



# Convention on the Rights of the Child

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## Committee on the Rights of the Child

### Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 31/2017\* \*\*

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

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

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

#### Facts as submitted by the author

2.1 The author, who is unmarried, is from the village Fuzschou Shi in the Fujian Province of China. She escaped China after the Chinese authorities performed a forced abortion on her.

\* Adopted by the Committee at its eighty-fifth session (14 September–1 October 2020).

\*\* The following members of the Committee participated in the examination of the communication: Suzanne Aho Assouma, Hynd Ayoubi Idrissi, Bragi Gudbrandsson, Philip Jaffé, Olga A. Khazova, Gehad Madi, Benyam Dawit Mezmur, Otani Mikiko, Luis Ernesto Pedernera Reyna, José Ángel Rodríguez Reyes, Ann Marie Skelton, Velina Todorova and Renate Winter.



Her father was killed in the incident during the scuffle with the police and her mother died later from the shock, owing to a heart condition.

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

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

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

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

2.6 The author submits that, at the request of the Refugee Appeals Board, the Ministry of Foreign Affairs contacted a local lawyer in her province of origin in order to obtain additional background information. According to the information provided, the punishment for illegal immigration is normally a fine of between 1,000 and 5,000 Chinese renminbi (\$140.90 to \$704.80). If the fine is not paid, it is likely that the person will be detained for several days and will be subject to a travel ban of up to three years. An unmarried person who has had children outside of China would have difficulties in registering them in the *hukou*. The mother would most likely also be subjected to a substantial fine for having had the children. The lawyer also stated that the authorities in the Fujian Province had a bad reputation with regard to respecting rules. There were cases of women who had been forced to undergo abortions; where women had escaped abortion, the children were not accepted into the family registry.

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

<sup>2</sup> The Danish Refugee Council referred to: United States of America Department of State, "Country report on human rights practices 2013 – China", 27 February 2014; Immigration and Refugee Board of Canada, "China: treatment of 'illegal' or 'black' children born outside the family planning policy; whether unregistered children are denied access to education, health care and other services", 1 October 2012; Shuzhuo Li and others, "Birth registration in China: practices, problems and policies", *Population Research and Policy Review*, Vol. 29, No. 3 (1 January 2010); and a 2014 report on human rights in China by the Swedish Ministry of Foreign Affairs.

2.7 On 17 March 2017, the Danish Refugee Appeals Board upheld the Immigration Service decision denying asylum to the author and her children. It considered that the author had been subjected to a forced abortion in 2011, and then left China illegally a few months later. She gave birth to two children outside of China and as an unmarried woman, and she could therefore be given a significant fine. Alternatively, she could serve a short sentence in prison in addition to a temporary travel ban. A majority of the Board's members also found that it had to be expected that it would be considerably difficult to register the children of asylum seekers in the *hukou*, at least for a period of time. The children therefore would be at a disadvantage with regard to medical aid, education and social services, as opposed to other Chinese children. However, the majority of the Board also stated that the sanctions might seem unfair from a Danish context, but the majority did not find that it would be of such character and of such proportions that it could be considered as persecution or assault under sections 7 (1) or (2) of the Aliens Act of Denmark. The Board also stated that neither the Convention on the Rights of the Child nor other conventions that Denmark had joined could lead to another result.

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

### **Complaint**

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

3.2 The author claims that the factual circumstances of the children's inability to be registered in China are undisputed and that contrary to the conclusions of the Refugee Appeals Board, this situation is covered by the provision of the Convention. She also argues that the consequences of returning the children are of such a serious nature that a non-refoulement obligation is triggered since it would lead to irreparable harm, including a lack of access to fundamental health care, education and social services.

### **State party's observations on admissibility and the merits**

4.1 In its observations of 15 February 2018, the State party submits that the author has failed to establish a *prima facie* case for the purpose of admissibility and that the communication should therefore be considered inadmissible as manifestly ill-founded pursuant to article 7 (f) of the Optional Protocol. Should the Committee find the communication admissible, the State party submits that it has not been established that there are substantial grounds for believing that the return of the author's children to China would constitute a violation of articles 3, 6, 7 and 8 of the Convention. The State party also submits that there was no violation of article 2 of the Convention when the domestic authorities considered the application for asylum lodged by the author.

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

4.3 The State party notes that, as established by the Committee's general comment No. 6 (2005), States parties should not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child, such as those contemplated under articles 6 and 37 of the Convention, either in the country to which

removal is to be effected or in any country to which the child might subsequently be removed (para. 27). The assessment of such risk should be conducted in an age- and gender-sensitive manner.

