



International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 3012/2017*, **

<i>Communication submitted by:</i>	D.A.M.
<i>Alleged victim:</i>	The author
<i>State party:</i>	Sweden
<i>Date of communication:</i>	4 July 2017 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 27 July 2017 (not issued in document form)
<i>Date of adoption of decision:</i>	13 March 2020
<i>Subject matter:</i>	Deportation from Sweden to Somalia
<i>Procedural issue:</i>	Level of substantiation of claims
<i>Substantive issues:</i>	Risk of torture and other cruel, inhuman or degrading treatment or punishment; non-refoulement
<i>Article of the Covenant:</i>	7
<i>Article of the Optional Protocol:</i>	2

1.1 The author of the communication is D.A.M., a national of Somalia born on 11 September 1982 in Mogadishu. She is subject to a deportation order to Somalia following the Swedish authorities' rejection of her asylum application. She claims that the State party has violated her rights under article 7 of the Covenant. The author is not represented by counsel. The Optional Protocol entered into force for the State party on 23 March 1976.

1.2 On 27 July 2017, pursuant to rule 94 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party to refrain from returning the author to Somalia while her case was under consideration by the Committee.

* Adopted by the Committee at its 128th session (2–27 March 2020).

** The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja and Gentian Zyberi.



The facts as submitted by the author

2.1 The author resided in Masagaway, Somalia. Her husband worked as a driver for a foreign humanitarian organization. In 2012, Al-Shabaab started threatening the author's husband in relation to his work. At first, he did not take the threats seriously. In March 2013, the author's brother-in-law borrowed her husband's car and was stopped and killed by Al-Shabaab. The author and her husband then decided to leave the area. The author was six months pregnant at the time. On their way, the author realized that she had forgotten some pregnancy medication at home. She returned home, where some members of Al-Shabaab were waiting. They took her to an unknown place where she was held for a week. They threatened to kill her and told her that she would be forced to marry a member of Al-Shabaab. One day, the guards received a call and left the place where the author was held. When the author screamed for help, some herders let her out and directed her to the nearest road. She paid a truck driver 600 shillings to take her to her uncle's house in Mogadishu. Once there, she was taken to a hospital where she learned that she had suffered a miscarriage. Her uncle's son was a member of Al-Shabaab, and he pressured his father to reveal the author's and her husband's whereabouts. Her uncle therefore arranged for her departure from Somalia, and she left the country in March 2013. She arrived in Turkey, where she worked until September 2014 in order to save money to pay a smuggler for her onward travel. Subsequently, she travelled from Turkey to Greece and then on to Denmark. In November 2014, she arrived in Sweden and applied for asylum.

2.2 On 29 November 2016, the Swedish Migration Agency rejected the author's asylum application, finding that although she could not return to Masagaway because of the presence of Al-Shabaab, she could still reside in Mogadishu. Her subsequent appeals before the Migration Court and the Migration Court of Appeal were all rejected, and she thus claims to have exhausted all available domestic remedies.

2.3 The author submits that she has a throat infection and needs an operation. She also claims that she cannot have the operation or receive medical assistance because she is not legally residing in the State party.

The complaint

3.1 The author claims that if returned to Somalia, she would face a serious risk of harm from Al-Shabaab, in violation of her rights under article 7 of the Covenant, as she was previously kidnapped by Al-Shabaab because of her husband's work.

3.2 The author claims that she does not have a male network in Mogadishu and does not know if her uncle is still alive. She contends that, although the Swedish authorities found Mogadishu to be a safe place for her, her uncle would not have advised her to leave Somalia if Mogadishu had been safe.

State party's observations on admissibility and the merits

4.1 On 2 March 2018, the State party submitted its observations on admissibility and the merits of the author's communication.

4.2 The State party notes that the author applied for asylum in Sweden on 19 November 2014. The Swedish Migration Agency rejected her application on 29 November 2016. She appealed to the Migration Court, which rejected her appeal on 26 April 2017. On 14 June 2017, the Migration Court of Appeal refused her leave to appeal and the decision to expel the author became final and non-appealable.

