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Convention on the Rights of the Child
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Committee on the Rights of the Child

Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in respect of communication no. 31/2017*,**

Submitted by:	W.M.C (represented by counsel, N.E. Hansen)
Alleged victims:	X.C., L.G. and W.G.
State party:	Denmark
Date of communication:	8 August 2017
Date of adoption of decision:	28 September. 2020
Subject matter:	Deportation of three children and their mother to China
Procedural issues:	Exhaustion of domestic remedies; lack of substantiation
Articles of the Convention:	2, 3, 6, 7 and 8
Articles of the Optional Protocol:	7 (c), (e) and (f)

1.1 The author of the communication is W.M.C. a Chinese national acting on behalf of her children, X.C. L.G. and W.G., born in Denmark on 7 March 2014, 7 September 2015 and 19 June 2018 respectively. The author and her children are subject to a deportation order to China. She claims that their deportation would violate her children's rights under articles 2, 3, 6, 7 and 8 of the Convention. She is represented by counsel. The Optional Protocol entered into force for Denmark on 7 January 2016.

1.2 On 15 August 2017, pursuant to article 6 of the Optional Protocol, the working group on communications, acting on behalf of the Committee, requested that the State party refrain from returning the author and her children to their country of origin while the case was under consideration by the Committee. On 16 August 2017, the State party suspended the execution of the deportation order against the author and her children.

The facts as submitted by the author

2.1 The author, who is unmarried, is from the village Fuzschou Shi in the Fujian Province of China. She escaped China after the Chinese authorities performed a forced abortion on her. Her father was killed in the incident during the scuffle with the police and her mother died later from the shock due to a heart condition.

2.2 On 12 March 2012, the author arrived in Denmark using a false passport. On 27 October 2012, she was detained by the police for staying in Denmark without valid travel documents. On 7 November 2012, she applied for asylum. On 7 March 2014, she gave birth to her first child, X.C. The father of the child, also an asylum seeker in Denmark, does not appear in the child's birth certificate. On 9 November 2015, her second child L.G. was born, allegedly while the author was in administrative detention.

2.3 The author contends that she initially sought asylum in Denmark on the grounds that she feared being forced into an abortion if she were returned to China and got pregnant again. Following the birth of her two children, she feared that she would be persecuted by Chinese authorities because she was unmarried and had two children. She further alleged that the children would be forcibly removed from her or that they would not be registered in the Hukou household register, which is essential for ensuring their birth registration and access to basic services such as health and education.

2.4 The author submits that the Danish Immigration Service did not dispute her personal circumstances but considered that the application for asylum should be examined in accordance with the procedure for manifestly unfounded applications.[1] In accordance with Danish law, on 23 June 2015, the case was referred to the Danish Refugee Council for a second opinion on the procedural question of whether the case should be dismissed as manifestly unfounded. On 13 July 2015, the Danish Refugee Council responded that it did not concur with the recommendation of the Danish Immigration Service that the examination of the application be continued in accordance with the procedure for manifestly unfounded applications. It referred to various reports on conditions of single mothers with children, the rights of children and the registration of children in China.[2] On 7 September 2015, X.C. and her mother were denied asylum by the Danish Immigration Service.

2.5 Consequently, the author appealed the decision before the Refugee Appeals Board. She claims that the Board never held an oral hearing, and thus she only had the opportunity to present her and the children's case through counsel's written statements. The Refugee Appeals Board denied a request for an oral hearing on the basis that the Immigration Service admitted the testimony of the author. Moreover, her second child was born after the decision by the Danish Immigration Service and her case has thus not had the possibility of a second instance.

[1] The State party explains in its submission that, under Section 53(b)1 of Aliens Act, the Danish Immigration Service may determine, following a consultation request to the Danish Refugee Council that the decision on an application for residence under section 7 of the Aliens Act cannot be appealed to the Refugee Appeals Board if the application must be deemed to be manifestly unfounded.

[2] The Danish Refugee Council referred to the Country Report on Human Rights Practices 2013 – China, US Department of State, 27 February 2014; China: Treatment of "illegal" or "black" children born outside the family planning policy, Immigration and Refugee Board of Canada, 1 October 2012; Birth Registration in China: Practices, Problems and Policies, US National Institutes of Health, 1 January 2010; and the Human Rights in China 2013, Swedish Foreign Department, 1 May 2014.

