Unedited version

Distr.: General
23 January 2026
English
Original: English

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. 97/2019*,**

Communication submitted by:	N.M.I.A. and Nu.M.I.A. (represented by the Danish Refugee Council)
Alleged victims:	The authors
State party:	Denmark
Date of communication:	5 September 2019
Date of adoption of Views:	19 January 2026
Subject matter:	Family separation because their respective countries of origin (Egypt and Nepal) are unwilling to accept the entire family together.
Procedural issue:	Non-substantiation of claims
Substantive issues:	Best interests of the child; interference with family life; separation of children from parents.
Articles of the Convention:	3, 7, and 9
Articles of the Optional Protocol:	7 (f)

* Adopted by the Committee at its one-hundredth session (12-30 January 2026).

** The following members of the Committee participated in the consideration of the communication: Suzanne Aho, Thuwayba Al Barwani, Hynd Ayoubi Idrissi, Mary Beloff, Rosaria Correa, Timothy Ekesa, Bragi Gudbrandsson, Mariana Ianachevici, Philip Jaffe, Sopio Kiladze, Cephas Lumina, Benyam Dawit Mezmur, Aissatou Alassane Sidikou, Juliana Scerri Ferrante, Zeinebou Taleb Moussa, and Benoit Van Keirsbilck.

1.1 The communication, dated 5 September 2019, is submitted by N.M.I.A and Nu.M.I.A, both Egyptian nationals born in Denmark on 20 July 2014 and 19 November 2018, respectively. The authors submit that their deportation to Egypt, separately from their mother, following the rejection of their asylum claim would amount to a violation by Denmark of their rights under articles 3, 7, and 9 of the Convention. The authors are represented by the Danish Refugee Council. The Optional Protocol entered into force for the State party on 7 January 2016.

1.2 On 6 September 2019, pursuant to article 6 of the Optional Protocol, and rule 7 of the Committee's Rules of Procedure, the Committee requested the State party to refrain from deporting the authors' father to Egypt while their case was being considered by the Committee. On 11 September 2019, the Refugee Appeals Board suspended the time limit for the authors' and their parents' departure from Denmark until further notice.

1.3 On 16 April 2020, the Committee decided to suspend the consideration of the communication, while domestic procedures were still ongoing.[1] On 23 April 2024, the Committee lifted this suspension and requested the State party to present its observations on admissibility and merits.

Factual Background

2.1 The author's mother, R.L., a Nepalese national, entered Denmark on 21 August 2012 on a study-work visa valid until 15 July 2015. She had been married to a Nepalese man since 2011 , who travelled to Denmark in February 2013 to work but left after 7–10 days; they divorced a few months later. On 24 March 2014, she married a Danish national and, on 22 May 2014, applied for family reunification. At the time of this marriage, she was already pregnant by M.A. On 16 October 2014, the Danish spouse informed the Immigration Service that he no longer wished to uphold the family reunification application, stating that he had not seen or heard from R.L. since June 2014, and on 28 November 2014, the application was rejected. After giving birth, R.L. divorced her Danish spouse and married M.A. in April 2015. On 24 June 2015, she applied for asylum, claiming a risk of violence upon return to Nepal due to conflicts with her family and former spouse. On 29 March 2016, the Danish Immigration Service rejected her asylum request, and on 8 August 2016, the Refugee Appeals Board upheld that decision.

2.2 The authors' father, M.A., an Egyptian national, arrived in Denmark on 1 September 2010 and applied for asylum on 5 December 2011 on the grounds that he might face problems in Egypt due to his conflict with an Egyptian family. On 19 December 2014, the Danish Immigration Service rejected his asylum application. The Danish Refugee Appeals Board upheld this decision on 10 August 2015.

2.3 On 24 April 2015 M.A. and R.L. got married during a religious ceremony.[2] N.M.I.A., was born on 20 July 2014. On 24 June 2015, R.L. submitted an asylum application on his behalf. The Danish Immigration Service rejected the application on 29 March 2016, and the Refugee Appeals Board upheld the decision on 8 August 2016. Nu.M.I.A. was born on 19 November 2018.