4.3 The State party also notes that, in order to determine the identity and place of habitual residence of the author, a language analysis was conducted on 12 September 2016. The result of the language analysis, which was communicated to the author on 19 September 2016, corroborated her statements about her origin and place of habitual residence, namely that she was born in Mogadishu and resided in Masagaway in the province of Shabelle Dhexe in central Somalia. The Migration Agency consequently assessed the author's case against the conditions prevailing in Masagaway and Mogadishu.

4.4 On 27 June 2017, after the decision to expel her became final, the author claimed before the Migration Agency that she was ill and had a tumour in her throat. However, she did not present any medical certificate in support of this claim. She has since submitted to the Committee medical statements indicating that she has a benign struma on the right side

of her throat and that no further medical treatment or follow-up visits to medical facilities have been deemed necessary.

4.5 As to the admissibility of the communication, the State party submits that the author's claim that she risks being subjected to treatment contrary to the Covenant fails to attain the basic level of substantiation required. It considers that the communication is manifestly unfounded and should therefore be held inadmissible pursuant to article 3 of the Optional Protocol and rule 99 (b) of the Committee's rules of procedure.

4.6 On the merits, the State party notes that in order to find a violation of article 7 of the Covenant, it must be established that if returned, the author would face a real risk of being subjected to the type of treatment that is prohibited in article 7.¹ The risk must also be the necessary and foreseeable consequence of the forced return.² The Committee's jurisprudence indicates a high threshold as to the substantial grounds required to establish that a real risk of irreparable harm exists, such as noted in article 7. All relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin. The State party notes that great weight should be given to the assessment conducted by the State party,³ and that it is generally for the domestic courts to evaluate the facts and evidence, unless the evaluation was clearly arbitrary or amounted to a denial of justice.⁴ The State party explains that, as the Swedish Aliens Act reflects the same principles that are contained in article 7 of the Covenant, the Swedish migration authorities apply the same kind of test when considering an asylum application as the Committee. It emphasizes that its migration authorities are in a very good position to assess the information submitted by an asylum seeker and to appraise the credibility of his or her claims.

4.7 The State party notes that in the present case, the Migration Agency and the Migration Court thoroughly examined the author's claims. The Migration Agency held an introductory interview with the author on 19 November 2014. The minutes of the interview were communicated to the author's counsel on 19 March 2015. On 29 June 2015, the author was again interviewed for about two hours in the presence of her counsel. The minutes of that interview were communicated to the author's counsel on 1 July 2015. During both interviews, interpreters were present and the author confirmed that she understood them well. Through her counsel, the author has been invited to submit written observations on the aforementioned minutes, and to make written appeals. The author had several opportunities to explain the relevant facts and circumstances in support of her claim and to argue her case before the Migration Agency and the Migration Court. Both the Migration Agency and the Migration Court had sufficient information to ensure that they had a solid basis for making a well-informed, transparent and reasonable risk assessment concerning the author's need for protection. In view of the foregoing and the fact that the Migration Agency and the Migration Court are specialized bodies with expertise in asylum law and practice, the State party finds no reason to conclude that their findings were inadequate or arbitrary, or amounted to a denial of justice.

4.8 As regards the author's risk of torture or other ill-treatment upon her return to Somalia, the State party submits that the risk must be assessed on grounds that go beyond mere theory or suspicion. The author should substantiate her claim by presenting an arguable case and establishing that she runs a personal, foreseeable and real risk of being subjected to treatment contrary to article 7 of the Covenant. After an individual assessment, the migration authorities found that the author's asylum claim contained several contradictory elements and implausible circumstances. The Agency noted that, despite the opportunities she was given to speak freely, the author had provided a vague account that was lacking in detail about the incidents that had allegedly occurred in Somalia. In

¹ In this regard, the State party recalls the Committee's jurisprudence that States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement, as it indicated in its general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 9; *A.C. v. Netherlands* (CCPR/C/93/D/1494/2006), para. 8.2; and *P.K. v. Canada* (CCPR/C/89/D/1234/2003), para. 7.2.

