



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

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**Committee on the Elimination of Discrimination
against Women**

Communication No. 53/2013

**Views adopted by the Committee at its sixty-second session
(26 October-20 November 2015)**

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| <i>Submitted by:</i> | A. (represented by counsel, Niels-Erik Hansen) |
| <i>Alleged victim:</i> | The author |
| <i>State party:</i> | Denmark |
| <i>Date of communication:</i> | 11 April 2013 (initial submission) |
| <i>References:</i> | Transmitted to the State party on 12 April 2013 (not issued in document form) |
| <i>Date of adoption of views:</i> | 19 November 2015 |



Annex

Views of the Committee on the Elimination of Discrimination against Women under article 7 (3) of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (sixty-second session)

concerning

Communication No. 53/2013*

Submitted by: A. (represented by counsel, Niels-Erik Hansen)
Alleged victim: The author
State party: Denmark
Date of communication: 11 April 2013 (initial submission)

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 19 November 2015,

Adopts the following:

Views under article 7 (3) of the Optional Protocol

1.1 The author of the communication is A., a Pakistani national born in 1983. She claims to be a victim of a violation by Denmark of her rights under articles 1, 2 (c) and (d), 3, 12, 15 and 16 of the Convention on the Elimination of All Forms of Discrimination against Women. The author is represented by counsel. The Convention and the Optional Protocol thereto entered into force for Denmark on 21 May 1983 and 22 December 2000, respectively.

1.2 On 8 January 2014, the State party was informed that the Committee, acting through its Working Group on Communications under the Optional Protocol, had decided to examine the admissibility of the communication together with the merits.

Facts as submitted by the author

2.1 The author is an illiterate woman from the Christian minority in Punjab who was raised in a village in Pakistan, where she lived until she married her husband, a Pakistani with a Danish permanent residence permit. The author and her husband have two children, born in 2009 and 2011. They met when her husband visited Pakistan in 2007. In 2008, they married in a church in Pakistan without the consent and knowledge of their respective families because the author's husband was

* The following members of the Committee took part in the consideration of the present communication: Ayse Feride Acar, Gladys Acosta Vargas, Bakhita Al-Dosari, Nicole Ameline, Magalys Arocha Dominguez, Barbara Bailey, Niklas Bruun, Nâela Gabr, Hilary Gbedemah, Nahla Haidar, Ruth Halperin-Kaddari, Yoko Hayashi, Lilian Hofmeister, Ismat Jahan, Lia Nadaraia, Theodora Nwankwo, Pramila Patten, Silvia Pimentel, Biancamaria Pomeranzi, Patricia Schulz and Xiaoqiao Zou.

expected to marry another woman. After the marriage, the author and her husband lived together for about two months in another village. The husband then returned to Denmark. Before his return, he found accommodation for the author, who was obliged to live there alone because she had been rejected by both families. During that period, the author was supported financially by her husband. The husband then decided to take the author to Denmark. In 2009, she obtained a visitor visa and was able to enter Denmark, but had to return to Pakistan in May 2009 after her request for a permanent residence permit was denied.¹ Back in Pakistan, she began working in a beauty salon in June 2009.

2.2 In July 2009, three men broke into the author's house, beat her, kicked her, threw inflammable liquid at her and set fire to her clothes, causing severe burns to her torso and arms. The men accused her of performing "dirty work", alleging that she was a prostitute. The attack occurred six days after a group of men broke into the beauty salon and committed vandalism, accusing the employees of performing "dirty work" and calling the place a "sex clinic". After the attack, the author never returned to the salon. Following the attack at her house, the author stayed in hospital for around seven or eight months to recover from her burns, during which time she gave birth to her first child. The author believes that the two attacks are linked and that they were organized by her husband's family. She claims that she did not make a complaint to the police because one of her acquaintances told her that the police took no action when her neighbours alerted them about the incident because she was considered a prostitute.

2.3 The author further alleges that, in March 2010, while she was taking her son to the hospital in a taxi, unknown men on motorbikes shot at them. She considers that that was a deliberate act because the men came very close to the car to shoot at her. She was not injured, but the driver was. The author again did not report the incident to the police because she knew that they would take no action owing to the rumours about her supposed work as a prostitute.