4.4 The State party refers to the decision in *A.A.A. v. Spain*, in which the Committee stated that it was of the view that, as a general rule, it came under the jurisdiction of the national courts to examine the facts and evidence, unless such examination was clearly arbitrary or amounted to a denial of justice.<sup>3</sup> The State party observes that, in the present case, the application for asylum for the author's children was given thorough consideration by the Refugee Appeals Board and that the author has failed to identify any irregularity in the decision-making process or any risk factors that the Board has failed to take properly into account. In her communication to the Committee, the author challenged the assessment of the circumstances of their case. Her communication merely reflects that the author disagrees with the outcome of the assessment of her and her children's specific circumstances and the background information made by the Board in the case at hand.

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

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

4.7 The consultation response of 12 December 2016 from the Ministry of Foreign Affairs notes that, owing to the fact that the two children were born out of wedlock and have not obtained a Danish passport, a Chinese passport or any other documents, the household registration for them is likely to be more complicated than for legitimate children. The consultation also notes that in accordance with the "Opinions of the General Office of the State Council on addressing the issue of household registration for persons without household registration", some steps need to be taken to complete the household registration for a child born outside of wedlock. First, a DNA test that determines the mother of a child must be carried out and a positive result must be obtained from a designated institution. Second, a birth certificate must be obtained with the positive DNA test result. The birth certificate must prove that the woman is the biological mother of the two children so that they can be registered under her *hukou*. Although the law does not stipulate it, it is understood that a Danish birth certificate should be sufficient for this purpose, as long as it proves that the woman is the biological mother of the children. If the children do not have Danish birth certificates, however, the woman will need to obtain Chinese birth certificates from the Chinese family planning authority.<sup>4</sup>

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

4.9 Even though the author did not apply for asylum until more than six months after entering the State party, the Refugee Appeals Board established the following facts. The

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<sup>3</sup> *A.A.A. v. Spain* (CRC/C/73/D/2/2015), para. 4.2.

<sup>4</sup> The State party provides a copy of the response from the Ministry of Foreign Affairs dated 12 December 2016.

author had been forced to have an abortion in 2011. She had left China illegally a few months later, and she had subsequently given birth to the children in Denmark while still unmarried. She could therefore be sentenced to a considerable fine, or to short-term imprisonment, and could also be banned from leaving the country for a period.

4.10 Concerning the registration of the author's children in the *hukou*, the majority of the members of the Refugee Appeals Board observed that it must be expected that it will be very difficult to accomplish, at least for an initial period during which they will be treated less favourably than other Chinese children in terms of access to medical care, education and social services.<sup>5</sup>

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

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

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

4.14 Concerning the author's submission that it appears from the Committee's general comment No. 6 (2015) that States parties must take into account the safety, security and other conditions, including socioeconomic conditions, awaiting a child upon return, the State party observes that it cannot be required that a child asylum seeker have completely the same social living standards as children in Denmark, but the child's personal integrity must be protected. Accordingly, the State party finds that the circumstance that the author's children risk being treated less favourably than other Chinese children in terms of medical care, education and social services for a period cannot independently justify asylum. Any lack of or difficulty in registration and subsequent lack of access to public services does not constitute such a violation of the Convention as to amount to "irreparable harm" within the meaning of the Convention. The Refugee Appeals Board conducted its assessment of the risk of such serious violations in an age- and gender-sensitive manner as required by general comment No. 6. The majority of the Board members found, however, that the provisions of the Convention could not lead to a different outcome. Accordingly, the State party finds that there are no substantial grounds for believing that the author's children will be exposed to a real risk of irreparable harm if returned to China.

4.15 The State party also observes that China has acceded to the Convention and that it must fulfil its obligations under the Convention. China must therefore make sure that the author's children are offered the opportunity to become registered, thereby giving them access to public services.

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<sup>5</sup> The State party does not provide any information as to the length of time that it will take for the children to be registered.

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

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

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

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

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

5.2 The author submits that the Danish Immigration Service never referred to the Convention, as the author's children were never part of the decision, which only involved their mother. In the author's opinion, the Refugee Appeals Board only "repaired" the decision of the Immigration Service when the majority of its members found that the provisions of the Convention on the Rights of the Child and other conventions to which Denmark has acceded could not lead to a different outcome.

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

5.4 The author refers to an earlier decision of the Committee, in which it stated that the evaluation of the risk that a child might be subjected to an irreversible harmful practice such as female genital mutilation in the country to which he or she was being deported should be

carried out following the principle of precaution and, where reasonable doubts existed that the receiving State could not protect the child against such practices, States parties should refrain from deporting the child.<sup>6</sup> The author maintains that the Refugee Appeals Board did not invoke the principle of precaution.