2.6 The author submits that, at the request of the Refugee Appeals Board, the Ministry of Foreign Affairs contacted a local lawyer in her province of origin in order to obtain additional background information. According to the information provided, the punishment for illegal immigration is normally a fine of between 1,000 and 5,000 RMB (140.9-704.8USD). If the person does not pay the fine, it is likely that he/she will be detained for several days including a travel ban of up to three years. An unmarried person who has had children outside of China will have difficulties to register these children in the Hukou household register. The mother would also most likely be subjected to a substantial fine for having had the children. The lawyer also stated that the authorities in the Fujian-province have a bad reputation regarding the respect of rules and that there have been cases where women were forced to undergo abortion and where the children were not accepted into the family registry where those women escaped abortion.

2.7 On 17 March 2017, the Danish Refugee Appeals Board upheld the Immigration Service decision denying asylum to the author and her children. It considered that the author *"in 2011 was exposed to a forced abortion, and a few months later left China illegally, thereafter she gave birth to two children outside of China outside of marriage, and that she thereby can be given a significant fine, and alternatively a shorter punishment in prison as well as a travel ban for a period of time"*. A majority also found that "*it must be expected that it will be considerably difficult to register the asylum seeker's children in the Hukou register at least for a period of time, where the children therefore will be less advantaged with regards to medical aid, education and social services, as opposed to other Chinese children"*. However, the majority of the Board also stated that *"The sanctions, which then might likely seem unfair from a Danish context, but the majority do not find that it would be of such character and of such proportions that it can be considered as persecution or assault under the Danish Aliens Act 7(1) or 7(2)".* The Board also stated that neither the Convention on the Rights of the Child nor other conventions that Denmark has joined could lead to another result.

2.8 The author explains that, since the decision of the Refugee Appeals Board cannot be appealed before the State party's courts, they have exhausted all available domestic remedies.

The complaint

3.1 The author claims that the State party would violate her children's rights under articles 2, 3, 6, 7 and 8 of the Convention if they are removed to China. She alleges that returning them to China would violate the principle of non-refoulement resulting in a violation of article 2 of the Convention in connection with articles 6, 7 and 8. The author also argues that the children's deportation to China is not in their best interests and would thus constitute a violation of article 3 of the Convention. She further claims that their return would constitute a serious risk to their life, survival and development, and thus would constitute an infringement of article 6. Their return would moreover constitute a violation of article 7, which prescribes the right of children to be registered, to a name and to acquire a nationality and be cared for by his or her parents and article 8 on the obligation to protect children deprived of their identity.

3.2 The author claims that the factual circumstances of the children's inability to be registered in China is undisputed and that, contrary to the conclusions of the Refugee Appeals Board, this situation is covered by the provision of the Convention. She also argues that the consequences of returning the children are of such a serious nature that a non-refoulement obligation is triggered since it would lead to irreparable harm including in the form of no access to fundamental health care, education and social services.

State party's observations on the admissibility and merits

4.1 In its observations of 15 February 2018, the State party submits that the author has failed to establish a prima facie case for the purpose of admissibility and that the communication should therefore be considered inadmissible as manifestly ill-founded, under article 7 (f) of the Optional Protocol. Should the Committee find the communication admissible, the State party submits that it has not been established that there are substantial grounds for believing that the return of the author's children to China would constitute a violation of Articles 3, 6, 7 and 8 of the Convention, nor that Article 2 of the Convention was

violated when the domestic authorities considered the application for asylum lodged by the author.

4.2 The State party notes that the author has not provided any new and specific information on her and her children's situation different to that already provided and assessed by the Refugee Appeals Board in its decision of 17 March 2017. It submits that the best interests of the child were a primary consideration in the decision made by the Refugee Appeals Board.

4.3 The State party notes that, as established by the Committee's general comment No. 6, States parties should not return a child to a country where there are substantial grounds for believing that he or she would be subjected to a real risk of irreparable harm, such as those contemplated under articles 6 and 37 of the Convention, either in the country to which removal is to be effected or in any country to which the child may subsequently be removed.[3] The assessment of such risk should be conducted in an age and gender-sensitive manner.