2.4 The author arrived in Denmark on 8 June 2010 on a visa that was valid until 20 September 2010. She requested family reunification on 19 July 2010, which was denied on 12 January 2011 by the Danish Immigration Service. She appealed against the decision before the Ministry of Refugees, Immigration and Integration Affairs. On 17 June 2011, the Ministry upheld the decision of the Service. On 15 September 2012, the author was arrested by the police for illegally staying in Denmark. She remained in detention until 15 October 2012. On 16 September 2012, she applied for asylum, claiming that she feared that her life would be in danger if she were returned to Pakistan. The Service denied her request for asylum on 22 January 2013,² considering that, according to background information, women in Pakistan were under the control of male family members and it was therefore unlikely that the author would have decided to marry without the consent of her family or of her husband's family. The Service also considered that the author's argument in that regard had been constructed for the purpose of the request. The Service further considered that the family of the author's husband had never threatened her and that her fears were therefore groundless, and that the events cited by the author as evidence of threat (the attacks at the beauty salon, at the author's home and in the

¹ The author provides no further information regarding the trip to Denmark or the decision to deny her request for family reunification.

² The author provided an unofficial translation of the decision by the Danish Immigration Service.

taxi), were general, isolated and past criminal matters. Furthermore, the Service concluded that the author's allegations were not credible, given that it took her two years to apply for asylum after her arrival in Denmark, and that, if her fears were justified, she could submit a complaint to the Pakistani authorities, even if she really was considered a prostitute.³

2.5 The Refugee Appeals Board denied the author's appeal on 5 April 2013. According to the author, the Board considered it a fact that she had been attacked at her home and had been burned and that she had also been attacked a few days earlier at her workplace. It also considered it a fact that the same people were responsible for both acts because they all referred to prostitution as justification for the attacks. The Board considered, however, that the author had failed to establish that the attacks had been perpetrated by her husband's family because of their marriage and that she could not establish that the attacks had been directed against her. The Board thus concluded that the author could not establish that she would be at risk of persecution if returned to Pakistan and that being a Christian woman with no network in the country was not sufficient to grant her asylum.

Complaint

3.1 The author claims to be a victim of a violation of articles 1, 2 (c) and (d), 3, 12, 15 and 16 of the Convention by the State party. The author considers that the State party seems to argue that, if the attacks were perpetrated by a group of men acting as "morality police", they would not constitute an act of violence against women. The author considers that such interpretation amounts to a violation of her rights under the Convention because it clearly constitutes gender-specific persecution, whoever perpetrated the attacks.

3.2 The author also claims that she was the victim of an attempted murder committed in the name of so-called honour, either because of her marriage without the consent of her husband's family or because of her work having been perceived as immoral. She states that she did not seek justice or redress in Pakistan because acts such as those that she suffered are not properly prosecuted and punished in that country. She therefore considers that her deportation to Pakistan amounts to a violation of her rights under the above-mentioned articles of the Convention.

State party's observations on admissibility

4.1 On 12 June 2013, the State party submitted its observations on the admissibility of the communication. It indicated that the author's husband had obtained a residence permit for Denmark in May 2005 on the basis of his marriage to a Danish national in May 2002. The author's husband had divorced his then spouse in March 2007 and married the author in Pakistan in 2008. The State party indicated that the author's children by her husband had residence permits in Denmark under the family reunification section of the Aliens Act. The author's application for family reunification, submitted on 19 July 2010, was rejected on 12 January 2011 by the Danish Immigration Service. On 17 June 2011, that decision was upheld by the Ministry of Refugees, Immigration and Integration Affairs, which requested the author to leave the country. On 15 September 2012, the national police came across the author, detained her and charged her with illegally staying in

³ No further information was provided on the argument by the Danish Immigration Service.

Denmark. On 16 September 2012, the Service decided to expel the author, and she applied for asylum.

4.2 The State party stated that the author had based her asylum request on her fear of the violence of her family and of her husband's family following their marriage without the families' consent. On 22 January 2013, the Danish Immigration Service denied the author's application for asylum. On 5 April 2013, the Refugee Appeals Board upheld that decision, considering that the attacks referred to by the author and recognized as facts by the Danish authorities had not been perpetrated directly against the author. The State party argued that the author's claim that her husband's family had instigated the attacks had not been substantiated because she had never been threatened by them and the attacks had occurred directly after she began working at the beauty salon, not after the wedding. The Board concluded that the author had failed to demonstrate that she would probably be at real risk of persecution if she were returned to Pakistan. The State party considered that the fact that the author was a Christian with no network in Pakistan was not sufficient to change the Board's assessment.

