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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under the Optional Protocol, concerning communication No. 2651/2015*,**,***

Communication submitted by:	A.M.F. and A.M. (represented by counsel, Daniel Nørrung)
Alleged victim:	The author
State party:	Denmark
Date of communication:	25 September 2015 (initial submission)
Document references:	Special Rapporteur's rule 92 decision, transmitted to the State party on 28 September 2015 (not issued in document form)
Date of adoption of Views:	22 July 2021
Subject matter:	Deportation to Ethiopia
Procedural issue:	Level of substantiation of claims, exhaustion of domestic remedies
Substantive issues:	Non-refoulement; torture, right to life
Articles of the Covenant:	6, 7, 24 (1)
Articles of the Optional Protocol:	2, 5 (2) (b)

1.1 The author is A.M.F., an Ethiopian national born in 1987. She submits the communication on behalf of herself and her son, A.M., born in 2010. She claims that they are victims of a violation by Denmark of their rights under articles 6, 7 and 24(1) of the International Covenant on Civil and Political Rights ("the Covenant"). The author and her son are represented by counsel.

* Adopted by the Committee at its 132nd session (28 June-23 July 2021).

** The following members of the Committee participated in the examination of the communication: Tania Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Shuichi Furuya,Kobauyah Kpatcha Tchamdja, Carlos Gómez Martínez, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada, Changrok Soh, Vasilka Sancin, José Manuel Santos Pais, Hélène Tigroudja and Gentian Zyberi

*** Joint Individual opinion by Committee members Shuichi Furuya,. Photini Pazartzis and. Vasilka Sancin (Dissenting). is annexed to the present Views

1.2 On 28 September 2015, the Special Rapporteurs on new communications and interim measures, acting on behalf of the Committee, decided not to issue a request for interim measures.

Facts as submitted by the author

2.1 On 3 September 2013, the author came to Denmark with her son and applied for asylum. She is an ethnic Oromo from Ethiopia and the daughter of an outspoken leader of the Oromo Liberation Front ("OLF"), who died in prison in 2002 or 2003 after torture. She escaped with her sister to Sudan three weeks after his death. Her other siblings and her mother later also fled to Sudan, where the United Nations High Commissioner for Refugees ("UNHCR") recognised the family as refugees. The author participated in an OLF fraction in Sudan through practical assignments and cultural events, but the Sudanese police interrupted these meetings on three occasions. She therefore fled to Europe in 2006 and came to Italy, where she was granted refugee status. However, she mostly lived in the streets, where she contracted tuberculosis and was sexually abused. She conceived her son as a result of this abuse and gave birth to him after escaping to Norway. However, she was returned to Italy, where she continued to live in the streets for another two years before her travel to Denmark in 2013.

2.2 In Denmark, the author was initially asked to leave to Italy in accordance with the Dublin Regulation. This request was repealed when it became known that she had refugee status there. In November 2013, she was asked again to return to Italy. In April 2015, following the introduction of a new practice, her removal was cancelled and she was informed that her asylum application would be examined on the merits. On 14 July 2015, the Danish Immigration Service ("DIS") rejected her application, "firstly" because she was not persecuted in Ethiopia and, "secondly", if her statements should have been accepted, then Italy would serve as her country of asylum. The DIS decided that she may be removed to Italy.

2.3 On appeal dated 4 September 2015, the Refugee Appeals Board ("RAB") accepted the credibility of the author's account. However, the Board rejected her appeal because it did not accept that she would be exposed to a concrete and individual risk, as she had stayed in Ethiopia for three weeks following her father's death without being persecuted. Moreover, several of her family members had stayed there even longer, including her mother, who stayed there until 2010, about four years after the author's activities in Sudan had ceased. Further, her activities for the OLF were less prominent. The Board's decision stated that she and her child may be removed to Ethiopia.

2.4 The author submits, inter alia, copies of her health records from 2013 to 2014, a letter dated 30 August 2015 from the OLF Committee Chairperson in the United Kingdom[1] and a letter from the Italian Interior Ministry confirming her refugee status in Italy.

The complaint

3.1 The author claims that the removal of herself and her son to Ethiopia would breach their rights under article 6 of the Covenant, as, given her family's and her own activities for the OLF, it would result in an immediate risk of losing her life at the hands of the authorities. According to the author, this risk was acknowledged when Italy granted her refugee status.