4.4 The State party refers to the decision M.A.A. v. Spain where the Committee stated that "[it] is of the view that, as a general rule, it comes under the jurisdiction of the national courts to examine the facts and evidence, unless such examination is clearly arbitrary or amounts to a denial of justice."[4] The State party observes that, in the present case, the application for asylum of the author's children was given thorough consideration by the Refugee Appeals Board and that the author has 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. In her communication to the Committee, the author challenged the assessment of the circumstances of their case. Her communication merely reflects that the author disagrees with the outcome of the assessment of her and her children's specific circumstances and the background information made by the Refugee Appeals Board in the case at hand.

4.5 With regard to the author's claim that the decision of the Refugee Appeals Board to return them to China constitutes a violation of the rights of her children under Article 3 of the Convention, the State party observes that, when exercising its powers under the Aliens Act, the Refugee Appeals Board is legally obliged to take the State party's international obligations into account. It appears explicitly from the decision that the Refugee Appeals Board took into account the Convention, including Article 3 on the best interests of the child. However, the Board found that the provisions of the Convention could not lead to a different outcome.

4.6 The State party explains that, in connection with its consideration of the appeal, the Refugee Appeals Board adjourned the case on 10 February 2016 pending a request to the Ministry of Foreign Affairs for the initiation of a consultation procedure to inquire about the anticipated consequences to an unmarried Chinese woman from the Fujian Province who has left the country illegally and has lived outside of China for four years if she returns to China with two children who have been born in Denmark out of wedlock and are presumed to be Chinese nationals.

4.7 The consultation response of 12 December 2016 from the Ministry of Foreign Affairs reads as follows: "Due to the fact that the two children were born out of wedlock and have not obtained a Danish passport, a Chinese passport or any other documents, the household registration for them is likely to be more complicated than for legitimate children." The consultation response further reads: "In accordance with the "Opinions of the General Office of the State Council on Addressing the Issue of Household Registration for Persons without Household Registration" the following steps needs to be taken to complete the household registration for a child born outside of wedlock: a) a DNA test that determines the mother of a child must be carried out and a positive result must be obtained from a designated institution; b) a birth certificate must be obtained with the positive DNA test result; The birth certificate is to prove that the woman is the biological mother of these two children so that they can be registered under her Hukou household register. Although the law does not stipulate it, we

[3] Committee's general comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin, para. 27.

[4] *M.A.A. v. Spain*, Communication No. 2/2015, views adopted on 30 September 2016, para. 4.2.

understand that a Danish birth certificate should be sufficient for this purpose, as long as it can prove that the woman is the biological mother of the children. If the children do not have Danish birth certificates, however, the woman needs to obtain Chinese birth certificates from the Chinese family planning authority."[5]

4.8 In this respect, the State party notes that, according to the information available, the author will not face any difficulties in proving that she is their biological mother by means of a DNA test, if required. Moreover, the author is in possession of Danish certificates of birth for both her children, and according to the above source, it is sufficient for her to present Danish certificates of birth for her children if the certificates prove that she is their biological mother.

4.9 Regardless of the circumstance that the author did not apply for asylum until more than six months after entering the State party, the Refugee Appeals Board found as facts that she had been forced to have an abortion in 2011 and had left China illegally a couple of months later, had subsequently given birth to the children in Denmark while still unmarried, and therefore could be sentenced to a considerable fine, alternatively short-term imprisonment, and banned from leaving the country for a period.

4.10 Concerning the registration of the author's children in the Hukou household register, the majority of the members of the Refugee Appeals Board observed that it must be expected that it will be very difficult to have the author's children entered in the Hukou household register, at least for a period during which they will be treated less favourably than other Chinese children in terms of access to medical care, education and social services.[6]

4.11 Based on an overall assessment of the background information and the consultation response of 12 December 2016 from the Ministry of Foreign Affairs, the majority of the members of the Refugee Appeals Board found, however, that those circumstances do not render it probable that the Chinese authorities will forcibly remove the author's children from their mother or otherwise subject the children and their mother to serious ill-treatment. The majority of the members of the Refugee Appeals Board further found that although the most probable sanctions might seem unreasonable in the State party's context, they are not of such nature or such proportions as to be considered persecution or ill-treatment falling within section 7(1) or section 7(2) of the Aliens Act.

