



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

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Committee against Torture

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

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

1.1 The complainant is H.S., a national of Uganda born in 1977. She claims that the State party would violate her rights under article 3 of the Convention if it removed her to Uganda. The State party has made the declaration pursuant to article 22 (1) of the Convention, effective from 27 May 1987. The complainant is represented by counsel, the Danish Refugee Council.

1.2 On 19 December 2016, the complainant requested that the Committee grant interim measures. On 20 December 2016, pursuant to rule 114 of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party to refrain from returning the complainant to Uganda while her communication was under consideration by the Committee. On 21 March 2019, the Committee denied the State party's request to lift the interim measures.

* Adopted by the Committee at its seventy-first session (12–30 July 2021).

** The following members of the Committee participated in the examination of the communication: Essadia Belmir, Claude Heller, Erdoğan İşcan, Liu Huawen, Ilvija Pūce, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé and Bakhtiyar Tuzmukhamedov. Pursuant to rule 109, read in conjunction with rule 15, of the Committee's rules of procedure, and paragraph 10 of the guidelines on the independence and impartiality of members of the human rights treaty bodies (the Addis Ababa guidelines), Peter Vedel Kessing did not participate in the examination of the communication.



Facts as submitted by the complainant

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

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

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

2.4 In May 2007, the complainant met a woman called A. in a bar in town Z and started a relationship with her. In June 2007, the complainant fled Uganda for Denmark with A. because she was not free to live as a homosexual in Uganda and feared being raped and imprisoned because of her sexual orientation.²

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

2.6 After living with A. for five or six months, the complainant was left in a bar with her passport, which had previously been in A.'s possession. Following that, she lived around the central station in Copenhagen before an African couple offered her shelter in return for carrying out household duties. She collected bottles on the streets to earn some money. She never talked to the couple about residence permits.

2.7 She only became aware of her illegal situation on 15 March 2013, when the police found her in the couple's apartment and arrested her for staying illegally in Denmark. The complainant was placed in custody, where she applied for asylum and was interviewed by the Danish Centre against Human Trafficking, which recognized her as a victim of human trafficking. The complainant was released from custody the following day.

2.8 On 7 October 2013, the Danish Immigration Service concluded that the complainant was not a victim of human trafficking. On 10 April 2014, the Danish Immigration Service rejected the complainant's request for asylum. On 15 April 2014, the complainant contacted

¹ A negative word for homosexuals.

² The complainant legally entered Denmark with a Schengen visa valid from 22 June to 4 August 2007. She told the Danish authorities that all formalities related to the visa application had been performed by A.

³ The first statement is undated. The second one is dated 4 July 2015.

LGBT Asylum, an organization that defends the rights of lesbian, gay, bisexual and transgender asylum seekers, and became an active member. On 30 September 2014, the Danish Refugee Appeals Board upheld the Danish Immigration Service's rejection of the complainant's request for asylum, finding that the complainant's account of facts was not credible.

2.9 The Danish Centre against Human Trafficking conducted a new in-depth interview on 29 October 2014, due to a mistake in the English translation of the 7 October 2013 decision of the Danish Immigration Service. The Danish Centre against Human Trafficking concluded that there was a suspicion of human trafficking which could not be fully assessed. On 27 November 2014, the Danish Immigration Service recognized the complainant as a victim of human trafficking.

2.10 On 20 July 2016, the Danish Refugee Council requested the Refugee Appeals Board to reopen the complainant's case as she had been diagnosed with post-traumatic stress disorder (PTSD) and dissociative amnesia and she had been identified as a victim of human trafficking. On 4 August 2016, the Board reopened the case and accepted the complainant's account of the facts but found that the risk of persecution was not sufficient to grant asylum. On 5 December 2016, it rejected the complainant's request for asylum.

2.11 As a member of LGBT Asylum, the complainant has given a number of public statements and participated in pride parades and debates. She has also given anonymous interviews to the Danish media. On 15 December 2016, an article appeared in an online Ugandan gossip publication featuring the complainant's name and photograph. The article portrayed her as "a top Ugandan lesbian" to be deported from Denmark.