² *A.R.J. v. Australia* (CCPR/C/60/D/692/1996), paras. 6.6, 6.8 and 6.14.

³ *Khan v. Canada* (CCPR/C/87/D/1302/2004), para. 5.4.

⁴ *Nakrash and Liu v. Sweden* (CCPR/C/94/D/1540/2007), paras. 7.3–7.4; and *X v. Sweden* (CCPR/C/103/D/1833/2008), para. 9.2.

particular, the Migration Agency took into consideration the fact that the author was unable to account for the circumstances surrounding her detention by Al-Shabaab and her subsequent escape. It thus concluded that she had failed to substantiate her grounds for asylum and that her statements were not credible. That conclusion was also supported by country information indicating that Somalis working for humanitarian organizations were not seen as opponents to Al-Shabaab, while local staff of the African Union Mission in Somalia and the United Nations were known to be targeted by the group. Notwithstanding the negative credibility finding of the author's claims, the Migration Agency noted that she would not be able to safely return to Masagaway owing to the security conditions, and continued to assess whether an internal flight alternative would be relevant and plausible.

4.9 The State party submits that, given that the security situation in Somalia varies in different parts of the country, a threat level may be limited to a certain location, and there may be an internal flight alternative. It notes that when determining whether such an alternative is relevant, circumstances such as sex, age, health and the availability of support networks must be taken into consideration. It considers that the situation is not such as to put everyone in any part of Somalia at risk of being treated in a way that would entail a violation of the Covenant. It also notes that, in cases where an internal flight alternative in Mogadishu is deemed relevant, the reasonableness of the proposed internal flight must be assessed.

4.10 In the present case, the State party's authorities first assessed the human rights and security situation in the habitual place of residence of the author, Masagaway, in the province of Shabelle Dhexe. They concluded that Al-Shabaab was in control of the area and that the author would therefore be unable to use a safe travel route back there. Consequently, Mogadishu, where the author was born and raised, was identified as an internal flight alternative. In this respect, the State party refers to the jurisprudence of the European Court of Human Rights which, with reference to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), has indicated that "article 3 does not, as such, preclude Contracting States from placing reliance on the existence of an internal flight alternative in their assessment of an individual's claim that a return to his or her country of origin would expose him or her to a real risk of being subjected to treatment proscribed by that provision".⁵ The State party notes that the European Court ruled that, in order to rely on the internal flight alternative, States must ensure that "the person to be expelled must be able to travel to the area concerned, gain admittance and settle there".⁶ The State party also takes note of the relevant jurisprudence of the Committee against Torture.⁷

4.11 With regard to the situation in Mogadishu, the State party observes that it is not such as to put everyone who is present there at real risk of treatment contrary to article 3 of the European Convention on Human Rights. As regards the author's personal situation, the State party notes that she was born in Mogadishu and was raised in the Hawiye Abgaal clan, which is also her husband's clan, while she belongs to the Arab Rer Saleh clan. The author's mother lived in Mogadishu until she died. According to country information, while all clans are represented in Mogadishu, the majority of the population are members of the Abgaal Hawiye clan. Furthermore, the author has a male relative, her uncle, in Mogadishu, who paid for her medical treatment and arranged for her departure from Somalia, including by selling her mother's house and finding a smuggler. The State party's authorities therefore found that the author's claim that she lacked any male network to be unsubstantiated and not credible and thus held that she had failed to substantiate a risk of persecution upon her return to Mogadishu. The State party finds no reason to question this assessment. Furthermore, while the author provided no information about her husband and her children, the State party considers it unlikely that she is unaware of her family's whereabouts, or unable to obtain any information about her family or at least provide

⁵ European Court of Human Rights, *Salah Sheekh v. the Netherlands* (application No. 1948/04), judgment of 11 January 2007, para. 141. See also *Chahal v. the United Kingdom* (application No. 22414/93), 15 November 1996, para. 98; *Sufi and Elmi v. the United Kingdom*, (application Nos. 8319/07 and 11449/07), 28 June 2011, para. 266; and *N.M.B. v. Sweden* (application No. 68335/10), judgment of 27 June 2013, para. 37.

