

Copenhagen, 10 July 2018

**CRC Communication No. 3/2016**  
**K.Y.M. v. Denmark**  
**Follow-up observations of the Government of Denmark**

**1. Introduction**

By letter of 31 January 2018, the Human Rights Committee (hereinafter 'the Committee') transmitted its views adopted on 25 January 2018 in the above case to the Government of Denmark (hereinafter 'the Government').

Pursuant to the request made in para. 14 of the Committee's views, the Government was requested to inform the Committee, within 180 days, of all measures taken to give effect to the views.

**2. The Government's follow-up observations**

2.1 Initially, the Government observes that it follows from para. 11.9 of the Committee's views that the Committee finds that **the State party failed to consider the best interests of the child when assessing the alleged risk of the author's daughter to be subjected to female genital mutilation if returned to the Puntland State of Somalia, and to take proper safeguards to ensure the child's wellbeing upon return, in violation of articles 3 and 19 of the Convention on the Rights of the Child.**

The Government further observes that it follows from para. 12 of the Committee's views that the State party is under an obligation to **refrain from returning the author and her daughter to the Puntland State of Somalia and that the State party is also under an obligation to prevent similar violations in the future, in accordance with the present Views.**

The Government observes that it is standard practice for the Refugee Appeals Board (*Flygtningetvænet*) to reopen cases in which a UN committee has found that the decision made by the Board is contrary to an international convention. The relevant case is then heard by an entirely new panel consisting of members who have not previously been involved in the hearing of the case.

However, the Refugee Appeals Board found no basis for reopening the case at hand.

The Refugee Appeals Board said as follows in its decision of 7 February 2018:

‘On 2 February 2016, the Refugee Appeals Board upheld a decision made by the Danish Immigration Service (*Udlændingestyrelsen*) refusing the application for residence under section 7 of the Danish Aliens Act (*udlændingeloven*) lodged by the Somali national [I.A.M.], born on [...] 1990, and her accompanying child [K.Y.M.], born on [...] 2016.

Acting on behalf of the author, you lodged a communication with the UN Committee on the Rights of the Child on 11 February 2016, complaining that it would constitute a breach of Articles 1, 2, 3 and 19 of the International Convention on the Rights of the Child (‘the CRC’) as well as General Comment No. 11 and Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices to return the author to Puntland.

On 18 February 2016, the Refugee Appeals Board suspended the time limit for the author’s departure from Denmark until further notice. Considering the circumstances of the case, the Refugee Appeals Board also decided to suspend the time limit for the departure of [I.A.M.], the author’s mother, until further notice.

On 11 January 2017, the author and her mother were registered as having failed to appear at the accommodation centre allocated to them.

On 7 February 2017, the Refugee Appeals Board contacted the National Operational Aliens Centre of the North Zealand Police (*Udlændingecenter Nordsjælland*) asking whether the police were aware of the whereabouts of the author and her mother or whether they were deemed by the police to have left Denmark.

On 10 February 2017, the National Operational Aliens Centre of the North Zealand Police informed the Refugee Appeals Board that the police were not aware of the whereabouts of the author and her mother. The police further said that the author and her mother were deemed to have left Denmark.

On 20 February 2017, you informed the Refugee Appeals Board by phone that you were not aware of the whereabouts of the author and her mother.

On 2 March 2017, the Danish Government requested the UN Committee on the Rights of the Child to discontinue the consideration of the communication as the Danish authorities were not aware of the whereabouts of the author and her mother.

On 9 June 2017, the UN Committee on the Rights of the Child notified the Danish Government that the Committee intended to continue the consideration of the communication.

On 7 November 2017, the Danish Government submitted its further additional observations to the Committee, pointing out that the author and her mother were still not registered as living at an accommodation centre in Denmark, although they had had the right to stay in Denmark throughout the period of the proceedings before the Committee. In its observations, the Danish Government also repeated its request that the

consideration of the communication be discontinued as the Danish authorities were not aware of the whereabouts of the author and her mother.

On 2 February 2018, the Refugee Appeals Board received the views adopted by the UN Committee on the Rights of the Child on 25 January 2018. According to the views of the UN Committee on the Rights of the Child, it would amount to a violation of Articles 3 and 19 of the CRC to return the author and her mother to Puntland.

As it is the assessment of the National Operational Aliens Centre of the North Zealand Police that the author and her mother have left Denmark and the Danish authorities are not aware of the whereabouts of the author and her mother, the Refugee Appeals Board finds no reason to reopen the case. Reference is made in this respect to the principles set out in section 33(8) of the Aliens Act that a request for reopening will not be considered if the authority that is to make the decision is not aware of the whereabouts of the relevant alien. Reference is also made to section 7 of the Aliens Act under which a residence permit can be issued to an alien staying in Denmark "upon application".

Against this background, the Board has furthermore decided to lift the suspension of the time limit for departure of the author and her mother.'

The full wording of the Refugee Appeals Board's decision of 7 February 2018 is appended as Exhibit 1.

As appears from the above, the Refugee Appeals Board accepted as a fact that the author and her daughter have left Denmark as their whereabouts are unknown. In the opinion of the Government, this finding is supported by the circumstances that the author's counsel and the National Operational Aliens Centre of the North Zealand Police (*Udlændingecenter Nordsjælland*) have informed the Refugee Appeals Board that they are not aware of the whereabouts of the author and her daughter, and that the author and her daughter are furthermore deemed by the police to have left Denmark.

Against this background, the Refugee Appeals Board found no reason to reopen the asylum case of the author and her daughter, and the Board decided to cancel the suspension of the time limit for their departure from Denmark.

On 2 July 2018, the Refugee Appeals Board informed the Government that the whereabouts of the author and her mother remained unknown. On 28 June 2018, the National Operational Aliens Centre of the North Zealand Police also provided the information that the author and her mother were still deemed to have left Denmark.

The Government therefore submits that, in these circumstances, it has taken the necessary measures to give effect to the views adopted by the Committee on 25 January 2018.

**2.2** The Government further observes that it follows from para. 14 of the Committee's views that the State party is requested to publish the Committee's Views and to have them translated into the official language of the State party and widely distributed.

The Government observes that an anonymised version of the views and decisions of UN committees in cases against Denmark involving the Refugee Appeals Board, including information on the consequent measures taken by the Board, are uploaded to the website of the Board ([www.fln.dk](http://www.fln.dk)) as quickly as possible after the Board has received the views or decision from the relevant committee. As regards the case at hand, reference is made to the news update posted on the website of the Board on 9 February 2018. Furthermore, the views and decisions of UN committees in cases against Denmark involving the Refugee Appeals Board are described in the annual report of the Refugee Appeals Board, which is distributed to all members of the Board for use in their work on the Board. The chapter on cases brought before international bodies comprises a general paragraph on the relevant conventions and a review of the views and decisions transmitted to the Government during the reporting year. The annual report is also available on the website of the Board.

Moreover, the Danish Ministry of Foreign Affairs (*Udenrigsministeriet*) has made the Committee's views publicly available on its website ([www.um.dk](http://www.um.dk)).

In light of the prevalence of English language skills in Denmark, the Government sees no reason for a full translation of the Committee's views into Danish.

### **3. Conclusion**

With reference to the actions mentioned above, the Government is of the opinion that it has taken the necessary measures to give effect to the views adopted by the Committee on 25 January 2018.