



Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Decision adopted by the Committee under article 4 (1) and (2) (c) of the Optional Protocol, concerning communication No. 161/2020^{*,**}

<i>Communication submitted by:</i>	T.M. (represented by counsel, Niels-Erik Hansen)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Denmark
<i>Date of communication:</i>	18 June 2020
<i>References:</i>	Transmitted to the State party on 16 September 2020 (not issued in document form)
<i>Date of adoption of decision:</i>	31 May 2024
<i>Subject matter:</i>	Deportation to Zimbabwe
<i>Procedural issue:</i>	Exhaustion of domestic remedies; non-substantiation of claims
<i>Substantive issues:</i>	Non-refoulement; gender-based violence
<i>Articles of the Convention:</i>	2, 3 and 12
<i>Article of the Optional Protocol:</i>	4 (1) and (2)

* Adopted by the Committee at its eighty-eighth session (13–31 May 2024).

** The following members of the Committee participated in the examination of the present communication: Brenda Akia, Hiroko Akizuki, Nicole Ameline, Marion Bethel, Rangita de Silva de Alwis, Corinne Dettmeijer-Vermeulen, Esther Eghobamien-Mshelia, Hilary Gbedemah, Yamila González Ferrer, Nahla Haidar, Marianne Mikko, Maya Morsy, Ana Peláez Narváez, Elgun Safarov, Natasha Stott Despoja and Genoveva Tisheva.



1.1 The communication is submitted by T.M., a national of Zimbabwe born in 1996. The author claims that her deportation from Denmark to Zimbabwe would violate her rights under articles 2, 3 and 12 of the Convention. The Optional Protocol entered into force for the State party on 22 December 2000. The author is represented by counsel.

1.2 On 16 September 2020, when registering the communication, the Committee, acting through its Working Group on Communications under the Optional Protocol, decided not to accede to the author's request for interim measures of protection in order to stop her deportation pending the consideration of her case by the Committee, pursuant to article 5 (1) of the Optional Protocol and rule 63 of the Committee's rules of procedure.

1.3 On 1 March 2022, when submitting comments, counsel renewed the author's request for interim measures of protection, owing to the fact that the author was pregnant. That request was not substantiated sufficiently to be considered.

Facts as submitted by the author

2.1 The author is a single woman from Zimbabwe seeking asylum in Denmark. She originally arrived in Denmark in 2017 and was allowed to work under an au pair scheme. When her visa expired, she overstayed owing to her fear of gender-specific violence in her country of origin. The author intended to contact the Danish police to ask for protection, but she was afraid to do so, since her only experience with the police had been a negative one with the police in Zimbabwe. In October 2019, the author was stopped by the police and immediately informed the officers that she was seeking protection in Denmark as a refugee. She was then taken into custody and at the time of submission of the present communication was still in detention.

2.2 The author needs protection because, if deported to her country of origin, she runs the risk of forced marriage, rape and sexual abuse. She explains that, under the local traditions, a single woman who is a close relative of a deceased married woman can be required to marry the surviving husband. The author claims to have been subjected to sexual abuse by her deceased cousin's husband before fleeing to Denmark. At that time, she reported the offender to the local police,¹ but he was released after he bribed the police. The author contends that her late cousin's husband is now seeking to register their marriage in order to subject her to further sexual abuse. Since the crime of rape is not recognized within a married couple in domestic criminal law in Zimbabwe, there will be no judicial protection of the author from sexual abuse upon her return.

2.3 The author also fears returning to Zimbabwe as her father is an active member of the Movement for Democratic Change (MDC), a political party opposed to the ruling Zimbabwe African National Union – Patriotic Front (ZANU–PF) party, and holds the position of rural district councillor. The author was threatened on three occasions on political grounds while in Zimbabwe and received an anonymous threatening Facebook message after she arrived in Denmark.²

2.4 The author has been detained in the high security prison for dangerous criminals of both sexes, which is disproportionate in view of the minor offence (violation of

¹ No evidence was provided by the author in support of her claim.

² According to the author, on one occasion, she was intimidated by an approaching car while she was crossing the road with the green light; on another occasion, two cars obstructed the car that she was in with her brother as they were driving on the highway. In addition, an unknown person warned the author's father that she should "hide forever". The anonymous Facebook message that she received contained the same warning. The author also submitted the medical certification (dated 30 January 2020) of the minor head injuries suffered by her father when he was attacked allegedly on political grounds.

immigration laws) for which she has been detained and violates her specific rights under the Convention. The author is therefore submitting a separate request for interim measures, so that she may be transferred to a women-only detention facility.

2.5 The author further claims that the officials of the Danish Immigration Service initially gave due weight to her fear of political persecution as a family member of an opposition party activist. Accordingly, they submitted a request for information to the Documentation Branch of the Immigration Service, asking whether persecution of family members on political grounds was indeed taking place in Zimbabwe. However, according to the author, the Documentation Branch did not provide any information in that regard. The author claims that the Danish Immigration Service and the Refugee Appeals Board then assumed that no such form of persecution (in particular, in respect of female family members) existed in Zimbabwe, even though they had no relevant background information to corroborate that assumption.

