



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 (2) (c) of the Optional Protocol, concerning communication No. 82/2015^{**}

<i>Communication submitted by:</i>	K.I.A.
<i>Alleged victim:</i>	The author
<i>State party:</i>	Denmark
<i>Date of communication:</i>	8 March 2015 (initial submission)
<i>References:</i>	Transmitted to the State party on 11 March 2015
<i>Date of adoption of decision:</i>	4 November 2019

* Adopted by the Committee at its seventy-fourth session (21 October – 8 November 2019).

** The following members of the Committee participated in the examination of the present communication: Gladys Acosta Vargas, Hiroko Akizuki, Tamader Al-Rammah, Nicole Ameline, Gunnar Bergby, Marion Bethel, Louiza Chalal, Esther Eghobamien-Msheila, Náela Gabr, Hilary Gbedemah, Nahla Haidar, Dalia Leinarte, Rosario G. Manalo, Lia Nadaraia, Aruna Devi Narain, Bandana Rana, Rhoda Reddock, Elgun Safarov, Wenyan Song, Genoveva Tisheva, Franceline Toe Bouda and Aicha Vall Verges.



Background

1.1 The author is K.I.A., a Palestinian refugee born in Jordan and a Jordanian national born in 1986. Her application for asylum in Denmark was rejected and she risks deportation to Jordan. She submits the communication on her behalf and on behalf of her five children, born in 2005, 2007, 2008, 2010 and 2011, respectively. She claims that if Denmark proceeds with their deportation, it would breach articles 1 and 2 (d), read in conjunction with articles 2 (e) and (f), of the Convention. The author is represented by counsel, the Danish Refugee Council.

1.2 When registering the communication, on 11 March 2015, the Committee, acting through its Working Group on Communications under the Optional Protocol, pursuant to article 5 (1) of the Optional Protocol and to rule 63 of the Committee's rules of procedure, requested the State party not to deport the author and her children pending the consideration of her case by the Committee. On 11 September 2015, the State party informed the Committee that on 19 March 2015 the Refugee Appeals Board of Denmark had suspended the time limit for the deportation of the author and her children from Denmark as per the Committee's request.

Facts as submitted by the author

2.1 The author is a Jordanian of Palestinian origin. The author was born in the United Nations Relief and Works Agency for Palestine Refugees in the Near East camp in Irbid, Jordan, in 1986. Her parents divorced shortly thereafter and she was raised by her grandmother there. Later on, her father moved to Denmark and obtained citizenship of that country.

2.2 In 1999, the author travelled to Denmark, where she obtained a residence permit. However, as she had difficulties settling with her father, she remained on the street with friends and, finally, ended up in a social youth shelter in the first half of 2002. She became intimate with a boy from her school. When her father found out, he claimed that she had violated the honour of the family.

2.3 As a punishment, her father arranged for the author's return to Jordan. He explained to her that her grandmother was ill and that she needed to visit her. The author left Denmark in the summer of 2002.

2.4 Once in Irbid, her passport was taken away from her.¹ She was then 15 years old. Her grandmother arranged for her to marry a 47-year-old man whom she did not know, a decision that the local imam endorsed.

2.5 The author sought the assistance of the embassy of Denmark in Amman and contacted a social worker and a teacher in Denmark. Her former teacher informed the municipal authorities in Denmark about her situation. According to the author, the Danish authorities claimed that they are unable to help her, as she was a minor under the custody of the father, and she got married (no exact date specified).

2.6 The author claims that her forced marriage was characterized by repeated domestic violence, rape and controlling and degrading treatment. On one occasion, her husband burned her with a cigarette and poured hot oil on her hand. She was not allowed to leave the house. The author got pregnant on seven occasions, and had two miscarriages as a result of violence. The husband was also violent to the older children.

2.7 The husband often reminded the author that, as per his arrangement with her father, she was subject to his power and will and that no one else would marry her

¹ No further details provided.

as a result of her history in Denmark. In the absence of other contact with her family, the author remained isolated in Jordan.

2.8 Owing to her situation, the author was not mentally well and was prescribed medicine. In view thereof, the husband threw her out of the house and prevented her from seeing the children. For three months, the author stayed with friends or at the mosque. She sought police assistance to see the children, but to no avail. She finally hired a mediator and the husband agreed to her return.

2.9 On at least four occasions, the author sought the protection of the police, showing marks of beating and bruises. The police either informed her that they could not help or advised her to initiate court proceedings. She applied to court “on three or four occasions”. The court informed her that, in the event of divorce, her husband would have full custody of the children, which she could not accept.²

2.10 In 2011, when she was expecting her fifth child, she tried to leave her husband. As her father was visiting the Syrian Arab Republic, she joined him there with her children. Her father, however, asked her to return to her husband, who had promised to be nice to her. After four months, she returned to Jordan but was again subjected to domestic violence, rape and controlling behaviour.