3.2 The author notes that the DIS decided that she may be returned to Italy. However, she lived in the streets in that country, contracted tuberculosis and was sexually abused, resulting

[1] Inter alia, the letter states that the Chairperson has known the author as a supporter of the OLF. Following her verification with Oromo community members in Khartoum, the author "had a good record of participation in Oromo meetings and she interacted with Oromo individuals to discuss Oromo political problems. She was regularly attending Oromo meetings in a specific place called Shexxa Girref in Khartoum where Oromo people regularly meet. She sung many Oromo songs that praise the OLF to the public and raised the awareness of Oromo people to stand against the current Ethiopian government. She also supported the OLF financially by selling Oromo cultural dresses. Please note that any participation in Oromo movements abroad is used as a pretext for Ethiopian government agents to arrest Oromos if they go back to Ethiopia". The letter further expands on the risks for Oromo people in Ethiopia, including for returnees surveilled abroad.

in the birth of her son. Therefore, a return thereto would amount to a breach of article 7 of the Covenant.

3.3 The author also submits that a removal to Italy would violate article 24 of the Covenant. Her son would be exposed to living in the streets in Italy and she would be at risk of further sexual abuse. If returned to Ethiopia, her son would suffer from a high risk of detention and harm to his single mother due to her and her family's affiliation with the OLF.

State party's observations on admissibility and the merits

4.1 On 24 March 2016, the State party submitted its observations on admissibility and merits. It notes that the DIS rejected the author's asylum application on 14 July 2015. On 4 September 2015, the RAB upheld this decision.

4.2 The State party provides a description of its relevant domestic law and procedures, the legal basis for the decisions taken by the RAB, the proceedings before it as well as the legal standards applied, including the principle of the country of first asylum.

4.3 The State party submits that the author argues incorrectly that the DIS had decided that Italy was to serve as the country of first asylum for her and her son. Indeed, the DIS did not consider that they would risk persecution in Ethiopia, as it considered her statements not to be credible. The DIS also found her to be a low profile individual, as it was unlikely that she was persecuted by the Ethiopian authorities due to her family's or her own support for the OLF. Only if the RAB were to accept her statements as facts and find, "from an isolated perspective", that she fell within section 7 of the Aliens Act, which incorporates article 1A of the Refugee Convention into Danish law, could Italy serve as the country of first asylum. The RAB itself also examined her alleged risk of return to Ethiopia rather than Italy. The State party submits that they are to be removed to Ethiopia and that their claims concerning Italy are therefore irrelevant and inadmissible as manifestly unfounded under rule 99 (b) of the Committee's rules of procedure.

4.4 The State party adds that the author has also failed to substantiate sufficiently her claims under articles 6 and 7 of the Covenant in relation to her and her son's removal to Ethiopia.[2]

4.5 The State party observes that the author's claim under article 24 of the Covenant contains no allegations of violations arising out of treatment that she and her son experienced in Denmark, or where the Danish authorities are in effective control, or that are due to their conduct. The Committee does not appear to have ever considered the merits of a communication regarding the removal of a person who feared a violation of other provisions than articles 6 or 7 of the Covenant in the receiving State. Further, it follows from General Comment No. 31 that the obligation under article 2 of the Covenant requiring States parties to respect and ensure the Covenant rights for all persons in their territory and under their effective control entails an obligation not to extradite, deport, expel or otherwise remove a person from their territory where there are sufficient grounds for believing that there is a real risk of irreparable harm such as that contemplated by articles 6 and 7 of the Covenant, whether in the country to which removal is to be effected or in any country to which the person may subsequently be removed. The removal of a person fearing a violation of his or her rights under e.g. article 24 of the Covenant by another State party will not cause such irreparable harm as contemplated in articles 6 and 7 of the Covenant. This claim is therefore incompatible *ratione loci* and *ratione materiae* with the provisions of the Covenant, and the Committee lacks jurisdiction over it.[3]

[2] The State party notes that it understands the communication as also claiming a breach of article 7 of the Covenant upon the author's and her son's removal to Ethiopia, even if no such claim is made explicitly.

[3] The State party refers, inter alia, to the decision of the European Court of Human Rights in *F. v. United Kingdom* (application No. 17341/03), where the Court found inadmissible an application claiming a violation of article 8 of the European Convention on Human Rights on the ground that a law in Iran, to were the applicant was to be returned, criminalized adult consensual homosexual acts. The Court stated that compelling considerations arising out of a risk of treatment contrary to articles 2 and 3 of the Convention "do not automatically apply under the other provisions of the Convention. On a purely pragmatic basis, it cannot be required that an expelling Contracting State only return an

4.6 The State party submits that the removal of the author and her son to Ethiopia would not be contrary to articles 6 or 7 of the Covenant. It observes that the communication contains no new information, except for the letter dated 30 August 2015 from the OLF Committee Chairperson in the United Kingdom. The RAB accepted that she had been able to stay in Ethiopia up to about three weeks after her father's death in 2003, without having been contacted by the Ethiopian authorities. It also accepted that several of her family members had remained there for a long time, including her mother, who left Ethiopia only in 2010, around four years after the author's activities in Sudan had ceased. Moreover, her activities for the OLF must be considered as less prominent. The Board thus found that a specific and individual risk of persecution had not been rendered probable.