2.6 According to the author, the Refugee Appeals Board did not challenge her claims of sexual abuse before she arrived in Denmark, but disregarded the imminent threat of forced marriage, continued sexual abuse and rape that she would face if deported to Zimbabwe.

2.7 The author submits that the decision of the Danish Refugee Appeals Board is final and cannot be appealed to the domestic courts and that she has thus exhausted all available domestic remedies. The matter has also not been examined under another procedure of international investigation or settlement.

Complaint

3.1 The author claims that her deportation to Zimbabwe would expose her to a real, personal and foreseeable risk of gender-based violence and political persecution, in violation of her rights under articles 2, 3 and 12 of the Convention and general recommendation No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women.

3.2 The author contends that the State party has violated article 2 (d) of the Convention since it failed to respect its obligations under the Convention when considering the author's personal situation. The author submits that the State party's authorities also violated article 12 of the Convention by refusing to consider the risk of gender-specific violence upon the author's return to her country of origin.³ The author also claims that the State party's authorities, acting in a discriminatory and biased fashion, did not properly assess the gravity of the risk that the author would be subjected to political persecution.⁴

3.3 Lastly, the author claims that her detention in a mixed-gender prison has violated her rights under articles 2 and 12 of the Convention.

³ With regard to the situation in the State party, the author refers to the concluding observations of the Committee on the combined second to fifth periodic reports of Zimbabwe (CEDAW/C/ZWE/CO/2-5, para. 21), in which the Committee expressed "serious concern about the persistence of harmful norms, practices and traditions ... these include, in particular, polygamy, bride price (*lobola*) and, in certain regions, virginity testing and witch hunting".

⁴ The author's counsel submits that the conditions in the author's home country have deteriorated during her absence, and political persecution of opposition members and their families has recently been on the rise. He indicates that, from January to August 2018, 367 cases of violence and torture have been reported and that such cases are not prosecuted because of the pressure inflicted on judges.

State party's observations on admissibility and the merits

4.1 On 17 May 2021, the State party submitted observations on the admissibility and the merits of the communication. First, the State party affirms that the detention of the author in Vestre Prison does not constitute a violation of the Convention.

4.2 The State party submits that the author has failed to establish a prima facie case for the purpose of admissibility of her communication under articles 2, 3 and 12 of the Convention and that the communication should therefore be considered inadmissible as manifestly ill-founded. The State party states that general recommendation No. 32 is not a binding legal text and therefore it is not possible to violate it.

4.3 The State party recounts the principal facts of the case, which involves T.M., a Zimbabwean national who was granted residence in Denmark under an au pair scheme. However, she was arrested in October 2019 for using another person's identity documents and residing in Denmark without the requisite permit. She applied for asylum, but her claim was rejected by both the Danish Immigration Service and the Refugee Appeals Board. She then brought her case before the Committee, claiming that returning her to Zimbabwe would breach the Convention. The Committee requested the State party's observations on the case. Meanwhile, on 8 October 2020, the Eastern High Court ordered her release owing to her willingness to assist in her return to Zimbabwe, the nature of the offence, the lack of progress in the case and the unlikelihood of her being returned to Zimbabwe within a limited time period.

4.4 The State party further provides verbatim information about statements made by the author during the asylum proceedings.⁵ The Danish Immigration Service accepted the author's statement on the grounds for asylum but concluded that she could not be granted residence under section 7 of the Aliens Act. They assessed that the author was not in danger of persecution from her father's political opponents and that the incidents that she had experienced were not connected to her father's political activities. They also concluded that the author's conflict with her deceased cousin's former husband did not justify asylum. The Danish Immigration Service determined that the general conditions in Zimbabwe, including unemployment, poverty and corruption, did not constitute grounds for asylum. They concluded that the author was not eligible for asylum in Denmark and could be returned to Zimbabwe. The Refugee Appeals Board upheld the decision of the Danish Immigration Service.

4.5 In its decision of 12 May 2020, the Refugee Appeals Board found that the author, an ethnic Shona and a Christian from Chegutu, Zimbabwe, had not been a member of any political or religious associations or organizations, nor had she been politically active. The author's grounds for asylum included her fear of problems with her father's political opponents in Zimbabwe, her fear of her deceased cousin's husband and the general situation in Zimbabwe. The author stated that her father was the Chairman of the local opposition party and that she had experienced three incidents due to her father's political activities. She had also received a message from a fake Facebook account telling her to stay in hiding forever. The author further stated that she had been sexually abused by her deceased cousin's husband after her cousin's death in 2015 and that, according to tradition, an unmarried woman has an obligation to marry or do domestic work for the widowed husband of a close family member. The Refugee Appeals Board considered the author's account of the factual circumstances relevant to her grounds for asylum as a fact but found that the circumstances described by the author were not of such nature that she would be subjected to persecution by her father's political opponents or to gender-specific

⁵ The decision of the Danish Immigration Service of 28 January 2020 and the decision of the Refugee Appeals Board of 12 May 2020 were appended in full.

abuse by her deceased cousin's husband upon her return to Zimbabwe. The Board also considered the background information on the current political situation in Zimbabwe and the general situation in Zimbabwe but found that they did not justify residence under section 7 of the Aliens Act. Therefore, the Refugee Appeals Board upheld the decision of the Danish Immigration Service.