2.11 The younger son of the author suffered from epilepsy and multiple disabilities. The husband was angry about having a child with disabilities and initially placed him in an institution.³ It was only when the author threatened to kill herself that the boy was returned to the family. Subsequently, on several occasions, the husband threatened to abandon the boy once he recovered full custody of the children.

2.12 In 2012, the author made a final attempt to divorce and keep custody of the children. The Bani Kenana sharia court ruled that full custody of the four sons was to be given to the father owing to the author’s adultery.⁴ It also stated that the author had been referred to the authorities as a result of her husband’s threats.⁵

2.13 In 2013, the author’s father agreed to invite her and her children to Denmark. In order to be able to travel, she told her husband that her father was sick and she needed to see him.

2.14 The author admits that she gave contradictory information to the Danish authorities regarding the practical circumstances of her departure from Jordan. In this connection, she explains that, as a result of a misunderstanding, the Danish Immigration Service noted that her husband had driven them to Dubai, United Arab Emirates, when this was not the case. Nevertheless, the author submits that the core of the case is that the husband believed that, after visiting her father in Denmark, she would return to Jordan.

2.15 She arrived in Denmark with her children on 10 April 2013 and applied for asylum on 15 April 2013.

2.16 When her visa for Denmark expired, she called the husband and informed him that she would not return. She claims that, at first, he promised her an improved life but later on started threatening her. She received several threats by phone that he would hurt her and take the children and leave the youngest one at an orphanage. The last time she heard from him was in the past three months, when he accused her again of adultery.

² No further details provided.

³ No further details provided.

⁴ The author explains that, during her absence from her home, she met a male friend, leading to an accusation of adultery. She adds that the husband was not interested in obtaining custody of their daughter but only of their sons.

⁵ No further details provided.

2.17 On 9 October 2013, the Danish Immigration Service rejected her asylum application. On 13 March 2013, a majority of the Refugee Appeals Board rejected her appeal. The police informed the author that her deportation was expected within a few weeks.

Complaint

3.1 The author claims that, if Denmark deports her and her children, it will breach articles 1 and 2 (d), read in conjunction with articles 2 (e) and (f), of the Convention.

3.2 She explains that she has been subjected to two interrelated series of breaches of articles 1 and 2 (e) and (f) of the Convention. First, she was forced to leave her teenage life and education in Denmark and to enter into a forced marriage as an honour-related sanction for not following traditional family norms. Second, she lived for 11 years in a forced marriage characterized by domestic violence, rape and controlling and degrading treatment. The marriage was arranged by her family and she was left alone in Jordan with no possibility to return to Denmark. She considers that the situation she faced amounts to a violation of articles 1 and 2 of the Convention.

3.3 The author underlines her husband's will and capacity to subject her to serious violence and abuse. The fact that she fled to Denmark, along with his subsequent threats, only intensified the existing tensions and conflict between them. She fears that if she is returned to Jordan, she will be subjected to the same inhuman and degrading treatment. She also fears that full custody of her children will be given to her husband owing to discriminatory practices in courts in Jordan.

3.4 The author also explains that, in the event of her return, she would be unable to obtain protection from the authorities in Jordan. Reiterating her reference to the Committee's general recommendation No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, she recalls that returning a person with previous experience and a future risk of being subjected to inhuman and degrading treatment amounts to persecution if the person would be unable to obtain sufficient protection from the authorities in the receiving country.

3.5 In support, she provides information on domestic violence, divorce and the situation of women in Jordan. She refers to the concluding observations of the Committee against Torture in 2010 ([CAT/C/JOR/2](#)), in which it was highlighted that violence against women remained deeply rooted in Jordan and, as a result, a culture of impunity towards domestic and gender-based violence had evolved. The Committee expressed serious concern that crimes in which a family's honour was thought to have been breached often went unpunished and, if punished, the sentences were far more lenient than those for equally violent crimes without an honour dimension. The Committee also expressed concern that the Protection from Family Violence Act (2009) had failed to explicitly criminalize domestic violence or provide for adequate prosecution of the perpetrators.

3.6 The author notes that the Special Rapporteur on violence against women, its causes and consequences, following her visit to Jordan, noted in her 2012 report ([A/HRC/20/16/Add.1](#)) that, according to a 2008 study, psychological and verbal violence were the most common forms of abuse experienced by Jordanian women. Husbands exerted control over their wives, sometimes limiting their freedom of movement or not allowing them to express their opinion. Such violence could escalate to physical or sexual violence. In 2004, a high percentage of society still believed women to be inferior to men and approved of women being disciplined by their husbands.

3.7 The Special Rapporteur noted that, in many cases, violence against women was perpetrated by husbands, guardians or other male relatives when women acted in ways considered “dishonourable”. Women who had engaged in premarital or extramarital sex faced the risk of being murdered so as to have the family honour restored. Leaving the home without permission or talking to an unrelated man were acts that had also resulted in the killing of women in the name of “honour”.