4.7 The State party observes that it appears from the author's statements in the asylum proceedings that she, her mother and her siblings had not experienced any kind of conflict with the Ethiopian authorities as a consequence of her father's circumstances, except for several house searches, whether before or after his death, despite his longstanding commitment to the OLF, and the fact that he had been imprisoned several times in this connection and died as a result of torture. Her mother and siblings were also members of and politically active for the OLF in Ethiopia, without experiencing any reprisals, and her mother was able to continue living there until around 2010. Moreover, the author herself was not involved with the OLF while still in Ethiopia.

4.8 The State party further observes that the author stated that her mother had often been summoned for an interview with the Ethiopian authorities because they wanted information on the whereabouts of her children and that the summonses had become more frequent after her departure. The State party notes that her mother had only been asked about the departure and whereabouts of her children and that she was not subjected to abuse on these occasions. When asked why her mother had been summoned, the author replied that there was no real answer to this question, but that she guessed that the authorities suspected her and her siblings of performing illegal political activities.

4.9 Concerning the author's stay in Sudan for around two years between 2003 and 2006, the State party notes that it results from her own statement that she did not have any contact with the Sudanese authorities at any time, nor was she identified or registered in connection with OLF activities in Sudan. 600 to 700 people had been present at the OLF meetings that she attended. Further, she does not appear to have played a prominent role, as she worked with cleaning and in a cafeteria, her financial contributions were small and she was active for the OLF only by singing, cooking and receiving tuition. Additionally, she was active for the OLF only in Sudan and for two years only and ceased these activities in 2006. She was never identified in this regard and never had any personal problems with the Ethiopian authorities.

4.10 The State party notes with concern reports of human rights violations in Ethiopia, including against actual and suspected dissidents in the Oromia region.[4] Large numbers of

alien to a country which is in full and effective enforcement of all the rights and freedoms set out in the Convention".

The State party also refers to *Z. and T. v. United Kingdom* (application No. 27034/05), in which the Court observed: "Where however an individual claims that on return to his own country he would be impeded in his religious worship in a manner which falls short of those proscribed levels, the Court considers that very limited assistance, if any, can be derived from article 9 by itself. Otherwise it would be imposing an obligation on Contracting States effectively to act as indirect guarantors of freedom of worship for the rest of the world".

The State party submits that, in a few special cases, the European Court of Human Rights has presumed that responsibility could attach to a Contracting State in respect of circumstances outside of its own territory in relation to article 8 of the Convention. However, those cases presented territorial ties with the Contracting State, contrary to the present case.

[4] Amnesty International, "Because I am Oromo: Sweeping repression in the Oromia region of Ethiopia", October 2014, <https://www.amnesty.org/en/documents/afr25/006/2014/en/>; Human Rights Watch, "Ethiopia: Lethal Force Against Protestors", 18 December 2015, <https://www.hrw.org/news/2015/12/18/ethiopia-lethal-force-against-protesters>; US Department of State, "Country Report on Human Rights Practices 2014 – Ethiopia", 25 June 2015, <https://2009-2017.state.gov/documents/organization/236570.pdf>; Human Rights Watch, "World Report 2015: Ethiopia", <https://www.hrw.org/node/268032> ; Amnesty International, "Report 2014/15 – Ethiopia", 25 February 2015,

Oromo people continued to be arrested or remained in detention in previous years, based on peaceful expression of dissent or their suspected opposition. Following protests against the planned expansion of Addis Ababa into Oromo territory, increased levels of arrests of actual or suspected dissenters continued. However, the background information does not lead to the conclusion that any contact or affiliation with the Oromo people or involvement in its struggle would justify granting asylum.[5] Moreover, there are no reports of Ethiopian nationals who have been imprisoned or subjected to other abuse following a forcible return, with some sources having indicated that they would have been informed of such incidents. Persons most likely to attract attention are those perceived as threats, those willing to use military power, opposition leaders and the most prominent members. However, anonymous participation in demonstrations with hundreds of participants will not in itself lead to persecution.