4.12 Against this background, the State party considers that the author will not face a real risk of treatment or punishment falling within section 7(1) of the Aliens Act or ill-treatment falling within section 7(2) of the Aliens Act in case of her return to her country of origin because she has given birth to two children out of wedlock in Denmark.

4.13 The State party considers that the author's submission that the factual circumstances of their inability to be registered in China is undisputed is not correct. The registration is possible, although it will entail considerable difficulties for a certain period to have the author's children registered. The circumstance that the authorities of the Fujian Province have poor reputation as regards the observance of rules and regulations on forced abortion and registration in the Hukou household register cannot independently lead to the conclusion that the rights of the author's children under the Convention have been violated. The author's submission that the Chinese authorities will forcibly remove them from their mother or otherwise subject them to serious ill-treatment is mere speculation and cannot lead to a different legal assessment of the author's eligibility for asylum.

4.14 Concerning the author's submission that it appears from the Committee's General Comment No. 6 that States parties must take into account the safety, security and other conditions, including socio-economic conditions, awaiting a child upon return, the State party observes that it cannot be required that a child asylum-seeker must have completely the same social living standards as children in Denmark, but his or her personal integrity must be protected. Accordingly, the State party finds that the circumstance that the author's children risk being treated less favourably than other Chinese children in terms of medical care,

[5] The State party provides a copy of the response from the Ministry of Foreign Affairs dated 12 December 2016.

[6] The State party does not provide any information as to the length of time that will take for the children to be registered.

education and social services for a period cannot independently justify asylum. Any lack or difficulty of registration and thus lack of access to public services does not constitute such violation of the Convention as to amount to "irreparable harm" within the meaning of the Convention. The Refugee Appeals Board conducted its assessment of the risk of such serious violations in an age and gender-sensitive manner as required by the Committee's General Comment No. 6. The majority of the Board members found, however, that the provisions of the Convention could not lead to a different outcome. Accordingly, the State party finds that there are no substantial grounds for believing that the author's children will be exposed to a real risk of irreparable harm if returned to China.

4.15 The State party also observes that China has acceded to the Convention and that it must fulfil their obligations under it, which means that they must make sure that the author's children are offered the opportunity to become registered and thus give them access to public services.

4.16 Regarding the author's complaint that Article 2 of the Convention had been violated because the application for asylum was considered only by the Refugee Appeals Board as far as L.G., the author's second child, is concerned and because the Board's decision could not be appealed before the courts, the State party submits that it follows from the case law of the Refugee Appeals Board that in most cases, the remission of a case to the Danish Immigration Service is not required as it is possible for the Refugee Appeals Board to assess new information on a fully informed basis at a Board hearing. Accordingly, a case will normally be remitted to the Danish Immigration Service only if new information has been provided on the asylum-seeker's nationality, or essential new information has been provided on conditions in the asylum-seeker's country of origin, or in the event of changes to the legal basis that are deemed essential to the determination of the case. The State party observes in this respect that the Refugee Appeals Board obtained comments from both the author and the Danish Immigration Service before the Board considered the appeal on the basis of written documents, and the Danish Immigration Service thus had the opportunity and the obligation to consider any new information before the Board made its decision on the case. If, based on any such new information provided, the Danish Immigration Service finds that the relevant asylum-seeker meets the conditions for being granted asylum or protection status, the Danish Immigration Service is obliged to notify the Refugee Appeals Board of such finding before the Board considers the appeal on the basis of written documents. This obligation also applied in the case at hand, and the Danish Immigration Service did not give any such notification.

4.17 The State party also observes that L.G., the author's second child, has not experienced discrimination of any kind due to her or her parents' or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status, for which reason Article 2 of the Convention has not been violated. Additionally, no provision of the Convention provides for the right of appeal in a case like the present case.

4.18 The State party concludes that the Refugee Appeals Board, which is a collegial body of a quasi-judicial nature, made a thorough assessment of all relevant information and that the authors have not demonstrated that its decision was clearly arbitrary or amounted to a manifest error or denial of justice. In the opinion of State party, the author's communication merely reflects that they disagree with the outcome of the assessment of her and her children's specific circumstances.