4.3 The State party provided detailed information about the work and composition of the Refugee Appeals Board and the legal basis of its decisions pursuant to the Aliens Act. It recalled that the Board was an independent quasi-judicial body and that its members could not accept or seek instructions from the appointing or nominating authorities. Pursuant to section 31 (1) of the Act, an alien may not be returned to a country where he or she will be at risk of the death penalty or of being subjected to torture or inhuman or degrading treatment or punishment, or where he or she will not be protected against being sent on to such country, in line with the principle of non-refoulement. That absolute provision applies to all aliens in accordance with the international legal obligations of Denmark. The State party further argued that the Board's decisions were based on an individual and specific assessment of the relevant case. The claims of an asylum seeker were assessed in the light of all relevant evidence and their review took into account background information regarding the country to which the asylum seeker might be removed.⁴

4.4 The State party argued that the communication should be declared inadmissible *ratione loci* and *ratione materiae* under articles 2 and 4 (2) (b) of the Optional Protocol because Denmark was not responsible under the Convention for the acts cited as the basis for the author's communication. Whereas the Convention had no explicit jurisdiction clause limiting its scope of application, article 2 of the Optional Protocol clearly provided that communications "may be submitted by or on behalf 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 was clearly limited by a jurisdiction clause. The State party acknowledged that the author was currently under Danish jurisdiction. However, her claims did not rest on any treatment that

⁴ The State party indicated that the background information included information from various sources, including the Ministry of Foreign Affairs of Denmark, the Documentation and Research Division of the Danish Immigration Service, the Danish Refugee Council, the Office of the United Nations High Commissioner for Refugees and States' country background documents (for example, reports from the Home Office of the United Kingdom of Great Britain and Northern Ireland, the State Department of the United States of America and the Federal Ministry of the Interior of Austria), as well as reports from non-governmental organizations, including Human Rights Watch and Amnesty International.

she would suffer in Denmark, but rather on consequences that she might suffer if she were returned to Pakistan. Therefore, the only conduct by a Danish authority about which the author had complained was the decision to remove her to a place where she would allegedly suffer discriminatory treatment contrary to the Convention. The decision to return the author to Pakistan, however, could not engage the State party's responsibility under article 1, 2 (c) and (d), 3, 12, 15 or 16 of the Convention.

4.5 The State party noted that the concept of jurisdiction for the purposes of article 2 of the Optional Protocol must be considered to reflect the meaning of the term in public international law, namely that a State's jurisdictional competence is primarily territorial. Only in exceptional circumstances could acts of States parties that produced effects in other States result in a responsibility for the acting State party, known as extraterritorial effect. The State party submitted that no such exceptional circumstances existed in the present case and that Denmark could not be held responsible for violations of the Convention that were expected to be committed by another State party outside of Danish territory and jurisdiction.

4.6 The State party further submitted that the question of extraterritorial effect had not been directly addressed in any published jurisprudence of the Committee and that there was no jurisprudence to indicate that the relevant provisions of the Convention had any extraterritorial effect.⁵ The European Court of Human Rights, however, had clearly stressed in its case law⁶ the exceptional character of the extraterritorial protection of the rights contained in the European Convention for the Protection of Human Rights and Fundamental Freedoms.

4.7 The State party also considered that, under article 2 of the Optional Protocol, the Committee could receive communications from individuals subject to the jurisdiction of a State party who claimed to be victims of a violation by that State party of any of the rights set forth in the Convention. In that connection, the State party referred to the jurisprudence of the Human Rights Committee according to which the deportation of persons by States parties to other States that would result in a foreseeable breach of their right to life, or their freedom from torture, would entail a violation. The Human Rights Committee had, however, never considered a complaint on its merits regarding the deportation of a person who feared "a lesser human rights violation" in the receiving State, such as a violation of a derogable right.⁷

4.8 The State party referred to the definition of gender-based violence as "a form of discrimination that can impair or nullify the enjoyment by women of their human rights, such as the rights to life, security of the person and not to be subjected to torture or ill-treatment". It considered that States parties were responsible only for obligations regarding individuals under their jurisdiction and could not be held responsible for discrimination in the jurisdiction of another State party, even if the

⁵ The State party refers to communication No. 10/2005, *N.S.F. v. the United Kingdom of Great Britain and Northern Ireland*, decision of inadmissibility adopted on 30 May 2007.

⁶ The State party refers to the judgement of the European Court of Human Rights of 7 July 1989 in *Soering v. the United Kingdom*, application No. 14038/88, para. 88, and the decisions of the Court of 22 June 2004 in *F. v. the United Kingdom*, application No. 17341/03, and 28 February 2006 in *Z. and T. v. the United Kingdom*, application No. 27034/05.

⁷ The State party refers to Sarah Joseph, Jenny Schultz and Melissa Castan, eds., *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary*, 2nd ed. (New York, Oxford University Press, 2004), p. 94.

author could establish that she would be subject to discrimination contrary to the Convention owing to gender-based violence in Pakistan. Accordingly, the return of a woman who had come to Denmark simply to escape from discriminatory treatment in her own country, however objectionable that treatment might be, could not constitute a violation of the Convention. The State party therefore considered that it was not responsible under the Convention for the violations alleged by the author and argued that the communication should be rejected as inadmissible *ratione loci* and *ratione materiae* pursuant to article 4 (b), read together with article 2, of the Optional Protocol.