4.11 The State party further notes that the author has not returned to Ethiopia and that there are no specific reasons to assume that the Sudanese authorities have any information or documentation concerning her involvement in OLF activities in Sudan from 2003 to 2006 that could have been transmitted to the Ethiopian authorities. The State party argues that this perception is exclusively based on her own presumption. Further, the letter dated 30 August 2015 from the OLF Committee Chairperson in the United Kingdom cannot lead to a different assessment, as it only relates to her limited activities in Khartoum and provides only general information on the monitoring of Oromo activities outside of Ethiopia, without being linked specifically to her. Additionally, the State party has not been able to confirm by a general internet search for the name of the author of the letter, including on the OLF website, that this person chairs the OLF Committee in the United Kingdom or can otherwise be associated with it. Thus, neither the general situation for Oromo people in Ethiopia nor the information provided by the author can lead to the conclusion that she risks being imprisoned, tortured, abducted or killed upon return to Ethiopia. The information on her health cannot lead to a different assessment, and she has been cured from tuberculosis.

4.12 The State party notes the Committee's jurisprudence according to which considerable weight should be given to the assessment conducted by the domestic authorities, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice, and that it is generally for the organs of the States parties to the Covenant to review or evaluate facts and evidence in order to determine whether such a risk exists.[6] The State party argues that the author benefited from due process guarantees, that she has not provided any new, specific details about her situation and that the communication does not identify any irregularity in the decision-making process or any risk factors that the authorities failed to properly consider.

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

5.1 On 22 September 2016, the author agrees that article 24 of the Covenant is irrelevant as it has not previously proven to have extraterritorial effect. However, the fact that she has a child, born because of her sexual abuse in Italy, renders her and her child more vulnerable to serious harm covered by articles 6 and 7 if removed to Ethiopia, where they have no more family.

5.2 The author notes that the decision of the DIS is purely administrative and no legal counsel or independent third party is mandatory. During the interview, the DIS representative

https://www.refworld.org/docid/54f07df3c.html#:~:text=Freedom%20of%20expression%20continued%20to,were%20subject%20to%20further%20attack..

[5] The State party notes that the Committee against Torture, in a case concerning the removal of a female ethnic Oromo who claimed that her father had carried out political activities and who claimed to have been tortured on account of her and her father's activities for the OLF, concluded that the complainant's removal to Ethiopia would not constitute a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; *X. v. Denmark* (CAT/C/53/D/458/2011), par. 9.8. The State party also refers to *H.K. v. Switzerland* (CAT/C/49/D/432/2010), where the Committee against Torture also found that the forced return of a female Ethiopian complainant who claimed to have been active for another Ethiopian opposition party in Ethiopia and Switzerland, would not violate article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

[6] *P.T. v. Denmark* (CCPR/C/113/D/2272/2013), para. 7.3; *K. v. Denmark* (CCPR/C/114/D/2393/2014), paras. 7.3-7.4; *N. v. Denmark* (CCPR/C/117/D/2464/2014), para. 6.6; *Mr. X. and Ms. X. v.* Denmark (CCPR/C/112/D/2186/2012), para. 7.5; *Z. v. Denmark* (CCPR/C/114/D/2329/2014), para. 7.4.

expressed a negative opinion on her chances of receiving a positive decision. Apart from the latter's decision, there is no other domestic remedy, as the Aliens Act prohibits an appeal to an ordinary court, despite the crucial matters in asylum procedures. According to the author, this constitutes a fair trial and discrimination problem. The RAB also lacks attributes of a real court, as the meetings remain closed. Additionally, one of the five members is appointed by the Ministry of Justice and that person is usually an employee of that Ministry, which is the superior administrative body to the DIS. Further, the quality of interpretation varies greatly. Finally, no audio recordings have been made available.

5.3 The author notes that the decision by the DIS reads that "We assess that Italy can serve as your first country of asylum, cf. Aliens Act section 7(3)". The final sentence states that, "Consequently, the Immigration Service has decided that the police can deport you to Italy if you do not leave voluntarily, cf. Aliens Act section 32 a". Thus, in her appeal, she focused on a return to Italy, where she had been made to live in the streets, contracted tuberculosis and was sexually abused. As Italy is known to lack resources for taking care of refugees, she and her son would be in imminent risk of repeated abuse and exposure to disease. If there was a doubt concerning her statements, the authorities should have requested her files from Sudan and Italy. The RAB accepted her credibility, but decided that she and her son can be removed to Ethiopia. She reiterates that she has made a prima facie case against their removal, whether to Ethiopia or Italy.

5.4 The author notes that the State party does not dispute that the Italian authorities and UNHCR have recognised her refugee status. Given the history of the handling of her case in Denmark, including frustrating alternating decisions after her arrival in Denmark following her escape from Ethiopia as a 16-year-old girl, it would be legally and humanly unfair to remove her to Ethiopia. She reiterates her arguments concerning the risks of such a removal and confirms that she claims that this would also breach article 7 of the Covenant.