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

5.1 In her comments of 9 July 2018, the author informed that her third child W.G. was born on 19 June 2018. She submits that the deportation of L.G. would also entail that she is separated from her father who is an asylum seeker in Denmark. L.G cannot apply for family reunification with her father as he does not have yet a residence permit. L.G.'s father is also the father of the newborn child.

5.2 The author submits that the Danish Immigration service never referred to the Convention, as the author's children were never part of the decision, which only involved their mother. In the author's opinion, the Refugee Board only "repaired" the decision of the Immigration Service when the majority of its members found that "the provisions of the

Convention of the Rights of the Child and other conventions to which Denmark has acceded cannot lead to a different outcome".

5.3 She claims that the main "irregularity" in the decision making process of the State party is that no hearing took place before the Refugee Board, that their case was only considered based on written material and that they did not have the right to appeal the decision of the Board. She argues that article 2 has been violated since any other case involving a Danish child and the best interests of the child, for instance a child custody case, would be decided by the administrative system with the possibility to appeal before the court.

5.4 The author refer to the decision n°3/2016 where the Committee stated that "the evaluation of the risk that a child may be subjected to an irreversible harmful practice such as female genital mutilation in the country to which he or she is being deported should be carried out following the principle of precaution and, where reasonable doubts exist that the receiving State cannot protect the child against such practices, State parties should refrain from deporting the child". The authors maintain that the Refugee Board did not invoke the principle of precaution.

5.5 The author refers to the 2017 Norwegian Country of Origin Information Centre report stating that "children born out of the wedlock or without government permit resulted in harsh, mostly economic sanctions. […] Other sanctions like confiscation of property or forced abortions or sterilisations also occurred, but under no circumstances should a child be taken from its parents as a punishment. Nevertheless, this did happen. In China, there are often discrepancies between the law and its implementation, corruption is widespread, and officials sometimes violates citizens' rights with impunity".[7] The author maintains that the State party is mistaken when stating that her fear of her children being removed from her is "mere speculation". She adds that the State party had access to that report as it was part of the information provided by the Refugee Board. She informs that since now the family includes three children, their situation upon return would be worse. She also informs that China has changed their policy and allows for two children born to married couples.

5.6 Finally, the author requests the Committee to include in its views a statement calling the State party to provide free legal aid for her children, as following a "change of law",[8] the national authorities are denying free legal aid to all cases concerning complaints about decisions made by the Refugee Board, which is a major problem for children as they are not able to file communications by themselves.

5.7 In her comments of 5 February 2019, the author informed the Committee that the Refugee Board had reopened their cases and had invited the family to a hearing in December 2018. She provided an unofficial translation of the decision dated 13 December 2018, denying their asylum request.[9] On 12 February 2019, the author clarified that the present complaint was also submitted on behalf of her youngest child W.G.

State party's further observations

6.1 In its observations of 27 August 2019, the State party reiterates its account of the events and its arguments regarding the admissibility and the merits of the communication.

6.2 The State party recalls that, on 24 August 2018, it informed the Committee that the Refugee Appeals Board had decided to reopen the case of the author and her children as she had given birth to the child, W.G., and requested that the case before the Committee be suspended until further notice.

6.3 The State party informs that, following review at an oral hearing before a new panel, the Refugee Appeals Board issued a new decision on 13 December 2018, upholding the refusal by the Danish Immigration Service of the author and her children application for asylum. The decision now also applies to L.G. and W.G.

[7] Chinese family planning policy, Norwegian Country of Origin Information Centre, Landinfo, 15 May 2017.

[8] The authors do not provide further information.

[9] See below paras. 6.1 to 6.9.

6.4 The Refugee Board considered that, due to their age, L.G. and W.G. were unable to provide any information in the case of significance to their grounds for asylum. However, their mother, has given a detailed account of the grounds for asylum that are directly related to those two children. These grounds are completely identical to those of the eldest daughter X.C., which were taken into account in the consideration of the application by the Danish Immigration Service. The Board found that the information provided by their mother included sufficient details about the children's perspective and that there was no other basis for remitting any part of the case to the Danish Immigration Service.