4.6 The State party explains that the Refugee Appeals Board is responsible for examining and uncovering information on the specific facts of a case, as well as providing necessary background information, including information on the situation in the asylum-seeker's country of origin or country of first asylum. This includes determining whether there is a consistent pattern of gross, flagrant or mass violations of human rights in the asylum-seeker's country of origin. The Board has access to a wide range of background material, including 182 documents related to Zimbabwe, which can be found on the Board's website.⁶

4.7 The State party recalls that the author claims that deporting her to Zimbabwe would breach articles 2, 3 and 12 of the Convention and the principle of non-refoulement as set out in general recommendation No. 32 issued by the Committee. The State party summarizes the author's arguments as follows: that the Convention has extraterritorial effect with regard to deportation to the country of origin and that she risks gender-based violence, forced marriage, rape and abuse if returned to Zimbabwe; that she had been subjected to rape by and is threatened with forced marriage to the husband of her deceased cousin and that she risks persecution from the ruling ZANU-PF party because of her father's political activities in the opposition; that she is a single woman from Zimbabwe, that her father is the Chairman of the local MDC opposition party and that her mother died in 2002; that she moved in with her cousin and her husband and their children in December 2010 and that, in 2015, when her cousin died, she was sexually abused by her cousin's husband; that she reported him to the authorities, but that he was released the same day that he was arrested; that she left Zimbabwe in March 2017 to work as an au pair in Denmark, that her residence permit expired in February 2019 and that she overstayed. The State party submits that the author was arrested on 31 October 2019 for violating section 174 of the Criminal Code and section 59 (2) of the Aliens Act and was placed in a prison in Copenhagen.

4.8 The State party further summarizes the author's claims that the Refugee Appeals Board made a wrong assessment concerning the fact that women with male relatives in the political opposition do not risk persecution and that it was solely her own assumption that the incidents of August and November 2016 were attributable to her father's political activities; that the Board made the wrong assessment that it is solely her own assumption that she will be subjected to abuse by her cousin's husband if returned to Zimbabwe; that the Board is shifting the burden of proof to her to prove that she would be at risk of gender-based violence if returned to Zimbabwe; and that the Board argued that her cousin's husband had no reason to force her to marry him since she was already living in his house where he could abuse her when he wanted to, but that when she had reported him to the police, who released him shortly after, he then had a reason to marry her. The author argued that, owing to tradition in Zimbabwe, she would not be able to prevent a forced marriage, and the marriage would make it even easier for the cousin's husband to abuse her sexually. She referred to the political situation in Zimbabwe and stated that political repression has escalated, and her father has won the local election. She also stated that the ZANU-PF party made a politically motivated attack on her father in January 2020, during which he sustained some internal head injuries. Lastly, according to the author, the Danish authorities ignored their obligations under the Convention and failed to take

⁶ Available at <https://fln.dk/da/Baggrundsmateriale?country=Zimbabwe>.

into account the rights enumerated in the Convention when examining her application for asylum, even though she had submitted before the Refugee Appeals Board that it would be contrary to the Convention to return her to Zimbabwe and argued that there was a real risk that her deportation would expose her to abuse under articles 2, 3, and 12 of the Convention.

4.9 With respect to admissibility, the State party states that the author's communication to the Committee concerns the potential risks she may face if returned to Zimbabwe, relying on the provisions of the Convention in an extraterritorial manner. The State party refers to the Committee's jurisprudence⁷ concerning the extraterritorial effect of the Convention in cases in which women may be exposed to a real, personal, and foreseeable risk of serious forms of gender-based violence, in which the Committee has emphasized that States have a positive duty to protect women from such risks, even if the consequences occur outside their territorial boundaries. In that regard, the State party submits that the author has failed to establish a prima facie case for the purpose of admissibility under the Convention, as it has not been sufficiently substantiated that she will be exposed to such risks if returned to Zimbabwe. Therefore, the State party notes that this part of the communication is inadmissible as it is manifestly ill-founded.

4.10 In its observations on the merits, the State party argues that the author's communication to the Committee, submitted after the Refugee Appeals Board upheld the decision of the Danish Immigration Service, does not provide any new, specific information beyond what was considered by the Board. In its decision, based on the author's gender, age, education and the time that had passed since her arrival in Denmark, the Refugee Appeals Board concluded that her application for asylum, made after a long stay in Denmark under the au pair scheme, was not credible. The Board also considered that the author had resided illegally in Denmark for over half a year before applying for asylum. The State party submits that the Board's decision, which took into account the country's international obligations, was legally sound and that returning the author to Zimbabwe would not violate the Convention.

4.11 As to the author's risk of persecution upon being returned to Zimbabwe owing to her father's political activities, the State party points out that the author claimed that her father is the Chairperson of the local opposition party, MDC. The author, a single woman from Zimbabwe, claims that her father's political activities have put her at risk of persecution. She describes three incidents in Zimbabwe that she believes were related to her father's political involvement. In the first incident, in August 2016, she was almost run over by a car while crossing a pedestrian crossing, and a ZANU-PF flag was waved from the car. In the second incident, in November 2016, a car tried to crush her car between a truck and another car on the highway. In the third incident, in February 2017, a car drove back and forth in front of her father's shop, and the driver, who had a ZANU-PF card, threatened her father and said that she should stay in hiding forever. The author also received a Facebook message in Shona two months after arriving in Denmark, saying that she should stay in hiding forever. Her father was assaulted by members of ZANU-PF in January 2020 and was hospitalized, but he has since recovered and resumed his work as a town council member. The author fears for her safety if she returns to Zimbabwe.