5.5 The author notes that in the period leading up to and about three weeks after her father's death, she was only 16 years old. Her mother was interrogated several times after her escape concerning her and her siblings' whereabouts. She became of age in Sudanand started to express support for her family's cause. However, her refugee camp was attacked by the military, in cooperation between the Ethiopian and Sudanese authorities. Many Oromo refugees were arrested, but she managed to escape. She fears being imprisoned, subjected to ill-treatment, and losing her life like her father because of his activities and her own public loyalty to the OLF. She would be an obvious target, as she is no longer a child, and would be without family protection. Moreover, she stated in her interview that the situation for Oromo people was worse than when she left and that people were executed simply for being OLF members. If returned, her illegal escape would become evident, and her registration and activities in Sudancould become evident given the cooperation between the Ethiopian and Sudanese authorities and in light of her mother's interrogations. Even if she was not in personal contact with the Sudanese authorities, it is still likely that she was recognised and/or registered because she was a frequent performer in public events against the Ethiopian government and the latter closely cooperates with the Sudanese authorities. Furthermore, the sources cited by the State party mention that "the Ethiopian government's response to the Oromia protests has resulted in scores dead and a rapidly rising risk of greater bloodshed".[7] She submits that, given her struggle of many years to escape the oppression of Oromo people, she should be given the benefit of the doubt concerning the question whether her activities have been registered by the Ethiopian authorities.

State party's additional observations

6.1 By note verbale of 20 February 2017, the State party provided additional observations, noting that the author's comments contain no new information on the situation in Ethiopia. The State party observes that article 13 of the Covenant does not contain a right to appeal[8] or to a court hearing.[9] The author's case has been examined at two instances, and essential new information may give rise to a reopening of the proceedings. Decisions of the RAB, which is

[7] Human Rights Watch, "Ethiopia: Lethal Force Against Protestors", 18 December 2015.

[8] *Mr. X and Ms. X. V. Denmark* (CCPR/C/112/D/2186/2012), para. 6.3.

[9] *Maroufidou v. Sweden* (CCPR/C/12/D/58/1979).

a quasi-judicial body, are final. However, aliens may bring an appeal before the ordinary courts, whose review is limited to points of law. Members of the RAB are independent and cannot accept or seek directions from, or discuss a case with, the appointing or nominating authority, including the central administration of the Ministry of Immigration and Integration (previously the Ministry of Justice). On the closed nature of hearings before the RAB and the absence of educational requirements for interpreters, the State party notes that the author did not request that others be allowed to attend her hearing, and did not identify any interpretation errors. Moreover, the DIS and the RAB are very attentive to the adequacy of interpretation and will suspend a hearing if problems arise. As for the benefits of audio recordings, the State party notes that a case officer makes a written report of the asylum-seeker's statements before the DIS and that after the interview, the record is read to the asylum-seeker, who can comment on and correct it and elaborate. A summary record is also made of the asylum-seeker's statements before the RAB, and any issues are clarified during the hearing.[10] In the present case, the author has not claimed that any errors or misunderstandings affected the decision of the RAB.

6.2 On the author's claim that it would be unfair to enforce her removal given the alternating decisions on her case, the State party notes that the fact that it took almost two years for the DIS to decide does not imply that she must be considered as falling within section 7 of the Aliens Act. Moreover, the RAB accepted her account, and she has not explained how her files from Italy or UNHCR would have contributed to her case. Further, she has not explained how the negative comment made by the DIS representative affected the decision of the RAB or the Committee's consideration of the present communication.

6.3 The State party submits that the author has incorrectly argued that the DIS decided that she must be deported to Italy. In fact, the DIS concluded that it could not consider as established that she would risk persecution in Ethiopia. As the RAB confirmed this conclusion, it was irrelevant to assess whether Italy could serve as her first country of asylum. In cases where the DIS found that an asylum seeker did not fall within section 7 of the Aliens Act, it was the usual practice, at the time of the submission of her asylum application, to make an alternative assessment of the existence of an internal flight alternative or another country of first asylum for the purpose of a subsequent hearing before the RAB. The author's counsel who filed the initial submission in the present communication also represented her before the RAB and it was clear from her brief that they were aware that the case focused on her grounds against returning to Ethiopia. Given her expertise in domestic proceedings, the counsel could not have been in doubt about the meaning of the decision of the RAB.

6.4 The State party reiterates that the author cannot be considered a high-profile individual for the Ethiopian authorities, that she carried out all of her activities concerning the OLF outside Ethiopia and that she was never identified in this regard. Therefore, there is no reason to assume that the Ethiopian authorities have any information, much less documentation, on these activities. Further, she does not justify her argument that the benefit of the doubt should be accorded to her in respect of this claim. Neither has she explained how her status as a single mother of a child born out of wedlock would lead to a risk of a violation of articles 6 or 7 under the Covenant. Moreover, despite the general security situation and the difficult conditions of Oromo people in Ethiopia, including increasing numbers of anti-government demonstrations in the Oromia and Amhara regions and the declaration of a state of emergency in October 2016, it cannot be concluded that any contact or affiliation with Oromo people would justify granting asylum.