4.9 The State party further submitted that the communication should be deemed inadmissible under article 4 (2) (c) of the Optional Protocol for lack of substantiation, given that the author had not clearly identified or explained which rights enshrined in the Convention would be violated in case of return to Pakistan, but only made a general reference to articles 1, 2 (c) and (d), 3, 12, 15 and 16 of the Convention and to general recommendations No. 12 (1989) and No. 19 (1992) on violence against women. Lastly, the State party argued that applications for asylum were examined in the same manner and under the same procedure for men and women, meaning that women asylum seekers were not subjected to discriminatory treatment in Denmark.

Author's comments on the State party's observations

5.1 On 18 July and 13 August 2013, the author submitted comments on the State party's observations. While confirming that the information regarding how her husband had arrived in Denmark and his residency status was accurate, she questioned the relevancy of such information in the context of her communication. In addition, she highlighted that the violations that she suffered occurred after Denmark refused her family reunification application, forcing her to return to Pakistan in 2009, even though she was already married and pregnant at the time (see para. 2.1).

5.2 The author reiterated that her husband's family had organized the first two attacks, one very shortly after the other (see para. 2.2). However, she clarified that she had never argued that she could make such an affirmation regarding the attack that occurred while she was in a taxi (see para. 2.3). She considered that the attacks to which she had been subjected constituted gender-based violence and that she would not be able to seek protection in case of return to Pakistan.

5.3 As to the State party's argument that she had not substantiated her allegations, the author contended that she had provided clear information on the gender-based violence to which she would be subjected if returned to Pakistan. She referred to the Committee's jurisprudence according to which crimes committed in the name of so-called honour are covered by the Convention and States have the obligation to protect women against such practices.⁸

⁸ See joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices (2014), paras. 10-14 and 29-30.

State party's additional observations

6.1 On 14 October and 20 December 2013, the State party provided additional observations reiterating that the communication should be deemed inadmissible under article 4 (2) (c) of the Optional Protocol for lack of substantiation. The State party noted the recently adopted views of the Committee in respect of the extraterritorial application of the Convention, according to which States parties have the obligation to protect women from being exposed to a real, personal and foreseeable risk of serious forms of gender-based violence, irrespective of whether such consequences take place outside the territorial boundaries of the State party from which the person is being deported. A State party would therefore violate the Convention if it returned a person to another State where it was foreseeable that serious gender-based violence would occur.⁹ Nevertheless, the State party considered that, under that jurisprudence, the Convention had an extraterritorial effect only in exceptional circumstances in which the person to be returned was at risk of being deprived of his or her right to life or of being exposed to torture and ill-treatment.

6.2 The State party considered that the facts as presented by the author did not establish prima facie evidence of her allegations. She had only declared that the persons behind the attacks that she suffered were probably members of her husband's family or her family because of their objection to the marriage. However, no elements substantiated her allegations that the attacks were of such a nature that, if returned to Pakistan, she would be at risk of persecution, qualifying for protection under section 7 of the Aliens Act, or that she would be exposed to a real, personal and foreseeable risk of serious forms of gender-based violence.

6.3 The State party further considered that the communication was inadmissible under article 4 (2) (b) of the Optional Protocol because it was incompatible with the provisions of the Convention. It asserted that the positive duties under article 2 (d) of the Convention did not encompass an obligation for States parties to refrain from expelling a person who might be at risk of pain or suffering inflicted by a private person, without the consent or acquiescence of the relevant State. The State party referred to the views of the Committee against Torture according to which torture must be inflicted by, or at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity.¹⁰ The State party also referred to the jurisprudence of the European Court of Human Rights, which had established that a State party could become responsible for acts committed against an alien in his or her country of origin only if he or she was able to demonstrate that the authorities of the receiving State were not able to obviate the risk by providing appropriate protection.¹¹ The State party considered that such condition had not been fulfilled in the present case because the author had never sought the protection of the authorities in Pakistan. She had only stated that her neighbours had contacted the police because she was unable to do so herself and that the police had replied

⁹ Communication No. 33/2011, *M.N.N. v. Denmark*, decision of inadmissibility adopted on 15 July 2013, para. 8.10.

¹⁰ See Committee against Torture, communication Nos. 130/1999 and 131/1999, *V.X.N. and H.N. v. Sweden*, views adopted on 15 May 2000.

