



**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. 61/2013**

**Decision on admissibility adopted by the Committee at its sixty-fifth  
session (24 October – 18 November 2016)**

<i>Submitted by:</i>	P.H.A. (represented by counsel, Niels-Erik Hansen)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Denmark
<i>Date of communication:</i>	11 September 2013 (initial submission)
<i>References:</i>	Transmitted to the State party on 13 September 2013 (not issued in document form)
<i>Date of adoption of decision:</i>	7 November 2016

## Decision on admissibility'

1.1 The author of the communication is Ms. P.H.A., an Iranian national born in 1975, who faces a deportation to Iran as her asylum application in Denmark has been rejected. She claims that her deportation would constitute a violation by Denmark of articles 1, 2 (c) and (d), 3, 12 and 15 of the Convention on the Elimination of All Forms of Discrimination against Women ("the Convention") and of the Committee's general recommendations No. 12 (1989) and No. 19 (1992) on violence against women. The author is represented by counsel. The Convention and the Optional Protocol thereto entered into force for the State party on 21 May 1983 and 22 December 2000, respectively.

1.2 When registering the communication on 13 September 2013, pursuant to article 5 (1) of the Optional Protocol and rule 63 of its rules of procedure, the Committee, acting through its Working Group on Communications under the Optional Protocol, requested the State party not to deport the author pending the examination of her case. On [REDACTED] March 2014, the State party informed the Committee that on [REDACTED] September 2013, the Refugee Appeals Board has stayed the deportation of the author, her spouse and their child. The State party also requested the Committee to first examine the admissibility of the communication. Counsel provided comments thereon on [REDACTED] April 2014. On [REDACTED] May 2014, in compliance with rule 66 of its rules of procedures, the Committee, acting through its Working Group on Communications under the Optional Protocol, decided to examine the admissibility of the communication separately from its merits.

### Facts as submitted by the author

2.1 The author grew up in Tehran. After graduation of high school, she worked as an administrative assistant in a private company for two years. In 2006, she married M.F and they had a son, S., born in December 2008 in Iran.

2.2 In 2007, during a birthday party of the author's brother in law, the police performed a raid at 10 pm, arrested all the guests and brought them to a prison. They were forced to undergo an alcohol test and people with positive tests were separated. The author's test was positive. All women who had consumed alcohol were sentenced to 25 lashes. The author had dark blue lines on her body as a result of her punishment but those marks are no longer visible. She was forced to sign a document to the effect that she would not participate in parties where men are present and would never consume alcohol. She was detained from 10 pm until 5 am the next morning.

2.3 The author has not been politically active, but her husband participated in the Iranian Green Movement demonstrations. He was detained for one week in 2009 by the authorities during which time the author ignored his whereabouts.<sup>2</sup> In her asylum claim, the author stated that her husband was tortured in prison and he returned home covered with blood, with swollen face and bruised body. He explained to her that he had been arrested during a demonstration; blindfolded and beaten with cables during an

<sup>0</sup>The following members of the Committee took part in the consideration of the present communication: Gladys Acosta Vargas, Magalys Arocha Dominguez, Barbara Bailey, Niklas Bruun, Louiza Chalal, Hilary Gbedemah, Ruth Halperin-Kaddari, Yoko Hayashi, Dalia Loinarte, Lia Nadaraja, Theodora Nwankwo, Pramila Patten, Silvia Pimentel, Biancamaria Pomeranzi, and Xiaojiao Zou.

<sup>1</sup> Exact date not provided.

<sup>2</sup> The author did state in her interview that she made several phone calls and attempted to find her husband.

interrogation while in prison and forced to consent that he would stop his political activities. Subsequently, the spouses' house was raided on several occasions by the authorities. During a search, security officers threatened the author and her son with weapons. They confiscated a hard drive, CDs and books. The author's husband stated in his asylum interview that the police confiscated flyers which he had prepared with the aim to distribute them. On another occasion, the author was apprehended by security officers on the street as part of her hair was outside her scarf. The author was violently placed in their car and was disgraced verbally. She was taken to a police station and forced to sign a pledge to be set free.

