



**Convention on the Elimination  
of All Forms of Discrimination  
against Women**

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**Committee on the Elimination of Discrimination  
against Women**  
**Fifty-fifth session**  
8-26 July 2013

**Communication No. [40/2012](#)**

**Decision adopted by the Committee at its fifty-fifth session,  
8-26 July 2013**

<i>Submitted by:</i>	M. S. (represented by counsel, Helge Nørrung)
<i>Alleged victims:</i>	The author, her husband and their two minor children
<i>State party:</i>	Denmark
<i>Date of communication:</i>	15 March 2012 (initial submission)
<i>References:</i>	Working Group's decision under articles 5 and 6 of the Optional Protocol and rules 63 and 69 of the Committee's rules of procedure, transmitted to the State party on 19 March 2012 (not issued in document form)
<i>Date of adoption of decision:</i>	22 July 2013



## Annex

### **Decision of the Committee on the Elimination of Discrimination against Women under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (fifty-fifth session)**

#### **Communication No. 40/2012, *M. S. v. Denmark*\***

<i>Submitted by:</i>	M. S. (represented by counsel, Helge Nørrung)
<i>Alleged victims:</i>	The author, her husband and their two minor children
<i>State party:</i>	Denmark
<i>Date of communication:</i>	15 March 2012 (initial submission)
<i>References:</i>	Working Group's decision under articles 5 and 6 of the Optional Protocol and rules 63 and 69 of the Committee's rules of procedure, transmitted to the State party on 19 March 2012 (not issued in document form)

*The Committee on the Elimination of Discrimination against Women*, established under article 17 of the Convention on the Elimination of All Forms of Discrimination against Women,

*Meeting on 22 July 2013,*

*Adopts the following:*

#### **Decision on admissibility**

1.1 The author of the communication is M. S., a national of Pakistan born in 1982. She submits the communication on her own behalf and on behalf of her husband and their two minor children, all nationals of Pakistan. The author and her family sought asylum in Denmark; their application was rejected and, at the time of submission of the communication, they were awaiting deportation from Denmark to Pakistan. The author claims that her and her family's deportation to Pakistan would constitute a violation by Denmark of their rights under articles 1, 2, 3, 5, 12 and 16 of the Convention on the Elimination of All Forms of Discrimination against Women, read in conjunction with the Committee's general recommendation No. 19. The author is represented by counsel, Helge Nørrung. The Optional Protocol to the Convention entered into force for Denmark on 22 December 2000.

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\* The following members of the Committee participated in the examination of the present communication: Ms. Ayse Feride Acar, Ms. Noor Al-Jehani, Ms. Nicole Ameline, Ms. Barbara Bailey, Ms. Olinda Bareiro-Bobadilla, Mr. Niklas Bruun, Ms. Næla Gabr, Ms. Hilary Gbedemah, Ms. Nahla Haidar, Ms. Ruth Halperin-Kaddari, Ms. Yoko Hayashi, Ms. Ismat Jahan, Ms. Dalia Leinarte, Ms. Violeta Neubauer, Ms. Theodora Nwankwo, Ms. Pramila Patten, Ms. Silvia Pimentel, Ms. Maria Helena Pires, Ms. Biancamaria Pomeranzi, Ms. Patricia Schulz, Ms. Dubravka Šimonović and Ms. Xiaoqiao Zou.

1.2 At the request of the author and after reviewing her case, the Working Group on Communications, acting on behalf of the Committee, and pursuant to article 5, (1) of the Optional Protocol and rule 63 of the Committee's rules of procedure, decided to grant interim measures requesting the State party to refrain from expelling the author and her two minor children to Pakistan while her communication was under consideration by the Committee. The State party acceded to that request.

1.3 On 6 July 2012, the Committee, acting through its Working Group on Communications, decided, pursuant to rule 66 of the Committee's rules of procedure, to consider the admissibility of the communication separately from its merits.