¹¹ See European Court of Human Rights, communication No. 24573/94, *H.L.R. v. France*, views adopted on 22 April 1997, para. 40; communication No. 1948/04, *Salah Sheekh v. The Netherlands*, views adopted on 12 December 2006, para. 137; communication No. 25904/07, *N.A. v. the United Kingdom*, views adopted on 24 June 2008, para. 110.

that she had been reported as a prostitute and therefore they had taken no action with regard to her case.¹² The State party therefore considered that the author had not sufficiently substantiated that the national authorities were unable to provide her with adequate protection and that her claims in that regard should be deemed inadmissible.

6.4 On 10 March and 18 August 2014, the State party submitted its observations on the merits of the communication, reiterating that the author had not substantiated the risk to which she would be subjected if returned to Pakistan. The State party stated that the Refugee Appeals Board had accepted as facts that she had been attacked at the beauty salon, at her home and in a taxi, but it considered that she had not demonstrated that those attacks had been directed against her and that she had provided no evidence that her removal to Pakistan would expose her to a real, personal and foreseeable risk of serious forms of gender-based violence.

Author's additional comments

7.1 On 23 December 2013, the author provided additional comments. She indicated that she had referred to the Convention in her asylum procedures, including in the hearing before the Refugee Appeals Board. The State party's authorities had considered, however, that they did not have the obligation to protect women who could be subjected to gender-based violence when returned to their country of origin. The author therefore welcomed the State party's submission in which it accepted that the Convention had an extraterritorial effect in cases involving the principle of non-refoulement.¹³

7.2 The author indicated that she had sufficiently substantiated her case and had established prima facie evidence that she was a victim of gender-based violence. She further indicated that burning attacks were a common form of gender-based violence in some regions of India and Pakistan and that they disproportionately affected women. She alleged that she had been subjected to such an attack for being a woman who behaved in a way that was not accepted by some sectors of society. The author reiterated that her marriage against the will of her parents and her husband's family could also be the source of the attacks that she had suffered, but that she could not provide additional evidence in that regard. Lastly, she considered that being a Christian woman living on her own and working in a beauty salon also made her vulnerable to such attacks. In that connection, the author referred to the Office of the United Nations High Commissioner for Refugees (UNHCR) eligibility guidelines for assessing the international protection needs of members of religious minorities from Pakistan, which indicated that violent anti-Christian attacks occurred throughout the country and that, in many instances, the authorities were unable or unwilling to protect the lives of Christians or to bring the perpetrators to justice.

7.3 The author further submitted that she had not been able to go to the police herself after the attacks because she had been in hospital recovering from the burns. After her release, she had not dared to do so in view of her neighbours' comment

¹² The State party refers to the interview given by the author to the Danish Immigration Service on 10 January 2013.

¹³ The author refers to the State party's observations provided on 14 October 2012. The author also refers to communication No. 33/2011, *M.N.N. v. Denmark* (see footnote 9 above), and communication No. 35/2011, *M.E.N. v. Denmark*, decision of inadmissibility adopted on 26 July 2013.

that, even though they had reported her case, the police had not investigated because she was considered a prostitute.

7.4 On 10 June 2014, the author submitted comments on the merits of the communication. She referred to the concluding observations of the Committee on the fourth periodic report of Pakistan (CEDAW/C/PAK/CO/4, para. 21), wherein it had expressed concern about the persistence of child and forced marriages, “karo-kari”, stove burning and acid throwing, marriage in accordance with the Koran, polygamy and murder in the name of so-called honour. The Committee highlighted that, notwithstanding the provisions in the Criminal Law Act of 2004 that criminalized offences in the name of so-called honour, the *qisas* and *diyat* ordinances continued to be applied in those cases, resulting in perpetrators being given legal concessions and/or being pardoned and not being prosecuted and punished. The Committee also expressed concern about the insufficient information regarding the implementation of the standard operating procedures for treating women who were victims of violence and the scant number of shelters. The author referred to other sources, according to which, in Pakistan, parents gave precedence to the honour of the family over the daughters’ right to choose their own husband.¹⁴

7.5 The author argued that the attacks that she suffered, which had been considered facts by the State party, were aimed directly at her because she was a woman who behaved contrary to the established gender roles in Pakistan. She therefore considered that it was impossible to conclude that she would not be subjected to similar acts in case of return to her country and considered that she would not be able to seek protection from the Pakistani authorities. The author further contended that the Refugee Appeals Board had not justified why it had not taken into account that she was a woman living on her own, with no network in Pakistan.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 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 examine the admissibility of the communication together with its merits.

8.2 The Committee notes the author’s claims that her deportation to Pakistan would constitute a violation by Denmark of articles 1, 2 (c) and (d), 3, 12, 15 and 16 of the Convention. The Committee also notes the State party’s argument that the Convention has an extraterritorial effect only under exceptional circumstances in which the person to be returned is at real, personal and foreseeable risk of serious forms of gender-based violence.