6.5 Regarding the authors' claim that article 2 has been violated, since any other matter involving a Danish child and the best interest of the child, would be possible to appeal to the ordinary courts, the State party submits that this claim is made in a very general manner.[10]

6.6 The State party observes that, in the decision of the Refugee Appeals Board of 13 December 2018, reference is specifically made to the provisions of the Convention. Regarding the author's submission that the Refugee Appeals Board did not invoke the principle of precaution in relation to their ability to provide the grounds for the asylum claim, the State party observes that the children were represented by their mother and a counsel during the proceedings at the Refugee Appeals Board. Furthermore, the mother provided information and a statement during the hearing at the Refugee Appeals Board on 13 December 2018 on behalf of the authors. It is therefore not relevant to invoke the principle of precaution in relation to the authors' ability to provide the grounds for the asylum claim.

6.7 Concerning the author's submission that as the family now includes three children the sanctions on them will be worse, the State party states that the Refugee Appeals Board's has made a thorough assessment, based on the fact that the author has three children. It concluded that there was no basis for finding as a fact that the Chinese authorities will forcibly remove the children from their mother, nor that the mother will otherwise face a real risk of being subjected to any other ill-treatment justifying asylum, including forced sterilization. Concerning the children, the Refugee Appeals Board found that the expected difficulties in having them entered into the Hukou household register, and the possible consequences that they are excluded from receiving free medical assistance and schooling, do not amount to circumstances comparable to serious ill-treatment falling within section 7 of the Danish Aliens Acts.

6.8 The State party argues that the author has not substantiated why the sanctions on the family are supposed to be worse as a consequence of the family now including three children. On the contrary, family-planning regulation in China has loosened up. The Chinese one-child policy has changed into a two-child policy by January 2016, which has also been implemented in the Fujian province. The State party refers to a report published by the Immigration and Refugee Board of Canada stating that the previous one-child and amended two-child Population Law require those who give birth to a child in contravention of family-planning policies to pay a social compensation fee.[11] This is in compliance with the assessment made by the Refugee Appeals Board in its decision of 13 December 2018. In addition, a report published by the Home Office states that abuses towards Chinese returnees, who have exceeded the permitted quotas of children such as forced abortions and sterilizations are less common than previously.[12]

6.9 Concerning the author's argument that the State party is not correct in stating that her fear of her children being removed from her is "mere speculation", as it follows from the report published by the Norwegian Country of Origin Information Centre on 15 May 2017, the State party observes that the report discusses the policy as it was formulated and

[10] The State party refers to *I.A.M. v. Denmark* (communication No. 3/2016), 8 March 2018, para. 10.3.

[11] Immigration and Refugee Board of Canada on 18 October 2018, 'China: Effects of the implementation of the Two-Child Family Planning Policy on children born outside the country and their parents, including access to social services and benefit, particularly in Guangdong, Fujian, Hebei, and Liaoning; punitive measures taken against parents who return from abroad after having children in violation of family planning policies, including whether the Two-Child Family Planning Policy is being applied retroactively', page 1.

[12] Home Office, Country Policy and Information Note. China: Contravention of national population and family-planning law, November 2018, pages 8-9.

implemented before January 2016. It submits that the Refugee Appeals Board has assessed the relevant background information, including that report in its decision of 13 December 2018, and it found that neither the report nor any more recent information provided a basis for finding as a fact that the Chinese authorities will forcibly remove the children from their mother.[13]

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 20 of its rules of procedure under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, whether the communication is admissible.

7.2 The Committee notes the author's statement that decisions by the Danish Refugee Appeals Board are not subject to appeal and consequently all domestic remedies have been exhausted. This has not been challenged by the State party. Therefore, the Committee considers that there is no obstacle to the admissibility of the communication under article 7 (e) of the Optional Protocol.

7.3 The Committee takes note of the author's claim based on article 2 of the Convention that her children were discriminated against because their claim was only considered by the Refugee Appeals Board without any possibility to appeal that decision, while any other case involving a Danish child and the best interests of the child, for instance a child custody case, would be decided by the administrative system with the possibility to appeal before the court. The Committee observes, however, that the author presents this claim in a general manner, without showing the existence of a link between her children's or her own origin and the alleged absence of appeal proceedings against the decisions of the Danish Refugee Appeals Board. [14] Therefore, the Committee declares this claim manifestly ill-founded and inadmissible under article 7 (f) of the Optional Protocol.