### **Factual background**

2.1 The author and her family are from Rawalpindi, Pakistan, and belong to the Christian minority of Anglo-Indians, who speak English as their mother tongue. The author claims that she has always been subjected to discrimination as a Christian and that, when she became a young woman, this discrimination turned into sexual harassment. She refers to frequent incidents of verbal assault in public, as well as the touching of her intimate parts by unspecified individuals. She submits that, when she was about 16 years old, a Muslim man named A. G. asked her to date him. He said that he would have her "on the side", that is, not for a serious relationship, because, in his opinion, as a Christian woman she was allowed to have premarital sexual relationships. When she refused, he threatened her with reprisals, but she did not take his threats seriously. However, in March 2002, the police came to the author's house and arrested one of her brothers without any grounds. A. G. called the next day saying that her brother had been arrested at his request, since his brother was a high-ranking police official. The author's brother was released after the family had paid a bribe.

2.2 Following these events, the author's family decided to move to another location. In 2003, the author secured employment at a hospital. A. G. learned this and came to the hospital to shout at and insult her, saying that they had had a relationship but that she had cheated on him. As a result, the author was forced to resign. She left her second job because she was sexually harassed by her boss, who considered Christian women to be of easy virtue. At her next job, in a bank, she was again exposed to sexual harassment by her superiors. In addition, one day A. G. came to her office and told her boss that she had had a relationship with him and that her family was involved in prostitution. As a result of such humiliation, she left her job.

2.3 The author obtained an au pair visa for Denmark with the help of her sister, who was living there. She arrived in Denmark in January 2007. A. G. reiterated his threats by calling the telephone number of her sister in Denmark. The author continued to receive threats on a daily basis.<sup>1</sup> One day, A. G. told her to contact her family in Pakistan. When she did, she learned that her elder brother had been arrested by the police without any grounds and had been badly beaten in detention. The family obtained her brother's release by paying a bribe.

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<sup>1</sup> The material on file does not show that the author had sought the assistance of the State party's police in connection with the threats received.

2.4 In March 2008, the author's mother experienced health problems and in May 2008, the author returned to Pakistan to look after her. There, the author met her future husband. Despite threats from A. G., they got married, in June 2008. For a few months, there were no calls from A. G. However, on one occasion, when the author was alone at night, A. G. came with a few friends and broke into the house. The author and her sister-in-law were verbally abused and spat at in the face. The author was also threatened with imprisonment because of her stay in Denmark.

2.5 In October 2008, without any reason, the police arrested the author's husband and younger brother on false allegations emanating from A. G. They spent one week in prison, where they were ill-treated. They were released only after their relatives had paid a bribe.

2.6 The author continued to receive phone threats from A. G. during her employment with a foreign company in Pakistan. She was pregnant at the time and, because of the stress, delivered early, on 14 March 2009, two months before her due date. A. G. threatened to kidnap the author's baby (a girl) from hospital.

2.7 The author and her family were granted tourist visas for Denmark on the basis of an invitation from the author's sister. They left Pakistan on 5 September 2009. They sought asylum in Denmark, claiming that in Pakistan they feared persecution by A. G. and life-threatening sexual assaults and that the author's husband would be killed in connection with the false accusations brought against him by the authorities. They claimed that A. G. belonged to a high-ranking family and that his brother was a high-ranking police official who would be able to locate them anywhere in Pakistan, thus leaving them with no protection.

2.8 The Immigration Service rejected the author's and her family's application for asylum. Their appeal was further rejected by the Refugee Appeals Board, on 9 March 2012; this decision is final and is not subject to further appeal. The Board found it reasonable for the author and her family to take up residence in a different location in Pakistan. It did not find that the harassment to which the author and her family had been exposed as Christians amounted to persecution or that the situation of Christians in Pakistan was such that it would be unreasonable for them to reside in a different location in Pakistan.

### **Complaint**

3. The author claims that she and her family are the victims of a violation of articles 1, 2, 3, 5, 12 and 16 of the Convention and of the Committee's general recommendation No. 19. She claims that she was subjected to sexual harassment in Pakistan and that three of her brothers and her husband were apprehended and detained by the police and severely beaten and humiliated. She claims that, on 12 January 2010, one of her brothers died as a result of serious injuries sustained in detention. She claims that, by deporting her and her family to Pakistan, Denmark will be in breach of the Convention, because the Pakistani authorities will be unable to protect them in their country of origin.