8.3 The Committee recalls its general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, according to which the obligations of States parties apply without discrimination both to citizens and non-citizens, including refugees, asylum seekers, migrant workers and stateless persons, within their territory or effective control, even if not situated within the territory. States parties are “responsible for all their actions affecting human rights, regardless of whether the affected persons are in their territories” (para. 12). The

¹⁴ “Pakistan acid attack parents ‘feared dishonour’”, BBC News, 5 November 2012.

Committee also recalls that, under article 1 of the Convention, discrimination against women is defined 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”. According to the Committee’s general recommendation No. 19, 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 (para. 6).

8.4 As stated in paragraph 10 of its general recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, the Committee recalls that the provisions of the Convention reinforce and complement the international legal protection regime for refugees and stateless women and girls, especially because explicit gender equality provisions are absent from relevant international agreements, notably the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto, the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. The Committee further notes that, under international human rights law, the principle of non-refoulement imposes a duty on States to refrain from returning a person to a jurisdiction in which he or she may face serious violations of human rights, notably arbitrary deprivation of life or torture or other cruel, inhuman or degrading treatment or punishment. The principle of non-refoulement also constitutes an essential component of asylum and international refugee protection.¹⁵ The essence of the principle is that a State may not oblige a person to return to a territory in which he or she may be exposed to persecution, including gender-related forms and grounds of persecution.¹⁶

8.5 The absolute prohibition of torture, which is part of customary international law, includes the prohibition of refoulement to a risk of torture, which entails the prohibition of any return of an individual where he or she would be exposed to a risk of torture. The same holds true for the prohibition of arbitrary deprivation of life. Gender-based violence is outlawed under human rights law primarily through the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. The Committee against Torture, in paragraph 18 of its general comment No. 2, has explicitly indicated that gender-based violence and abuse fall within the scope of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.¹⁷

8.6 The Committee recalls that, under article 2 (d) of the Convention, States parties undertake to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions act in

¹⁵ See article 33 of the 1951 Convention relating to the Status of Refugees.

¹⁶ See communication No. 33/2011, *M.N.N. v. Denmark*, para. 8.8, and communication No. 35/2011, *M.E.N. v. Denmark*, para. 8.7 (see footnote 13 above).

¹⁷ See Human Rights Committee, communications No. 2149/2012, *M.I. v. Sweden*, views adopted on 25 July 2013, and No. 1465/2006, *Kaba v. Canada*, views adopted on 25 March 2010. It is also worth noting that the European Court of Human Rights and the Inter-American Commission on Human Rights have found instances of rape of detainees to be tantamount to acts of torture. In addition, “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity” constitutes a crime against humanity under the Rome Statute of the International Criminal Court.

conformity with that obligation. That positive duty encompasses the obligation of States parties to protect women from being exposed to a real, personal and foreseeable risk of serious forms of gender-based violence, irrespective of whether such consequences take place outside the territorial boundaries of the State party: if a State party takes a decision relating to a person within its jurisdiction, and the necessary and foreseeable consequence is a violation of that person's rights under the Convention in another jurisdiction, the State party itself may be in violation of the Convention. A State party would therefore violate the Convention if it returned a person to another State where it was foreseeable that serious gender-based violence would occur.¹⁶ Such violation also occurs when no protection against the identified gender-based violence can be expected from the authorities of the State to which the person is returned. What amounts to serious forms of gender-based violence will depend upon the circumstances of each case and needs to be determined by the Committee on a case-by-case basis at the merits stage, provided that the author has made a prima facie case by sufficiently substantiating her allegations.¹⁸

8.7 In the present case, the Committee notes the State party's argument that the author did not substantiate that the attacks to which she was subjected in Pakistan were of such nature that, if returned there, she would face a real, personal and foreseeable risk of serious forms of gender-based violence. The Committee also notes the author's claim that she established prima facie evidence that she had been subjected to attacks of gender-based violence in Pakistan and that she feared being subjected to similar acts if returned there. Lastly, it notes that none of the violent acts described by the author have been contested by the State party. In view of the information provided, the Committee considers that the author has sufficiently substantiated her claims for the purpose of admissibility. Accordingly, it proceeds to their examination on the merits.

Consideration of the merits

9.1 The Committee has considered the present communication in the light of all the information made available to it by the author and by the State party, as provided in article 7 (1) of the Optional Protocol.