3.8 According to several reports,⁶ Jordan is in general a country characterized by patriarchal cultural norms and customs, resulting in legal and de facto discrimination against women. Women continue to suffer from legal inequality with respect to marriage, divorce and child custody. Under sharia law, women are not granted the same rights as men. Referring to the Special Rapporteur’s report, the author notes that men can divorce without providing a reason. Women may file for judicial divorce at the sharia court, but need evidence and witnesses to support their applications. Grounds for divorce can include domestic abuse, the husband’s failure to provide financially or prolonged absences. Procedures are often lengthy and divorces are usually denied.

3.9 With regard to child custody, the Special Rapporteur noted that, within marriage, the Personal Status Act allows only for men to act as children’s guardians. Following a divorce, a woman has no custody of her children until they reach the age of puberty and they decide with whom they prefer to live. If a woman remarries, she loses custody of the children, who will return to their father or his family. Even when a mother has custody of her child, the father is still considered the legal guardian and final decision maker regarding issues such as education (see [A/HRC/20/16/Add.1](#), para. 66). The Act also allows fathers to prevent their children from travelling abroad with their mother.

3.10 The author further submits that, regardless of her holding a Jordanian passport, she is a Palestinian refugee who lived in the Palestinian refugee community during her marriage. This affects her rights and possibility to seek protection in Jordan. In support, she refers to the report of the Special Rapporteur, according to which refugee women do not enjoy the same support with regard to violence occurring within the family, as the community still regards this issue as a private matter that will bring shame if disclosed (*Ibid.*, para. 47). Some interviewees explained that domestic violence is accepted and sometimes even justified by society as a form of discipline. This largely restricts victims from speaking out and seeking support. Refugee women face an additional layer of fear owing to their disadvantaged position before the authorities. They will not reach out to the available support systems such as those provided by the Family Protection Department, as this is part of the Public Security Directorate and reporting would, in their view, open the door to further scrutiny and control of their communities by the police.

3.11 The author claims that asylum proceedings in Denmark fail to adopt a gender-sensitive approach. She considers that in her case the central focus was on her departure from Jordan. The original honour-related sanctions for not obeying traditional norms, the forced marriage, the domestic violence and abuse, and the discriminatory legal system in Jordan were not duly taken into account. The Refugee Appeals Board has noted that she provided contradictory information as to her departure from Jordan and that her explanation regarding the intensity and volume of domestic violence and sexual abuse during the marriage could not serve as a basis for the decision. It considered that her credibility assessment relating to the most central part of her application – domestic abuse for 11 years in a forced marriage – had not substantiated her claim. At her interview with the Danish Immigration Service on 9 September 2013 and at the hearing of the Refugee

⁶ No further details provided.

Appeals Board on 13 March 2014, the honour-related sanctions, the forced marriage and the domestic violence abuse were canvassed only briefly. The central and detailed questions related only to her departure from Jordan and the court proceedings there. Thus, according to the author, it remains unclear on what basis her credibility assessment was made and in which way, if any, it was carried out in a manner that took into account the practice and prevalence of domestic abuse in Jordan.

3.12 Finally, the author notes that the Board concluded that, regardless of whether she would be in a conflict with the husband as a result of the mentioned relationship during her stay in Denmark, she has not shown that she would be subjected to persecution or abuse or that she could not seek protection from the Jordanian authorities. The author notes that the assessment of the expected protection in Jordan was not disputed in any way by the authorities of the State party. No reference was made to background information on actual and sufficient access to non-discriminatory protection by the authorities for Palestinian refugee women with no network there.

State party's observations on admissibility and the merits

4.1 The State party presented its observations on admissibility and merits on 11 September 2015. It recalled the facts of the case. The author, a Jordanian national, sought asylum in Denmark on 15 April 2013. On 9 October 2013, the Danish Immigration Service rejected her application. On 20 December 2013, the Ministry of Justice refused to grant her residence on humanitarian grounds. On 13 March 2014, the Refugee Appeals Board confirmed the refusal of the Service to grant her asylum.

4.2 The State party observes that the Board noted that the author was not a member of any political or religious association or organization and was politically inactive. As grounds for asylum, she referred to the fear of her spouse. She was forced to marry after having fallen in love with a Danish national in Denmark between 1999 and 2002. Her husband was violent towards her and refused to let her leave the home. In 2011, she fled to the Syrian Arab Republic but returned and the abuses continued. She travelled to Denmark in 2013.

4.3 The State party notes that the majority of the Board members found that, on a number of essential points, the author's statements appeared to be inconsistent and increasingly elaborate, including the statement on her husband's active participation in her departure as stated to the police and the Danish Immigration Service, compared with her subsequent explanation to the Board that she had escaped with the help of a greengrocer having the same name as her husband. The Board also found that the author's statements on the intensity and scope of the violent and sexual abuse in her marriage could not be considered as facts. The Board noted that, even if the author would face a conflict with her husband in the event of her return, including "because of the said romantic relationship during her stay in Denmark", she had failed to substantiate that she would be subjected to persecution or abuse from which she would be unable to apply to the Jordanian authorities for protection. Against that background and based on an overall assessment, the majority of the members of the Board found that the author would not be at risk of persecution or at risk of abuse to justify asylum under sections 7 (1) or 7 (2) of the Aliens Act.

