United Nations CCPR/C/114/D/2360/2014

International Covenant on Civil and Political Rights

Distr.: General
25 September 2015

Original: English

Human Rights Committee

Communication No. 2360/2014

Views adopted by the Committee at its 114th session (29 June-24 July 2015)

Submitted by:	Warda Osman Jasin (represented by the Danish Refugee Council)
Alleged victim:	The author and her three children
State Party:	Denmark
Date of communication:	17 March 2014 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 19 March 2014 (not issued in document form)
Date of adoption of Views:	22 July 2015
Subject matter:	Deportation from Denmark to Italy
Procedural issues:	-
Substantive issues:	Prohibition of torture or other cruel, inhuman or degrading treatment
Articles of the Covenant:	7
Articles of the Optional Protocol:	-

GE.15-15602(E)

Annex

Views of the Human Rights Committee under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights (114th session)

concerning

Communication No. 2360/2014*

Submitted by:	Warda Osman Jasin (represented by the Danish Refugee Council)
Alleged victim:	The author and her three children
State Party:	Denmark
Date of communication:	17 March 2014 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 22 July 2015,

Having concluded its consideration of communication No. 2360/2014, submitted to the Human Rights Committee by Warda Osman Jasin, under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5 (4) of the Optional Protocol

1.1 The author of the communication[1] is Warda Osman Jasin, born on 2 May 1990 in Somalia. She submits the communication on behalf of herself and her three minor children: S, SU and F. The author is a Somali national seeking asylum in Denmark and subject to deportation to Italy following the Danish authorities' rejection of her application for

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Ahmed Amin Fathalla, Yuji Iwasawa, Ivana Jelić, Duncan Muhumuza Laki, Photini Pazartzis, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval. In accordance with article 90 of the Committee's rules of procedure, Mauro Politi did not participate in the consideration of the communication.
The texts of individual opinions by Committee member Dheerujlall Seetulsingh (dissenting) and by Committee members Yuval Shany and Konstantine Vardzelashvili (concurring) are appended to the present Views.

[1] The communication itself is not dated; it was received by the secretariat on 17 March 2014..

refugee status in Denmark.[2] The author claims that by forcibly deporting her and her children to Italy, Denmark would violate their rights under article 7 of the International Covenant on Civil and Political Rights. The author is represented by the Danish Refugee Council. The first Optional Protocol to the Covenant entered into force for Denmark on 23 March 1976.

1.2 On 19 March 2014, pursuant to rule 92 of the Committee's rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party not to deport the author and her children to Italy while their case was under consideration by the Committee.

1.3 On 4 December 2014, the Committee, acting through its Special Rapporteur on new communications and interim measures, denied the State party's request to lift the interim measures.

The facts as presented by the author

2.1 The author was born on 2 May 1990 in Kismayo, Somalia. She belongs to the Shekhal clan, and is Muslim. She has three children: S (born in Libya in 2007), SU (born in Italy in 2010), and F (born in Denmark in 2013).

2.2 The author fled Somalia due to fear of her former husband, a powerful 70-year-old local clansman, to whom she was forcibly wed at age 17. The marriage was agreed upon by two rival clans as part of the settlement of a clan conflict. The author was subjected to continuous and serious acts of violence, rape and harassment by her husband She had tried to several times to escape before actually succeeding. Since she has run away from a marriage arranged by her own clan, she cannot seek the protection from the Shekhal clan from her former husband.

2.3 After fleeing Somalia and her former husband, the author discovered that she was pregnant. She entered Libya and was held for four months in a detention centre, where she gave birth to her daughter S.

2.4 Upon release from the detention centre, on an unspecified date, the author fled Libya and sailed in a ship towards Europe. After four days at sea, the ship ran out of fuel and the author and other passengers ran out of food and water. They were rescued by the Italian coastguard in May 2008 and taken to Lampedusa. There, the author was given food and medical assistance and her fingerprints were registered. Thereafter, the author and her daughter, along with other asylum seekers were flown by the Italian authorities to Sicily. Upon arrival, the author and her daughter were offered shelter in a reception facility, where they stayed with eight other women in one room. They were given food, shelter and access to sanitary facilities during their four-month stay there, and the author was interviewed with regard to her asylum application.

2.5 On 3 September 2008, the author and her daughter were given subsidiary protection by the Italian authorities and were issued a residence permit valid from 3 September 2008 to 4 November 2011. The residence permit was not renewed and is thus no longer valid.

2.6 The day after the author was issued a residence permit, she was informed by the staff that she could no longer stay at the reception centre and that she would not be offered any assistance to find alternative temporary shelter, work or more permanent housing.