2.4 On 11 April 2019, the Danish National Police requested the Refugee Appeals Board to assess whether the family could be deported separately—namely, by returning the father to Egypt and the mother with the children to Nepal—or whether a joint deportation was necessary to uphold their right to private and family life. During a February 2019 meeting with the Egyptian Embassy, the Police were informed that the father and children could be returned together to Egypt. However, for the mother to be included, the parents needed to be legally married. Danish law prohibits rejected asylum seekers without valid residence permits from marrying in Denmark. The Egyptian Embassy further stated that marriage under Egyptian law would require M.A. to prove he had completed military service. Furthermore, the Nepalese Embassy advised that under Nepalese law, it was not possible to issue travel documents to the entire family.

[1] The case of the authors and their family was being reviewed by the Immigration Appeals Board.

[2] She converted to Islam and got married in the mosque by an imam.

2.5 On 10 July 2019, the Refugee Appeals Board informed the Danish National Police that, according to the practice of the Board,[3] the Board has not assessed whether the family has to be jointly deported either to Egypt or to Nepal. The Refugee Appeals Board explains that even though the father and the mother have been religiously married in Denmark, the Board does not order joint deportation of families if a marriage occurs once they have entered Denmark.

2.6 On 1 July 2019, by decision of the municipality of Lejre the authors were forcibly removed from the asylum center, where they lived with their parents, because of the statements made by the mother about threats to commit suicide and to kill the older son. The children were placed in an observation Centre (Glostrup Observationshjem), a specialized institution for families facing social challenges. Both parents maintained regular contact with the authors. Subsequently, on 18 July 2019, the family was reunited at the observation centre. According to documentation from the family's asylum center in Avnstrup, the observation period at the center was to last three months and was funded by the Danish Immigration Service. The Observation Center issued an opinion on 28 August 2019 concerning the authors' well-being. The statement says: "It is our assessment that the family and, not least, the children need the family to stay together. Both children had a very strong reaction to the separation from their parents in the first period at the observation center without their parents. It was noted that both children had a setback in development. It is therefore our opinion that it will have a significant effect on their development and can be harmful for the children if separated from their parents again." Despite this, the Danish Refugee Appeals Board has maintained the decision to deport the father independently, without reassessing the situation in light of the family's request to return together.

2.7 On 1 August 2019, the Danish Refugee Council formally requested a reconsideration, emphasizing Articles 3 and 9 of the Convention. On 5 September 2019, the Board declined to reopen the case, claiming that there was no new information on file necessitating a review. Meanwhile, on August 30, 2019, the father was detained in a deportation center, and the deportation was scheduled for 6 September 2019. On 11 September 2019, the Refugee Appeals Board suspended the time limit for the authors' and their parents' departure from Denmark until further notice.

Facts after registration

2.8 On 6 February 2020, the Danish Refugee Appeals Board decided to reopen the case and remitted it to the Danish Immigration Service for reconsideration in view of new information on N.M.I.A.'s nationality and possibility of him being issued with a travel document. The Refugee Appeals Board observed that, Nu.M.I.A. was not comprised by the Board's decisions of 10 August 2015 and 8 August 2016, as he was born on 19 November 2018 and requested that the Danish Immigration Service examine whether the request for reopening the case should be understood as an application for asylum made on behalf of Nu.M.I.A.