2.12 On 30 May 2017, the Refugee Appeals Board again rejected her request for asylum.

Complaint

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

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

3.3 Concerning her experience of ill-treatment, the complainant refers to the "corrective rape" she was subjected to and the threats she received from members of her family and the local community in Uganda because of her sexual orientation. She claims that, prior to fleeing from Uganda, she had lived in constant fear of being raped and had hidden her sexuality in order to avoid further ill-treatment. In that regard, the complainant notes, with reference to the judgment of the Court of Justice of the European Union in *X, Y and Z. v. Minister voor Immigratie en Asiel*,⁵ that homosexual persons cannot be expected to conceal or exercise restraint in the expression of their sexual orientation in their country of origin in order to avoid persecution.

3.4 The complainant submits that, since 2014, she has been advocating the rights of lesbian, gay, bisexual, transgender and intersex persons in Denmark, which increases the real and personal risk of her being subjected to ill-treatment contrary to article 3 of the Convention if deported.

3.5 She claims that lesbian, gay, bisexual, transgender and intersex persons in Uganda, in particular activists, face a risk of systematic ill-treatment contrary to article 3 of the

⁴ CAT/C/56/D/562/2013.

⁵ Judgment, 7 November 2013, paras. 70–71.

Convention. She cites a number of reports published from 2014 to 2016 by non-governmental and governmental organizations⁶ and the media according to which lesbian, gay, bisexual, transgender and intersex persons in Uganda have experienced discrimination, harassment and attacks even after the Anti-Homosexuality Act was nullified by the Constitutional Court of Uganda in August 2014. Moreover, according to the reports, lesbians face arrest and incarceration under section 145 of the Penal Code, are subjected to physical and verbal abuse and may endure “corrective rape”. Abuses of the rights of lesbian, gay, bisexual, transgender and intersex persons have also reportedly been committed or condoned by the Ugandan police, although on some occasions police officers have protected lesbian, gay, bisexual, transgender and intersex persons. The complainant submits, against this background, that she runs an ongoing risk of being subjected to the kind of “curative rape” to which she has already fallen victim.

State party’s observations on admissibility and the merits

4.1 In its observations dated 19 January 2018, the State party observes that, following the complainant’s communication to the Committee, the Refugee Appeals Board reopened the case and adopted a new substantive decision on 30 May 2017. The State party submits that the complainant’s communication contains no new information about her personal circumstances or about the grounds on which she is requesting asylum beyond the information already considered by the Board in its decisions of 30 September 2014, 5 December 2016 and 30 May 2017. In its decision of 30 May 2017, the Board took into account the background information on Uganda referred to by the complainant, as well as additional and more recent background information. The State party concludes that the merits of all of the complainant’s claims have been thoroughly examined by the Board. In its assessment of whether the complainant is at risk of abuse under article 3 of the Convention if deported, the Board considered the following: (a) the abuse to which the complainant was subjected in Uganda and the risk of abuse if deported; (b) the complainant’s activities for organizations advocating the rights of lesbian, gay, bisexual, transgender and intersex persons in Denmark; (c) the inclusion, in an article posted on a Ugandan website, of the complainant’s name and photograph; and (d) the general conditions for lesbians in Uganda, both in themselves and combined with the complainant’s specific circumstances.

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

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

4.4 The State party observes that its obligations under article 3 of the Convention are reflected in section 7 (1)–(2) of the Danish Aliens Act and that, when assessing the risk of a violation of article 3 of the Convention, the domestic authorities rely on criteria elaborated by the Committee in paragraphs 5 to 7 of its general comment No. 1 (1996)⁷ and in its jurisprudence. The complainant did not meet the criteria for finding a violation of article 3 as she did not present an arguable case establishing that she would face a foreseeable, real and personal risk of being subjected to torture.