2.4 The author's husband worked at a bank and participated in nightly political meetings with his colleagues.<sup>3</sup> After a meeting, in February 2012, the author's colleagues who participated in meetings started to be arrested one by one. Afraid to be arrested too, the author's husband decided that they need to flee Iran. The authorities looked for the author's husband and searched the family home one day in February 2012. The husband was at a shop during this time and was warned by a neighbour; he went hiding and asked his wife not to stay home but with some relatives. On [redacted] February 2012, the author and her husband met at the [redacted] in Tehran and received a visa valid until [redacted] February 2012.

2.5 The author, her husband and her son fled by plane from Tehran to Vienna on [redacted] February 2012.<sup>4</sup> The family used passports that they allegedly arranged with a third person, whom they refer to as their agent, and the author ignored whether the passports were issued with their correct names as they had been requested by the agent not to look at their passports. The agent travelled with the family to Austria and took their passports there. They were then driven to Denmark by another man with the agent accompanying them. In Denmark, they were brought to a house and stayed there for one month. The agent demanded around 300 million rials from the family to let them quit the house. Once the money was paid, the family immediately applied for asylum.

2.6 A police report, issued by the Ostjyllands Police, confirms that the family sought asylum at the Aarhus police headquarters on [redacted] March 2012. In their initial explanation to the police, the family stated that they had directly arrived in Denmark from Iran. The author subsequently explained in her asylum interview that the agent has instructed her not to mention that they had come via Austria; she did not tell the truth as she was afraid. The family was unable to seek asylum in Austria as the agent had immediately transported them to Denmark. The author's husband immediately informed the Danish police about his imprisonment and torture in Iran. The author explained to the police that she fears for her husband's life as he was wanted due to his involvement in the Iranian Green Movement. The author explained that her reason for fleeing Iran was due to her

<sup>3</sup> According to the material on file, on [redacted] February 2012, the author's husband discussed politics with one of his colleagues after having left a number of leaflets in the toilets of the Bank. Another colleague listened to their conversation and at some point told them that he disagrees with their views. The next day, the author was asked to go to an office in the Bank, where the intelligence services worked, and a person reminded him of his undertaking not to be involved in politics which he gave in 2009. The author was explained by his employer that the Bank did not need his services temporarily, and that he would be contacted soon. This happened the day when later on the authorities searched for him in his house but he was not at home and he went hiding.

<sup>4</sup> In their initial interviews, the author and her husband claimed that they have arrived in Denmark by plane directly from Teheran on passports provided to them by the agent, who collected the passports once they passed through the border control. Allegedly, the agent had asked them not to look into the passports. Later on, they admitted that this was untrue, but that they have repeated what the agent had advised them to say.

husband's problems with the authorities and that he would be arrested and killed in Iran. Her family in Iran has informed her that they have been visited several times by people inquiring about her husband after their departure from Iran.

2.7 The author adds that together with her husband, she converted to Christianity in 2012 in Denmark. She provided a copy of her certificate of baptism dated May 2012 to the Danish authorities.<sup>5</sup> She attends church in Denmark and communicates with a priest who speaks Farsi via Skype. Her interest in Christianity began in Denmark.

2.8 On April 2013, the Danish Immigration Service rejected the author's request for asylum and the decision was referred to the Danish Refugee Board. The Danish Refugee Appeals Board (RAB) decision of September 2013 joined the author's and her son's case to her husband's case.

2.9 The RAB found that the author's explanation in relation to her husband's political persecution was inconsistent and unreliable. The Board noted that the family firstly explained to the Danish police that they arrived directly in Denmark and then subsequently changed their story to admit they arrived first in Austria. It also expressed doubts regarding the explanation that the author's husband had started planning to flee only after the incident in February 2012 but he had been in contact with the authorities regarding exit papers before December 2011.

2.10 On September 2013, the RAB concluded that it was not probable that the author would be subject to persecution in Iran based on the alleged incident in February 2012. The Board also found that the fact that the author had been baptised less than two months after taking an interest in Christianity meant that her conversion did not appear credible.<sup>6</sup> The Board was thus not satisfied that the author had made a genuine conversion to Christianity. It rejected the author's asylum request and held that the author and her son must leave Denmark within 15 days from the date of the decision, i.e. by September 2013.