⁶ European Court of Human Rights, *Salah Sheekh v. the Netherlands*, para. 141.

⁷ *H.M.H.I. v. Australia* (CAT/C/28/D/177/2001), para. 6.6; *B.S.S. v. Canada* (CAT/C/32/D/183/2001), para. 11.5; and *N.S. v. Canada* (CAT/C/59/D/582/2014), para. 9.6.

accounts of her search for information by contacting her relatives and clan members in Somalia.

4.12 The State party notes that the author has raised a new claim before the Committee, that she cannot return to her uncle in Mogadishu because his son is a member of Al-Shabaab. It points out that she has not submitted any explanation for her failure to raise this claim during the domestic asylum proceedings. The State party considers it reasonable to expect the author not to omit such a fundamental element of her claim during the asylum proceedings. It therefore finds the author's new claim to be an "escalation" of her asylum account and strongly questions its credibility.

4.13 In the light of the foregoing, the State party considers that its migration authorities have thoroughly examined the author's claims, and that her protection claims are not credible. It contends that, by presenting additional information and details only at a later stage before the Committee, the author has escalated her asylum account, undermining her credibility. The State party asserts that its migration authorities have provided evidence that Mogadishu is both a relevant and reasonable internal flight alternative for the author. Furthermore, the State party notes that the author has not indicated any risk of persecution by the State or its agents that would mean that internal flight to Mogadishu might not be considered relevant or reasonable. It contends that due consideration has been given to the author's personal situation including her sex, age, health and the availability of support networks in Mogadishu. She has been deemed to have relevant support networks consisting of clan support, both from the Darod and Hawiye Abgaal clan on either side of her parents, and the support of a male network, her uncle. Lastly, the State party points out that, as there is an international airport in Mogadishu, the author is able to return to Mogadishu without having to travel by herself within Somalia, and that she has failed to substantiate a real risk of being subjected to torture or other ill-treatment upon her return to Mogadishu.

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

5. On 8 March and 31 August 2019, the author submitted that she was encountering difficulties, as she missed her family, especially her children. She also stated that she had no further comments on the State party's observations.

State party's additional observations

6.1 In a letter dated 13 November 2019, the State party provided additional observations. It notes that the author's submissions dated 8 March and 31 August 2019 provide that she is a mother who is alone in Sweden, that she misses her children, and that she cannot wait any longer without her family. It also notes that in her initial complaint before the Migration Agency, the author claimed that she had a son and three daughters whose place of residence seemed to be Masagaway, where she used to live with her family. The author then filled out a form in which she indicated that she was unaware of the whereabouts of her children. During the asylum proceedings, she stated that she did not know what had happened to her husband and her children. In a submission dated 10 September 2015 to the domestic authorities, she indicated that while her husband and her family were on the run, she did not know where they were. She also stated that her only relative was a cousin in Mogadishu; she had four brothers and a younger sister with whom she had lost contact when they had fled the war between 1999 and 2000; that an older aunt still lived in Masagaway; and that a cousin on her father's side was living in Karan, where her father lived until he died.

6.2 In view of the foregoing, the State party reiterates that the author's accounts contain a number of contradictory elements and implausible circumstances and that she provided a vague account, lacking in detail, about what happened to her and her family in Somalia. The State party notes that the author has not provided any information about what happened to her husband and her children, even though they seem to be in contact with her, with the ultimate aim of reuniting with the author in Sweden.

6.3 The State party repeats that Mogadishu is both a relevant and reasonable internal flight alternative for the author, where she has been deemed to have relevant support networks consisting of clan support. It submits that the author should be able to receive support from her husband and her children with whom she seems to be in contact. Accordingly, by returning the author to Mogadishu, Sweden would not violate its obligation under article 7 of the Covenant.

Issues and proceedings before the Committee

Consideration of admissibility

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

7.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, 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 the effective domestic remedies available to her. In the absence of any objection from the State party in this 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 author's claim that she would face torture or cruel, inhuman, or degrading treatment or punishment by Al-Shabaab if returned to Somalia, owing to her husband's previous work for a humanitarian organization. She submits that she was threatened, abducted and detained by Al-Shabaab, resulting in her departure from Somalia. The Committee also takes note of her claim that she has no male network in Somalia, which would further expose her to a risk of being subjected to treatment contrary to article 7 of the Covenant in case of return to her country of origin.