4.4 The State party further provides a detailed description of the activities, independence, composition, legal basis for decisions, prerogatives, assessment of evidence and use of background material by the Board.

4.5 On admissibility, the State party believes that the author has failed to establish a prima facie case that she would be subjected to a real, personal and foreseeable

risk of serious forms of gender-based violence in Jordan, and considers that the case is thus insufficiently substantiated under article 4 (2) (c) of the Optional Protocol.

4.6 On the merits, the State party believes that the author has failed to establish that in Jordan she would be exposed to a real, personal and foreseeable risk of serious forms of gender-based violence. The author has failed to produce new and specific information on her situation in addition to the information relied upon as a basis for the decision of the Board of 13 March 2013.

4.7 Regarding the author's credibility, the State party notes that the Board concluded that her statement about the intensity and scope of violence and sexual abuse could not be considered as fact. The majority of the Board members emphasized that the author's statement appeared to be inconsistent and increasingly elaborate on a number of essential points. The Board also noted the inconsistencies regarding those who had allegedly helped her leave Jordan.

4.8 The State party notes that, in her interview on 24 April 2013 with the police, the author explained that she had preferred leaving the Syrian Arab Republic because of the war and because one of her children was ill, and that she wanted to divorce her spouse. Before the Danish Immigration Service on 9 September 2013, she affirmed having a very difficult relationship with her husband, that they had fallen out in 2011 and that he had forced her to have sex and to cook food, which their eldest sold in a park. She added that her spouse had beaten her and locked her in every time he had left home. She claimed that she feared being thrown out of the house and having her children taken away in the event of return.

4.9 Before the Board on 13 March 2014, the author stated that her relationship with her husband had been pure torture. He had raped her and beaten her so badly that she had miscarried twice. She had not been allowed to leave the house and the spouse had burned her face with a cigarette and had poured hot oil over her hand. Thus, according to the State party, the author had elaborated considerably on the basis of her asylum application. Both during the asylum proceedings and in her claim to the Committee, she had failed to explain the reasons for such elaboration.

4.10 The State party also notes that the author affirmed having succeeded in leaving her spouse at least twice even though he had allegedly systematically locked her in their home. According to her own statements, she had succeeded in moving out of their house, together with the children, in 2011. When interviewed by the Danish Immigration Service on 9 September 2013, she explained that at some point her spouse had thrown her out of the house and that she had hired a lawyer, who helped her to return.

4.11 The author has made other inconsistent statements. Before the Service, she claimed that she had not reported her husband's violence to the police. By contrast, before the Board, she claimed that she had contacted the police on five occasions, in a bloody and beaten up state, but had received no help, except for being informed that she could initiate a judicial action. Thus, the State party considers that the author's statement as to whether she had previously reported the violence to the police is inconsistent and incompatible with her statement that the spouse locked her inside the house.

4.12 The State party notes that the author stated to the police and to the Service that her spouse had taken her to Dubai. Before the Board, however, she contended that she had been taken there by an acquaintance of one of her friends and that the Service had misunderstood. In this regard, the State party notes that the initial interview report was read out to the author and she accepted its contents without adding any comments.

4.13 The author has also made inconsistent statements regarding when she left Jordan. Before the police, she stated that she had fled the Syrian Arab Republic three years before, and travelled to Denmark through Dubai and Cairo. When interviewed by the Service, she stated that she had stayed in Jordan until her departure for Denmark in April 2013.

4.14 In addition, before the Service, she stated that she had convinced her husband to let her go with the children, as they would have a better life in Denmark. Later, at the same interview, she explained that she had told her husband that her father was ill and she needed to see him but had assured her husband she would return to Jordan. When confronted with this contradiction, she explained that she had told her husband only of her intention to stay in Denmark after the expiration of her visa. Before the Board, she gave a different statement, according to which she had escaped from her home by smashing the door lock prior to her departure.

4.15 Regarding her stay in Denmark since 2013, the author has also made inconsistent and increasingly elaborate statements. On 9 September 2013 before the Service, she claimed that her spouse sometimes contacted her to enquire about the children, that they had last spoken in the past few days and that he would throw her out of the house and take the children away if she returned to Jordan. She also claimed that her husband had promised her that he would treat her well if she returned and that he had not threatened her during her stay in Denmark, but rather told her to come back and promised to make sure that she would be happy. Before the Board, however, she stated that her husband had threatened her over the phone several times and that he had also threatened her father and her sister.

4.16 The State party explains that it agrees with the assessment of the Board on the crucial elements of the author's grounds for seeking asylum. It observes that it cannot consider as fact that the author has been subjected to violent and sexual abuse in her marriage since crucial elements of her statements appear inconsistent and increasingly elaborate.