4.12 The Refugee Appeals Board found that the author's statements about the three incidents in Zimbabwe could be considered facts. However, the Board did not find that these incidents were connected to her father's political activities or that they would lead to persecution by her father's political opponents. The Board found it less likely that the author would be identified with her father and be at risk of persecution

⁷ See *M.N.N. v. Denmark* (CEDAW/C/55/D/33/2011), paras. 8.7, 8.8 and 8.10; and *M.E.N. v. Denmark* (CEDAW/C/55/D/35/2011), para. 8.9.

owing to his political activities on return to Zimbabwe. The Board also found that the incidents in August 2016 and November 2016 may have been ordinary traffic incidents, and the reason for and purpose of the incident in her father's shop in 2017 appeared unclear. The Board did not find that these incidents or the threat that she received on Facebook were matters of such a nature and intensity that they could lead to the author being at risk of ill-treatment within the scope of application of section 7 of the Aliens Act if returned to Zimbabwe.

4.13 The State party maintains that the author's risk of being forced to marry and being subjected to abuse by the husband of her deceased cousin on return to Zimbabwe were thoroughly assessed by the authorities. The author sought asylum in Denmark owing to alleged abuse from her deceased cousin's husband, X. She claimed that he had begun treating her poorly after she moved in with the family in 2011, and the abuse escalated to sexual abuse in 2016. She had reported the abuse to the police, but he bribed them not to act. The author feared that if she returned to Zimbabwe, X would demand to marry her, as tradition dictates that an unmarried woman must marry the widowed husband of a close female family member or do domestic work for him. However, the Refugee Appeals Board found that X did not attempt to force the author into marriage after her cousin's death in 2015, and he did not prevent her departure to Denmark in 2017. The Board also noted that the author has male family members in Zimbabwe who could protect her. Therefore, the Board concluded that the author's account of her alleged conflicts in Zimbabwe did not make it probable that she would be subjected to gender-based violence if she returned to Zimbabwe.

4.14 As to the author's argument that the Refugee Appeals Board did not consider the background information on the difficult conditions for women in Zimbabwe, which include gender-based abuse, the State party acknowledges that the situation for women in Zimbabwe can be challenging, but the Board found that this does not automatically mean that the author would face gender-based violence if she returned. The Board concluded that the author's situation did not meet the criteria for asylum under Danish law.

4.15 The State party further observes that the author has a male network in Zimbabwe, including her father and brothers, with whom she has maintained continuous contact during her stay in Denmark. Two of her brothers are on the run for political reasons, which affects the author's choice of staying in Denmark. The Refugee Appeals Board did not accept the author's claim that her brothers were being persecuted owing to their father's political activities. The Board concluded that the author's male network in Zimbabwe, including her father and brothers, could protect her from the husband of her deceased cousin and a potential forced marriage.

4.16 The State party notes that the Refugee Appeals Board did not explicitly reference the Convention in its decision, but this does not mean the Board failed to consider whether the author would face abuse contrary to the Convention upon her return to Zimbabwe. The State party cites a previous decision by the Committee,⁸ in which the Committee recalled that significant weight should be given to the assessment conducted by the State party's authorities, unless it is clearly arbitrary or amounts to a denial of justice. The Committee also noted that the Board's lack of reference to a specific convention does not mean it did not consider that convention. The State party highlights similar conclusions reached by the Committee in other cases.⁹ The Government asserts that the Board made a thorough assessment of the author's circumstances and background information and found that she would not be

⁸ *S.A.O. v. Denmark* (CEDAW/C/71/D/101/2016), para. 6.8.

⁹ See *H.D. v. Denmark* (CEDAW/C/70/D/76/2014); *S.F.A. v. Denmark* (CEDAW/C/69/D/85/2015); and *A.S. v. Denmark* (CEDAW/C/69/D/80/2015).

in danger of being killed or subjected to torture or inhuman treatment upon return to Zimbabwe.

4.17 The State party argues that the author's communication does not provide any new, specific details about her situation and merely reflects her disagreement with the Board's assessment. It adds that the author's communication is an attempt to use the Committee as an appellate body to reassess her asylum claim. The State party asserts that the Board's findings should be given considerable weight and that there is no basis for doubting or setting aside its assessment. It concludes that the author has failed to establish a prima facie case for admissibility under the Convention and that her communication should be considered inadmissible as manifestly ill-founded.

4.18 If the Committee finds the communication admissible, the State party submits that it has not been established that returning the author to Zimbabwe would constitute a violation of the Convention. It also notes that the background information available to the Board is obtained from a wide range of sources and has been compared with the statements made by the author.