### **State party's observations on admissibility**

4.1 In its submission of 21 May 2012, the State party challenges the admissibility of the communication. It notes that the author and her family arrived in Denmark on 5 September 2009 and applied for asylum on 8 September 2009. They explained to

the asylum authorities that they were ethnic Anglo-Indians of Christian faith from Rawalpindi, Pakistan. They were not members of any political or religious associations or organizations or otherwise politically active. They affirmed that they feared persecution by one individual who had persecuted them in the past. In substantiation, they claimed that the author had been harassed for a number of years by the individual in question, who wanted to start a relationship with her. They further claimed that this individual belonged to a high-ranking family and that his brother was a high-ranking police official who could find them anywhere in Pakistan. They claimed that, because of this, they would be unable to enjoy the protection of the Pakistani authorities. They also referred to persecution against Christians in Pakistan.

4.2 On 27 November 2009, the Immigration Service rejected the author's and her family's application for asylum. The author and her family appealed to the Refugee Appeals Board. On 9 March 2012, the Board upheld the Service's decision. The Board found that the author and her family had been harassed and subjected to outrages by an individual, his brother and the local police for a number of years. It did not, however, consider that the author's brother had been killed by the police. The Board concluded, *inter alia*, that it must be considered reasonable for the author and her family to take up residence elsewhere in Pakistan, in a place where their persecutor would be unable to harass them. Moreover, the Board found that it had not been established that the author and her family had been subjected to general harassment as Christians in Pakistan to such an extent as to be considered to amount to persecution within the meaning of section 7 (1) of the Aliens Act and that the conditions for Christians in Pakistan were not such as to make it impossible for the author and her family to change their place of residence in the country. The Board concluded that the author and her family did not satisfy the conditions for residence under section 7 of the Aliens Act and rejected their asylum application.

4.3 The State party provides details concerning the prerogatives and composition of the Refugee Appeals Board and the legal basis for its decisions.<sup>2</sup> It further points out that, pursuant to section 7 (1) of the Aliens Act, a residence permit will be issued to an alien if the alien falls within the provisions of the Convention relating to the Status of Refugees (Refugee Convention) (convention status). Pursuant to section 7 (2) of the Aliens Act (the wording of which is similar to that of article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)), a residence permit will further be issued to an alien if the alien will be at risk of the death penalty or of being subjected to torture or inhuman or degrading treatment or punishment in the event

<sup>2</sup> The State party indicates that the Refugee Appeals Board is an independent, quasi-judicial body and that any appeal to it suspends the enforcement of the decision under appeal. The Board is considered a court within the meaning of article 39 of Council of the European Union Directive 2005/85/EC on minimum standards on procedures in European Union member States for granting and withdrawing refugee status, which established the right of asylum seekers to have a decision in their case reviewed by a court or tribunal. Pursuant to section 56 (8) of the Aliens Act, decisions of the Refugee Appeals Board are final, i.e. there can be no appeal against the Board's decisions. Aliens may, however, by virtue of the Constitution, bring an appeal before the ordinary courts, which have the authority to adjudicate any matter concerning the limits to the competence of a public authority. As established by the Supreme Court, the ordinary courts' review of decisions of the Board is limited to a review of legal issues, including shortcomings in the basis of the decision and the unlawful exercise of discretion. The Board's assessment of evidence is not subject to review.

that he/she is returned to his/her country of origin (protection status). The conditions for granting a residence permit under section 7 (2) of the Aliens Act are considered to have been met when concrete and individual factors render it probable that the asylum seeker will run a real risk of being subjected to torture in the event that he/she is returned to his/her country of origin. It follows from section 31 (2) of the Aliens Act that no alien may be returned to a country where he/she will be at risk of persecution on the grounds set out in article 1 (A) of the Refugee Convention, or where he/she will not be protected against being sent on to such a country.