4.17 Regarding a Jordanian court trial transcript dated 25 December 2012 whereby the court gives custody of the author's male children to the father and which refers the author to the competent authorities to be provided protection against the husband's threats, the State party observes that, according to the court record in question, the reason for the transfer of custody was infidelity. The State party further notes that the author did not give any information to the Service about any decision on custody in 2012 during her interview in September 2013, although she made a statement about her fear that her spouse would take the children away from her in the event of return to Jordan. The document in question was produced by the author's counsel only before the Board hearing. Before the Board, the author stated that the husband had obtained custody, as she could not support the children herself. The author also stated that, after one year, she had addressed a new request to the authorities for custody of the children.

4.18 The State party finds it strange that the author did not mention before the Service that the court had considered the custody matter four months before her departure from Jordan. The author has failed to provide any reason as to why the court should have decided to transfer the custody if, at that time, she and her husband were still living together. Thus, the State party considers that the document has been fabricated for the occasion to support the author's claims regarding previous conflicts with her spouse. The author has failed to render it probable that she will be subjected to abuse in the event of return to Jordan.

4.19 As regards the eventual protection by the authorities in Jordan, the State party notes that the author, although born in a refugee camp, is a Jordanian national and as such can rely on the same rights as other Jordanians. The State party further

emphasizes that, in any event, it cannot be taken as fact that the author has been subjected to violent and sexual abuse in her marriage or that she will suffer such ill-treatment in future. Thus, it is unnecessary to assess whether the Jordanian authorities would offer her protection.

4.20 The State party adds that the author's statement that her father arranged her departure from Denmark in 2002 and her forced marriage cannot, per se, justify a different assessment of her asylum application or a different assessment of the risk of persecution in case of return. The circumstances that it may be difficult for the author to obtain custody of the children in the event of subsequent divorce and that the author's youngest child is disabled cannot be seen per se as circumstances justifying asylum.

4.21 Regarding a gender-sensitive approach in asylum proceedings, the State party observes that the Refugee Appeals Board is not only well informed, but also has a thorough understanding of the forms of persecution and abuse that women experience merely on grounds of gender. The Board has a comprehensive collection of general background material, including on the situation of women. It is also recognized in the case law of the Board that certain kinds of abuse against women committed by private individuals, including spouses, may be of such scope and intensity as to amount to persecution if the authorities are unable or unwilling to offer protection to women.

4.22 The author has expressed fear of gender-based persecution on return to Jordan. As clearly reflected in the report on the interview by the Service and the author's statement to the Board, this is what the Danish immigration authorities focused on clarifying during the asylum proceedings. When interviewed by the Service, the author was also invited to make a statement describing her situation and to clarify various elements of her statement. At the hearing before the Board, she was invited once more to make such a statement, assisted by her counsel, and afterwards the Board and the Service asked clarifying questions. The fact that the author was asked questions about events from an overall perspective, including about her departure, does not mean that the immigration authorities focused merely on this issue. Asylum seekers should be able to give an account of their departure from their country of origin, and such an account can be a relevant and integral element of the statement describing their situation.

4.23 The State party adds that, in order to prepare her departure following the refusal of her asylum application, the Danish police conducted a number of meetings with the author. From these meetings, it transpired that the author had held residence permits for the United Arab Emirates from 6 January 2004 to 5 January 2007 and from 26 December 2005 to 25 January 2009. She and her five children had also held residence permits for that country from 21 March 2012 to 20 March 2014. According to the author's explanations, her husband had been living in Abu Dhabi since 1998, and she had moved there in 2005 and stayed until her departure in 2013. Four of her children had been born there and two of them had been enrolled in school there in 2012/13. The available information also reflects that the author travelled from Dubai to Denmark via Istanbul, Turkey.

4.24 The author has explained that she tried to conceal her visa for the United Arab Emirates from the Danish authorities, as she feared that she could be sent there to her husband. For the same reason, she made an incorrect statement about the place of birth of the children.

4.25 The State party observes that the information received from the police contradicts the author's previous statements, including with regard to her living conditions, her departure and her journey and the alleged reports to the police and legal actions in Jordan. In the State party's opinion, the author has failed to give a

reasonable explanation as to why she withheld information on her personal living conditions and failed to make a true statement regarding her journey.

4.26 The State party considers that the Board took into account all relevant information in its decision, and the present communication has not brought to light any information substantiating that the author would be at risk of persecution or abuse justifying asylum.

4.27 The State party recalls that important weight must be given to the statements made in the context of the interviews conducted by the State party, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice, and that it is generally for the State's organs to review or evaluate facts and evidence in order to determine whether such a risk exists.⁷ The State party notes that the Board, a collegial quasi-judicial body, made a thorough assessment of the author's credibility, her specific circumstances and the background information available, and found that she had failed to render it probable that she would risk persecution or abuse justifying asylum in the event of her return to Jordan.