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

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

5.7 In her comments of 5 February 2019, the author informed the Committee that the Refugee Appeals Board had reopened their cases and had invited the family to a hearing in December 2018. She provided an unofficial translation of the decision dated 13 December 2018, denying their asylum request (see paras. 6.1–6.9 below). On 12 February 2019, the author clarified that the present complaint was also submitted on behalf of her youngest child W.G.

#### **State party's additional observations**

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

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

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

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

<sup>6</sup> *I.A.M. v. Denmark* (CRC/C/77/D/3/2016), para. 11.8.

<sup>7</sup> Landinfo – Norwegian Country of Origin Information Centre, "Kina: Familieplanleggingspolitikken og kinesiske borgere som får barn i utlandet", 15 May 2017 (in Norwegian). English summary available at <https://landinfo.no/en/land/china/>.

<sup>8</sup> The author did not provide further information.

6.5 Regarding the author's claim that article 2 has been violated, since any other matter involving a Danish child and the best interest of the child would be possible to appeal to the ordinary courts, the State party submits that this claim is made in a very general manner.<sup>9</sup>

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

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

6.8 The State party argues that the author has not substantiated the claim that the sanctions on the family are worse now that the family includes three children. On the contrary, family-planning regulations in China have been relaxed. The Chinese one-child policy was changed to a two-child policy in January 2016, and that policy has also been implemented in the Fujian Province. The State party refers to a report published by the Immigration and Refugee Board of Canada stating that the previous one-child and amended two-child Population Law required those who had given birth to a child in contravention of family-planning policies to pay a social compensation fee.<sup>10</sup> That was in compliance with the assessment made by the Refugee Appeals Board in its decision dated 13 December 2018. In addition, a report published by the Home Office states that abuses towards Chinese returnees who have exceeded the permitted quotas of children, including forced abortions and sterilizations, were less common than they had been previously.<sup>11</sup>

6.9 Concerning the author's argument that the State party is not correct in stating that her fear of her children being removed from her is "mere speculation", as it follows from the report published by the Norwegian Country of Origin Information Centre on 15 May 2017, the State party observes that the report discusses the policy as it was formulated and implemented before January 2016. The State party submits that the Refugee Appeals Board has assessed the relevant background information, including that report, in its decision dated 13 December 2018, and the Board found that neither the report nor any more recent information provided a basis for finding as a fact that the Chinese authorities would forcibly remove the children from their mother.<sup>12</sup>

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<sup>9</sup> The State party refers to *I.A.M. v. Denmark* (CRC/C/77/D/3/2016), para. 10.3.

<sup>10</sup> Immigration and Refugee Board of Canada, "China: effects of the implementation of the Two-Child Family Planning Policy on children born outside the country and their parents, including access to social services and benefits, particularly in Guangdong, Fujian, Hebei, and Liaoning; punitive measures taken against parents who return from abroad after having children in violation of family planning policies, including whether the Two-Child Family Planning Policy is being applied retroactively", 18 October 2018, p. 1.

<sup>11</sup> United Kingdom: Home Office, "Country policy and information note – China: contravention of national population and family-planning laws", November 2018, pp. 8–9.

<sup>12</sup> The State party refers to: United States Department of State, "2018 country reports on human rights practices – China", 13 March 2019.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

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

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

7.3 The Committee takes note of the author's claim based on article 2 of the Convention that her children were discriminated against because their claim was only considered by the Refugee Appeals Board without any possibility to appeal that decision, while any other case involving a Danish child and the best interests of the child – for instance, a child custody case – would be decided by the administrative system with the possibility of an appeal before the court. The Committee observes, however, that the author presents this claim in a general manner, without showing the existence of a link between her children's or her own origin and the alleged absence of appeal proceedings against the decisions of the Refugee Appeals Board.<sup>13</sup> Therefore, the Committee declares this claim manifestly ill-founded and inadmissible under article 7 (f) of the Optional Protocol.

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

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

### *Consideration of the merits*

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

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

8.3 The Committee recalls its general comment No. 6 (2015), in which it stated that States are not to return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child, such as, but by no means limited to, those contemplated under articles 6 and 37 of the Convention (para. 27); and that such non-refoulement obligations apply irrespective of whether serious violations of those rights

<sup>13</sup> *I.A.M. v. Denmark* (CRC/C/77/D/3/2016), para. 10.3.

guaranteed under the Convention originate from non-State actors or whether such violations are directly intended or are the indirect consequence of action or inaction. The assessment of the risk of such serious violations should be conducted in an age- and gender-sensitive manner.<sup>14</sup> Such assessment should be carried out following the principle of precaution and, where reasonable doubts exist that the receiving State cannot protect the child against such risks, State parties should refrain from deporting the child.<sup>15</sup>