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

5.1 In her submission of 28 February 2022,¹⁰ the author contests the State party's challenge to the admissibility of the complaint. She notes that it is unclear what would be needed to substantiate a real risk meriting admissibility. The author has provided evidence of her fear of being returned to her abuser, facing renewed risks of rape and other gender-based violence, being subjected to forced marriage by her abuser and facing political persecution as a result of her father's political career. The author's fear of political persecution is supported by instances of harassment and attacks against her brothers.

5.2 General recommendations are authoritative interpretations of treaty provisions and provide guidance on issues related to the mandate of the Committee. The State party is not violating general recommendation No. 32 but the Convention itself. The Committee has recognized forced/early marriage, rape, other forms of sexual assault, political persecution and persecutory consequences of failing to conform to gender-prescribed social norms as legitimate grounds for international protection. The Committee has also emphasized the principles of non-refoulement and extraterritorial effect, stating that a State party would violate the Convention if it returned a person to another State where it was foreseeable that serious gender-based violence would occur and no protection against the identified gender-based violence could be expected from the authorities of the State to which the person is to be returned.

5.3 The author's past experience as a victim of sexual violence and the risk of her being subjected to further inhuman and degrading treatment and political persecution in the future, against which she would be unable to find protection, would amount to a violation of the Convention. The author has established prima facie evidence that she has been subjected to gender-based violence in Zimbabwe and fears being subjected to similar treatment if returned. The Refugee Appeals Board and the State party have not questioned the credibility of the author.

5.4 The detention of the author in Vestre Prison constitutes a violation under articles 2 and 12 of the Convention. The Committee has emphasized the need for separate facilities and materials to meet the specific hygiene needs of women in detention and the use of female guards and wardens.¹¹ The author was detained in Vestre Prison with both male and female prisoners convicted of the most serious

¹⁰ On 1 March 2021, counsel provided the additional information that the author is pregnant.

¹¹ General recommendation No. 32, para. 34.

crimes under Danish law, which amounts to a clear violation of articles 2 and 12 of the Convention.

5.5 The author claims that political persecution in Zimbabwe has intensified since her escape to Denmark. Freedom House changed the status of Zimbabwe from “Partly Free” to “Not Free” owing to intensified persecution of opposition figures and civic activists. The “2020 Zimbabwe Human Rights Report” issued by the United States Department of State details widespread organized political persecution, including physical and psychological torture of labour leaders and opposition party members. Women are particularly vulnerable, as seen in the abduction, sexual abuse and torture of three female opposition members of the MDC Alliance. In its 2020/21 report, Amnesty International highlights how political persecution targets family members of opposition politicians, with women being particularly vulnerable to sexual assault. The author’s father is a member of MDC, the same party as the opposition politicians who were targeted. The author is therefore at real risk of political persecution, including sexual assault, if returned to Zimbabwe. That would constitute a violation of the State party’s obligations under articles 2, 3 and 12 of the Convention.

5.6 With respect to the asylum process, the Refugee Appeals Board considered negatively the author’s delay in applying for asylum, as she applied more than two and a half years after arriving in Denmark and had been residing there illegally for over half a year. In that regard, the author explains that she did not apply earlier because she had a visa and was scared of contacting the Danish police owing to her negative experience with the police in Zimbabwe. A woman asylum-seeker’s failure to seek protection or make a complaint before leaving her country of origin should not prejudice her asylum claim, especially where violence against women is tolerated or there is a pattern of failure in responding to women’s complaints of abuse.¹² It would not be realistic to require her to have sought protection before fleeing. She may also lack confidence in the justice system and access to justice or fear abuse, harassment or retaliation for making such complaints. Although this consideration pertains to a woman asylum-seeker’s lack of action in her country of origin, it could also apply to the author after her escape from Zimbabwe to Denmark on a visa. After reporting her experience of sexual abuse to the police in Zimbabwe, the author received neither protection nor justice, which strained her trust and faith in police and public authorities in general.

5.7 With regard to gender discrimination, the State party challenged the author’s assumption that she will risk gender-specific abuse if returned to Zimbabwe as speculative and not independently justifying asylum. The Danish authorities acknowledge the author’s statements as facts but downplay the real threat that she faces if returned to Zimbabwe. The author has already been a victim of sexual abuse perpetrated by the husband of her deceased cousin and sought protection and justice from authorities in Zimbabwe without success. It would be impossible for her to withstand local customary norms that would entail a forced marriage to her abuser if returned to Zimbabwe. The State party and the Refugee Appeals Board have failed to properly take into account the considerable amount of data and reports that paint a grim picture of the prevalence of gender-based violence and harmful marital customs

¹² The author refers to the Committee’s general recommendation No. 32, para. 29.

in Zimbabwe.¹³ The Committee has expressed concern about discriminatory gender stereotypes and harmful practices, high levels of gender-based violence, a culture of silence and impunity, politically motivated gender-based violence, and discriminatory customary laws and practices that continue to regulate marriage and family relations in the State party.¹⁴

5.8 The author provided adequate evidence of the real risk of gender-based violence that she is facing, and the situation for women in Zimbabwe further substantiates her fears. The Danish authorities do not acknowledge the risk of her being subjected to renewed sexual violence and other gender-based violence by the husband of her deceased cousin if returned to Zimbabwe. 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 on return.¹⁵ Arguably, the author has more than sufficiently substantiated the reasonable likelihood of a well-founded fear of persecution or exposure to persecution in the form of subjection to serious forms of gender-based violence on return to Zimbabwe. Taking into account the author's statements and the overwhelming evidence on the overall prevalence of gender-based violence in Zimbabwe – and in the region from which the author originates in particular – the deportation of the author would amount to a violation of articles 2, 3 and 12 of the Convention.