4.28 The State party further recalls that in another decision the Human Rights Committee found that, in the absence of evidence establishing that the Board was manifestly unreasonable or arbitrary with respect to the allegations of the author, it could not conclude that the information before it showed that the author's removal would expose him to a real risk of treatment contrary to article 7 of the Covenant.⁸

4.29 The State party is of the opinion that the author's communication merely reflects her disagreement with the Board's assessment of her credibility and that she has failed to identify any irregularity in the decision-making process or any risk factors that the Board would have failed to take properly into account. The State party believes that the author is trying to use the Committee as an appeals body and to have the factual circumstances in support of her asylum claim reassessed. The State party concludes that the author's return to Jordan would not result in a breach of the Convention.

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

5.1 The author presented her comments on 25 November 2015. With regard to credibility, she notes that the State party agrees with the Board's assessment of her explanation regarding the violence, control and abuse during marriage, finding it lacks credibility. She explains that she has admitted inconsistent statements regarding her departure, but these statements should not per se lead to a negative assessment of credibility. In this context, the author refers to the Office of the United Nations High Commissioner for Refugees (UNHCR) *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the*

⁷ Reference is made to *P.T. v. Denmark* (CCPR/C/113/D/2272/2013). With reference to *Mr. X and Ms. X v. Denmark* (CCPR/C/112/D/2186/2012), para. 7.5, the State party notes that the Human Rights Committee also concluded that "the authors' refugee claims were thoroughly assessed by the State party's authorities, which found that the authors' declarations about the motive for seeking asylum and their account of the events that caused their fear of torture or killing were not credible. The Committee observes that the authors have not identified any irregularity in the decision-making process, or any risk factor that the State party's authorities failed to take properly into account. In the light of the above, the Committee cannot conclude that the authors would face a real risk of treatment contrary to articles 6 or 7 of the Covenant if they were removed to the Russian Federation."

⁸ See *Z. v. Denmark* (CCPR/C/114/D/2329/2014), para. 7.4.

1951 Convention and the 1967 Protocol relating to the Status of Refugees,⁹ according to which it may be necessary for the examiner to clarify any apparent inconsistencies and to resolve any contradictions, and to find an explanation for any misrepresentation or concealment of material facts. Untrue statements by themselves are not a reason for refusal of refugee status and it is the examiner's responsibility to evaluate such statements in the light of all the circumstances of the case.

5.2 The author has explained to her lawyer that she tried initially to conceal her visa for the United Arab Emirates out of fear that she would be sent to her husband. For the same reason, she did not provide information on the exact place of birth of the children.

5.3 Regarding her actual residence, she has explained to the lawyer that her father took her passport when she arrived in Jordan in 2002. She was forced into a marriage, and her husband obtained a new passport for her that was valid for six months. At the same time, he arranged for a visa and temporary residence permit for the United Arab Emirates while he worked there. In the following years, they travelled between the United Arab Emirates and Jordan by car. Since 2002, she has possessed valid documents for the United Arab Emirates. Only her oldest son attended a Jordanian school.

5.4 She has also clarified with the lawyer that in 2011 she fled from the property of her husband to her father in the Syrian Arab Republic but her father asked her to return.

5.5 She reiterates that her husband believed that her father was ill and that she would return to Jordan after her visit. The husband assisted her in obtaining a visa and drove her and their children to Dubai.

5.6 The author has also explained that she tried to seek the protection of the Jordanian police. After having attempted to commit suicide, she was in contact with the police in Abu Dhabi while in the Khalifa Hospital. The medical staff and police witnessed that she was threatened and beaten by her husband, who wanted her back home. The police did not protect her. The author informed the Danish authorities about her suicide attempt but concealed the fact that it occurred in the United Arab Emirates.

5.7 Counsel regrets the concealing of information but notes that, in the light of the author's fears and her attempt to avoid a return to her husband in the United Arab Emirates, this cannot lead to the rejection of the overall asylum claim based on credibility. The fact that the family lived in the United Arab Emirates does not change the central matter of the gender-based persecution and domestic violence. In addition, in the United Arab Emirates she was also subjected to violence. The information regarding the time spent in the United Arab Emirates does not change the substance of the claim and the gender-based nature of the persecution. The author was forced into marriage and subjected to violence, abuse and harassment. Her life was subordinated to the will of her husband. She had no social network and received no protection by the Jordanian authorities.

5.8 Counsel further refers to the UNHCR guideline regarding credibility assessment, *Beyond Proof: Credibility Assessment in the E.U. Asylum Systems*,¹⁰ according to which an applicant may truthfully relate the core reasons for an

⁹ Available at <https://cms.emergency.unhcr.org/documents/11982/49074/UNHCR,+Handbook+and+Guidelines+on+Procedures+and+Criteria+for+Determining+Refugee+Status+under+the+1951+Convention+and+the+1967+Protocol+Relating+to+the+Status+of+Refugees/30fe78f2-5414-47ec-9439-0f2663889e58>.