7.4 The Committee also takes note of the author's claim that the deportation of her children to China would constitute a violation of article 7, which prescribes the right of children to be registered after birth, to a name and to acquire a nationality and be cared for by his or her parents. However, the Committee notes that the birth of the author's children has already been registered in the State party, and that all three children have Danish birth certificates. The Committee also notes that the author has not invoked a risk that her children would become stateless if returned to China. Therefore, the Committee considers that the author has failed to sufficiently substantiate her claim based on article 7 and declares it inadmissible under article 7 (f) of the Optional Protocol.

7.5 The Committee considers, however, that the author's allegations under articles 3, 6 and 8 of the Convention, in the sense that the consideration of their asylum request by the State party violated the best interests of the child, and that the deportation of the author's children to China would constitute a serious risk to their life, survival and development, as they would not be registered in the Hukou household register, which is essential for ensuring access to health, education and social services and would violate their right to preserve their identity, have been sufficiently substantiated for purposes of admissibility. The Committee therefore declares these claims admissible and proceeds to their consideration on the merits.

Consideration of the merits

8.1 The Committee on the Rights of the Child has considered the present communication in the light of all the information made available to it by the parties, in accordance with article 10 (1) of the Optional Protocol.

[13] The State party refers to: Freedom in the World 2019-China, Freedom House, 2 April 2019 and Country Reports on Human Rights Practices 2018, China, US Department of State, 13 March 2019.

[14] *I.A.M. v. Denmark*, CRC/C/77/D/3/2016, para. 10.3.

8.2 The Committee takes note of the author's allegations that the State party failed to take the best interests of the child into account when considering her children's asylum application, in violation of article 3 of the Convention. It also notes the author's claim that their deportation would entail a violation of her children's right to preserve their identity in violation of article 8 of the Convention.

8.3 The Committee recalls its general comment No. 6, in which it states that States shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child, such as, but by no means limited to, those contemplated under articles 6 and 37 of the Convention; and that such non-refoulement obligations apply irrespective of whether serious violations of those rights guaranteed under the Convention originate from non-State actors or whether such violations are directly intended or are the indirect consequence of action or inaction. The assessment of the risk of such serious violations should be conducted in an age- and gender-sensitive manner.[15] Such assessment should be carried out following the principle of precaution and, where reasonable doubts exist that the receiving State cannot protect the child against such risks, State parties should refrain from deporting the child.[16]

8.4 In the present case, the Committee takes note of the author's allegations that, if deported to China, her three children, who were born to unmarried parents, would be at risk of being forcibly removed from her and that and that they would not be registered in the Hukou household register, which is required to ensure their access to health, education and social services.

8.5 The Committee takes note of the State party's argument that it appears explicitly from the decision that the Refugee Appeals Board took into account the Convention, including Article 3; that the children's situation was given thorough consideration by the Refugee Appeals Board, and that the author has failed to identify any irregularity in the decision-making process. The Committee observes that the State party authorities inquired –through their Ministry of Foreign Affairs- about the process of registration of the authors in the Hukou household register. According to the consultation response of 12 December 2016, the Ministry acknowledged that their household registration was likely to be more complicated than for children born to married parents, that the Danish birth certifications should be sufficient in that regard. It also observes that the majority of the members of the Refugee Appeals Board considered that it must be expected that it will be very difficult to have the author's children entered in the Hukou household register, at least for a period, during which period they will therefore be treated less favourably than other Chinese children in terms of medical care, education and social services.

8.6 The Committee recalls that the best interests of the child should be a primary consideration in decisions concerning the deportation of a child and that such decisions should ensure — within a procedure with proper safeguards — that the child will be safe and provided with proper care and enjoyment of rights.[17] The Committee also recalls that the burden of proof does not rest solely on the author of the communication, especially considering that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to the relevant information.[18] In the present case, the Committee notes the arguments and information submitted to it by the State party. However, the Committee observes that the State party does not appear to have sufficiently verified, through means that would not have jeopardized the author and her children's position as asylum seekers, whether the Danish birth certificate would be sufficient

[15] See the Committee's general comment No. 6, para. 27; and the Committee on the Elimination of Discrimination against Women general recommendation No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, para. 25.

[16] *I.A.M. v. Denmark*, CRC/C/77/D/3/2016, para. 11.8.

[17] See joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child, paras. 29 and 33.