[2] At the time of submission of the present communication, the author's counsel was informed that their deportation was scheduled to take place "at some point within the next few weeks".

2.7 The author tried without success to find housing and employment and lived in the street with her one-year-old daughter. They slept in railway stations and market places and received food from churches or by begging in the streets.

2.8 Because the author's situation had become desperate in Italy, on an unspecified date, she travelled to the Netherlands and applied for asylum there. During her stay there, she became pregnant by a man of Somali origin. In September 2009, the author and her daughter were returned to Italy by the Dutch authorities, while her residence permit in Italy was still valid. The author was informed by the Dutch authorities that she would be provided with humanitarian assistance from the Italian authorities upon arrival in Rome. However, upon arrival, she was not provided with any assistance and the airport personnel asked her to leave the airport. Thus, the author, who was pregnant at the time, lived in the street in Rome with her two-year-old daughter. They slept in railway stations or, occasionally in informal settlements with other Somali refugees. At one point, the author took the train to Milan to seek work and housing, without any luck.

2.9 On an unspecified date, the author returned to Sicily with her daughter and requested humanitarian assistance at a CARITAS office. She was given a meal and clothes for her daughter, but was informed that CARITAS could not help her find temporary or permanent housing solutions. The author lived in the streets in Sicily with her daughter, surviving by begging and receiving food from churches. During her pregnancy, the author and her daughter slept in railway stations, or when possible, as guests of other persons of Somali origin. The author did not receive any medical assistance or examinations during her pregnancy, because she was informed that, in order to get an appointment with medical staff, she needed an address.

2.10 When the author was nine months pregnant, a woman of Somali origin offered her shelter in her apartment. When she went into labour, her host called for an ambulance, but when the staff at the emergency call centre heard the address, they refused to send an ambulance to the neighbourhood as many persons of Somali origin were known to live there illegally. The author thus gave birth at home without any professional assistance. The following morning, she went to the hospital to have her newborn examined, but was turned away. After two weeks, the host and the author and her two children were evicted from the apartment.

2.11 Thereafter, the author, a single mother with two small children, lived in the streets or, occasionally, with other persons of Somali origin, whom she didn't know very well. The author and her children were fully dependent on receiving food from churches or begging. Every day, the author feared that she would be unable to provide food and find a safe shelter for her children at night.

2.12 The author could not afford the fee of €250 to renew her Italian residence permit as she did not have an income. In October 2011, she travelled to Sweden to seek asylum. When she learned that the Swedish authorities planned to return her to Italy, she travelled to Denmark, where she applied for asylum on 25 June 2012.

2.13 On 19 November 2013, the Danish Immigration Service determined that because of her situation in Somalia, the author was in need of subsidiary protection but should be transferred to Italy, as Italy was her first country of asylum. That decision was appealed before the Refugee Appeals Board. On 22 December 2014, the author gave birth to her third child, F.

2.14 On 6 February 2014, the Refugee Appeals Board upheld the decision of the Danish Immigration Service, stating that the author was in need of subsidiary protection but should be returned to Italy in accordance with the principle of first country of asylum (see the Dublin Regulation).

2.15 The author suffers from asthma, a condition that she developed from living in the street in Italy. She is dependent on medication for that condition and was hospitalized in Denmark when she failed to inhale her medication in time.

2.16 The author claims that she exhausted all domestic remedies in Denmark, when the negative decision, dated 6 February 2014, was handed down by the Danish Refugee Appeals Board as that decision is final and cannot be appealed before another court. The author contends that the Danish Refugee Appeals Board based its negative decision on the fact that she had received a temporary residence permit in Italy, when she first entered that country, owing to situation in Somalia and that she could enter Italy and reside there legally while applying to renew her residence permit. The Board stated that there was not a "fully sufficient basis" for not referring to Italy as the first European Union country of asylum in the author's case. However, the Board did note that "the majority of [the members of] the Refugee Appeals Board had found that the background information regarding the conditions for asylum seekers who received temporary residence permits in Italy to some extent supported concerns that the humanitarian conditions for this group were approaching a level where it would no longer be secure to refer to Italy as the first country of asylum.

The complaint

3.1 The author submits that, by forcibly returning her and her children to Italy, the Danish authorities would violate their rights under article 7 of the International Covenant on Civil and Political Rights.[3] She submits that reception conditions in Italy and basic human standards for refugees with valid or expired residence permits do not comply with international obligations of protection.[4] On that issue, the author cites a report which states that international protection seekers returning to Italy who had already been granted a form of protection and benefitted from the reception system when they were in Italy were not entitled to accommodation in the reception facilities in Italy.[5] She maintains that her experience indicates systemic failures regarding basic support for asylum seekers and refugees in Italy, especially members of vulnerable groups, and that she and her children would likely face homelessness, destitution and very limited access to medical care if transferred to Italy. She asserts that asylum seekers in Italy experience severe difficulties accessing health services.[6] She asserts that, in view of that situation, Italy does not currently meet the necessary humanitarian standards for the principle of first country of asylum to be applied.