2.11 The author affirms that she has exhausted all domestic remedies as a decision by the Danish Refugee Board is final.

### Complaint

3.1 The author claims that by deporting her to Iran, Denmark would breach its obligations under article 1, article 2, paragraph (c) and (d), article 3, article 12 and article 15 of the Convention. She claims that if deported to Iran, she would be at risk of execution and/or torture/gender based violence given that her husband is sought after by

<sup>5</sup> The Certificate is issued by the First International Baptist Church in Copenhagen. The author adds that religion was part of the suppression of women in society and the family in Iran, and for this reason she wanted to convert in Denmark. At the same time, however, before the immigration authorities she had affirmed that she became interested in Christianity in Denmark.

<sup>6</sup> The author claims that she feared of being treated as an annex to her husband's asylum case. In substantiation, she claims that in its decision regarding her asylum claim, the RAB quoted its reasoning reached in her husband's case, when concluding that his conversion was not genuine, as it was made two months after having taken an interest in Christianity and given that he continued to elaborate on his Christian commitment during the consideration of his case by the immigration authorities. In substantiation, the author claims that the RAB asked her whether she did not convert because her husband had decided to do so. The same day, the Board had also rejected the author's husband asylum claim, finding his story regarding his involvement in politics lacking credibility and casting doubts at the genuineness of his conversion to Christianity. The husband was also asked to leave Denmark.

the Iranian authorities for involvement in the Iranian Green Movement. She also fears being executed because of her conversion to Christianity.

3.2 The author argues that she has been a victim of a violation of articles 1, 3, 2 and 15 of the Convention as her case was never examined and decided on an equal footing with men. She alleges that she suffered discrimination as her right to equal treatment was violated by the Danish Refugee Board. She claims that in Denmark, she has only been considered as "an annex" to her husband and her own asylum application has been reduced to the question of whether or not her husband should be granted asylum. She argues that her case was decided on the same day as her husband's case and contends that, thus, her asylum request was therefore never taken seriously and she was reduced to being just a wife of a male asylum-seeker.

3.3 The author claims that she will be a victim of a violation of article 12 of the Convention if returned to Iran as she already suffered gender-specific violence there and she fears execution due to her conversion.<sup>7</sup> If not sentenced to death, she fears forced conversion back to Islam and a forced marriage to a Muslim man as her marriage is no longer valid due to her conversion. In addition, from the date of her husband's conversion to Christianity, having sex with her spouse constitutes a sexual activity outside of marriage which is punishable in Iran.

#### State party's observations on admissibility and merits

4.1 By Note verbale of [redacted] March 2014, the State party presented its observations on admissibility and merits. It contends that the communication should be declared inadmissible and asks the Committee to lift its request for interim measures. It also observes that should the communication be declared admissible, no violation of the author's rights under the Convention would occur in case of her deportation to Iran.

4.2 The State party recalls the facts of the case: the author is an Iranian citizen born in 1975, who entered Denmark, on [redacted] March 2012, on a valid Iranian passport, with her spouse and their child born in 2008. The same day, the author and her spouse applied for asylum to the East Jutland Police office. On [redacted] April 2013, the Danish Immigration Service, DIS, rejected the author's asylum application. This decision was appealed to the Danish Refugee Appeals Board, RAB.

4.3 On [redacted] September 2013, the RAB upheld the negative decision of the DIS in the author's case. On the same day, the RAB confirmed the negative decision of the DIS regarding her husband.

4.4 The State party notes that during the proceedings before the RAB on [redacted] September 2013, the author's asylum application was examined jointly with the application of her husband. As her asylum grounds, the author referred to her fear, in Iran, of being killed by the authorities because of her husband's accusation of being an opponent to the regime. Additionally, she claimed that she had converted to Christianity in Denmark, "she found belief in Jesus, Christians were sweet and loving towards each other as opposed to Muslims", and that she was aware that conversion could be sanctioned by execution in Iran. She also claimed that she could never wear her cross openly in Iran as this would prevent her to live normally, but that she could not return to Muslim faith "and that, in the circumstances, she would have converted on her own even if her spouse has not converted".