4.4 According to the State party, the present communication should be declared inadmissible *ratione loci* and *ratione materiae* under article 2 and article 4 (2) (b) of the Optional Protocol, since Denmark cannot be held responsible under the Convention on the Elimination of All Forms of Discrimination against Women for the acts referred to in the communication. The author seeks to apply the provisions of the Convention in an extraterritorial manner, but the allegations set out in the communication, while they may be imputable to Pakistan, are not imputable to Denmark. The Committee therefore lacks jurisdiction over the alleged violations with regard to Denmark and the communication is incompatible with the provisions of the Convention.

4.5 The State party notes that, while the Convention itself has no explicit jurisdiction clause limiting its scope of application, article 2 of the Optional Protocol clearly states that communications “may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State party, claiming to be victims of a violation of any of the rights set forth in the Convention by that State party”. Accordingly, the right of individual petition is clearly limited by a jurisdiction clause. It follows that the author may submit a communication concerning Denmark only if the violations of the Convention alleged therein were committed under the jurisdiction of Denmark (see article 2 of the Optional Protocol). In the present case, no Danish official and no private person, organization or enterprise under the jurisdiction of Denmark has committed a violent act, gender-based or otherwise, against the author and her family. Nor have the author and her family made any allegations against Denmark to that effect. While it is true that the author and her family are temporarily residing in Denmark and, therefore, currently under Danish jurisdiction, their claims rest not on any treatment that they will suffer in Denmark, or in an area where Danish authorities are in effective control or as a result of the conduct of Danish authorities, but rather on consequences that they may suffer if they are returned to Pakistan. The author complains that she and her family will be returned to a place where they will allegedly suffer discriminatory treatment contrary to the Convention. However, the decision to return her and her family to Pakistan cannot engage the responsibility of the State party under article 1, 2, 3, 5 or 16 of the Convention.

4.6 According to the State party, the concept of jurisdiction, for the purposes of article 2 of the Optional Protocol, must be considered as corresponding to the meaning of the term in public international law. Thus, the words “under the jurisdiction of a State party” must be understood to mean that a State’s jurisdictional competence is primarily territorial and that State jurisdiction is presumed to be exercised normally throughout its territory. Only in exceptional circumstances can certain acts of a State party produce effects outside its territory, triggering its responsibility (something known as “extraterritorial effect”). No such exceptional circumstances exist in the present case and Denmark cannot be held responsible for

violations of the Convention that are expected to be committed by another State party outside both the Danish territory and Danish jurisdiction. The State party also points out that the question of extraterritorial effect has not been directly addressed in the Committee's jurisprudence and that there are no indications that the relevant provisions of the Convention would apply extraterritorially.<sup>3</sup>

4.7 The State party further explains that the European Court of Human Rights has clearly stressed, in its case law, the exceptional nature of extraterritorial protection regarding the rights contained in the European Convention on Human Rights. Already in *Soering v. the United Kingdom* (application No. 14038/88, judgement of 7 July 1989), the Court applied the principle of extraterritoriality to article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), which expressly prohibits States from expelling, returning or extraditing a person to another State where there are substantial grounds for believing that he/she would be in danger of being subjected to torture.

4.8 Since then, the European Court of Human Rights has confirmed this judgement on a number of occasions. In *F. against the United Kingdom* (application No. 17341/03, decision of 22 June 2004), the applicant was an Iranian citizen who had applied for asylum in the United Kingdom claiming persecution on account of his homosexuality and arguing that it would be a violation of article 8 (right to private and family life) of the European Convention on Human Rights if he was removed to the Islamic Republic of Iran, because consensual homosexual activity between adults was forbidden there. The Court observed that its case law had found responsibility attaching to Contracting States in respect of expelling persons who were at risk of treatment contrary to article 2 (right to life) and article 3 (prohibition of torture) of the Convention. The Court went on to state as follows:

Such compelling considerations do not automatically apply under the other provisions of the Convention. On a purely pragmatic basis, it cannot be required that an expelling Contracting State only return an alien to a country which is in full and effective enforcement of all the rights and freedoms set out in the Convention.