[3] The author cites European Court of Human Rights, *M.S.S. v. Belgium and Greece*, application No. 30696/09, judgement adopted on 15 December 2010; and *Mohammad Hussein and Others v. the Netherlands and Italy*, application No. 27725/10, decision adopted on 2 April 2013.

[4] The author refers to the Swiss Refugee Council (OSAR), *Reception conditions in Italy: Report on the current situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees* (October 2013), p. 11; Asylum Information Database (AIDA), *Country report: Italy*, May 2013, p. 34; Council of Europe, "Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to Italy from 3 to 6 July 2012", 18 September 2012 (CommDH(2012)26), p. 150.

[5] The author cites European Network for technical cooperation of the application of the Dublin II Regulation, *Dublin II Regulation - National report on Italy*, 19 December 2012, available from www.dublin-project.eu/dublin/Dublin-news/New-report-Dublin-II-regulation-lives-on-hold; AIDA, *Country report: Italy*, May 2013, p. 37; United States of America, Department of State, "Country Reports on Human Rights Practices for 2012: Italy13); OSAR, *Reception conditions in Italy*(see note 4), pp. 4-5; and Jesuit Refugee Service Europe, *Protection Interrupted: The Dublin Regulation's impact on asylum seekers' protection*, June 2013, pp. 152 and 161.

[6] The author cites CommDH(2012)26 (see note 4), p. 143 ; and OSAR, *Reception conditions in Italy* (see note 4).

3.2 The author states that her circumstances are in contrast with those in the case of *Mohammed Hussein and Others v. the Netherlands and Italy*,[7] because she has already experienced being transferred from the Netherlands to Italy, and she did not, neither on arrival nor later, have any assistance from the Italian authorities in securing the basic needs of her family, namely, shelter, food, medical assistance at birth, nor was she provided with any assistance to find work, more permanent housing and to integrate into Italian society.

3.3 The author adds that if they were to return to Italy, she and her children would be at a real risk of facing inhuman and degrading treatment because, based on her previous experience and subsequent developments, they would be exposed to destitution and homelessness, with no prospects of finding a durable humanitarian solution. The author draws attention to her status as a single mother with three small children, the youngest of whom is two and a half months old. She notes that after she was told to leave the Italian reception facilities in September 2008, when she was granted subsidiary protection, she had not been able to find shelter, access to medical care, work or any durable humanitarian solution for her and her children. She states that her Italian residence permit expired in November 2011 and that she does not have the funds to renew it or find shelter and food while awaiting its renewal.

State party's observations on the admissibility and the merits

4.1 In its observations dated 31 October 2014, the State party informed the Committee that in a decision dated 23 July 2014, the Danish Refugee Appeals Board rejected the author's application to re-open her asylum process. The State party considers that the communication is manifestly ill-founded and should therefore be declared inadmissible; for the same reasons, the State party considers that it is wholly without merit. More specifically, the State party considers that the author did not provide any essential new information or views on her circumstances, beyond the information already relied upon during the asylum proceedings, and Appeals Board had already considered that information in its decisions of 6 February and 23 July 2014. The Appeals Board found that the author had previously been granted subsidiary protection in Italy and could return to Italy and stay there lawfully with her children; therefore, Italy is considered the "country of first asylum", which justifies the refusal of the Danish authorities to grant her asylum, in accordance with section 7 (3) of the Aliens Act. When applying the principle of country of first asylum, the Refugee Appeals Board requires, at a minimum, that the asylum seeker is protected against *refoulement* and that he or she be able to legally enter and take up lawful residence in the country of first asylum.

4.2 According to the State party, such protection includes certain social and economic elements, as asylum seekers must be treated in accordance with basic human standards and their personal integrity must be protected. The core element of such protection is that the person(s) must enjoy personal safety, both upon entering and while staying in the country of first asylum. However, requiring that the asylum seeker will have the exact same social and living standards as nationals of the country is not possible.