4.5 Referring to paragraph 9 of the Committee’s general comment No. 1 (1996), the State party submits that the Committee is not an appellate, a quasi-judicial or an administrative body and that considerable weight should be given to findings of fact made by organs of the State party. The State party draws the Committee’s attention to the fact that the complainant’s

⁶ Reference is made to reports by Human Rights Watch, Amnesty International, Freedom House, Chapter Four Uganda, the Organization for Refuge, Asylum and Migration and Bertelsmann Stiftung, as well as the Department of State of the United States of America, the Home Office of the United Kingdom of Great Britain and Northern Ireland and the Finnish Immigration Service.

⁷ Superseded by general comment No. 4 (2017).

case has been examined by two instances, including three times by the Refugee Appeals Board at oral hearings before three different panels. During the procedure before the Board, the complainant could present her views, in writing and orally, assisted by counsel.

4.6 The State party adds that the Refugee Appeals Board conducted a comprehensive and thorough examination of the complainant's statements and of all other information available on the case, including the complainant's communication to the Committee, and that the Board's assessments are clearly and thoroughly justified and substantiated by background material from reliable and objective sources. The State party notes that the medical records produced on the complainant's mental health were taken into account by the Board. As a result, the Board did not accord any value to inconsistencies and unlikely elements in the complainant's statements. On the contrary, in its decisions of 5 December 2016 and 30 May 2017, the Board essentially accepted the complainant's account regarding the grounds for seeking asylum. The State party considers that the complainant fails to identify any irregularity in the Board's decision-making. The State party concludes that the complainant's communication to the Committee merely reflects her disagreement with the assessment of her specific circumstances and of the background information by the Board in an attempt to use the Committee as an appellate body.

4.7 The State also submits that the account of the facts given by the complainant to the Committee "paints a different picture" compared to the statements she made at two interviews by the Danish Immigration Service, on 7 November 2013 and 24 March 2014, and at three oral hearings before the Refugee Appeals Board, on 30 September 2014, 5 December 2016 and 17 May 2017.

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

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

4.10 Furthermore, the State party contests the statements given by the complainant to the Committee according to which she had fled Uganda for Denmark because she was not free to live as a homosexual and feared being raped and imprisoned. The State party refers to the complainant's statements before the Refugee Appeals Board according to which she had never attempted to leave Uganda before meeting A. and that their departure was A.'s initiative. The complainant stated that she and A. had been together for a month before deciding to leave and that they had talked about the journey as lovers. When asked why she had travelled to Denmark, the complainant replied that A. had shown her love. When asked whether the reason for her departure with A. was that people in the village had spoken ill of her, the complainant replied that she had not wanted to go to prison, that their love had been strong and that they had been harassed.

4.11 The State party also contests the complainant's statement to the Committee according to which she had lived in town Z "avoiding further ill-treatment from the Ugandan authorities". At no time did the complainant state to the Danish authorities that she had had problems with or had been harassed by the Ugandan authorities. It appears from the statement given by the complainant to the Refugee Appeals Board on 30 September 2014 that she believed that the local council in her parents' village had come to know about her homosexuality before she moved away from her parents, but that she had not been contacted by the police or the local authorities. Against this background, the State party cannot accept the complainant's account of the facts to the Committee. This also applies to the complainant's statement to the Committee according to which she had lived in constant fear of being raped before fleeing Uganda and had hidden her sexuality and taken precautions to avoid further ill-treatment.

4.12 Regarding the complainant's previous ill-treatment in Uganda in the form of "corrective rape" and threats from her family and the local community, the State party observes that the Refugee Appeals Board agrees with the complainant that information on previous ill-treatment is an important factor when assessing whether there is an actual risk of ill-treatment but disagrees that it is a decisive indicator of future risk. In accordance with paragraph 8 of the Committee's general comment No. 1 (1996), the Board made a thorough assessment of whether the abuse and treatment to which the complainant had been subjected by other people in the village of her parents imply that, if returned to Uganda, she would be at risk of treatment contrary to article 3 of the Convention. The Board's findings against this hypothesis are partly based on the fact that a long time has passed since she was subjected to the treatment in question⁸ and partly on the fact that, despite her particular vulnerability and mental state resulting from her traumatic experience, the complainant subsequently managed to live for nine years in town Z and had a homosexual relationship with A. there until she departed for Denmark in 2007 with A. and on A.'s initiative.