¹⁰ See <https://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=51a704244>.

application for international protection after having provided false information about the journey but that:

Such behaviour should not automatically be used as grounds for imposing a higher credibility threshold or denying the applicant the benefit of the doubt. Where the provision of false information and/or documentation relates to a material fact, ... the determining authority must determine whether the applicant can provide a satisfactory explanation for his or her behaviour. ... Moreover, UNHCR recalls that untrue statements alone are not a reason for refusal of refugee status.

Counsel believes that the author has given a plausible explanation regarding her stay in the United Arab Emirates.¹¹

5.9 Regarding the husband's attempt to locate the author, counsel explains that, in its last reports, the Danish police noted that it had received a letter from the husband, dated 22 March 2014, wherein he stated that he had tried to locate her and asked her to return with the children.¹² The husband no longer contacts her father, since he did not return her to Jordan. The author has changed her phone number and her husband cannot contact her anymore.

5.10 Regarding the lack of a gender-sensitive approach in the asylum proceedings, counsel notes that the majority of the questions put to the author by the Danish Immigration Service and the Refugee Appeals Board regarded the factual circumstances of the case, and very few concerned the nature of the violence and abuse in the marriage. Ensuring a gender-sensitive approach in asylum proceedings is not only about offering the applicant a possibility to tell her story, but also ensuring that the relevant information is examined. Counsel notes that, according to the UNHCR *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status*, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner. According to counsel, the author's claims regarding her punishment for not obeying traditional gender norms, the forced marriage and the violent and abusive behaviour of her husband were not examined thoroughly enough by the asylum authorities.

5.11 Even if the punishment for not obeying traditional norms took place in 2002, it remains relevant to the overall assessment of whether the author has been and will be subjected to gender-based discrimination and violence. The family's acceptance of the past forced marriage is closely linked, in counsel's opinion, with the future risk of the author being again returned to a marriage characterized by violence and abuse. The failure to acknowledge and pay attention to the relationship between the punishment by the author's family for not obeying traditional norms and the violent and abusive nature of her marriage, assessed in conjunction with the lack of efficient protection in Jordan, demonstrates, according to counsel, the lack of a gender-sensitive approach in the examination and assessment of the asylum claim.

¹¹ Counsel also refers to a judgment of the European Court of Human Rights in *A.F. v. France* (application No 80086/13), judgment of 15 April 2015, regarding an asylum seeker using a false identity and whose application had been rejected. Subsequently, he used his true identity and the same asylum motive. The Court decided that his deportation would breach article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

¹² Counsel explains that he finds it strange that the State party has left this information out of its presentation to the Committee. He notes that this information was part of their appeal to the Refugee Appeals Board and that it was only one of several attempts by the husband to reach the author in Denmark. As explained to the Board, he had contacted her, her father, a friend of her father and his own friend in Denmark with threats and a request regarding her return with the children to Jordan.

5.12 The State party's observation that, although the author was born in a refugee camp, she would be entitled as a Jordanian citizen to the same protection as all Jordanians is not based on any reference to available background information. On the contrary, it contradicts the report of the Special Rapporteur on violence against women, who observed that Palestinian women, even if they hold Jordanian nationality, do not enjoy the same protection as native Jordanian women against domestic violence.

State party's additional observations

6.1 The State party presented additional observations by a note verbale of 2 March 2017. It notes preliminarily that the author's comments of 25 November 2015 do not contain new information on her social background or situation in Jordan. The explanations as to the concealed information regarding the United Arab Emirates are a repetition of her explanations to the Refugee Appeals Board on 29 July 2015.

6.2 As to the author's contention that her inconsistent statements should not have led to a negative assessment of her credibility, and that the concealing of information should not have led to an overall rejection of her asylum claim, the State party notes that the Board, in reaching a decision on 13 March 2014, attached decisive importance to the circumstance that the author's account appeared inconsistent and increasingly elaborate on a number of essential points.

6.3 The State party reiterates that, in her communication, the author merely disagrees with the conclusions of the asylum authorities. However, she has not established that the assessment made by the asylum authorities was arbitrary or amounted to a manifest error or a denial of justice. She also failed to identify any irregularity in the decision-making process or any factors that the Board failed to take properly into account.¹³

6.4 With regard to the letter from the author's husband of 22 March 2014 addressed to the Danish police, the State party notes that the author did not refer to that letter in her communication to the Committee. The Board has decided that this letter could not lead to a different assessment of the asylum claim; when viewed in isolation, it does not provide detailed support for the author's claim regarding the risk of gender-based violence in Jordan.

6.5 Regarding the alleged lack of a gender-sensitive approach, the State party notes that the author's asylum application concerned her fear of future gender-based persecution and that the immigration authorities focused on this very issue. This is clearly apparent from the interviews with the author. On 13 March 2014, the author appeared before the Board and the Board took into account her situation, including the fact that she is a woman, when it made its decision on her asylum application.