<sup>7</sup> See U.S. Department of State, 2010 Report on Iran, <http://www.state.gov/documents/organization/171734.pdf>, p.3, where it is stated that conversion from Islam is punishable by death in Iran).

4.5 Regarding the part of the author's asylum grounds linked to her husband's political activities, the RAB referred to the Board's decision regarding her husband, where its majority found that part of the husband's statement concerning his political activities was rejected as inconsistent and lacking credibility. Based on this, the majority of the RAB decided that the author has failed to render it probable that her husband would be persecuted in Iran.

4.6 As regards the author's claim on her conversion to Christianity, the majority of the RAB, giving the same reasons as in their decision concerning the author's husband, found that the author's conversion was not genuine, and thus she would not risk a persecution in Iran on this ground. In its decision in her husband's case, the majority of the RAB found that his claim that he risked persecution due to his conversion could not be taken as a fact. The RAB took into account the above finding about the husband's general credibility, the fact that he had been baptised less than two months after having taken an interest in Christianity, and he continued to elaborate on his Christian commitment during the consideration of his case by the immigration authorities. As a result, it was considered that the husband has failed to substantiate that he made a genuine conversion, involving a risk of persecution in Iran. On these grounds, the majority of the RAB found that the author has failed to "render probable that her conversion to Christianity [was] genuine".

4.7 The State party further provides an extensive description of its refugee status application proceedings and the legal basis and the composition, prerogatives and functioning of the Danish Refugee Appeals Board.<sup>8</sup>

4.8 The State party recalls that the author claims before the Committee that she fears persecution/execution in Iran due to her husband's accusations of being an opponent to the regime and to her conversion. She also claims that the immigration authorities have committed gender-based discrimination as the decision in her case referred to the decision in the asylum case of her husband. She finally claims that she fears to be subjected to gender-based violence as she was subjected to such violence in the past. The State party believes that the case is inadmissible as manifestly ill-founded/insufficiently substantiated and for non-exhaustion of domestic remedies.

4.9 The State party recalls that under the Committee's 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.<sup>9</sup> The State party believes that this means that acts of States parties that may have an indirect effect on a person's rights under the Convention in other States can entail responsibility for the acting State party (extraterritorial effect) only under exceptional circumstances in which the person to be returned is at risk of being deprived of the right to life or of being exposed to torture or other inhuman or degrading treatment, as those rights are protected under, *inter alia*, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights, articles 6 and 7, and the European Convention on Human Rights, articles 2 and 3.

4.10 The State party notes that the author has firstly stated as grounds for her asylum claim before the DIS and the RAB that, if returned to Iran, she feared being killed because her spouse was accused of being an opponent to the regime. For a long time, this was the only ground invoked by the author in her asylum application.

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<sup>8</sup> See, for example communication No. 57/2013, *V. v. Denmark*, views adopted on 11 July 2016, paragraph 4.7.

<sup>9</sup> The State party refers to in case No. 33/2011, *M.N.N. v. Denmark*, inadmissibility decision adopted on 30 July 2013.

4.11 Both the author's and her husband's statements to the immigration authorities on their departure to Denmark have been inconsistent on various points, such as the date of actual departure, the manner and moment of their entry to Denmark, whether any visa has been used for the trip and who had applied for a visa. According to police reports of [REDACTED] March 2012, asylum registration reports of [REDACTED] March 2012 and asylum application forms dated [REDACTED] and [REDACTED] April 2012, the author and her husband gave substantively identical statements about their direct flight from Tehran to Denmark on [REDACTED] March 2012. Both spouses confirmed that they had not applied for a visa.

4.12 Police reports of [REDACTED] June 2012 show that, when directly asked whether the family has travelled on the basis of their own passports and visas for Austria and had then been driven to Denmark, both spouses maintained their previous statements about their departure. The same police reports show that both spouses confirmed that they had not applied for a visa to any embassy. Not until a police report of [REDACTED] July 2012 did the spouses state, when confronted with the fact that the [REDACTED] only issues visas upon application in person, that they had been a meeting at the [REDACTED] and that the family had flown to Austria, had arrived within the visa period, and then travelled by car to Denmark.