9.2 The Committee observes that, while the State party does not challenge the truth of the three attacks perpetrated at the beauty salon where the author worked, at her house and while she was in a taxi with her son, it considers that the author did not provide sufficient evidence to demonstrate that the attacks were targeted directly against her. The Committee also observes that the State party has also not challenged the truth of the insults uttered against the author by the two groups of men who vandalized the beauty salon and attacked her at her house and set fire to her clothes, namely that the beauty salon was a "sex clinic", that she was performing "dirty work" and that she was a prostitute. The Committee notes that, while the author provided all relevant information about the tension between her and her parents as well as her husband's parents, who were all against their marriage, and stated that she had "assumed" that the attacks had been instigated by her in-laws, her application was denied simply because the Danish Immigration Service was of the opinion that her claim that the attacks had been instigated by her husband's family was not substantiated because she had never been threatened by

¹⁸ See also communication No. 35/2011, *M.E.N. v. Denmark*, para. 8.8 (see footnote 13 above).

them and the attacks occurred directly after she began working at the beauty salon, not after the wedding.

9.3 The Committee further notes the nature and seriousness of the attack by three men at the author's house in July 2009, during the course of which she suffered severe burns that resulted in her being admitted to hospital for seven to eight months; the attack against the beauty salon where the author was employed; and the shooting incident in March 2010 by unknown men on motorbikes, which could have resulted in serious injuries to the author and her son. The Committee is of the view that the nature and circumstances of those attacks all indicate that they were targeted at the author and were therefore "personal". The Committee also considers that the inability of the author to provide precise information on the exact identity of the persons responsible for the three attacks did not compromise her credibility and therefore considers that the denial of her asylum application by the State party was manifestly arbitrary. Even if the attacks had not been instigated by the parents of the author's husband, as "assumed" by the author, she was still at risk of being subjected to other serious harm and had a well-founded fear of further acts of gender-based violence. In that connection, the Committee recalls its general recommendation No. 32, according to which States parties should take into account that the threshold for accepting asylum applications should be measured not against the probability, but against the reasonable likelihood that the claimant has a well-founded fear of persecution or that she would be exposed to persecution upon her return.

9.4 The Committee has given due consideration to the State party's submission that the author did not sufficiently substantiate her claim that the Pakistani authorities would be unable to provide her with the protection necessary to obviate the alleged risk. The Committee also notes the author's submission that she did not go to the police because she was in hospital recovering from severe burns and that she did not dare to do so after she was released because she had been informed by her neighbours that, notwithstanding the fact that they had reported the severe attacks to the police, the police had refused to investigate because they considered her to be a prostitute. The Committee has given due consideration to the unchallenged submission by the author that she did not complain to the police. In that regard, the Committee recalls that, in line with paragraph 29 of its general recommendation No. 32, "as a matter of international law, the authorities of the country of origin are primarily responsible for providing protection to the citizens, including ensuring that women enjoy their rights under the Convention, and that it is only when such protection is not available that international protection is invoked to protect the basic human rights that are seriously at risk". In the present case, the Committee is of the view that the fact that the author did not seek the protection of the State or make a complaint to the authorities before her departure from Pakistan should not have prejudiced her asylum claim, especially taking into account the level of tolerance towards violence against women and the pattern of failure in responding to women's complaints of abuse, which are reflected in the information provided by the author and make it unrealistic to require the author to have sought protection in advance of her flight.

9.5 The Committee also considers that the State party gave no due consideration to the fact that the author was an illiterate ethnic Punjabi of Christian faith with no family support, living in a village in Pakistan away from her husband and being treated as a "prostitute" by society at large, including the police. In that connection, the Committee recalls the UNHCR eligibility guidelines for assessing the

international protection needs of religious minorities from Pakistan, which highlight that women from the Christian minority are in danger of gender-specific violence and that “violent anti-Christian attacks reportedly occur throughout the country and in many instances, the authorities are reportedly unable or unwilling to protect the lives of Christians or to bring perpetrators of such violence to justice”.¹⁹ The Committee also recalls that gender-related asylum claims may intersect with other proscribed grounds of discrimination, including ethnicity and religion.

9.6 In the present case, the Committee considers that the author has been subjected to gender-based violence in Pakistan, given that she was attacked, either because she was a woman living on her own and working at a beauty salon, which was perceived as “immoral” by her community, or because she married against the wishes of her husband’s family and her family, or both. In that connection, the Committee recalls paragraph 50 of its general recommendation No. 32, according to which States parties should institute gender-sensitive procedural safeguards in asylum procedures to ensure that women asylum seekers are able to present their cases on an equal basis with men and without discrimination. States parties should take into account that the threshold for accepting asylum applications should be measured not against the probability, but against the reasonable likelihood that the claimant has a well-founded fear of persecution or that she would be exposed to persecution upon her return. In the present case, the Committee therefore considers that the author has sufficiently substantiated that, if returned to Pakistan, she would be at risk of being subjected to serious forms of gender-based violence.