<sup>3</sup> The State party observes that, in communication No. 10/2005, *N.S.F. v. the United Kingdom of Great Britain and Northern Ireland*, decision of 30 May 2007, the applicant was a Pakistani national who had applied for asylum in the United Kingdom along with her two children. She claimed to fear for her life at the hands of her former husband in Pakistan and for her two sons' future and education if the authorities of the United Kingdom deported her. She did not invoke any specific provisions of the Convention nor demonstrate how the Convention might have been violated. The communication was declared inadmissible on the grounds of failure to exhaust domestic remedies. The Committee did not address the issue of extraterritoriality. The State party also makes reference to communication No. 26/2010, *Guadalupe Herrera Rivera v. Canada*, decision of 18 October 2011, where Canada argued that, in contrast to the Convention against Torture and articles 6 and 7 of the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women does not deal directly (or indirectly) with removal to torture or other serious threats to life and the security of the person (see para. 4.4 of the decision). Canada further argued that the author could only bring a communication concerning Canada related to alleged violations of the Convention committed by and under the jurisdiction of Canada. Having found the communication inadmissible on the grounds of failure to exhaust domestic remedies, the Committee expressly stated that it did not consider it necessary to examine the other inadmissibility grounds invoked by the State party (see para. 6.4. of the decision).

4.9 In *Z. and T. against the United Kingdom* (application No. 27034/05, decision of 28 February 2006), the European Court of Human Rights stated that the extraterritoriality principle should be applied predominantly to violations of article 2 (right to life) and article 3 (prohibition of torture) of the European Convention on Human Rights, and to article 5 (right to liberty and security) and article 6 (right to a fair trial) of the Convention if the person expelled would be at risk of a flagrant violation of those rights in the receiving State. This case was about the alleged violation of article 9 (freedom of thought, conscience and religion) of the Convention in the event that applicants were returned to Pakistan, as they claimed that they would not be able to live there as Christians without risking adverse attention or taking steps to conceal their religion. The Court observed the following:

Where however an individual claims that on return to his own country he would be impeded in his religious worship in a manner which falls short of those proscribed levels, the Court considers that very limited assistance, if any, can be derived from article 9 by itself. Otherwise it would be imposing an obligation on Contracting States effectively to act as indirect guarantors of freedom of worship for the rest of world.

4.10 The State party notes that, similarly, article 1 of the Optional Protocol to the International Covenant on Civil and Political Rights, like article 2 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, stipulates that the Human Rights Committee can receive communications from individuals who are subject to the jurisdiction of a State party and who claim to be victims of a violation of any of the rights set forth in the Covenant by that State party. Like the European Court of Human Rights, the Human Rights Committee has found on a number of occasions that the deportation of persons by States parties to other States that would result in a foreseeable breach of their right to life or of their freedom from torture, as set out in articles 6 and 7 of the Covenant, would entail a violation of their convention rights. However, the Human Rights Committee has never considered a communication on its merits regarding the deportation of a person who feared a “lesser” human rights violation (e.g. violation of a derogable right) in the receiving State.

4.11 Legal obligations against removal to serious violations of human rights are found explicitly in the Convention against Torture and in articles 6 and 7 of the International Covenant on Civil and Political Rights. While the latter provisions have been interpreted by the Human Rights Committee to offer implicit protection against removal to the death penalty and to torture or other serious threats to the life and security of the person, the Convention on the Elimination of All Forms of Discrimination against Women does not deal directly (or indirectly) with removal to torture or other serious threats to the life and security of the person.

4.12 The State party submits that it is aware of the position of the Committee on the Elimination of Discrimination against Women, as reflected in its general recommendation No. 19, that gender-based violence is a form of discrimination that impairs or nullifies the enjoyment by women of human rights and fundamental freedoms, such as the right to life, the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, and the right to security of the person. Nevertheless, this does not change the fact that a State party is responsible only for violations that are committed under its own jurisdiction and cannot be held responsible under the Convention for discrimination occurring under the jurisdiction



of another State. This is true even if the author can demonstrate that she would be subjected to discrimination under the terms of the Convention as a result of gender-based violence in Pakistan.