4.13 The State party observes that, in compliance with the judgment of the Court of Justice of the European Union in *X, Y and Z v. Minister voor Immigratie en Asiel*, cited by the complainant, and in line with article 3 (2) of the Convention, the Refugee Appeals Board conducted a thorough assessment of whether the complainant would be at risk of abuse contrary to article 3 of the Convention in case of her return to Uganda due to the general situation for lesbians in Uganda. The State party refers to the Board's decision of 30 May 2017, for which it examined Ugandan law and the actual situation of lesbian, gay, bisexual, transgender and intersex persons, relying on more recent background information than that referred to by the complainant.

4.14 The State party also refers to the decision of the Refugee Appeals Board of 5 December 2016, by which the Board found that the applicant was neither a high-profile homosexual individual nor in conflict with anyone at the time of her departure from Uganda. Regarding the complainant's advocacy activities in Denmark, the State party is of the opinion that the circumstances in *J.K. v. Canada* differ from the circumstances in the case at hand. J.K. had participated actively in efforts to advocate the rights of lesbian, gay, bisexual, transgender and intersex persons in Uganda, had been charged by the Ugandan authorities with "having carnal knowledge against nature" and could have been detained upon his return to Uganda pursuant to those charges. Unlike J.K., the complainant did not engage in any activities in favour of the rights of lesbian, gay, bisexual, transgender and intersex in Uganda and her political activities for organizations advocating the rights of lesbian, gay, bisexual, transgender and intersex in Denmark appear to have been carried out anonymously or at least in such a way as to not have made her a high-profile individual to such an extent that her circumstances would justify the granting of asylum under section 7 of the Aliens Act. The State further submits that the situation in Uganda has changed in recent years and continues to change. The situation during the period 2010–2012, when it was assumed that the Anti-Homosexuality Act could be brought before Parliament again at any time, cannot be compared with the current situation.

4.15 Finally, regarding the article containing the complainant's name and photograph that was posted online by a Ugandan gossip publication, the State party observes that, following

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

the complainant's request on 20 July 2016 that the Refugee Appeals Board reopen her case, the Board received an email from the complainant on 21 July 2016 with a link to a Ugandan publication. The article dealt with the Danish authorities' decision to remove two Ugandan lesbians. Neither the complainant's name nor her photograph appeared in the article. In its decision of 5 December 2016, the Board emphasized that the applicant had not been identified in the article. On 19 December 2016, the complainant once again requested the Board to reopen her case and referred to another article, published on 15 December 2016, featuring her name and photograph. In its decision of 30 May 2017, the Board concluded that the fact that the complainant's name and photograph had appeared in an article on a Ugandan website could not lead to a different assessment because in its previous decision the Board had taken into account background information according to which a number of organizations, mainly in Kampala, had reportedly been actively and openly discussing the rights of lesbian, gay, bisexual, transgender and intersex persons and pursuing cases before the courts with the aim of protecting those rights, according to which support networks for homosexuals had been set up and according to which issues related to the rights of lesbian, gay, bisexual, transgender and intersex persons were being discussed openly in large towns. The State party considers that the Board has taken into account the general situation for homosexuals in Uganda and the complainant's specific profile.