4.13 At subsequent asylum interviews, both spouses stated having left Austria on [REDACTED] February 2013 and having been driven to Denmark; that the smuggler kept them captive for a month until receipt of the residual payment, and then they contacted the police and sought asylum.

4.14 The State party points out that on essential points, both spouses have additionally given inconsistent and partly elaborating statements concerning the husband's involvement in the Green Movement, his detention, including when and for how long he was detained, the threats received by the author, her arrests and detentions, etc. and the abuse suffered by her husband.

4.15 As regards the author's conversion, the State party observes that her allegation on persecution on this ground was only raised late in the asylum proceedings, and her statements on commitment to Christianity appear inconsistent. The majority of the RAB found that she had failed to render it probable that her conversion was genuine.

4.16 The State party further notes that the author has stated before the Board having been aware at the time of baptism of the serious consequences she could face in Iran as a result of her conversion. However, she did not mention anything about this at her interview with the DIS on [REDACTED] April 2013 nor did she mention her conversion as a problem when she was asked directly on the reasons for her application for a residence permit and what she feared in case of return in Iran.

4.17 Based on the above considerations, the State party believes that the communication should be declared inadmissible under article 4 (2)(c) of the Optional Protocol as the author has failed to sufficiently substantiate her claim that her return to Iran would expose her to a personal and foreseeable risk of serious forms of gender-based violence.

4.18 The State party further notes the author's claim that if she is not sentenced to death due to her conversion on [REDACTED] May 2012, she would face a charge of fornication since her marriage with her husband is not valid since that date and sexual activity outside marriage is punishable in Iran. According to the State party, however, this claim was never raised before its immigration authorities, and it should be thus considered inadmissible under article 4 (1) of the Optional Protocol.

4.19 Similarly, the author's claim that in case of her return to Iran she would face a forced conversion and would be obliged to marry a Muslim man was never raised at

domestic level. [The State party also observes that in her communication before the Committee she does not claim having been subjected to sexual assault and severe punishment in Iran, in 1994, without possibility of protection, but that was part of her claim before the Danish immigration authorities. For the sake of clarity, the State party notes that the incident took place in 1994; according to the author, she never met the man responsible between her voluntarily return to Iran in 2004 and her departure to Denmark in 2012.]

4.20 Further, the State party notes that in her communication to the Committee, the author claims that religion was part of the suppression of women in society and the family [in Iran] and for this reason she wanted to convert in Denmark. The State party notes that this claim was never invoked before the Danish asylum authorities. As a reason for her conversion, the author has stated in her interview with the DIS, on April 2013 and at the Board's hearing on September 2013 that she came into contact with some Christian families in Denmark where she found love and discovered that Christians are sweet and loving towards each other.

4.21 The State party notes that the present communication contains a number of new viewpoints and the Danish domestic authorities had thus never had the opportunity "to deal with any potential assertion that the decision involved gender-based discrimination".<sup>10</sup>

4.22 The State party notes that the author claimed that the issue of gender-based violence was raised during the consideration of the case, in writing on August 2013 and orally, during the hearing on September 2013. The State party observes that the author's counsel presented an alternative claim during the RAB proceedings asking that the author should be granted residence under section 7(2) of the Allens Act – protection status – which indirectly comprises a reference to CEDAW (see sections 5.2 and 5.4). However, counsel failed to state in further detail in his brief of August 2013 to the RAB or during the hearing on September 2013 what specific matters made it relevant to invoke CEDAW, and counsel also failed to refer to any specific provisions of CEDAW. With reference to the Committee's case law,<sup>11</sup> the State party recalls that authors must have raised, at the domestic level, the substance of the claim they wish to bring before the Committee. Thus, in the present case the author has failed to exhaust the domestic remedies.

4.23 On the merits, the State party notes that the asylum proceedings before the RAB are not an instance of gender-based discrimination. The State party notes the author's claim under article 15 and the fact that she contended that her right to equal treatment was violated by the RAB and that she suffers from inequality in her access to justice as her case was never examined and decided on equal footing with those of men. The author also claimed that the RAB majority who rejected her application based its decision exclusively on the decision they made in her husband's case.