4.3 In response to the author's allegations regarding the humanitarian situation in Italy, the State party refers to the decision of inadmissibility handed down by the European Court of Human Rights in *Mohammed Hussein and Others v. the Netherlands and Italy* in 2013. In that case, taking into account the reports drawn up by both governmental and non-governmental organizations, the Court considered that "while the general situation and living conditions in Italy of asylum seekers, accepted refugees and aliens who have been granted a residence permit for international protection or humanitarian purposes may

[7] See *Mohammad Hussein and Others v. the Netherlands and Italy*.

disclose some shortcomings, it has not been shown to disclose a systemic failure to provide support or facilities catering for asylum seekers as members of a particularly vulnerable group of people, as was the case in *M.S.S. v. Belgium and Greece*."[8] The Court found the applicant's allegations manifestly ill-founded and inadmissible and that the applicant could be returned to Italy. With regard to the present case, the State party considers that, although the author has relied on the European Court's finding in *M.S.S. v. Belgium and Greece* (2011), the Court's decision in the *Mohammed Hussein* case (2013) is more recent and specifically addresses the conditions in Italy. The Court noted that a person granted subsidiary protection in Italy would be provided with a three-year renewable residence permit that allowed the holder to work, obtain a travel document for aliens, family reunification and benefit from the general schemes for social assistance, health care, social housing and education.[9]

4.4 The 2012 Council of Europe report cited by the author was already available when the Court handed down its decision in the *Mohammed Hussein* case, as was the 2012 United States of America Department of State country report on Italy. Information that some aliens lived in abandoned buildings in Rome and had limited access to public services was mentioned included in the *Mohammed Hussein* decision. Finally, the 2013 AIDA country report on Italy, also cited by the author, stated that some asylum seekers who did not have access to asylum centres were obliged to live in "self-organized settlements", which are often overcrowded (see p. 37). The November 2013 update of that country report indicates that those were the reception conditions in Italy for asylum seekers and not for aliens who had already been issued residence permits. The author has relied primarily on reports and other background material relating to reception conditions in Italy that were relevant to asylum seekers, including returnees under the Dublin Regulation, and not to persons, like herself, who had already been granted subsidiary protection. Moreover, although the author states that she suffers from asthma and requires medication for the condition, information available indicates that the author would have access to health care in Italy.[10]

4.5 Consequently, the State party concludes that it will not be breaching article 7 of the Covenant to deport the author and her children to Italy and that the author has failed to substantiate that she would be at risk of irreparable harm in Italy.

Author's comments on the State party's observations

5.1 In her comments dated 3 December 2014, the author asserts that the living conditions in Italy for asylum seekers *and* beneficiaries of international (subsidiary) protection are similar, since there is no effective integration scheme in Italy. Asylum seekers and recipients of subsidiary protection often face the same severe difficulties finding basic shelter, access to sanitary facilities and food.[11] The author refers a report which states that the real problem concerns those who are sent back to Italy and who already had some kind of protection. They may have already stayed in at least one of the accommodation options available upon arrival, but, if they left the centre voluntarily before the established time, they are no longer entitled to accommodation in the Government reception centres for asylum seekers (CARAs). Most of the people occupying abandoned buildings in Rome fall into this last category. The findings show that the lack of places to

[8] See *Mohammed Hussein and Others v. the Netherlands and Italy*, para.78.

[9] Ibid., para 38.

[10] Ibid.

[11] The author refers to her initial communication and the reports cited therein.

stay is a big problem, especially for returnees who are, in most cases, holders of international or humanitarian protection.[12]

5.2 The author also disputes the State party's interpretation of the European Court jurisprudence. She contends that the *Mohammed Hussein* decision was based on an assumption that upon notification, the Italian authorities would prepare a suitable solution for the arrival of the applicant's family in Italy.[13] The author submits that she had also been transferred from the Netherlands to Italy and was not provided with any assistance by the Italian authorities in securing the basic needs of her family, such as shelter, food, medical assistance, employment, permanent housing or integration into Italian society. Thus, based on that experience, there is no basis for assuming that the Italian authorities will prepare for her return in accordance with basic human rights standards.

5.3 Furthermore, the author argues that the more recent European Court decision in *Tarakhel v. Switzerland* (4 November 2014), which involved similar facts, supports her claim that she should not be sent back to Italy.[14] The author notes that, in the *Tarakhel* case, the Court stated that the presumption that a State participating in the Dublin system will respect the fundamental rights in the European Convention on Human Rights is not irrebuttable. The Court further found that, in the current situation in Italy, "the possibility that a significant number of asylum seekers may be left without accommodation or accommodated in overcrowded facilities without any privacy or even in insalubrious or violent conditions, cannot be dismissed as unfounded." The Court required Switzerland to obtain assurances from its Italian counterparts that the applicants (a family) would be received in facilities and conditions adapted to the age of the children; if such assurances were not made, Switzerland would be violating article 3 of the European Convention by transferring them to Italy. The author argues that, in the light of that finding, the acute homelessness facing recipients of subsidiary protection upon returning to Italy would fall within the scope of article 3 of the European Convention on Human Rights and article 7 of the International Covenant on Civil and Political Rights. Accordingly, the author reiterates that deporting her and her children to Italy would constitute a violation of article 7 of the Covenant.