5.9 Concerning the author's male network, the State party argues that she has a substantial male family network in Zimbabwe that would be able to provide her with protection from gender-based violence. However, the author notes that the very same male network is at the crux of the problem and that she is also seeking protection from harassment and threats owing to the political activity of her father. Her brothers are also experiencing political persecution for the same reason. As such, the State party's arguments seem to be contradictory. On the one hand, the State party argues that the author is not in danger of political persecution because she has not lived with her father since early childhood, the argument being that the author will not be seen as an associate of her father. On the other hand, when it comes to the fear of being subjected to renewed sexual violence by her late cousin's husband, the State party proposes that she move in with her father or brothers, which would place her in the spotlight of renewed political persecution. In that regard, the State party's suggestion that the author's male network would be able to shield her from gender-based violence would then most probably expose her to political persecution. It is further reiterated that the author's father has himself followed the customary norm of receiving a "replacement bride" from the family of his deceased wife – the author's mother – in 2002. It is therefore unlikely that he would be willing or able to protect the author from marriage to her abuser, the husband of her deceased cousin. The author argues that she has no effective male network that she can rely on for protection against political persecution or gender-based violence or discrimination in general.

¹³ The President of Zimbabwe has declared gender-based violence to be a national emergency. According to a 2019 report from UNICEF and the Zimbabwe National Statistics Agency, about half of all women aged 15–49 years had experienced emotional, physical or sexual abuse committed by their current or most recent husband/partner in their lifetime. Thirty-nine per cent of women aged 15–49 years reported that they had experienced physical violence since the age of 15. UNICEF Zimbabwe issued an alert in 2021 on the prevalence of sexual violence, the negative effect of the coronavirus disease (COVID-19) pandemic and the elusiveness of justice for victims. The Australian Department of Foreign Affairs and Trade also notes in its 2019 Country Information Report on Zimbabwe that any loss of virginity could result in marriage, including early or forced marriage.

¹⁴ Concluding observations on the sixth periodic report of Zimbabwe (CEDAW/C/ZWE/CO/6).

¹⁵ General recommendation No. 32, para. 50 (g).

5.10 She maintains that her truthful testimonies and the general circumstances of women and girls in Zimbabwe, and in the province of Mashonaland East in particular (including customary norms of “wife inheritance” or “replacement brides”), substantiate that her rights under articles 2, 3 and 12 of the Convention would be violated if she were returned to Zimbabwe.

5.11 In conclusion, the author reiterates 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, as covered extensively by the Committee in general recommendation No. 32, 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.

5.12 She further notes that “under the Convention and general international law, a State party is responsible for acts and omissions by its organs and agents that constitute gender-based violence against women. These include the acts or omissions of officials in its executive, legislative and judicial branches”.¹⁶ In the present case, the State party authorities failed to give sufficient consideration to the real, personal and foreseeable risk of serious forms of gender-based violence and political violence faced by the author if returned to Zimbabwe. In the light of the author’s past experience as a victim of sexual violence and the risk of her being subjected to further inhuman and degrading treatment in the future, against which she would be unable to find protection, her claims for the purpose of admissibility have been sufficiently substantiated.

5.13 The author’s statements are indeed of such a nature and intensity that, alongside a thorough examination of the prevalence of political persecution in Zimbabwe, and the vulnerability of women and girls in this regard, her deportation to Zimbabwe would subject her to a real risk of ill-treatment and discrimination and thus constitute a violation of the State party’s obligations under articles 2, 3 and 12 of the Convention.

5.14 Based on the author’s original communication, the comments given above and the Committee’s jurisprudence in *A. v. Denmark* (CEDAW/C/62/D/53/2013) and *R.S.A.A. et al. v. Denmark* (CEDAW/C/73/D/86/2015), the author requests the Committee to acknowledge the violations of her rights under articles 2, 3 and 12 of the Convention.

State party’s additional observations on admissibility and the merits

6.1 On 29 August 2022, the State party reiterated its observations on admissibility and the merits and submitted additional observations in relation to the author’s claim that her detention in Vestre Prison constitutes a violation of articles 2 and 12 of the Convention.

6.2 The State party submits that the communication should be declared inadmissible under article 4 (1) of the Optional Protocol for non-exhaustion of domestic remedies in relation to the author’s claims of violations under articles 2 and 12 of the Convention in connection with her detention in Vestre Prison. The State party notes that the author could have brought a case regarding the conditions in relation to her detention in Vestre Prison, including their compatibility with the Convention, against the authorities before the national courts under section 63 of the Danish Constitution. Under section 63 of the Danish Constitution, the national courts may review the

¹⁶ General recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, para. 22.

legality of administrative decisions, including under the country's international obligations, such as those under the Convention. However, the author has not exploited this opportunity.