2.9 On 10 June 2021, the Danish Immigration Service rejected the application for residence under Section 7 of the Danish Aliens Act submitted by the authors and their parents. With regard to the authors' father, the Danish Immigration Service found that he did not face a risk of persecution in Egypt or ill-treatment warranting protection under asylum law. The claim that his children might face problems in Egypt due to their father's personal conflict with an Egyptian family was not considered sufficient to alter the assessment. Furthermore,

[3] The Refugee Appeals Board referred to the 2018 Annual Report of the Refugee Appeals Board, page 270, which describes the Board practice as follows: 'Where the Board's decision concerns a married couple and the spouses are of different nationalities, the Board decides ex officio whether the spouses can be returned together.
In case the spouses are of different nationalities, [and] were married before entering Denmark and have maintained cohabitation during their stay in Denmark, the Board will include a note in the decision to return that it is a condition for a forced return to either country that, prior to the forced return, both spouses have been given the opportunity to return to either country and that both spouses have obtained or can obtain entry permits for either country, and that the spouses have declined to make use of such opportunity. If the marriage has been contracted during their stay in Denmark, the Board does not take a joint return of the family into consideration.'

the Service concluded that the authors did not present individual grounds for asylum. The authorities also rejected the argument that the father's potential imprisonment for failing to complete compulsory military service in Egypt, and his concern that his spouse and children would be unable to cope in his absence, could form a basis for granting asylum. The assessment further emphasized that socio-economic conditions, including financial and health-related concerns, do not constitute grounds for international protection.

2.10 With respect to the authors' mother, the Danish Immigration Service determined that it could not accept as established the existence of a conflict between her and either her family or her former spouse in Nepal. It further concluded that, upon return, she would not be at risk of persecution or ill-treatment warranting the granting of asylum under applicable standards. In its assessment, the Service considered her concern that, should M.A. be returned to Egypt, he may be imprisoned by the Egyptian authorities due to his failure to complete mandatory military service. However, it found that her fear of being unable to cope alone in Egypt during any such period of imprisonment did not constitute grounds for asylum. It was further determined that the joint removal of the father, along with the authors and their mother, to Egypt was feasible. This conclusion was supported by a communication dated 23 September 2020 from the Ministry of Foreign Affairs of Denmark, affirming the possibility of such combined removal. The Service also noted that the authors' mother could apply for family reunification in Egypt. According to this assessment, she would be able to enter and reside in Egypt during the processing of her application by requesting a long-stay visa.

2.11 On 26 April 2022, the Danish Refugee Appeals Board upheld the decision made by the Danish Immigration Service of 10 June 2021. On 6 July 2022, the Danish Refugee Council appealed the decision of the Danish Immigration Service from 24 June 2022. On 20 December 2023, the Danish Immigration Appeals Board upheld the decision of 24 June 2022 of the Danish Immigration Service. Hence, the authors and their parents were refused a residence permit for Denmark pursuant to section 9 c (1), first sentence of the Danish Aliens Act, on the grounds that no exceptional reasons exist for granting a residence permit.

The complaint

3.1 The authors claim that their father's deportation to Egypt, initially alone and later with them, would violate their rights under articles 3, 7, and 9 of the Convention. They argue that the family separation would seriously harm their well-being and development and would be contrary to their best interests. They contend that the Refugee Appeals Board failed to give due weight to the best interests of the children as a primary consideration by not assessing the need for a joint return of the family.

3.2 The authors further assert that this separation deprives them of the opportunity to be cared for by their parents, as a result of the Board's failure to properly examine their best interests. The separation would not be temporary but could extend for many years or become permanent. As previously mentioned, their father is considered a military evader in Egypt and risks imprisonment upon return, which would effectively prevent him from caring for his children. This would constitute a violation of Article 7(1) of the Convention. The parents have declared their willingness to cooperate and return together, provided they are deported jointly.

3.3 The authors also claim that the Refugee Appeals Board did not assess whether the forcible separation of the family could result in a long-term or permanent situation contrary to Article 9 of the Convention. They reiterate that, under the current circumstances, the separation may become indefinite. The father cannot travel to Nepal, and the mother cannot legally travel to Egypt as long as they are not married. However, legal marriage is not an option due to the father's military status in Egypt and the impossibility of marrying under Danish law as rejected asylum seekers.

3.4 The authors argue that national remedies have been exhausted, as decisions of the Refugee Appeals Board are final and not subject to judicial review in Danish courts.