4.24 In this connection, the State party refers to its observations in paras 4.9- 4.17 above and notes that one of the author's grounds for her asylum application was her alleged fear that, in Iran, she would be killed due to her husband's accusation there of being an opponent to the regime. Therefore, her asylum application was related to her husband's grounds for asylum, and thus this part of her grounds for asylum is dependent on the assessment by the RAB of her husband's grounds for seeking asylum.

<sup>10</sup> See *NSF v the UK*, decision of 30 May 2007, para 7.3, and *Rahime Kayhan v. Turkey* decision of 27 January 2006.

<sup>11</sup> See *Rahime Kayhan v. Turkey*, decision of 27 January 2006, para 7.7.



4.25 Thus, it is natural, and not an instance of gender-based differential treatment, for the majority if the RAB cites the decision of [redacted] September 2013 regarding her husband's asylum application, concerning the part of the author's application based on her fears in Iran based on her husband's political activities there. The majority of the RAB has decided to put the part concerning his political persecution in her husband's asylum claim aside, as inconsistent and non-credible. Based on this, the majority of the RAB found that the husband has failed to render it probable that he would be subjected to persecution if returned to Iran and consequently neither would the author.

4.26 The State party adds that a counsel had been assigned to the author and to her husband, the counsel pleaded the author's case in his brief prior to the RAB's hearing; the author had an opportunity during the hearing to made an independent statement to the Board on her grounds for seeking an asylum and thus she had a chance to emphasise the matters she believed to be essential to her case, and that the author's counsel had an opportunity to plead and argue orally the author's case to the Board too.

4.27 The State party submits that, based on the above considerations, the RAB made an objective separate and individual decision in the author's asylum case, however with the natural reservation that a large part of her grounds for seeking asylum derived from her husband's asylum application. Consequently, the RAB's assessment of that part of grounds for asylum was based on the Board's assessment of her husband's case. In addition, it is common practice for the RAB to review cases jointly if the asylum seekers are spouses, who, as it is in the present case, have entered Denmark together and there is a presumption that their grounds for seeking asylum are overlapping or identical. The joint review is only aimed at the best possible clarification of such cases.

4.28 The State party further notes that before the Committee, the author claims that she only converted to Christianity after her arrival in Denmark in view of the fact that Iran suppressed women, that she would have converted regardless of her husband's decision on this, and that she feared the consequences of the conversion in case of her return to Iran.

4.29 The State party notes in this regard that the author entered Denmark on [redacted] March 2012 and she did not state until [redacted] April 2013 that she had converted. Prior to this she had been interviewed five times and completed herself her asylum application form, without mentioning having started to be interested in Christianity. In addition, like the other asylum seekers, she was invited to give the most detailed description possible of the grounds for asylum at the interviews. On [redacted] April 2013, she said to the DIS that she had become a Christian about one year before the interview. The State party finds it inexplicable that the author could not state her interest in Christianity at an earlier date, particularly because she stated at the interview with the DIS on [redacted] April 2013 that she became interested in Christianity when she arrived in Denmark and had not sufficient knowledge of it in Iran. According to the State party, it is conspicuous that the couple's son was not baptised and that the time before the conversion seems extremely short, only two months of preparation for baptism through Skype. When asked about the shortness by the DIS, the author explained that a miracle had occurred.

4.30 In light of the above, the State party submits that the author's grounds for asylum relating to persecution based on her conversion were considered separately during her asylum proceedings. Accordingly, there is no reason to question the comprehensive assessment made by the RAB on the basis of which the Board rejected the genuineness of her conversion for the same reasons as those applying to her husband.

4.31 Finally, regarding the Committee's request for interim measures, the State party notes that on [redacted] September 2013, the RAB extended the time limit for the departure of the author, in accordance with the Committee's request. The State party, however, in light of

the above observations, invited the Committee to review its request, as the author has failed to render it probable that she would suffer an irreparable harm if returned to Iran.