Author's additional comments

7.1 On 8 June 2017, the author submitted additional comments. She confirms that she did not make any request for others to be present at her hearing before the RAB and that she made no complaint against the interpretation. She only intended to illustrate general weaknesses in the domestic asylum system.

7.2 She reiterates her fear for her and her son's lives upon removal to Ethiopia because of her young age when she fled Ethiopia, her father's activities for the OLF that led to his torture and death, her own support for the OLF, the lack of family support and the fact that her son

[10] *K. v. Denmark* (CCPR/C/114/D/2393/2014), para. 7.6.

was born out of wedlock. She also reiterates the authorities' acceptance of her asylum account and the State party's acknowledgment of the difficult conditions of Oromo people in Ethiopia. She refers to an article according to which "In some Ethiopian villages, children considered "mingi", or cursed, are killed. A child can be mingi because of physical deformities, illegitimate birth or superstitions."[11] She notes that public information also states that Oromo people are often arbitrarily arrested and accused of belonging to the OLF,[12] which, she submits, underlines her personal risk in light of her individual circumstances.

State party's additional observations

8. In its additional observations of 8 August 2017, the State party observes that the author did not claim a risk arising out of her son's illegitimate birth in the domestic proceedings. Neither has she substantiated why he would be at a particular risk. Moreover, she originates from the city of Jima, which has 160,000 inhabitants, whereas the article invoked, written in 2011, describes the situation in villages. Further, she claimed a risk of persecution by the Ethiopian authorities, whereas the article mentions that children are killed by tribal leaders. Information gathered by the RAB states that gender-based and honour-related violence often occurs in rural and conflict-ridden areas in Ethiopia.[13] It is also more common now in large towns and cities for young men and women to date openly and engage in premarital sexual relations. The State party concludes that the claim concerning her son's illegitimate birth cannot lead to a different assessment, including as considered together with the other circumstances of the case.

Issues and proceedings before the Committee

Consideration of admissibility

9.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

9.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not and has not being examined under another procedure of international investigation or settlement.

9.3 The Committee notes that the State party does not submit that the author has not exhausted all available domestic remedies, except where she did not raise a risk arising out of her son's illegitimate birth in the domestic proceedings. The author has not contested this. Accordingly, the Committee considers that it is not precluded under article 5 (2) (b) of the Optional Protocol from examining the communication, except insofar as it concerns the author's claim of a risk arising out of her son's illegitimate birth.

9.4 The Committee notes the State party's submission that the author's claims under articles 6 and 7 of the Covenant are inadmissible on the ground that she has failed to make a *prima facie* case. With regard to the author's contention that she has made a *prima facie* case against the removal of herself and her son to Italy, the Committee notes that the stipulation by the DIS that they could be removed to Italy was an alternative assessment for the purpose of a subsequent hearing before the RAB, and that the State party has clarified the intention of its authorities to remove the author and her son to Ethiopia, not Italy. Therefore, the Committee finds that these claims as presented by the author, are not relevant for the case at hand, and decides not to consider them.

9.5 The Committee also notes the author's argument that she has made a *prima facie* case against her and her son's removal to Ethiopia, owing to the security conditions for Oromo

[11] CNN, "Is the tide turning against the killing of 'cursed' infants in Ethiopia?', 5 November 2011, <https://edition.cnn.com/2011/11/05/world/africa/mingi-ethiopia/index.html>.

[12] Human Rights Watch, "Ethiopia: Lethal Force Against Protestors", p. 5; Amnesty International, "Because I am Oromo: Sweeping repression in the Oromia region of Ethiopia"; Human Rights Watch, "'Such a Brutal Crackdown'; Killings and Arrests in Response to Ethiopia's Oromo Protests", 15 June 2016, <https://www.hrw.org/report/2016/06/15/such-brutal-crackdown/killings-and-arrests-response-ethiopias-oromo-protests>.

[13] Landinfo, Temanotat *Etiopia: kvinners situasjon* (Thematic memorandum on Ethiopia: The situation of women), 11 May 2016.

people in Ethiopia, her father's torture and death because of his activities for the OLF, her own OLF activities in Sudan, the interrogations of her mother, her lack of family protection and her young age when she left Ethiopia. She has additionally argued that the State party has accepted her account of what happened to her, and that UNHCR and the Italian authorities have recognised her as a refugee. The Committee considers that, for the purposes of admissibility, the author has sufficiently substantiated her allegations under articles 6 and 7 of the Covenant. In light of the above, the Committee declares the communication admissible insofar as it raises issues under articles 6 and 7 and proceeds to its consideration of the merits.

