

# Jama Warsame vs. Canada

## Facts

The author was born in 1984 in Saudi Arabia, but he never obtained a Saudi Arabian citizenship. He is of Somali descent, but has never lived in or visited Somalia. He came to Canada in 1988 and was granted permanent resident status as a dependent of his mother, but he was not granted Conventional Refugee status. After two criminal convictions sentenced with imprisonment, the author received in 2006 a deportation order from Canada for “serious criminality”.

The Pre-Removal Risk Assessment (PRRA) found that the author would face risk to life and ill-treatment if returned to Somalia. This was based on the author’s age, gender, lack of family or clan support, lack of previous residence in Somalia, lack of language skills as well as on documentary evidence. The Ministry of Public Safety responded that the author would not be at personal risk if deported to Somalia, that he represented a danger to the public in Canada and that “humanitarian and compassionate hardships did not outweigh the danger to the public.”

The author’ application for leave to judicially review the Ministry’s decision was dismissed for failure to file an application record, as he could not afford legal counsel and was refused legal aid. On 21 July 2010 the author was informed that he would be deported to Somalia on 30 July.

## Consideration of admissibility

**Article 5 §2(b) of the Optional Protocol (OP):** The Committee recalls that the author is required to exhaust all remedies that appear to be effective and are *de facto* available (No. 1003/2001 [P.L. v. Germany](#) 2003; No. 433/1990 [A.P.A. v. Spain](#) 1994). The Committee finds that the negative decisions the author failed to appeal were either not effective (because they would not operate to stay removal or because there is clear jurisprudence setting a high threshold for an appeal to be successful) or not *de facto* available, as legal aid had been denied. Accordingly the author did not need to exhaust these remedies. The Committee therefore considered this part of the communication admissible.

The Committee also declared the claims under Art.6 §1 and Art.7 admissible, since the reasons giving by the author not to return were sufficiently substantiated. Claims under Art.12 §4, and Art.17 and Art.23 §1, read in conjunction with Art.2 §3 of the Covenant are found admissible.

## Consideration of merits

**Art.6 §1 and Art.7:** Bearing that the author has never lived in Somalia, has limited or no clan support, does not speak the language and does not have any family in there, he would face a real risk of harm upon return, the Committee finds that deportation to Somalia would, if implemented, constitute a violation of Art.6 §1 and 7 ([General](#)

## Key words

- Right to life
- Ill-treatment
- Freedom of movement
- Privacy
- Effective remedy
- Protection of family

## Relevant Provisions

- Article 2 §3
- Article 6 §1
- Article 7
- Article 12 §4
- Article 17
- Article 23 §1

## Violated Provisions

- Article 6 §1
- Article 7
- Article 12 §4
- Article 17
- Article 23 §1

[Comment No. 31](#)).

**Art.12 §4:** On the question of whether Canada is indeed the author's 'own country' for the purposes of deciding whether his deprivation of the right to enter that country would be arbitrary, the Committee took into account that the term is not limited to nationality but 'embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien' ([General Comment No. 27](#)). The Committee considered matters such as 'long standing residence, close personal and family ties and intentions to remain, as well as absence of such ties elsewhere' ([General Comment No. 27](#)) In the light of the above, the Committee considered it sufficiently established that Canada is the author's "own country". The Committee also considered that there are few, if any, circumstances in which deprivation of the right to enter one's own country could be reasonable ([General Comment No. 27](#)). In this case, a deportation of the author to Somalia would render his return to Canada *de facto* impossible due to Canadian immigration regulations. Therefore, the author's deportation would be disproportionate to the legitimate aim of preventing the commission of further crimes and would thus be arbitrary. The Committee therefore concluded that, if Canada had sent the author to Somalia, it would constitute a violation of Art.12 §4.

**Art.17 and Art.23 §1 alone and in conjunction with Art. 2 §3:** The Committee reiterated that the separation of a person from his family because of expulsion could constitute a violation of Art. 17 if the 'effects on him were disproportionate to the objectives of removal' (No. 558/1993, [Canepa v. Canada](#) 1997). Bearing the fact that the author's family ties would be irreparably severed if he were to be deported to Somalia, as his family could not visit him there, the means to keep up a regular correspondence are limited, and it would be impossible for the author to apply for a visitor's visa to Canada for a significant lapse of time, the Committee found the interference with the author's family life to be disproportionate to the aim of preventing the commission of further crimes. Therefore, the Committee found that deportation would violate Art.17 and Art.23 §1 alone and in conjunction with Art.2 §3.

## Conclusions

The Committee found that the author's deportation to Somalia would violate Art.6 §1; Art.7; Art.12 §4; Art. 17 and Art.23 §1 of the Covenant.

The State party must provide the author with an effective remedy, including avoiding deporting him to Somalia. It should moreover, within 180 days, give the Committee information about the measures taken to give effect to its views, as well as publishing the Committee's Views.

## Dissent/Concurrence

**Dissenting opinion of Mr. Krister Thelin.** The dissenting member contends that there is no violation on the allegations under Art.17 and Art.23 §1 on the grounds that "the author's family ties in Canada are not such that he, in light of his criminal record, is subjected to disproportionate interference" (No.1792/2008 [Dauphin v. Canada](#),

2009).

**Dissenting opinion of Sir Nigel Rodley (with support from 5 other Committee members).** The dissenting member contends that the Committee gives the impression that it relies on General Comment 27 when finding that the deportation constitutes a violation of Art.12 §4. He points out that this General Comment applies to situations where the individual is deprived of any effective nationality, and is therefore not applicable to the present case. He also argues that the author did not explain why he did not seek Canadian nationality. He is therefore not convinced that Art.12 §4 would be violated if the author was sent to Somalia. He further notes that the Committee did not explain sufficiently why it found violations under Art.6 §1 and Art.7, and preferred the author's assertion of situation rather than that of the State.