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

5.1 The author's counsel presented comments to the State party's observations on [REDACTED] March 2016. Firstly, he notes that in August 2016, he asked the Refugee Board to take into consideration CEDAW with regard to the author's asylum case and he reiterated his request orally during the Board's hearing. However, no reference is made to CEDAW in the Board's decision, and the author had, according to counsel, to look into her husband's decision to learn the reasons behind her negative asylum decision.

5.2 Counsel adds that the author's asylum application was rejected for lack of credibility. He notes, however, that there is no indication that, on [REDACTED] September 2013, the 5 members of the Refugee Board took into consideration the issue of risk, for the author, of serious forms of gender specific violence.

5.3 Counsel notes that the State party argues that the Danish Refugee Board always – even when not invoked by the asylum seeker – takes CEDAW into consideration, even if this would not specifically appear in the decision. In this connection counsel claims that the State party's contention is not correct. In support, he refers to the views of the Human Rights Committee in an individual communication,<sup>12</sup> with a conclusion that Denmark would violate the author's<sup>13</sup> rights in case of her deportation to Nigeria. Following the adoption of the Views of the Human Rights Committee, the Danish Refugee Appeals Board re-examined the author's asylum application, on [REDACTED] November 2015, taking into account the Views, but confirmed its initial negative decision.<sup>14</sup>

5.4 Secondly, counsel notes that in the above mentioned case, the Danish Refugee Board took it as a fact that the Nigerian woman was a victim of trafficking and that she had testified in court against her traffickers. Nevertheless, in its decision of [REDACTED] November 2015, there is no reference to CEDAW whatsoever.

5.5 Counsel concludes that the Danish authorities "are misinforming" the Committee "again". During a number of meetings with the different Committees, the Danish representatives kept explaining that there was no need to incorporate the ICCPR, CAT, CEDAW, etc., since all human rights instruments were part of the Danish legal order. The quoted decision of [REDACTED] November 2015 shows, in the counsel's opinion, that this is not the case.

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

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

<sup>12</sup> Communication No. 2288/2013.

<sup>13</sup> The case related to the risk of the deportation of the author – a Christian Nigerian woman victim of rape and obliged to prostitute herself in Denmark. According to the counsel, on [REDACTED] November 2015, the Board noted, *inter alia*, that the opinions of the Human Rights Committee are not legally binding and that it is thus also "after the resumption for the competent Danish authorities to decide whether the applicant may be sent back" to her country of origin". Counsel contends that since ICCPR and CEDAW are both not incorporated into Danish law, it could be assumed that the decisions of the CEDAW Committee could also be considered not legally binding by the Danish authorities.

<sup>14</sup> Informal translation provided by the counsel.

6.2 The Committee notes, first, the author's claim that her deportation to Iran would constitute a violation, by Denmark, of article 1, article 2, paragraph (c) and (d), article 3, article 12 and article 15 of the Convention, in view of her husband's perceived opposition activities there and due to her conversion. The Committee also takes note of the State party's argument that the communication should be declared inadmissible under article 4 (2) (c) of the Optional Protocol for lack of substantiation.<sup>15</sup>

6.3 The State party has also claimed that the part of the communication regarding the claim that the author could risk being killed or forcibly converted to Islam and being married to a Muslim man due to her conversion to Christianity in Denmark and for having had sexual relations outside marriage;<sup>16</sup> her claim that religion was part of the suppression of women in Iran;<sup>17</sup> are inadmissible for non-exhaustion of domestic remedies under article 4 (1) of the Optional Protocol, as they were never brought to the Danish authorities prior to the submission of the present communication.

6.4 Regarding the author's claim, first, that she fears that the authorities would kill her husband if returned to Iran due to his past political activities there, in light of the documents on file, the Committee notes that the Danish immigration authorities have duly examined these allegations but have concluded that the author has failed to sufficiently substantiate her allegations, in particular given that her husband's claims in this regard have been found to lack credibility. Nothing on file allows the Committee to consider that in reaching this conclusion, the Danish immigration authorities have failed in their duties or acted in a biased or otherwise arbitrary manner. In these circumstances, and in the absence of any other pertinent information on file, the Committee considers that the author has failed to sufficiently substantiate this particular claim for purposes of admissibility. Accordingly, it declares this part of the communication inadmissible under article 4 (2)(c) of the Optional Protocol.