Consideration of the merits

10.1 The Committee has considered the communication in the light of all the information made available to it by the parties, as required under article 5 (1) of the Optional Protocol.

10.2 The Committee recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory where there are substantial grounds for believing that there is a real risk of an irreparable harm, such as those contemplated by articles 6 and 7 of the Covenant.[14] The Committee has also indicated that the risk must be personal, with a high threshold for establishing substantial grounds for the existence of a real risk of irreparable harm.[15] Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin. The Committee further recalls its jurisprudence that significant weight should be given to the assessment conducted by the State party, and that it is generally for the organs of States parties to examine the facts and evidence of the case in order to determine whether such a risk exists, unless it can be established that the assessment was arbitrary or amounted to a manifest error or denial of justice.[16]

10.3 The Committee notes the information according to which the State party's authorities do not have the intention to remove the author and her son to Italy, as first country of asylum, but to Ethiopia as her country of origin. The Committee notes the State party's assertion that the author's claims are not sufficiently substantiated to show risk of death and torture, if the author and her son are returned to Ethiopia. The State party claims that the author was able to stay in Ethiopia for three weeks after her father's death in 2003, that several members of her family, including her mother, were able to live in Ethiopia for a long time. The State party further claims that the author's activities for the OLF must be considered as less prominent and that she herself was not involved in the OLF activities while residing in Ethiopia. Regarding the author's OLF activities in Sudan, the State party claims that she was a cleaner and working in a cafeteria, that her financial contributions were small and that her activities for the OLF were only singing, cooking and receiving tuition. While the State party acknowledges concerns about human rights violations in Ethiopia, including against actual and suspected dissidents in the Oromia region, it submits it cannot accept that the mere contact or affiliation with the Oromo people or involvement in its struggle would justify granting asylum. The State party submits that the findings of domestic authorities must be given considerable weight, and that the author benefited from due process guarantees, but did not provide any new, specific details about her situation and that the communication does not identify any irregularity in the decision-making process or any risk factors that the authorities failed to properly consider.

10.4 The Committee notes the author's claim that, if returned to Ethiopia, she and her son face risk of torture and death due to the activities of her family and herself. The author claims that her father was an outspoken leader of the OLF who was tortured and died in prison when she was young because of his activities for the OLF. , She claims that it is also due to these events and subsequent threats that, not only her, but her siblings and her mother

[14] Para. 12, General Comment 31.

[15] X v. Denmark (CCPR/C/110/D/2007/2010), para. 9.2; A.R.J. v. Australia (CCPR/C/60/D/692/1996), Para. 6.6; and X v. Sweden (CCPR/C/103/D/1833/2008), para. 5.18.

[16] X v. Denmark (CCPR/C/110/D/2007/2010), para. 9.2; and X v. Sweden (CCPR/C/103/D/1833/2008), Para. 5.18.

were also forced to flee the country at some point (para. 2.1). The author further claims that before her mother fled the country she was interrogated several times (para. 5.5) after her escape concerning her and her siblings' whereabouts, and that their home was searched several times (para. 4.7). The author claims that she actively participated in the OLF activities in Sudan. The author claims, as an additional element,, a risk due to her son being born out of wedlock, since such children are considered cursed and can be killed (para.7.2).

10.5 The Committee reiterates that it is the organs of the State, which are best placed to make findings of facts based on the evidence and testimony before them, unless such findings are arbitrary or amount to a manifest error or denial of justice. In this connection, the Committee finds that the author provided sufficient explanations and substantiation where possible to demonstrate that she and her son would face risks of death and torture, by providing sufficient details that she had to flee Ethiopia three weeks after the torture and death of her father, a leader of the OLF, that not only she, but her siblings and her mother faced threats and had to flee as well. These factors, taken each separately, and cumulatively, required an in-depth examination in order to determine whether the author faced a real and personal risk of treatment contrary to the Covenant.

10.6 In the absence of an assessment, which takes into consideration the consequences of the author's activities, the activities of her late father, the treatment that her siblings and mother received, the situation and the potential treatment that her son might face, if returned, the Committee considers that the State party has failed to demonstrate that the administrative and/or judicial authorities have conducted an individualized assessment of the author's case sufficient to determine whether there are substantial grounds for believing that there is a real risk of irreparable harm, as contemplated by articles 6 and 7 of the Covenant, if the author and her son are removed to Ethiopia.

11. The Committee, acting under article 5(4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the author's and her son's removal to Ethiopia, if implemented in the absence of a procedure which guarantees a proper assessment of the real and personal risk that she and her son might face if deported, would violate the rights of the author and her son under articles 6 and 7 of the Covenant.