Additional observations by the State party

6.1 On 17 February 2015, the State party commented on the European Court of Human Rights decision in *Tarakhel v. Switzerland* and notes that, in reference to its case law, the Court had reiterated that article 3 could not be interpreted as obliging the High Contracting Parties to provide everyone within their jurisdiction with a home, nor did article 3 entail any general obligation to give refugees financial assistance to enable them to maintain a certain standard of living.[15] In the opinion of the State party, the *Tarakhel* case — which concerned a family with the status of asylum seekers in Italy — does not deviate from the findings in the Court's previous case law on individuals and families with a residence permit for Italy, as expressed in, inter alia, the *Mohammed Hussein* decision. Accordingly, the State party expresses the view that it cannot be inferred from the *Tarakhel* decision that States are required to obtain individual guarantees from the Italian authorities before returning individuals or families in need of protection, who had already been granted residence permits in Italy.

[12] See Jesuit Refugee Service Europe, *Protection Interrupted* (see note 5), p. 152 .

[13] See *Mohammed Hussein and Others v. the Netherlands and Italy*, para. 77.

[14] See European Court of Human Rights, *Tarakhel v. Switzerland*, application No. 29217/12, judgment adopted on 10 September 2014.

[15] Ibid., para. 95.

6.2 In that respect, the State party reiterates that it appears from the decision in *Mohammed Hussein* case (paras. 37 and 38) that persons recognized as refugees or granted subsidiary protection in Italy are entitled to benefit from the general schemes for social assistance, health care, social housing and education under Italian domestic law.

6.3 Accordingly, the State party reiterates that article 7 of the Covenant does not prevent it from enforcing the Dublin Regulation in respect of individuals or families who have been granted residence permits in Italy, like the author.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with article 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

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

7.3 The Committee notes the author's claim that she has exhausted all effective domestic remedies available to her. In the absence of any objection by the State party in that connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

7.4 The Committee notes the State party's challenge to the admissibility of the communication on the grounds that the author's claims under article 7 of the Covenant are manifestly ill-founded. The Committee however considers that the inadmissibility argument adduced by the State party is intimately linked to the merits and should thus be considered at that stage.

7.5 The Committee declares the communication admissible insofar as it appears to raise issues under article 7 of the Covenant and proceeds to its consideration of the merits.

Consideration of merits

8.1 The Human Rights Committee has considered the present 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.

8.2 The Committee notes the author's claim that deporting her and her three minor children to Italy, based on the Dublin Regulation principle of "first country of asylum", would expose them to the risk of irreparable harm, in violation of article 7 of the Covenant. The author bases her arguments on, inter alia, the actual treatment she received after she was granted a residence permit in Italy in September 2008 and on the general conditions of reception for asylum seekers and refugees entering Italy, as found in various reports.

8.3 The Committee recalls its general comment No. 31,[16] 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 risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may

[16] See the Committee's general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

subsequently be removed. The Committee has also indicated that the risk must be personal and that the threshold for providing substantial grounds to establish that a real risk of irreparable harm exists was high.[17] The Committee recalls that, generally speaking, it is for the organs of the States parties to the Covenant to review or evaluate facts and evidence in order to determine whether such risk exists.

8.4 The Committee notes that, according to the uncontested submissions by the author, after her initial four-month stay in a CARA in Sicily, Italy, in September 2008, she and her eldest daughter were granted subsidiary protection and a residence permit valid for three years. The day after the residence permit was issued, the author was informed that she could no longer stay in the reception centre; she was thus left without shelter nor means of subsistence. She left Italy and went to the Netherlands, but was returned to Italy in September 2009 with her minor child, and was again left to fend for herself without any social or humanitarian assistance from the Italian authorities, even though she held a valid residence permit, including during her pregnancy. Owing to her state of indigence and vulnerability, she was unable to renew her Italian residence permit in 2011. In 2011, she went to Sweden, then to Denmark where she requested asylum in June 2012. Today, the author, an asylum seeker and a single mother of three minor children, who suffers from asthma, finds herself in a situation of great vulnerability.