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

5.1 In her comments dated 28 February 2019, the complainant refers to several reports by international non-governmental organizations on the general situation of lesbian, gay, bisexual, transgender and intersex persons in Uganda. She quotes the *World Report 2018* of Human Rights Watch, according to which "same-sex conduct remained criminalized under Uganda's colonial-era law" and "concerns remain that the 2016 NGO law effectively criminalizes legitimate advocacy on rights of lesbian, gay, bisexual and transgender ... people". Moreover, in the report, Human Rights Watch referred to the cancellation of pride celebrations in Kampala and Jinja after the Minister for Ethics and Integrity threatened organizers with arrests and violence and reported on the police's failure to end the practice of forced anal examinations of men and transgender women accused of consensual same sex-conduct.⁹

5.2 The complainant further cites an extract from *Freedom on the Net 2018*, in which Freedom House noted that "hacking attacks against gay individuals for the purpose of blackmail" had been reported and, specifically, that "a social worker at the Most at Risk Populations Initiative had their email and Facebook accounts hijacked", a move that activists suggested "may have been perpetrated by the government given the sheer amount of information the social worker possessed about the LGBTI community through their work and private communications".¹⁰ The complainant also invokes the report *Freedom in the World 2018*, in which Freedom House states that the lesbian, gay, bisexual and transgender community "continues to face overt hostility from the government and much of society", "homosexuality remains effectively criminalized under a colonial provision" and "men and transgender women accused of consensual same-sex conduct may be forced to undergo an anal exam".¹¹ Finally, the complainant refers to the article entitled "Uganda: human rights group targeted in violent break-in", published on 9 February 2018, in which Human Rights Watch describes how human rights non-governmental organizations, including those that defend the rights of lesbian, gay, bisexual, transgender and intersex persons, have been subjected to a string of break-ins, burglaries and attacks without the police having identified or arrested the suspects.¹² The complainant observes that this recent background information confirms that lesbian, gay, bisexual, transgender and intersex persons in Uganda face a difficult situation and that non-governmental organizations working to protect their rights are subject to harassment.

⁹ See www.hrw.org/sites/default/files/world_report_download/201801world_report_web.pdf, p. 577.

¹⁰ See <https://freedomhouse.org/country/uganda/freedom-net/2018>.

¹¹ See <https://freedomhouse.org/country/uganda/freedom-world/2018>.

¹² See www.hrw.org/news/2018/02/09/uganda-human-rights-group-targeted-violent-break.

5.3 The complainant submits that the last decision of the Refugee Appeals Board was based on background information and did not consider the risks she could face after her photograph and name had been posted online in an article.

5.4 The complainant contests the State party's assertion about discrepancies between the account of the facts submitted to the Committee and the information she provided during the asylum proceedings. First, she notes that her assertion that she was repeatedly questioned and called derogatory names by men seems very consistent with her statement that she and B. were approached by men who wanted to date them and who, having been turned down, then asked them if they were lesbians. Second, she submits that it is possible that her underlying reason for going to Denmark with A. was the opportunity to flee Uganda and avoid the risk of being raped and imprisoned because of her sexual orientation. In this respect, she recalls her medical diagnosis according to which she does not take any kind of initiative and leaves it to others to make important decisions regarding her life. She also recalls that she has been identified as a victim of human trafficking. She concludes that, owing to her particular vulnerability and her mental state, she cannot be expected to always explain the underlying reasons "on her own account" and, therefore, it cannot be regarded as "painting a different picture of the actual facts" when she expresses deeper reasons for her behaviour.

State party's additional observations

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

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

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

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

Issues and proceedings before the Committee

Consideration of admissibility

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

7.2 In accordance with article 22 (5) (b) of the Convention, the Committee shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the present case, the State party has not contested that the complainant has exhausted all available domestic remedies. The Committee therefore finds that it is not precluded from considering the communication under article 22 (5) (b) of the Convention.

7.3 The Committee notes the State party's argument that the communication must be rejected as manifestly ill-founded because the complainant's claims have been thoroughly

examined by the domestic authorities and because the complainant has failed to substantiate the claim that there is a personal risk of torture or other cruel, inhuman or degrading treatment or punishment contrary to article 3 of the Convention upon her return to Uganda.

7.4 The Committee considers, however, that the complainant's claim that she risks being subjected to ill-treatment contrary to article 3 of the Convention on account of her sexual orientation has been sufficiently substantiated for the purpose of admissibility.