6.3 Subsidiarily, the State party submits that the communication is manifestly ill-founded with regard to the author's claims of violations of articles 2 and 12 in connection with her detention in Vestre Prison. The author has submitted that her detention in Vestre Prison violates the Convention, as she was placed in a ward with both male and female inmates. In that regard, the State party observes that, at the time of the author's detention, Vestre Prison had a specific women's ward, in which the author was detained. Owing to capacity reasons, a number of male inmates were placed in the women's ward during the author's detention. Precautions were taken to ensure the safety of the female inmates during this time. First, prison staff ensured that no male inmates were placed in the women's ward without a prior individual assessment. Second, male inmates were under constant supervision by the staff when leaving their cells. Third, no socialization between male and female inmates in the cells was allowed.

6.4 Regarding the author's access to hygiene facilities, the State party submits that bath and toilet facilities were shared only with the other female inmates in the ward. Male inmates were assigned a specific bath and toilet, which was locked when in use. In addition, male inmates were accompanied to the facilities by members of staff. Therefore, the female inmates had very limited contact with male inmates, and these limited interactions took place under the supervision of members of staff.

6.5 Furthermore, the State party notes that the author – as well as every other female inmate – had unlimited access to female hygiene products. Lastly, the author was continuously in contact with the prison health-care staff during her detention. The State party therefore submits that, while it is regrettable that it was necessary to place male inmates in the women's ward, it took every necessary step to ensure the safety and well-being of the female inmates. The State party thus maintains that the author's detention in Vestre Prison did not constitute a violation of her rights under articles 2 and 12 of the Convention.

6.6 Lastly, the State party observes that no new, relevant information has been submitted by the author in support of her asylum claim. The State party reiterates that the author's communication merely reflects a disagreement with the outcome of the assessment of the author's statements and the facts of the case, including the background information, that have been considered by the Refugee Appeals Board.

6.7 Overall, the State party maintains that the author has failed to establish a prima facie case for the purpose of admissibility of her communication under articles 2, 3 and 12 of the Convention and that the communication should therefore be considered inadmissible as manifestly ill-founded.

6.8 In addition, the State party maintains that, if the Committee were to find the communication admissible, it has not been established that there are substantial grounds for believing that returning the author to Zimbabwe would constitute a violation of articles 2, 3 and 12 of the Convention. Furthermore, the author has not exhausted domestic remedies in relation to her complaint regarding her detention in Vestre Prison, nor established that it constituted a violation of articles 2 and 12 of the Convention.

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

7.1 On 13 June 2023, the author reiterates her position about the admissibility and merits of the communication and resubmits that she fears: (a) being returned to her

abuser and put at risk of rape and other gender-based violence; (b) being subjected to forced marriage by her abuser; and (c) being politically persecuted upon returning to Zimbabwe owing to her father's political career, a fear substantiated by several prior instances of harassment and by attacks against her brothers.

7.2 The author indicates that she has established prima facie evidence that she has been subjected to gender-based violence in Zimbabwe and that she fears being subjected to political persecution if returned. She notes that neither the Danish Refugee Appeals Board nor the State party have questioned her credibility.

7.3 As to the non-exhaustion of domestic remedies, the author submits that all administrative decisions made by public bodies can be invoked before the Danish courts, with the exception of those of the Refugee Appeals Board. She refers to the concern expressed by the Committee on the Elimination of Racial Discrimination that "decisions by the Refugee Board on asylum requests are final and may not be appealed before a court"¹⁷ and to the State party's response that "decisions by the Refugee Board are final, which means that it is not possible to appeal the Board's decisions. This is stated by law and confirmed by a Supreme Court decision of 16 June 1997. The Supreme Court attached importance to the fact that the Refugee Board is an expert board of court-like character. The Supreme Court has since repeated this position in several other judgements".¹⁸

7.4 Regarding her detention, the author reiterates that she was kept in Vestre Prison in Copenhagen, where murderers, rapists and other serious criminals are imprisoned. She was in a facility that included both men and women. She points out that the Danish Ombudsman has acknowledged the problem with women being placed with male inmates. She observes that, in October 2021, the State party set up a special women's prison (Jyderup Prison), where she has been detained since then. She considers therefore that the State party has acknowledged the problems that have previously existed with mixed-gender prisons. In that regard, she adds that even asylum-seeker couples are separated at present.

7.5 The author concludes that the State party and its authorities have failed to consider sufficiently the real, personal and foreseeable risk of serious forms of gender-based violence and political violence that she faces if returned to Zimbabwe and failed to protect her from criminal male inmates during her stay in Vestre Prison.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 In accordance with rule 64 of its rules of procedure, the Committee is to decide whether the communication is admissible under the Optional Protocol. In accordance with rule 72 (4), it must do so before considering the merits of the communication.

8.2 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.

8.3 In accordance with article 4 (1) of the Optional Protocol, the Committee shall not consider a communication unless it has ascertained that all available domestic

¹⁷ In its concluding observations on the combined sixteenth and seventeenth periodic reports of Denmark (CERD/C/DEN/CO/17, para. 13), the Committee on the Elimination of Racial Discrimination recommended that asylum-seekers be granted the right to appeal against the Refugee Board's decisions.