4.13 According to the State party, the return of women who arrive in Denmark simply to escape from discriminatory treatment in their own country, however objectionable that treatment may seem, cannot constitute a violation of the Convention. If the opposite view were accepted, States parties could return aliens only to countries where conditions were in full compliance with each of the safeguards, rights and freedoms set out in the Convention. States parties cannot be obliged under the Convention to return aliens only to countries whose legal systems are compatible with the principle of non-discrimination enshrined in the Convention. In the light of the foregoing, the State party contends that the present communication is incompatible with the provisions of the Convention and should be declared as inadmissible *ratione loci* and *ratione materiae* under article 4 (2) (b), read together with article 2, of the Optional Protocol.

4.14 The State party further argues that the communication is inadmissible in relation to the author's husband and to the baby boy born in 2011, as they cannot claim to be victims under the Convention. Article 2 of the Optional Protocol states that communications may be submitted by or on behalf of individuals or groups of individuals who are under the jurisdiction of a State party and who claim to be victims of a violation by that State party of a right set forth in the Convention. The Convention concerns discrimination against women. While the term "women" is not clearly defined in the Convention, it is clear that adult males and boys cannot be regarded as women and, as a consequence, cannot be considered victims of a violation of the Convention.

4.15 The State party also claims that the communication is inadmissible on the grounds that it is not sufficiently substantiated (see article 4 (2) (c) of the Optional Protocol). The author does not clearly identify or explain the rights under the Convention on which she is in fact relying, but instead simply lists articles 1, 2, 3, 5 and 16 of the Convention. It is unclear which violations the author is in fact claiming will occur should she and her family be returned to Pakistan. Neither does she substantiate her claim.

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

5.1 In her submission of 20 June 2012, the author explains that, in her written submission to the Refugee Appeals Board dated 5 March 2012, she invoked articles 1, 2 and 5 of the Convention, as well as the Committee's general recommendation No. 19. Articles 3 and 16 of the Convention were invoked in her initial communication to the Committee, dated 15 March 2012. The author explains that she wishes also to invoke article 12 of the Convention.<sup>4</sup> Since the State party did not challenge the admissibility of the communication on the grounds of non-exhaustion of domestic remedies, the author considers that no further remedies have to be exhausted in Denmark.

5.2 The author claims that the Committee is competent to consider different forms of gender violence. Specifically, she refers to a number of its cases dealing with

<sup>4</sup> The author merely invokes article 12 of the Convention without providing any further information or arguments in support thereof.

gender-related crimes, including rape.<sup>5</sup> She claims that her case is about the possible risk of rape/sexual assault in Pakistan, and notes that the extent to which she runs such a risk relates to the merits of the communication, not to its admissibility.

5.3 She further argues that the provisions of the Convention that address violence against women should have extraterritorial effect, like article 3 of the Convention against Torture and article 7 of the International Covenant on Civil and Political Rights, especially in cases where deportation would result in torture or inhuman treatment upon return. She notes the absence of any jurisprudence in this respect, but claims that the Committee can provide protection in cases of violence against women. The author recalls that, in her case, the Committee granted interim measures requesting the State party to refrain from deporting her and her two minor children to Pakistan. She refers to other cases<sup>6</sup> that, according to her, “seem to indicate” that the Committee considers her case to be “exceptional” and “confirming” that the provisions of the Convention on the Elimination of All Forms of Discrimination against Women have extraterritorial effect.

5.4 The author rejects the State party’s argument that her husband and son cannot be considered victims under the Convention, claiming that her husband had to flee Pakistan because of her problems and that their family suffered from discrimination in Pakistan and therefore fear returning there. In addition, adult males and boys can be victims of gender inequality and discrimination too.

5.5 Lastly, the author claims that, contrary to the State party’s assertion, the communication is sufficiently substantiated and should be considered on its merits. She submits that the Refugee Appeals Board failed to consider her sexual harassment claim and to acknowledge the State party’s obligations under the Convention. For instance, when the Board was called upon to assess the risk of rape and forced marriage should she be returned to Pakistan, it simply recommended that she should move to another part of the country.