8.5 The Committee notes the various reports submitted by the author. It also notes that recent reports highlight the lack of available places in the reception facilities in Italy for asylum seekers and returnees under the Dublin Regulation. The Committee notes in particular the author's submission that returnees, like her, who had already been granted a form of protection and benefited from the reception facilities when they were in Italy, are not entitled to accommodation in the CARAs.[18]

8.6 The Committee further observes that the majority of the members of the Danish Refugee Appeals Board had found on 6 February 2014 that the background information regarding the conditions for asylum seekers who had obtained temporary residence permits in Italy to some extent supported concerns that the humanitarian conditions for this group were approaching a level where it would no longer be secure to refer to Italy as the first country of asylum (see para. 2.16 above).

8.7 The Committee notes the finding of the Refugee Appeals Board that Italy should be considered the "country of first asylum" in the present case and the position of the State party that the country of first asylum is obliged to provide asylum seekers with certain social and economic elements in accordance with basic human standards, although it is not required that such persons have exactly the same social and living standards as nationals of the country (see paras. 4.1 and 4.2 above). It notes that the State party also referred to a decision of the European Court of Human Rights which stated that, although the situation in Italy had shortcomings, it had not disclosed a systemic failure to provide support or facilities catering for asylum seekers (see para. 4.3 above).[19]

8.8 However, the Committee considers that the State party's conclusion did not adequately take into account the detailed information provided by the author, who

[17] See communications No. 2007/2010, *X v. Denmark*, Views adopted on 26 March 2014, para. 9.2; No. 282/2005, *S.P.A. v. Canada*, decision adopted on 7 November 2006; No. 333/2007, *T.I. v. Canada*, decision adopted on 15 November 2010; No. 344/2008, *A.M.A. v. Switzerland*, decision adopted on 12 November 2010; No. 692/1996, *A.R.J. v. Australia*, Views adopted on 28 July 1997, para. 6.6; and No. 1833/2008, *X. v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

[18] See AIDA, *Country report: Italy*, January 2015, p. 54-55, available at www.asylumineurope.org/sites/default/files/report-download/aida_italy_thirdupdate_final_0.pdf .

[19] See *Mohammed Hussein and Others v. the Netherlands and Italy*.

presented extensive information based on her own personal experience that, despite being granted a residence permit in Italy, on two occasions she was faced with indigence and extreme precarity. Furthermore, the State party does not explain how the Italian residence permit that the author was granted and which was now expired would protect her and her three minor children from hardship and destitution, which she had already experienced in Italy, if she and her children were to be returned to that country.

8.9 The Committee recalls that States parties should give sufficient weight to the real and personal risk a person might face if deported[20] and considers that it was incumbent upon the State party to undertake an individualized assessment of the risk that the author would face in Italy, rather than rely on general reports and on the assumption that, as she had benefited from subsidiary protection in the past, she would, in principle, be entitled to work and receive social benefits in Italy today. The Committee considers that the State party failed to devote sufficient analysis to the author's personal experience and to the foreseeable consequences of forcibly returning her to Italy. It has also failed to seek proper assurance from the Italian authorities that the author and her three minor children would be received in conditions compatible with their status as asylum seekers entitled to temporary protection and the guarantees under article 7 of the Covenant, by requesting that Italy undertake (a) to renew the author's and her children's residence permits and not to deport them from Italy; and (b) to receive the author and her children in conditions adapted to the children's age and the family's vulnerable status, which would enable them to remain in Italy.

8.10 Consequently, the Committee considers that, under the circumstances, removal of the author and her three minor children to Italy on the basis of the initial decision of the Danish Refugee Appeals Board would be in violation of article 7 of the Covenant.

9. The Human Rights 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 deportation of the author and her three children to Italy would violate their rights under article 7 of the International Covenant on Civil and Political Rights.

10. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide Warda Osman Jasin, the author of the present communication, with an effective remedy, including full reconsideration of her claim, taking into account the State party's obligations under the Covenant, the Committee's present Views, and the need to obtain assurance from Italy, as set out in paragraph 8.9 above, if necessary. The State party is also requested to refrain from expelling the author to Italy while her request for asylum is being reconsidered. The State party is also under an obligation to avoid exposing others to similar risks that would constitute a violation of article 7 of the International Covenant on Civil and Political Rights.

11. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the present Views. The State party is also requested to publish the present Views and to have them translated into the official language of the State party and widely distributed.

[20] See for example, communication No. 1763/2008, *Pillai v. Canada*, Views adopted on 25 March 2011, paras.11.2 and 11.4.