State party's observations on admissibility and merits

4.1 On 20 June 2024, the State party presented its observations on admissibility and merits. The State party submits that the communication should be declared inadmissible as manifestly ill-founded, on the grounds that the Refugee Appeals Board has determined that

the authors would not face a risk of persecution or ill-treatment upon return, and that no legal impediment exists to the family's removal to Egypt. The State party further notes that, in cases involving risks of abuse directed at children, the Refugee Appeals Board assesses whether the harm reaches a level of severity that warrants protection under section 7 of the Aliens Act. However, the evaluation of whether compliance with the Convention justifies granting a residence permit on other grounds—such as humanitarian considerations—falls within the competence of the Immigration Service, the Immigration Appeals Board, and the Ministry of Immigration and Integration. The State Party further notes that according to the Refugee Appeals Board, the authors, in their submission of 5 September 2019 or at any other point in the proceedings, did not claim that they would face persecution or ill-treatment warranting asylum under section 7 of the Aliens Act if returned to Egypt.

4.2 The State party further submits that concerning spouses of different nationalities and their children, if the marriage took place during the stay in Denmark, as in the present case, the Refugee Appeals Board does not reserve the right to deploy them together. Concerning the common children of spouses or cohabitants of different nationalities, it is basically the children's citizenship that determines which country the children can be sent to with the parent who is also a citizen of the country in question.

4.3 The State party submits that, since the authors have not been able to independently make statements regarding their alleged separation from their father, their parents have given statements to the Danish Immigration authorities on their behalf.

4.4 The State party also submits that the authors have not substantiated that the assessment made by the Refugee Appeals Board was arbitrary or amounted to a manifest error or denial of justice, and that their communication merely reflects that the authors disagree with the Refugee Appeals Board's assessment of the authors' and their parents' specific circumstances and the available background information.

4.5 With regard to the authors' claim that a separation will have severe emotional implications for the authors, and that it will be detrimental to the authors' well-being and possibly their further development, and thus contrary to their best interests, the State party notes that on 26 April 2022, the Board found that in case of return to Egypt, M.A. would not be at risk of being sentenced for having failed to do his military service while, judging by Danish legal tradition, it would be a disproportionate punishment and that this circumstance therefore did not justify asylum either, and that his fear of such sentence was unsubstantiated. Furthermore, on 10 June 2021, the Refugee Appeals Board stated that in the case of R.L.'s return to Nepal, she would not be at risk of persecution. Finally, the Board found that the authors, who are Egyptian nationals, have no individual grounds for asylum.

4.6 According to the State party, the authors have failed to sufficiently substantiate that they would face a real risk of irreparable harm if returned to Egypt with their father and without their mother. Nor have they demonstrated that their return to Egypt would, in itself, expose them to such a risk. The State party further argues that the authors' claims under articles 3, 7, and 9 of the Convention are based on hypothetical circumstances that might arise if they and their father were removed to Egypt without their mother.

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

5.1 On 2 December 2024, the authors submitted their comments on the State party's observations regarding the admissibility and merits of the communication.

5.2 The authors contend that the State party failed to consider the specific facts of the case and did not conduct a proper assessment of the best interests of the children in light of those facts. They submit that the case concerns the imminent risk of an irreversible family separation, as the father—whether alone or accompanied by the children—is subject to removal to Egypt, with no realistic prospect of future family reunification. The authors assert that neither parent can legally enter the other's country of nationality: the father cannot lawfully reside in Nepal, and the mother cannot enter or reside in Egypt. Furthermore, the mother is unable to apply for family reunification in Egypt, as the parents are not legally married. Marriage is not possible in Denmark due to their lack of legal residency status, and it cannot be concluded at the Egyptian Embassy because the father has not fulfilled his compulsory military service and cannot provide the necessary documentation.

5.3 The authors further argue that their father risks imprisonment upon return to Egypt for failure to complete military service. Should the children be removed with him, there is no guarantee that he would be in a position to provide for or care for them during or after any period of detention.