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

Consideration of the merits

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

8.2 The issue before the Committee is whether the forced removal of the complainant to Uganda would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return (*refouler*) a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture.¹³

¹³ For jurisprudence on non-refoulement claims of lesbian, gay, bisexual, transgender and intersex persons facing removal to Uganda, see; *J.K. v. Canada*, in which the Committee found a violation of article 3 in view of the author's sexual orientation, his militancy in organizations advocating the rights of lesbian, gay, bisexual, transgender and intersex persons and the fact that he could be detained pursuant to criminal charges brought against him; and *Nakawunde v. Canada* (CAT/C/64/D/615/2014), in which the Committee found the communication inadmissible due to the non-exhaustion of domestic remedies. For jurisprudence related to non-refoulement claims of lesbian, gay, bisexual, transgender and intersex persons, see: *H.R.E.S v. Switzerland* (CAT/C/64/D/783/2016), in which the Committee did not find a violation of article 3 in the event of the complainant's return to the Islamic Republic of Iran, despite the fact that homosexuality is generally prohibited in the country, because the complainant did not claim that the Iranian authorities were aware of his sexual orientation or that he would express his homosexuality in the public sphere; and *Mondal v. Sweden* (CAT/C/46/D/338/2008), in which the Committee found a violation of article 3 in the event of the complainant's expulsion to Bangladesh in view of his past experience of torture, his former political activities and the risk of persecution on the basis of his homosexuality combined with the fact that he belongs to a minority Hindu group. For jurisprudence of other treaty bodies, see Human Rights Committee, *X. v. Sweden*, (CCPR/C/103/D/1833/2008), in which the Committee found a violation of articles 6 and 7 of the International Covenant on Civil and Political Rights because the State party's authorities focused mainly on credibility in the author's account of facts and insufficient weight was given to the author's allegations of the real risk he might face in Afghanistan in view of his sexual orientation; Human Rights Committee, *M.K.H. v. Denmark* (CCPR/C/117/D/2462/2014), in which the Committee found a violation of article 7 of the Covenant because of the arbitrary examination of the complainant's claims, inter alia, as regards the situation of lesbian, gay, bisexual, transgender and intersex persons in Bangladesh; Human Rights Committee, *M.I. v. Sweden* (CCPR/C/108/D/2149/2012), in which the Committee found a violation of article 7 of the Covenant because of the authorities' failure to take into due consideration the author's allegations regarding the events she experienced in Bangladesh because of her sexual orientation – in particular, her mistreatment by the police – in assessing the alleged risk she would face if returned to her country of origin; Human Rights Committee, *W.K. v. Canada*, (CCPR/C/122/D/2292/2013), in which the Committee did not find a violation of articles 6 and 7 of the Covenant in the event of the complainant's return to Egypt, notwithstanding serious human rights abuses committed against homosexuals in Egypt, because the author did not provide any specific argument that would lead to the conclusion that he would be at a real and personal risk if he were to return and because the applications filed and the arguments submitted by the author were thoroughly examined by the State party's authorities; and Committee on the Elimination of Discrimination against Women, *A.S. v. Denmark* (CEDAW/C/69/D/80/2015), in which the Committee found the communication inadmissible owing to lack of substantiation and to the absence of evidence demonstrating that the authorities gave insufficient consideration to the author's application for asylum, or that, in the examination of her case, there was any procedural defect or arbitrariness.