Appendix I

Individual opinion of Committee member Dheerujlall Seetulsingh (dissenting)

1. However much one may sympathize with the condition of the author and her three children, I do not agree with the view that there will be a likely violation by the State Party of article 7 of the Covenant, in this case, if they were to be deported to Italy (the country of first asylum). Such a finding would unduly widen the ambit of article 7 and make it applicable to the situation of thousands of poor and destitute people in the world, especially those who now want to move from the South to the North. There is no precedent in the jurisprudence of the Committee to support the extension of the application of article 7.

2. The author arrived in Italy alone from Somalia when she was pregnant in 2008. She obtained a residence permit valid until November 2011. And yet soon after 2008, she decided to move with her daughter to the Netherlands where she again got pregnant. They were returned to Italy, where she gave birth to a second child. In October 2011, she left Italy for Sweden, which denied her asylum, so she went on to Denmark. She failed to renew her residence permit in Italy, which expired in November 2011, allegedly due to lack of means. However, she found the means to travel across Europe. In November 2013, the Danish Immigration Service ruled that the author should be returned to Italy. Although she was in that predicament with two small children, the author gave birth to a third child in Denmark in December 2014. She seems to have totally ignored the existence and value of birth control, thereby exhibiting a certain degree of irresponsibility in her conduct and exacerbating her precarious situation and that of her small children.

3. The Committee recalls (see para. 8.3 of the Views) it is for the authorities of the State party to assess the risk that the author would face if deported to the country of first asylum. The decision taken was subject to appeal before the Danish Refugee Appeals Board, which was presided over by a judge. The sovereign appreciation of facts must be left to the State party, unless there is a manifest error of judgment or an error of law or a misapplication of the law or of the provisions of the Covenant to the facts. Such is not the case here. Since all the facts were taken into account by the authorities of State party's before it took a decision, it is difficult to endorse the sweeping conclusions of the majority of the members of the Committee (see para. 8.9 of the Views) that the State party "failed to devote sufficient analysis to the author's personal experience". The Appeals Board did take into account that conditions would be difficult for the author in Italy, but effectively concluded that there were no substantial grounds to lead to the conclusion that she would suffer "irreparable harm" if deported. That issue was therefore adequately addressed.

4. The fact that living conditions are better in Denmark than in Italy is not sufficient ground to conclude that the author would be subjected to inhuman and degrading treatment if deported to the country of first asylum. Nor is there any reason to believe that she would be compelled to return to her country of origin (Somalia) because of harsh living conditions in Italy or that Italy would deport her to her country of origin, where allegedly she is likely to face torture or other cruel, inhuman or degrading treatment. The latter course of action was not contemplated by the Italian authorities during the time that she spent there between 2008 and 2011. Thus, the situation envisaged and the concern expressed in the concurring individual opinion of Messrs. Shany and Vardzelashvili do not find relevance here.

5. Finally, to presume a violation of article 7 is tantamount to introducing the concept of economic refugees within the Covenant, thus creating a dangerous precedent, whereby asylum seekers and refugees would be justified in moving from one country to another,

seeking better living conditions than in the country of first asylum. Subsidiary protection may vary from country to country depending on the economic resources available in each country. The decisions of the European Court of Human Rights, relied upon by the author, are not on all fours with the author's case.

6. Concerning the particular situation of the author, the State party has the sole discretion in taking a final decision, although the author has been largely responsible for putting herself "in a situation of vulnerability" by bearing three children between 2008 and 2014.

7. While the Covenant should be considered as a living instrument that can cater to new situations which may arise some 50 years after it came into being, there is certainly a risk in extending the scope of article 7 to the situation described in the present case, as it may result in dire consequences and create innumerable problems, for which a solution is not within the ambit of the Covenant.

Appendix II

Individual opinion of Committee members Yuval Shany and Konstantine Vardzelashvili (concurring)

1. We agree that, in the circumstances of the case, deporting the author and her children to Italy without undertaking an individual assessment of their personal circumstances and without considering the need to obtain proper assurances from the Italian authorities that they will be able to access the most basic social services would violate article 7 of the Covenant. Still, we wish to clarify an aspect that was not sufficiently explained in the Committee's Views. We believe that the Committee's approach should have been based more explicitly on the unique status of the author and her children as asylum seekers entitled to subsidiary protection and not merely on the economic destitution that she had experienced and may experience again if deported to Italy. For us, it is this unique status that gives rise to the obligation of the State party not to the deport the author and her children to Italy.