5.4 The authors maintain that the decision rejecting the father's asylum claim does not refer to or engage with the best interests of the children. There is no individualized assessment of the risk of separation from either parent. They further submit that the established practice of the Refugee Appeals Board—whereby, in cases involving parents who were not legally married prior to entry into Denmark, there is no obligation to facilitate a joint removal—fails to consider the best interests of the child and leads to de facto family separation, in contravention of the Convention.

Issues and Proceedings before the Committee

Consideration of admissibility

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

6.2 The Committee notes the author's argument that domestic remedies have been exhausted as decisions by the Refugee Appeals Board are not subject to judicial review. Accordingly, and given that the State party has not raised any objections in this regard, the Committee considers that all available domestic remedies must be deemed to have been exhausted and concludes that article 7 (e) of the Optional Protocol does not constitute an obstacle to the admissibility of the communication.[4]

6.3 The Committee takes note of the State party's claim that the communication is inadmissible as manifestly ill-founded. However, the Committee considers that the authors have sufficiently substantiated their claim that migration authorities failed to consider the potentially prolonged separation of the family that their father's return to Egypt would entail, even if returned together with the authors, or the cumulative effect of such separation, the risk of instability in the children's caregiving environment, and the possible harm to the children's development and well-being.[5] The Committee therefore considers that the authors' claims based on articles 3, 7, and 9 of the Convention have been sufficiently substantiated for the purposes of admissibility and proceeds to consider them on the merits.

Consideration of merits

7.1 The Committee has considered the 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.

7.2 The Committee takes note of the authors' uncontested allegations that the decision by the Danish Immigration Service of 10 June 2021 refusing the authors' and their parents' application for asylum did not take into account the effect of the potential family separation, the risk of instability in the children's caregiving environment, and the possible harm to their development and well-being. In this regard, the Committee observes that the Danish Immigration Service based its decisions primarily on individual protection grounds and socio-economic considerations and concluded that neither parent had established an individual risk of persecution or ill-treatment justifying international protection. Concerning the authors' father, the Committee notes that the Service found that M.A.'s personal conflict with an Egyptian family and his fear that his children might face reprisals as a result were insufficient to substantiate a claim for asylum. The authorities further held that the possibility of his imprisonment upon return to Egypt for failing to complete compulsory military service, and the resulting impact on his family, did not justify protection. In relation to the authors' mother, the Committee notes that the Service did not accept as credible her claim of conflict with her family or former spouse in Nepal and determined that her return would not place her

[4] See, in this regard, *K.Y.M. v Denmark* (CRC//C/77/D/3/2016), para. 10.2; and *Y.A.M. v Denmark (*CRC/ C/86/D/83/2019), para. 7.2.

[5] CRC/C/94/D/145/2021, para. 7.5

at risk. It also considered, but dismissed, her concern that she would be unable to care for the children alone in Egypt should her spouse be detained.

7.3 The Committee also notes the opinion issued by the Observation Centre on 28 August 2019 regarding the authors' well-being, which observed that both children had strong emotional reactions to the initial separation from their parents and experienced developmental setbacks during that period. The opinion further noted that a renewed separation could significantly affect the children's development and potentially be harmful to their well-being.

7.4 The Committee recalls that, pursuant to article 9 (1) of the Convention, States parties should ensure that children are not separated from their parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary in the best interests of the children.[6] The Committee also recalls its general comment No. 14 (2013), according to which the right of children to have their best interests taken into account as a primary consideration is a substantive right, a fundamental interpretative legal principle, and a rule of procedure.[7] Therefore, the legal duty to assess the best interests of the child applies to all decisions and actions that directly or indirectly affect the child, even if they are not the direct target of the measure; the Committee specified that, in situations in which decisions would have a major impact on children, a greater level of protection and detailed procedures to consider their best interests was appropriate.[8] In that regard, the Committee considers it indispensable to carry out the assessment and determination of children's best interests in the context of a potential separation of a child from their parents.[9] Specifically, the best interests of children should be ensured explicitly through individual procedures as an integral part of any administrative or judicial decision concerning, inter alia, the detention or expulsion of parents associated with their own migration status.[10] Additionally, the Committee has stressed the need to conduct systematically best-interests' assessments and determination procedures as part of, or to inform, migration-related and other decisions that affect migrant children, which involve evaluating and balancing all the elements necessary to make a decision in the specific situation for a specific individual child or group of children.[11] The Committee has further specified that States parties have an obligation to assess and determine the best interests of the child at the different stages of migration and asylum procedures that could result in the detention or deportation of the parents due to their migration status and that these procedures should be put in place in any decision that would separate children from their family.[12] Lastly, the Committee recalls that, as a general rule, it is for national authorities to examine the facts and evidence and to interpret domestic law unless such an examination or interpretation is clearly arbitrary or amounts to a denial of justice. It is therefore not for the Committee to interpret domestic law or to assess the facts of the case and the evidence in place of the national authorities but to ensure that their assessment was not arbitrary or tantamount to a denial of justice and that the best interests of the children were a primary consideration in that assessment.[13]