[18] See *M.T. v Spain*, (CRC/C/82/DR/17/2017), para. 13.4. See also inter alia, the Views of the Human Rights Committee in communications No. 1422/2005, *El Hassy v. Libyan Arab Jamahiriya*, adopted on 24 October 2007, para. 6.7, and No. 1297/2004, *Medjnoune v. Algeria*, adopted on 14 July 2006, para. 8.3.

for the purposes of registration in the Hukou household register, and if not, what other procedures would be required for the children to obtain their Chinese birth certificates; what would be the likelihood of obtaining these and how long would the children have to wait until they succeed to be registered in the Hukou register. The Committee notes that these issues are particularly relevant given the numerous administrative requirements for obtaining a birth certificate and complex registration procedures in China, and that birth registration is linked to the Hukou registration.[19] The Committee is also of the view that the State party did not consider how the rights of the children to education and health would be ensured pending or failing their registration.

8.7 In this connection, the Committee takes note of a 2019 US State department report according to which "although under both civil law and marriage law the children of single women are entitled to the same rights as those born to married parents, in practice children born to single mothers or unmarried couples are considered "outside of the policy" and subject to the social compensation fee and the denial of legal documents, such as birth documents and the hukou residence permit.[20] It also takes note of a 2018 Home Office report stating that "many children born to single/unmarried parents have been denied a household registration document (hukou) preventing them from accessing public services, medical treatment and education. Although the government has stated it is making it easier for illegitimate children to be registered, the implementation of this is inconsistent and there can still be obstacles".[21]

8.8 The Committee therefore concludes that the State party failed to duly consider the best interests of the child when assessing the alleged risk that the author's children would face of not being registered in the Hukou household register if deported to China and to take proper safeguards to ensure the child's well-being upon return, in violation of article 3 of the Convention.

8.9 The Committee also notes the author's allegations that, if deported, her children would not be registered in the Hukou household register, which is required to ensure their access to health, education and social services and the only means to prove their identity in China. In that respect, the Committee takes note of a 2016 Immigration and Refugee Board of Canada report stating that "[n]either the birth certificate from the Population and Family Planning Commission, nor the Medical Birth Certificate, in themselves, are functional civil documents beyond their role in the birth registration process. In other words, they cannot attest legal identity or nationality; they only are of use within their capacity to enable birth registration. Birth registration is only complete upon the registration in the police station (paichusuo), and the hukou is the only documentary evidence to attest birth registration."[22] In light of the fact that in China being registered in the Hukou household register is essential for ensuring access to health, education and social services and a requirement as a means to prove one's identity, and that the children born to unmarried parents face numerous difficulties to be registered in the Hukou household register, the Committee considers that the decision of the State party to deport the author's children would entail a violation of their right to life, survival and development under article 6, and their right to preserve their identity under article 8 of the Convention.

9. The Committee, acting under article 10 (5) of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, is of the view that the facts before

[19] See the Committee's Concluding Observations on China's third and fourth period reports (CRC/C/CHN/CO/3-4), para. 39.

[20] Country Reports on Human Rights Practices for 2019, United States Department of State • Bureau of Democracy, Human Rights and Labor, p. 67.

[21] Home Office, Country Policy and Information Note. China: Contravention of national population and family-planning law, November 2018, page 9.

[22] Canada: Immigration and Refugee Board of Canada, China: Information on birth registration for children born out of wedlock; whether the name of the father appears on the birth certificate if the child is born out of wedlock; what information may appear on the birth certificate if the father is unknown; whether the father's name may be added to the child's birth certificate by referring to the father's Resident Identity Card, particularly relating to Henan Province birth certificates (2010-June 2016), 29 June 2016, CHN105545.E, available at: https://www.refworld.org/docid/5821defa4.html [accessed 8 April 2020].

it reveal a violation of article 3 of the Convention, and that the return of the author and their children to China would also amount to a violation of articles 6 and 8 of the Convention.

10. The State party is under an obligation to refrain from deporting the author and her children to China. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

11. Pursuant to article 11 of the Optional Protocol on a communications procedure, 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 include information about any such measures in its reports to the Committee under article 44 of the Convention. Finally, the State party is requested to publish the present Views and to have them widely disseminated in the official language of the State party.