12. In accordance with article 2(1) of the Covenant, which establishes that States parties undertake to respect and to ensure to all individuals within their territory and subject to their jurisdiction the rights recognized in the Covenant, the State party is under an obligation to proceed to a review of the author's case taking into account the State party's obligations under the Covenant and the Committee's present Views. The State party is also requested to refrain from expelling the author until her request for asylum is properly considered.

13. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and disseminate them widely in the official languages of the State party.

Annex

Joint Opinion by Committee members Shuichi Furuya, Photini Pazartzis and Vasilka Sancin (Dissenting)

1. We are unable to concur with the View's conclusion that the authors' removal to Ethiopia, if implemented, would violate their rights under articles 6 and 7 of the Covenant.

2. According to the jurisprudence of the Committee, it is generally for the organs of a State party to examine the facts and evidence of the case in question in order to determine whether a real risk of irreparable harm exists when a person is deported to the country of his or her origin, unless it can be established that the assessment was clearly arbitrary or amounted to a manifest error or denial of justice.[1] This means that, in deportation cases, the Committee departs from the assessment by the State party of the risks, only when it establishes on the basis of evidence and information submitted to it that the State party's assessment was substantively or procedurally clearly arbitrary, manifestly erroneous or constituted a denial of justice. Furthermore, it is an author who bears the burden of proof to establish that the assessment by the State party was such as to fail the abovementioned standard.

3. In the present case, the State party provided the authors with sufficient occasions to explain their situation and then made an individualized assessment in light of their factual backgrounds. In fact, the author does not identify any irregularity in the decision-making process or any risk factors that the authorities of the State party failed to consider. At variance between the authors and the State party is the assessment of those factors they recognized.

4. The View, supporting the authors' claim, finds that "the author provided sufficient explanations and substantiation where possible to demonstrate that she and her son would face risks of death and torture, by providing sufficient details that she had to flee Ethiopia three weeks after the torture and death of her father, a leader of the OLF, that not only she, but her siblings and her mother faced threats and had to flee as well." In our opinion, however, this is not an appropriate finding. The author has provided no detailed explanation on what happened in three weeks after her father's death nor the reason why she decided to leave Ethiopia. Nor has she explained clearly why her mother had been summoned for an interview with the Ethiopian authorities, as well as the reason her mother and other family members had not decided to leave Ethiopia with her and were able to live there for a long time if they actually faced threats and abuses. As the State party observed, one of the main grounds for risk assessment was that she could stay in Ethiopia for three weeks without having been contacted by the Ethiopian authorities (para.4.6) and her mother was able to continue living there until 2010 without experiencing any reprisal (para. 4.7). The author must have known that these factors were crucial points for assessment. Nevertheless, as far as we read the author's comments on the State party's observations (paras. 5.5 and 7.2), there is no convincing explanation that, contrary to the State party's observations, she and her family members were in reality under the threat of death or ill-treatment in Ethiopia.

5. In addition, the author has not provided sufficient information to demonstrate, as a matter of her specific and individual risk, that she would be at risk of death and torture or ill-treatment because of her involvement in the activities for the OLF in Sudan. The State party observes that she had no contact with the Sudanese authorities at any time during her stay in Sudan, nor was she identified or registered in connection with OLF activities in Sudan. 600 to 700 people had been present at the OLF meetings she attended and, according to the State party, anonymous participation in demonstrations with hundreds of participations may not itself lead to persecution (para. 4.9). The State party also observes that there are no specific reasons to assume that the Sudanese authorities have any information or documentation concerning her involvement in OLF activities that could have been transmitted to the Ethiopian authorities (para. 4.11). Furthermore, the author has not provided any clear rebuttal to those State party's observations.

[1] K v. Denmark (CCPR/C/114/D/2393/2014), para. 7.4; Q.A. v. Sweden (CCPR/C/127/D/3070/2017), para. 9.5; A.E. v Sweden (CCPR/C/128/D/3300/2019), para 9.3.

6. As the View recognizes, the organs of the State are best placed to make findings of facts based on the evidence and testimony before them (para. 10.5). For this very reason, the Committee has taken the position that it respects the assessment by the State party unless the author sufficiently and convincingly demonstrates that the State party's assessment was clearly arbitrary or amounted to a manifest error or denial of justice. In the present case, we consider, in the absence of pertinent information provided by the author, that she failed to demonstrate that the assessment by the authorities of the State party was clearly arbitrary or amounted to a manifest error or denial of justice. Accordingly, we conclude that the removal of the authors, if implemented, would not constitute a violation of articles 6 and 7 of the Covenant.