8.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally at risk of being subjected to torture upon return to Uganda. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of the determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.¹⁴

8.4 The Committee recalls that the non-refoulement obligation exists whenever there are “substantial grounds” for believing that the person concerned would be in danger of being subjected to torture in a State to which he or she is facing deportation, either as an individual or as a member of a group that may be at risk of being tortured in the State of destination.¹⁵ The Committee also recalls that “substantial grounds” exist whenever the risk of torture is “foreseeable, personal, present and real”.¹⁶ Indications of personal risk may include, but are not limited to: (a) the political affiliation or political activities of the complainant and/or the complainant’s family members; (b) the complainant’s sexual orientation; and (c) the risk of a female complainant being subjected to gender-based violence, including rape.¹⁷

8.5 The Committee recalls that the burden of proof is upon the author of the communication, who must present an arguable case, that is, submit substantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real. However, when complainants are unable to elaborate on their case, such as when they have demonstrated that they are unable to obtain documentation relating to their allegations of torture or have been deprived of their liberty, the burden of proof is reversed and the State party concerned must investigate the allegations and verify the information on which the complaint is based.¹⁸

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

8.7 The Committee further notes the State party’s observations that the complainant’s personal circumstances, including the media article disclosing her name and photograph, have been thoroughly examined by the domestic authorities, taking into account the general human rights situation for lesbian, gay, bisexual, transgender and intersex persons in Uganda. The Committee notes the State party’s argument that the domestic authorities took into account the complainant’s diagnosis of post-traumatic stress disorder and accepted the account of the facts she gave to the asylum authorities despite inconsistencies and unlikely elements in her statements. The Committee also notes the State party’s argument that some statements submitted in the complainant’s communication to the Committee do not

¹⁴ See, for example, *E.T. v. the Netherlands* (CAT/C/65/D/801/2017), para. 7.3; and *Y.G. v. Switzerland* (CAT/C/65/D/822/2017), para. 7.3.

¹⁵ General comment No. 4 (2017), para. 11.

¹⁶ *Ibid.*, para. 11.

¹⁷ *Ibid.*, para. 45.

¹⁸ *Ibid.*, para. 38.

correspond to the account of the facts given to the Danish authorities during the asylum proceedings.

8.8 The Committee observes that it is not disputed that the complainant was subjected to “corrective rape” on the basis of her sexual orientation in Uganda. The Committee refers to its general comment No. 4 (2017) and recalls that, when applying the principle of non-refoulement, States parties should consider whether, in the State of origin or in the State to which the person is to be deported, the person has been or would be a victim of violence, including gender-based or sexual violence, in public or in private, amounting to torture, without the intervention of the competent authorities for the protection of the victim.¹⁹ When examining allegations of violations of article 3 of the Convention, the Committee should take into account whether the complainant has been tortured or ill-treated by, at the instigation of or with the consent or the acquiescence (tacit agreement) of a public official or other person acting in an official capacity in the past, and, if so, whether this was in the recent past.²⁰

8.9 The Committee recalls that rape committed by private actors without the State exercising due diligence to prevent, investigate, prosecute and punish those responsible constitutes torture within the meaning of article 1 of the Convention.²¹ At the same time, however, the Committee notes that the complainant was the victim of an aggression by a private individual and that the incident was never reported to the authorities. The complainant does not argue that the Ugandan authorities could have been aware of the rape, that they did not show due diligence in identifying and sanctioning the perpetrator or that they did not offer her an effective remedy.

8.10 The Committee recalls that ill-treatment suffered in the past is only one element to be taken into account when assessing the risk of a violation of article 3 of the Convention. The principal aim of such an assessment is to determine whether the complainant currently runs the risk of being subjected to torture upon her return to her country of origin. It does not automatically follow from the complainant’s former ill-treatment that she would still be at risk of being subjected to torture if returned to Uganda.²² The Committee notes that, when assessing the complainant’s asylum case, the Danish migration authorities took into account the important period of time that had elapsed between the complainant’s rape and her departure from Uganda and the fact that, during nine years prior to her departure, she had lived with another woman and had had homosexual relationships without being the victim of aggressions by members of the local community and without being persecuted by the authorities. The Committee further notes that the complainant does not claim that the Ugandan authorities attempted to prevent her from leaving Uganda. Neither has she submitted any evidence suggesting that the Ugandan authorities, such as the police or other security services, have been looking for her.²³

