to establish a *prima facie* case for the purpose of admissibility under article 4(2)(c) of the Optional Protocol, and that the communication should therefore be declared inadmissible as manifestly ill founded. Should the Committee find the communication admissible, the State party further maintains that it has not been established that there are substantial grounds for believing that it would constitute a violation of the Convention to return the author to Somalia.

Issues and proceedings before the Committee concerning admissibility

9.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol. Pursuant to rule 66, the Committee may decide to consider the admissibility of the communication separately from its merits.

9.2 The Committee observes that the State party did not challenge the admissibility of the communication on the grounds of non-exhaustion of domestic remedies and it is also satisfied that it is not precluded by the requirements of article 4 (1) of the Optional Protocol from examining the communication.

9.3 The Committee notes, first, the author's claim that her deportation to Somalia would constitute a violation, by Denmark, of articles 1, 2, 12 and article 15, of the Convention. The Committee also takes note of the State party's argument that the communication should be declared inadmissible under article 4 (2) (c) of the Optional Protocol for lack of substantiation.

9.4 In terms of substantiation, the author has only claimed that she fears being killed if returned to Somalia due to rumours about her infidelity; because she has no male network to protect her; and that there are still members of Al-Shabab in her hometown.

9.5 The Committee notes that the Danish immigration authorities have duly examined the author's allegations but have concluded that the author has failed to sufficiently substantiate her allegations, in particular regarding her spouse alleged violence and Al-Shabab threats. It further notes the author's explanation that her statements seemed incoherent and vague due to translation problems, and because she has a bad memory. The Committee notes in this regard that all the interview reports throughout the asylum proceedings were reviewed with the author, who was also given the opportunity to comment on those reports, and that she never objected to their contents.

9.6 The Committee further observes that none of the material on file indicates that in reaching the conclusion that the author's allegations lacked credibility, the Danish immigration authorities have failed in any manner whatsoever, in their duties or acted in a biased or otherwise arbitrary manner. The Committee notes that the author has provided no additional information or documentation before it to substantiate her claims about the risk in case of her return to Somalia. In addition, the author has completely failed to substantiate her claims of violations of articles 12 and 15 of the Convention.

9.7 The Committee also takes note of the author's claims that the Danish immigration authorities have failed to consider her case from the perspective of the Convention and to mention it in its decision while it was raised both orally and in writing by her counsel during the Board hearing. The Committee takes note of the State party reply's that the Convention is a source of law in Denmark and forms an integral part of assessments made by RAB in asylum cases. The Committee observes that the author's lawyer only requested the immigration authorities to consider her asylum claim in the light of the Convention

without referring to specific provisions of the Convention and without substantiating claims under any specific articles of the Convention.

9.8 Regarding the author's claim that the fact that she is a single woman constitutes a supplementary factor of risk for her in Somalia, the Committee points out, in the light of the information contained on file - notably the UNHCR Position on Return to Southern and Central Somalia from June 2014 on which both the State party and the author rely on - that the author, in fact, has a network back in Somalia, as she has several close relatives in Qoryooley, including her daughter, mother, sisters and her uncle, the latter having helped her to go to Europe. Therefore, the Committee considers that the author cannot be considered as a single woman if returned to her hometown.

9.9 In light of these considerations, the Committee is of the view that the author's claim that her removal to Somalia would expose her to a real, personal and foreseeable risk of serious forms of gender-based violence was insufficiently substantiated for the purposes of admissibility. Accordingly, it declares the communication inadmissible under article 4 (2)(c) of the Optional Protocol as insufficiently substantiated.

10. The Committee therefore decides that:

(a) In accordance with articles 4 (2) (c) of the Optional Protocol, the communication is inadmissible;

(b) This decision shall be communicated to the State party and to the author.