2. The status of asylum seekers entitled to subsidiary or complementary protection is specifically regulated in Executive Committee (ExCom) Conclusion No. 103(LVI) (2005) of the United Nations High Commissioner for Refugees (UNHCR)[a] and governed, for most European Union member States, including Italy, by the system of allocation of responsibilities introduced by Council Regulation (EC) No. 343/2003 (Dublin II Regulation) as amended by Council Regulation (EC) No. 604/2013 (Dublin III Regulation).[b] According to these instruments, persons entitled to subsidiary protection must not be returned to their countries of origin or to 'unsafe' third countries (*non-refoulement*);[c] and according to the relevant UNHCR interpretative guidelines[d] and Council directives, they should also be able to enjoy basic economic and social rights in the receiving countries.[e] In fact, these two entitlements appear to be, at least in some cases, closely interrelated, as the inability to exercise the most basic economic and social rights, which would enable asylum seekers to stay in the country of asylum, may eventually leave them no choice but to return to their country of origin, effectively rendering illusory their right to *non-refoulement* under international refugee law.[f] The same logic applies to the *non-*

[a] UNHCR, ExCom Conclusion No. 103(LVI) (2005), Conclusions on the provision on international protection through complementary forms of protection.

[b] Council of the European Union, Council Regulation (EC) No. 343/2003 of 18 February 2003 (Dublin II Regulation); and European Parliament and Council of the European Union, Regulation (EU) No. 604/2013 of 26 June 2013 (Dublin III Regulation).

[c] See UNHCR, ExCom Conclusion No. 103 (LVI) (2005) (note a above), para. (m); Dublin II Regulation, preambular para. 2 and art. 2 (c); and Dublin III Regulation, preambular paras. 3 and 10.

[d] UNHCR, *Complementary Forms of Protection: Their Nature and Relationship to the International Refugee Protection Regime*, 9 June 2000 (EC/50/SC/CRP.18), para. 17.

[e] Council of the European Union, Council Directive 2004/83/EC of 29 April 2004 (the Qualification Directive), arts. 28-29, as amended by European Parliament and Council of the European Union, Directive 2011/95/EU of 13 December 2011 (the recast Qualification Directive), arts. 29-30, which confers basic benefits on those entitled to subsidiary protection. These provisions resemble Council Directive 2003/9/EC of 27 January.2003 (the Reception Directive), art. 13, as amended by European Parliament and Council of the European Union Directive 2013/33/EU of 26 June 2013 (the recast Reception Directive), arts. 17-19, which confers basic benefits on asylum seekers.

[f] See, for example, *Penelope Mathew, Reworking the Relationship between Asylum and Employment* (New York, Routledge, 2012), p. 88; and James C. Hathaway and Michelle Foster, *The Law of Refugee Status*, 2nd ed. (Cambridge, Cambridge University Press, 2014) 348.

refoulement obligations of State parties under the Covenant: placing individuals who should not be deported to their countries of origin under intolerable living conditions in the country of refuge, may compel them to return despite the real risk of serious human rights violations awaiting them in their home State.

3. Although we are of the view that the very harsh conditions experienced by the author and her family in Italy may amount to a violation of a number of rights under the Covenant, they do not, in themselves, cross the high threshold for *non-refoulement* under the Covenant, namely, a real risk of a serious violation of the most basic rights under the Covenant, such as deprivation of life or torture.[g] Hence, had the author been an Italian national, or even a foreign national whose basic rights were not at risk of being seriously violated at the country of origin, we would not consider Denmark to be under a legal obligation not to deport her and her family to Italy. In such a case, Italy would be excepted to fulfil its obligations under the Covenant towards the deported individuals upon their arrival there, pursuant to the Dublin II Regulation, and Denmark would not be required to continue to host them in its territory for an indefinite period of time.

4. Still, in the particular circumstances of the case, the exceptional combination of the following factors: (i) the unclear legal situation in Italy of the author and her children, following the expiration of her residence permit; (ii) the extreme vulnerability of the author and her family given their health situation and age; (iii) the demonstrated failure of the Italian social welfare system to address the most basic needs of the author and her children, notwithstanding their entitlement to subsidiary protection; and (iv) the lack of adequate assurances for the provision of such protection following the contemplated deportation — cast serious doubt as to whether Italy can be effectively regarded as a "safe country" for the specific author and her children. As a result, deporting her back to a country, which does not offer her a minimum level of social protection commensurate with her protected status, without any other resettlement alternatives available to her, may eventually compel the author and her family to return to her country of origin — Somalia — despite the real risk of torture that awaits her there and notwithstanding her right to *non-refoulement* under the Covenant.

5. Since the Danish immigration did not consider the effect of their decision to deport the author and her author on their actual ability to effectively exercise the right to *non-refoulement* under the Covenant, we agree with the Committee that deporting the author to Italy would violated Denmark obligations under article 7 of the Covenant, and that Denmark is under an obligation to reconsider the author's claim for asylum.

[g] See the Committee's general comment 31(2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.