8.11 The Committee notes the State party’s argument that the complainant did not engage in activities advocating the rights of lesbian, gay, bisexual, transgender and intersex persons in Uganda and that her activities for organizations involved in such advocacy in Denmark appeared to be anonymous or of a nature that has not made her a high-profile individual to such an extent that she would risk torture if returned to Uganda. The Committee recalls that, when evaluating the risk of a violation of article 3 of the Convention, it is pertinent to take into account whether the complainant has engaged in political or other activities within or outside the State concerned that would appear to make the complainant vulnerable to the risk of being subjected to torture in case of deportation.²⁴ The Committee considers that, even if her participation in activities advocating the rights of lesbian, gay, bisexual, transgender and intersex persons in Denmark could potentially put her at risk of ill-treatment contrary to

¹⁹ Ibid., para. 29 (c).

²⁰ Ibid., para. 49 (b).

²¹ General comment No. 2 (2007), para. 18.

²² See *X, Y and Z v. Sweden* (CAT/C/20/D/61/1996), para. 11.2; *G.B.M. v. Sweden* (CAT/C/49/D/435/2010), para. 7.7; *X. v. Denmark* (CAT/C/53/D/458/2011), para. 9.5; and *S.S.B. v. Denmark* (CAT/C/60/D/602/2014), para. 8.7.

²³ See, for example, *I.E. v. Switzerland* (CAT/C/62/D/683/2015), para. 7.6; and *H.R.E.S. v. Switzerland*, para. 8.13.

²⁴ General comment No. 4 (2017), para. 49 (f).

article 3 of the Convention, the complainant has failed to adduce sufficient evidence to show that her engagement in advocacy activities has been of such significance that she would attract the attention of the Ugandan authorities.

8.12 The Committee notes the complainant's argument that the Refugee Appeals Board failed to consider the risks she could face as a result of the disclosure of her name and photograph in the article of a Ugandan gossip publication. The Committee also notes, however, that, in its decision of 30 May 2017, the Board examined this circumstance and concluded that it did not place the complainant at risk of being subjected to torture if returned to Uganda because a number of organizations, mainly in Kampala, were actively and openly discussing the rights of lesbian, gay, bisexual, transgender and intersex persons and pursuing related rights cases before the courts and because lesbian, gay, bisexual, transgender and intersex issues were being discussed openly in large towns.

8.13 The Committee notes that, in line with article 3 (2) of the Convention, in order to determine whether there are grounds for believing that a person would be in danger of being subjected to torture if returned to another State, the competent authorities should take into account the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights, including harassment and violence against minority groups.²⁵ The Committee notes with concern the reports of human rights violations committed against lesbian, gay, bisexual, transgender and intersex persons in Uganda. The Committee recalls, however, that the occurrence of human rights violations in a complainant's country of origin is not sufficient in itself to conclude that he or she runs a personal risk of torture upon return to that country. Therefore, the mere fact that the human rights of lesbian, gay, bisexual, transgender and intersex persons are reportedly violated in Uganda is not in itself sufficient to conclude that the complainant's removal to that country would constitute a violation of article 3 of the Convention.²⁶

8.14 The Committee recalls that it is generally for the instances of States parties to the Convention to review or evaluate facts and evidence in order to determine the existence of danger of persecution.²⁷ It appears from the information available to the Committee that the Danish authorities took into consideration a large amount of background information and concluded that lesbian, gay, bisexual, transgender and intersex persons were not subjected to targeted abuse by Ugandan authorities or by the general public. The Committee notes that, while she disagrees with the factual conclusions of the State party's authorities, the complainant has not shown that they were arbitrary, manifestly erroneous or amounted to a denial of justice.²⁸

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

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

²⁵ *Ibid.*, para. 43.

²⁶ See *H.R.E.S v. Switzerland*. For similar conclusions of the Human Rights Committee, see *W.K. v. Canada*.

²⁷ See also Human Rights Committee, *X. v. Sweden*, para. 9.2.

²⁸ See also Human Rights Committee, *W.K. v. Canada*, para. 10.5.