6.5 The Committee further observes the author's contention that she has been a victim of a violation of articles 1, 2, 3 and 15 of the Convention as her case was never examined and decided on an equal footing with men. She alleges that she suffered discrimination as her right to equal treatment was violated by the Danish Refugee Board, because she has only been considered as "an annex" to her husband and her own asylum application has allegedly been reduced to the question of whether or not her husband should be granted asylum or not, and she was reduced to being just a wife of a male asylum-seeker. The Committee notes the State party's reply that the initial asylum claim of the author was only linked to her husband's asylum claim, based on the fact that the author claimed asylum as a consequence of her husband's alleged political activities in Iran and the resulting problems he faced. The Committee observes that nothing in the case file permits to confirm the author's claim of discrimination. To the contrary, the information before the Committee shows that the author has been afforded adequate opportunity for independent examination for her independent circumstances. The Committee therefore considers that this part of the communication is inadmissible under article 4 (2)(c) of the Optional Protocol.

6.6 The author has also claimed that she will be a victim of a violation of article 12 of the Convention if returned to Iran she fears execution because of her conversion. If not sentenced to death, she fears forced conversion back to Islam and a forced marriage to a Muslim man as her marriage is no longer valid due to her conversion. In addition, from the date of her husband's conversion to Christianity, having sex with her spouse

<sup>15</sup> See para 4.17 above.

<sup>16</sup> See para 4.18 above.

<sup>17</sup> See para 4.19 above.

constitutes a sexual activity outside marriage which is punishable in Iran. The Committee notes that the State party has challenged this part of the communication under article 4 (1) of the Optional Protocol, as these claims were never raised to the Danish immigration authorities prior to the submission of the present communication to the Committee. This remained uncontested by the author or her counsel. The Committee also notes the State party's affirmation that there is no reason to question the comprehensive assessment made by the RAB on the basis of which the Board rejected the genuineness of the author's conversion. The Committee notes that the decision of the RAB lists comprehensively the author's explanations in this connection; it also notes the questions asked to her and the answers she provided thereon. This information relates to her mainly, and differs from the allegations and information provided by her husband, concerning his alleged conversion, in his asylum application. Regarding the claims of her husband referred to in the author's asylum application, it should be noted that it is the author herself who directed the RAB to evidence which was supposed to be provided by her husband regarding the conversion and her explanations to the effect that he was more knowledgeable on Christianity matters than her. In light of all these considerations, and in the absence of any other pertinent information on file, the Committee considers that the facts before it do not show that the RAB has failed to give sufficient attention to the author's personal situation and specific claims, including her claims regarding her conversion. Accordingly, the Committee declares this part of the communication is inadmissible for non-exhaustion of domestic remedies and for lack of substantiation under article 4 (1) and article 4 (2)(c), of the Optional Protocol.

6.7 Finally, the author's counsel has claimed that the Danish immigration authorities have failed to consider her case from the perspective of the CEDAW Convention even if he has specifically asked for this.<sup>18</sup> The Committee notes that in reply, the State party has argued that neither the author nor her counsel have presented any claims under the Convention and have not indicated which substantive rights under the Convention they thought the Danish authorities have violated or would violate in case of the author's deportation to Iran. The State party has also noted that counsel has merely referred to CEDAW in his appeal, without any substantiation or explanation whatsoever. The Committee notes that the State party's observations remained uncontested by the counsel.<sup>19</sup> In light of these considerations, the Committee considers that the author has not substantiated how the reference to CEDAW raised issues separate to those already considered by the RAB in the context of the author's asylum claim. The Committee considers therefore that this part of the communication is insufficiently substantiated, for purposes of admissibility, and is therefore inadmissible under article 4 (2) (c) of the Optional Protocol.

7. The Committee therefore decides that:

(a) In accordance with articles 4 (1) and 4 (2) (c) of the Optional Protocol, the communication is inadmissible;

(b) This decision shall be communicated to the State party and to the author.

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<sup>18</sup> See para 5.1 above.

<sup>19</sup> See paras 4.21 and 4.22 above.