7.5 The Committee observes that the Swedish Migration Agency considered the author's accounts of the events that had allegedly taken place in Somalia to be vague, lacking in detail and contradictory. In particular, the Migration Agency pointed out that the author was unable to account for the circumstances of her detention and escape from Al-Shabaab. The Agency did not therefore accept that she had been abducted by Al-Shabaab on the basis of her husband's work for the humanitarian organization. The Committee observes that, notwithstanding its negative credibility findings, the Agency continued to assess whether an internal flight alternative might be relevant and plausible for the author. In that regard, the Committee notes that the Agency examined the security circumstances in two places of the author's habitual residences, Mogadishu and Masagaway, and identified Mogadishu as an internal flight alternative for her. The Agency also took into account the fact that the clans of her parents and her husband are represented in Mogadishu. The Agency noted that the author had an uncle in Mogadishu, who had actively supported her, including by paying for her medical treatment and selling her mother's house to fund her departure from Somalia, and that her allegations that she does not have any male network in Somalia were therefore not substantiated. Furthermore, the Committee notes that in her additional observations submitted to it, the author has not provided any new information regarding her uncle. In addition, the Committee notes the State party's contention that, during the domestic asylum proceedings, the author did not raise the claim that her uncle's son was a member of Al-Shabaab and had requested his father to reveal her whereabouts, and that this situation would prevent her from returning to her uncle in Mogadishu. The Committee also notes the State party's contention that the author has not provided any explanations as to her failure to raise this central claim during the domestic proceedings, thereby undermining her credibility. In this regard, the Committee notes that the author has not substantiated her claim that her uncle may no longer be alive. In view of the above, the Committee considers that the information available demonstrates that the authorities of the State party have carried out a thorough assessment of the author's asylum application. The information before it does not enable the Committee to conclude that the author would be at serious risk of a violation of her rights under article 7 of the Covenant in case of return.

7.6 The Committee considers that, while the author disagrees with the factual conclusions of the State party's authorities, the information available does not indicate that those findings are manifestly unreasonable.⁸ It also considers that the author has not established a sufficient basis for her claim that the evaluation of her asylum application by the Swedish authorities was clearly arbitrary or amounted to a manifest error or denial of justice.⁹

⁸ *R.G. et al. v. Denmark* (CCPR/C/115/D/2351/2014), para. 7.7.

⁹ For example, *A v. Denmark* (CCPR/C/116/D/2357/2014), para. 7.4.

7.7 The Committee recalls that the obligation not to remove an individual contrary to a State party's obligations under the Covenant applies at the time of removal and that, in cases of imminent deportation, the material point in time for assessing this issue must be that of its own consideration of the case.¹⁰ Accordingly, in the context of the communications procedure under the Optional Protocol, in assessing the facts submitted by the parties for consideration, the Committee must also take into account new developments that may have an impact on the risks that an author who is subject to removal may face. In the present case, the information in the public domain has indicated the prevalence of human rights violations in Somalia.¹¹ However, on the basis of the information in the case file, the Committee is not in a position to assess the extent to which the current situation in her country of origin may impact the author's personal risk. In this context, the Committee recalls that it remains the responsibility of the State party to continuously assess the risk that any individual would face in case of return to another country before the State takes any final action regarding his or her deportation or removal.

7.8 Therefore, without prejudice to the continuing responsibility of the State party to take into account the present situation of the country to which the author would be deported, the Committee considers that, in the light of the available information regarding the author's personal circumstances, the author's claims under article 7 of the Covenant are insufficiently substantiated and are therefore inadmissible under article 2 of the Optional Protocol.

8. The Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
- (b) That the present decision shall be transmitted to the State party and to the author.

¹⁰ For example, *S.Z. v. Denmark* (CCPR/C/120/D/2625/2015), para. 7.9.

¹¹ For example, A/HRC/42/62.