#### **Additional observations by the State party**

6.1 In its submission of 27 August 2012, the State party explains that it does not dispute the fact that violence against women can amount to ill-treatment contrary to article 3 of the European Convention on Human Rights, article 3 of the Convention against Torture and articles 6 and 7 of the International Covenant on Civil and Political Rights. However, the Convention on the Elimination of All Forms of Discrimination against Women does not address the issue of removal to torture or other serious threats to the life and security of the person, either directly or indirectly. The author can therefore submit a communication concerning Denmark only if the violations of the Convention alleged therein were committed under the jurisdiction of Denmark.

6.2 The State party reiterates that it is aware of the Committee’s position, as reflected in its general recommendation No. 19, that gender-based violence is a form of discrimination that impairs or nullifies the enjoyment by women of human rights and fundamental freedoms. Nevertheless, this does not change the fact that a State party is responsible only for violations that are committed under its own jurisdiction

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<sup>5</sup> Communication No. 18/2008.

<sup>6</sup> Communication No. 10/2005 and communication No. 26/2010.

and cannot be held responsible under the Convention for discrimination occurring under the jurisdiction of another State.

6.3 Referring to two recent decisions of the Committee,<sup>7</sup> the State party notes that they both were declared inadmissible on other grounds and that the issue of the extraterritorial application of the Convention was not addressed. The State party therefore invites the Committee to express its view on this issue.

6.4 The State party further observes that the Committee's application of interim measures pursuant to article 5 (1) of the Optional Protocol in both the present case and previous cases, such as *Guadalupe Herrera Rivera v. Canada* (communication No. 26/2010), cannot be interpreted as establishing that the Convention has extraterritorial effect, as claimed by the author. This view is supported by the very wording of article 5 (2) of the Optional Protocol, which reads: "Where the Committee exercises its discretion under paragraph 1 of the present article, this does not imply a determination on admissibility or on the merits of the communication."

6.5 The State party further notes that the author also alleges a violation of article 12 of the Convention, according to paragraph 2 of which States parties must take all appropriate measures to eliminate discrimination against women in the field of health care. The State party submits, however, that this article, like the other articles of the Convention, cannot be considered to have extraterritorial effect. On several occasions, the European Court of Human Rights has considered whether health-care considerations can warrant a finding of a breach of article 3 of the European Convention on Human Rights in the event that a person is returned to his or her country of origin. For example, in *N. v. the United Kingdom* (application No. 26565/05, judgement of 27 May 2008) the Court found the following:

Advances in medical science, together with social and economic differences between countries, entail that the level of treatment available in the Contracting State and the country of origin may vary considerably. While it is necessary, given the fundamental importance of Article 3 in the Convention system, for the Court to retain a degree of flexibility to prevent expulsion in very exceptional cases, Article 3 does not place an obligation on the Contracting State to alleviate such disparities through the provision of free and unlimited health care to all aliens without a right to stay within its jurisdiction. A finding to the contrary would place too great a burden on the Contracting States.

6.6 According to the State party, the risk of discrimination in the field of health care cannot oblige States parties to return aliens only to countries where conditions are in full compliance with each of the safeguards, rights and freedoms set out in the Convention on the Elimination of All Forms of Discrimination against Women. This is the case with article 3 of the European Convention on Human Rights. It is even more the case with the Convention on the Elimination of All Forms of Discrimination against Women, because this instrument does not address, either directly or indirectly, the issue of removal to torture or other serious threats to the life and the security of the person.

<sup>7</sup> Communication No. 25/2010, *M.P.M. v. Canada*, decision of 24 February 2012, and communication No. 26/2010, *Guadalupe Herrera Rivera v. Canada*, decision of 18 October 2011.

**Issues and proceedings before the Committee concerning admissibility**

7.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol. Pursuant to rule 66, the Committee may decide to consider the admissibility of the communication separately from its merits.