7.5 The Committee recalls that State decisions affecting children must be guided by a child-rights-based approach and demonstrate that the best interests of the child have been effectively assessed and afforded proper weight.[14] The Committee notes that, in light of the

[6] See *C.C.A.M. and A.C.C.* (CRC/C/94/D/145/2021), para. 8.5

[7] General comment No. 14 (2013), para. 6.

[8] *Ibid*., paras. 19 and 20.

[9] *Ibid*., paras. 58 and 59.

[10] Joint general comment No. 3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 22 of the Committee on the Rights of the Child (2017), para. 30.

[11] *Ibid.,* para. 31.

[12] *Ibid.,* para. 32 (e).

[13] See, inter alia, the Committee's decisions in *C.C.O.U., C.C.A.M. and A.C.C.* (CRC/C/94/D/145/2021), para. 8.5, *U.A.I. v. Spain*, para. 4.2; *Navarro Presentación and Medina Pascual v. Spain* (CRC/C/81/D/19/2017), para. 6.4; and *A.R.G. v. Spain* (CRC/C/85/D/92/2019), para. 4.2.

[14] See CRC/C/87/D/51/2018, para. 9.5.

circumstances of the case, the migration authorities' findings regarding the absence of a personal, real and imminent risk upon return does not per see appear to be manifestly arbitrary. However, the lack of consideration of the likely prolonged separation of the family members in the particular circumstances of the case and the consequences of such separation on the children indicates that migration authorities failed to ensure that the best interests of the children were a primary consideration, and to adequately safeguard the children's right to family unity and protection from harm, in violation of articles 3 and 9 of the Convention.

7.6 In the present case, given the potentially significant impact of the decisions regarding the authors' deportation to Egypt, considering their young age and the separation from their mother that such deportation would entail, a detailed assessment of the best interests of the children would have been paramount. The Committee considers that the State party's failure to assess the specific impact of the decisions on the children violated their rights under articles 3 and 9 (1) of the Convention.

7.7 In the light of the above finding of a violation of articles 3 and 9 of the Convention, the Committee does not consider it necessary to separately examine whether the same facts would amount to a violation of the children's rights under article 7 of the Convention.

7.8 The Committee, acting under article 10 (5) of the Optional Protocol on a communications procedure, is of the view that the facts before it discloses a violation of the rights of N.M.I.A. and Nu.M.I.A., enshrined in articles 3 and 9 of the Convention.

8. The State party is under an obligation to ensure a reassessment of the authors' claims, considering the best interests of N.M.I.A. and Nu.M.I.A., and to refrain from separating the family. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. In that regard, the State party is requested, in particular, to ensure that asylum or other proceedings directly or indirectly affecting children ensure an assessment of the best interests of the child as a primary consideration. Decisions involving the separation of children from one of their parents or caregivers should, in particular, ensure a careful consideration of the impact of the separation on the children in the light of their specific circumstances, and consider all possible alternatives to such a separation.

9. 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 requested to include information about any such measures in its reports to the Committee under article 44 of the Convention. The State party is also requested to publish the present Views and to disseminate them widely.