¹⁸ Information provided by the Government of Denmark on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination (CERD/C/DEN/CO/17/Add.1, para. 12).

remedies have been exhausted, unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief. The Committee notes that the author claims to have exhausted all domestic remedies, while the State party has not challenged the admissibility of the communication on this ground, except concerning the author's claim that her detention in Vestre Prison constitutes a violation of articles 2 and 12 of the Convention. In this regard, the Committee notes the State party argument that the author could have brought a case regarding the conditions in relation to her detention in Vestre Prison, including their compatibility with the Convention, against the authorities before the national courts under section 63 of the Danish Constitution. The Committee further observes that, in October 2021, the State party established a women's prison (Jyderup Prison), where the author has been detained since then. The Committee also observes that, under Danish law, no appeals against decisions of the Refugee Appeals Board can be lodged before the national courts. Accordingly, the Committee considers that it is not precluded by the requirements of article 4 (1) of the Optional Protocol from considering the matter, except for the specific claim about the initial detention of the author in a mixed-gender prison, which the Committee considers inadmissible under article 4 (1) of the Optional Protocol for non-exhaustion of domestic remedies.

8.4 The Committee notes the author's claims that her deportation to Zimbabwe would amount to a violation by Denmark of articles 2 (d), 3 and 12 of the Convention. It also notes the State party's observations that the author has failed to sufficiently substantiate her claims for the purposes of admissibility and has failed to establish that the assessment by the Refugee Appeals Board was arbitrary or amounted to a manifest error or a denial of justice and has failed to identify any irregularity in the decision-making process or any risk factors that the Board failed to take properly into account.

8.5 The Committee reiterates that, according to its jurisprudence, the Convention has extraterritorial effect only when the woman to be returned will be exposed to a real, personal and foreseeable risk of serious forms of gender-based violence.¹⁹

8.6 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, notably arbitrary deprivation of life or torture or other cruel, inhuman or degrading treatment or punishment.²⁰ It reiterates that gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, amounts to discrimination within the meaning of article 1 of the Convention and that such rights include the right to life and the right not to be subjected to torture.²¹ The Committee reaffirms the obligation of States parties to eliminate discrimination against women, including gender-based violence, reiterating that the obligation comprised two aspects of State responsibility for such violence: that which resulted from the acts or omissions of both the State party or its agents, on the one hand, and non-State actors, on the other.²²

8.7 The Committee notes that, in the present case, the State party's asylum authorities accepted the author's statement on the grounds for asylum, yet found that she had not been a member of any political or religious associations or organizations, nor had she been politically active, and assessed that she was not in danger of

¹⁹ See, for example, *M.N.N. v. Denmark* (CEDAW/C/55/D/33/2011), para. 8.10, and *F.H.A v. Denmark* (CEDAW/C/75/D/108/2016), para. 6.5.

²⁰ See general recommendation No. 32, para. 21.

²¹ See general recommendation No. 19 (1992) on violence against women, para. 7.

²² See general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, para. 21.

persecution from her father's political opponents and that the incidents that she experienced were not connected to her father's political activities.

8.8 The Committee also notes that the author's risk of being forced to marry and being subjected to abuse by the husband of her deceased cousin on return to Zimbabwe were thoroughly assessed by the State party's authorities. The Refugee Appeals Board found that the author's cousin's former husband did not attempt to force the author into marriage after her cousin's death in 2015, that he did not prevent her departure to Denmark in 2017 and that the author has male family members in Zimbabwe who could protect her. The Board concluded that her conflict with her deceased cousin's former husband did not justify asylum. The Committee thus notes the State party's contention that all the author's claims had been examined by the national immigration authorities, but were rejected.

8.9 The Committee recalls that it is generally for the authorities of States parties to the Convention to evaluate the facts and evidence or the application of national law in a particular case,²³ unless it can be established that the evaluation was biased or based on gender stereotypes that constitute discrimination against women, was clearly arbitrary or amounted to a denial of justice.²⁴ In that regard, the Committee notes that, in substance, the author's claims are aimed at challenging the manner in which the State party's authorities assessed the factual circumstances of her case, applied the provisions of legislation and reached their conclusions.

8.10 In the light of the foregoing, on the basis of material on file, while not underestimating the concerns that may be reasonably expressed with regard to gender-based violence and discrimination in Zimbabwe, the Committee considers that the author has failed to substantiate, for the purposes of admissibility, that the assessment of her case by the State party's asylum authorities resulted in any gender-based discrimination or that she would suffer political persecution if deported to Zimbabwe.

8.11 The Committee therefore declares the author's non-refoulement claims to be inadmissible under article 4 (2) (c) of the Optional Protocol.

9. The Committee therefore decides:

- (a) That the communication is inadmissible under article 4 (1) and (2) (c) of the Optional Protocol;
- (b) That this decision shall be communicated to the State party and to the author.

²³ See, for example, *R.P.B. v. Philippines* (CEDAW/C/57/D/34/2011), para. 7.5.

²⁴ See, for example, *N.Q. and S.A. v. United Kingdom of Great Britain and Northern Ireland* (CEDAW/C/63/D/62/2013), para. 6.6; and *N.M. v. Denmark* (CEDAW/C/67/D/78/2014), para. 8.6.