7.2 In accordance with article 4 (2) (a) of the Optional Protocol, the Committee is satisfied that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.3 The Committee observes that the State party did not challenge the admissibility of the communication on the grounds of non-exhaustion of domestic remedies. Accordingly, it considers that it is not precluded by the requirements of article 4 (1) of the Optional Protocol from examining the communication.

7.4 The Committee notes the author's allegation that her and her family's deportation to Pakistan would constitute a violation by Denmark of their rights under the Convention in view of the sexual harassment to which she had previously been subjected there and the inability of the Pakistani authorities to provide them with effective protection against the treatment to which, she claims, they would again be exposed upon their return. The Committee also takes note of the State party's arguments that the communication should be declared inadmissible *ratione loci* and *ratione materiae* under article 2 and article 4 (2) (b) of the Optional Protocol, as the author seeks to expand the protection offered by the Convention in an extraterritorial manner; that the State party cannot be held responsible under the Convention for gender-based discrimination that has occurred or is to occur under the jurisdiction of another State (Pakistan); that the Committee lacks jurisdiction over the alleged violations with regard to the State party; and that the communication is incompatible with the provisions of the Convention.

7.5 The Committee recalls that article 1 of the Convention defines discrimination against women as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women ... of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field". The Committee further recalls its general recommendation No. 19, which has clearly placed violence against women within the ambit of discrimination against women by stating that gender-based violence is a form of discrimination against women and includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.

7.6 In the present case, the Committee notes that the author claims that, since the age of 16 (i.e. since 1998), she has been subjected to sexual harassment by an individual belonging to a high-ranking family with strong connections within the police force, and that this harassment continued until she and her family left Pakistan for Denmark in 2009. The Committee also notes the author's claim that she and her family were persecuted because of their Christian faith.

7.7 The Committee further notes that the Refugee Appeals Board found that the author and her family had been subjected to outrages by a particular individual, his brother and the local police for a number of years; however, the Board concluded that it must be considered reasonable for the author and her family to take up

residence elsewhere in Pakistan, in a place where the persecutor would be unable to harass them.

7.8 The Committee observes that the author's alleged sexual harassment by A. G. began in 1998 when she was 16 years old. While the author refers to several incidents of stalking, oral threats, verbal abuse and harassment by the named individual between 1998 and 2009 and claims that her relatives were arrested on several occasions at his request, the Committee observes that the facts as presented by the author do not show a causal link between the respective arrests and the harassment suffered by the author. Neither was she able to demonstrate that her relatives had been summoned by the police, arrested or charged with a crime. Furthermore, the author provides no clear or specific information about her family's decision to move to another location in Pakistan in an attempt to avoid harassment by A. G. She also fails to explain how A. G. was able to obtain her sister's telephone number in Denmark and thereby to continue harassing and threatening her by telephone while she was in Denmark between January 2007 and May 2008. The Committee also notes that the alleged harassment-related incidents were of a sporadic nature and as such cannot be considered to constitute systematic harassment amounting to gender-based violence. Lastly, the Committee considers that the author has not adduced sufficient information in support of her contention regarding the alleged persecution based on religion. In the circumstances, the Committee considers that the author has failed to sufficiently substantiate, for the purposes of admissibility, her claim that her removal to Pakistan would expose her to a real, personal and foreseeable risk of serious forms of gender-based violence and therefore declares the communication inadmissible under article 4 (2) (c) of the Optional Protocol.

7.9 In the light of this conclusion, the Committee decides not to examine the remaining inadmissibility grounds invoked by the State party, including those of *ratione loci* and *ratione materiae*. Regarding the State party's argument that the author seeks to apply the provisions of the Convention in an extraterritorial manner, the Committee refers to its position explained in its decision in communication No. 33/2011, *M. N. N. v. Denmark*, adopted on 15 July 2013.<sup>8</sup>

8. The Committee therefore decides:

- (a) That the communication is inadmissible under article 4 (2) (c) of the Optional Protocol;
- (b) That this decision shall be communicated to the State party and to the author.

[Adopted in Arabic, Chinese, English, French, Russian and Spanish, the English text being the original version.]

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<sup>8</sup> CEDAW/C/55/D/33/2011, paras. 8.5-8.10.