9.7 The Committee also recalls its concluding observations on Pakistan, in which it expressed concern about the persistence of patriarchal attitudes and deep-rooted stereotypes concerning women’s roles and responsibilities that discriminate against women and perpetuate their subordination within the family and society, all of which has recently been exacerbated by the influence of non-State actors in the State party. In that connection, the Committee recalls that *qisas* and *diyat* ordinances continue to be applied to offences committed in the name of so-called honour, resulting in perpetrators being given legal concessions and/or being pardoned and not being prosecuted and punished (see [CEDAW/C/PAK/CO/4](#), para. 21) according to the provisions of the Criminal Code. It is reported that 70 per cent of perpetrators of those kinds of crimes go unpunished.²⁰

9.8 In conclusion, the Committee recalls that, under international human rights law, the non-refoulement principle imposes a duty on States to refrain from returning a person to a jurisdiction in which he or she may face serious violations of human rights, that the right to life and the right not to be subjected to torture or ill-treatment are implicitly covered by the Convention, and that States parties are under an obligation not to extradite, deport, expel or otherwise remove a person from their territory to the territory of another State where there are substantial grounds for believing that there is a real risk of irreparable harm. In the present case, the Committee is of the view that there are substantial grounds for considering

¹⁹ See the Office of the United Nations High Commissioner for Refugees (UNHCR) eligibility guidelines for assessing the international protection needs of religious minorities from Pakistan, 14 May 2012, pp. 25-30.

²⁰ United Kingdom, Home Office, *Country Information Guidance, Pakistan: Women*. Available from www.gov.uk/government/uploads/system/uploads/attachment_data/file/331642/Pakistan_CIG.Women.2014.07.16.v1.0.pdf. See also para. 7.4.

that the author would be exposed to a real, personal and foreseeable risk of serious forms of gender-based violence in case of return to Pakistan.

10. In the light of the above findings, the Committee will not examine separately the author's allegations under articles 3, 12, 15 and 16 of the Convention.

11. Acting under article 7 (3) of the Optional Protocol to the Convention, and in the light of all the above considerations, the Committee is of the view that the State party has failed to fulfil its obligations and has thereby violated the rights of the author under articles 2 (c) and (d) of the Convention. The Committee therefore makes the following recommendations to the State party:

(a) Concerning the author of the communication: refrain from forcibly returning the author to Pakistan, where she would be at real, personal and foreseeable risk of being subjected to severe forms of gender-based violence, taking also into account that her husband and two minor children are permanent residents of Denmark;

(b) In general, and in line with the Committee's general recommendation No. 32, the Committee requests the State party:

- (i) To take all measures necessary to prevent similar violations in the future;
- (ii) To take all measures necessary to ensure that victims of gender-related forms of persecution who are in need of protection, regardless of their status or residence, are not returned under any circumstance to any country in which their life would be at risk or where they might be subjected to gender-based violence, or to torture or ill-treatment;
- (iii) To adopt gender-sensitive procedural safeguards in asylum procedures to ensure that women asylum seekers are able to present their case on the basis of equality and non-discrimination. That includes that interviewers use techniques and procedures that are sensitive to gender, age and other intersectional grounds of discrimination and disadvantage that compound the human rights violations that women refugees and asylum seekers experience; that a supportive interview environment is established so that the claimant can provide her account, including disclosure of sensitive and personal information, especially for survivors of trauma, torture and/or ill-treatment and sexual violence and that sufficient time is allocated for interviews; and that mechanisms for referral to psychosocial counselling and other support services, where necessary, both before and after the asylum interview, are made available;
- (iv) To ensure that the threshold for accepting asylum applications is measured not against the probability but against the reasonable likelihood that the claimant has a well-founded fear of persecution or that she would be exposed to persecution on return;
- (v) To ensure that, whenever necessary, examiners use all the means at their disposal to produce the necessary evidence in support of the application, including by seeking and gathering gender-relevant information from reliable governmental and non-governmental sources on human rights in the country of origin and taking all necessary measures in that regard;

(vi) To ensure that a gender-sensitive approach is integrated when interpreting all legally recognized grounds for asylum; to classify gender-related claims under the grounds of membership of a particular social group, where necessary; and to consider adding sex and/or gender and other status to the list of grounds for refugee status in the national asylum legislation;

(vii) To adopt a proper identification system for women asylum seekers and refugees that is not based on prejudices and stereotyped notions of women;

(viii) To ensure that police officers and immigration officials are adequately trained, supervised and monitored for gender-sensitivity and non-discriminatory practices when dealing with women asylum seekers and refugees.

12. In accordance with article 7 (4) of the Optional Protocol, the State party shall give due consideration to the views of the Committee, together with its recommendations, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee. The State party is also requested to publish the Committee's views and recommendations and to have them widely disseminated in order to reach all relevant sectors of society.