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

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

8.6 The Committee recalls that the best interests of the child should be a primary consideration in decisions concerning the deportation of a child and that such decisions should ensure – within a procedure with proper safeguards – that the child will be safe and provided with proper care and enjoyment of rights.<sup>16</sup> The Committee also recalls that the burden of proof does not rest solely on the author of the communication, especially considering that the author and the State party do not always have equal access to the evidence and that frequently, the State party alone has access to the relevant information.<sup>17</sup> In the present case, the Committee notes the arguments and information submitted to it by the State party. However, the Committee observes that the State party does not appear to have sufficiently verified, through means that would not have jeopardized the author and her children's position as asylum seekers: whether the Danish birth certificate would be sufficient for the purposes of registration in the *hukou*, and if not, what other procedures would be required for the children to obtain their Chinese birth certificates; and what the likelihood of obtaining the Chinese birth certificates would be and how long the children would have to wait until they succeeded in being registered in the *hukou*. The Committee notes that these issues are particularly relevant given the numerous administrative requirements for obtaining a birth certificate and complex registration procedures in China, and that birth registration is linked to the *hukou*.<sup>18</sup> The Committee is also of the view that the State party did not consider how the rights of the children to education and health would be ensured pending or failing their registration.

8.7 In this connection, the Committee takes note of a 2019 report of the United States Department of State, according to which, although under both civil law and marriage law the children of single women are entitled to the same rights as those born to married parents, in practice children born to single mothers or unmarried couples are considered outside of the

<sup>14</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 32 (2014), para. 25.

<sup>15</sup> *I.A.M. v. Denmark* (CRC/C/77/D/3/2016), para. 11.8.

<sup>16</sup> See joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child, paras. 29 and 33.

<sup>17</sup> *M.T. v. Spain* (CRC/C/82/D/17/2017), para. 13.4; *El Hassy v. Libyan Arab Jamahiriya* (CCPR/C/91/D/1422/2005), para. 6.7; and *Medjnoune v. Algeria* (CCPR/C/87/D/1297/2004), para. 8.3.

<sup>18</sup> CRC/C/CHN/CO/3-4, para. 39.

policy and are subject to the social compensation fee and the denial of legal documents, such as birth documents and the *hukou*.<sup>19</sup> It also takes note of a 2018 report of the United Kingdom Home Office, in which it is stated that many children born to single or unmarried parents had been denied a household registration document, preventing them from accessing public services, medical treatment and education. Although the Government has stated it is making it easier for illegitimate children to be registered, the implementation of this is inconsistent and there can still be obstacles.<sup>20</sup>

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

8.9 The Committee also notes the author's allegations that, if deported, her children would not be registered in the *hukou*, which is required to ensure their access to health, education and social services and is the only means to prove their identity in China. In that respect, the Committee takes note of a 2016 report of the Immigration and Refugee Board of Canada, which states that neither the birth certificate from the Population and Family Planning Commission nor the medical birth certificate, in themselves, are functional civil documents beyond their role in the birth registration process. In other words, they cannot attest legal identity or nationality; they are only of use within their capacity to enable birth registration. Birth registration is only complete upon the registration in the police station, and the *hukou* is the only documentary evidence to attest birth registration.<sup>21</sup> In the light of the fact that in China being registered in the *hukou* is essential for ensuring access to health, education and social services and a requirement as a means to prove one's identity, and that children born to unmarried parents face numerous difficulties in being registered in the *hukou*, the Committee considers that the decision of the State party to deport the author's children would entail a violation of their right to life, survival and development under article 6, and their right to preserve their identity under article 8 of the Convention.

9. The Committee, acting under article 10 (5) of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, finds that the facts before it disclose a violation of article 3 of the Convention, and that the return of the author and her children to China would also amount to a violation of articles 6 and 8 of the Convention.

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

11. In accordance with article 11 of the Optional Protocol, the Committee wishes to receive from the State party, as soon as possible and within 180 days, information about the measures it has taken to give effect to the Committee's Views. The State party is also requested to include information about any such measures in its reports to the Committee under article 44 of the Convention. Lastly, the State party is requested to publish the present Views and to disseminate them widely.

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<sup>19</sup> United States Department of State: Bureau of Democracy, Human Rights and Labor, "2019 country reports on human rights practices – China", p. 67.

<sup>20</sup> United Kingdom: Home Office, "Country policy and information note – China: contravention of national population and family-planning laws", November 2018, p. 9.

<sup>21</sup> Canada: Immigration and Refugee Board of Canada, "China: information on birth registration for children born out of wedlock; whether the name of the father appears on the birth certificate if the child is born out of wedlock; what information may appear on the birth certificate if the father is unknown; whether the father's name may be added to the child's birth certificate by referring to the father's Resident Identity Card, particularly relating to Henan Province birth certificates (2010–June 2016)", 29 June 2016.