Author's additional comments

7.1 The author presented additional comments on 3 August 2017. She notes that, on 26 July 2017, she informed her counsel that her husband had contacted her family in Jordan by phone several times, making more threats. She had also learned that her husband had tried to apply for a Schengen visa for Denmark, and she feared that he would reach Denmark and hurt her and the children and force their return.

7.2 In particular, regarding the assessment of her credibility, the author notes that the Refugee Appeals Board, on 13 March 2014, found her statement about the violence and sexual abuse she suffered not to be considered as a fact. She recalls

¹³ The State party further notes that the author has not demonstrated any similarities between her case and the case of *A.F. v. France* (see footnote 14 above).

that she said to the police that she had left the Syrian Arab Republic¹⁴ as a result of the war and because of her sick child and that she wanted to divorce. Before the Danish Immigration Service, she stated that she had a difficult relationship with her spouse, who had forced her to have sex and to cook and who had beaten her and locked her up, that she feared being thrown out of the house and that the children would be taken away by her husband in the event of return. Before the Board, she stated that her relationship with the husband had been pure torture, that he had raped her and beaten her to the point of miscarriage twice and that he had prohibited her from leaving the home and burned her and poured hot oil on her hand.

7.3 The author notes that it is reasonable to assume that an abusive relationship of the nature described, over such a long period, can include other types of abuse, such as beatings resulting in miscarriages, and burning with cigarettes and hot oil, and that it cannot be expected that such details will automatically be given up during an interview in which the author has already described severe domestic abuse. In addition, the additional information she provided on the abuse does not contradict the information about the asylum motive and cannot be seen as an attempt to create an additional asylum motive. The author's statement is supported by the background information on Jordan. There is nothing suspicious about the additional information she provided to the Board. Thus, this information should not have been used to undermine her credibility.

7.4 On 13 November 2017, the author provided further comments. She adduced a statement made by a judge in Irbid, confirming that she had filed a number of cases in 2008 concerning alimony for her and the children and custody, which she later withdrew.¹⁵

State party's further observations

8.1 The State party presented further observations by a note verbale of 23 February 2018. It notes that the author's additional observations of 3 August 2017 reiterate her previous submissions. However, she recounted also having learned that her husband planned to travel to Denmark. In the light of the immigration authorities' consideration regarding the author's credibility, the State party dismisses this information.

8.2 As regards the author's observations of 13 November 2017, the State party notes that they do not contain new factual information. The State party reiterates its position that the author has failed to establish that the assessment by the Board was arbitrary or amounted to a manifest error or a denial of justice. She also failed to identify any irregularity in the decision-making process or any risk factors that the Board failed to properly take into account. She gave highly non-credible and increasingly elaborate accounts throughout the proceedings. Her new submissions cannot lead to a different assessment of her credibility.

8.3 As for the court document appended to her comments of 13 November 2017 as proof that she initiated court proceedings in 2008, the State party notes that it cannot lead to a different conclusion in the case. The document does not render it probable that the author's spouse has been granted full custody of the children by a judgment delivered in 2012. Thus, there is no reason to request an authentication of the document in question. The State party notes that the decision to authenticate documents presented by asylum seekers is based on the overall assessment of, inter alia, the nature and content of the documents, in conjunction with the prospect of whether such verification could lead to a different assessment of the evidence, the

¹⁴ See para. 2.10 above.

¹⁵ No further details provided.

timing and circumstances of the submission of the document and the credibility of the asylum seeker's statements in the light of the general background country information. Making reference to the case law of the European Court of Human Rights, the State party notes that the Board is under no obligation to systematically verify the authenticity of documents in all cases.¹⁶

8.4 The State party further notes that the author has not rendered probable the grounds for asylum. On the contrary, it would be obvious to consider that the case at hand is a family reunification one, as the author's differing statements must be characterized as an attempt to be issued a Danish residence permit in order to remain with her family. Since the State party cannot accept her statements, including those concerning the conflict with her husband, to be facts, it continues to find that it will not breach the Convention's provisions in the event of deportation.

Issues and proceedings before the Committee concerning admissibility

9.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol. 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.

9.2 The Committee notes that the author claims to have exhausted all available domestic remedies and that the State party has not challenged the admissibility of the communication on this ground. The Committee observes that, according to the information available to it, decisions of the Refugee Appeals Board are not subject to appeal before the national courts. Accordingly, the Committee considers that the requirements of article 4 (1) of the Optional Protocol do not preclude it from examining the communication.

9.3 The Committee notes the author's claims that her deportation with her children to Jordan would amount to a violation, by Denmark, of articles 1 and 2 (d), read in conjunction with article 2 (e) and (f), 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, that she disagrees with the conclusions of the asylum authorities and is trying to have her case reassessed, using the Committee as an appeals body, and that she has failed to establish that the assessment by the Board was arbitrary, 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.

9.4 The Committee recalls that under international human rights law, the non-refoulement principle imposes a duty on States parties 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.¹⁷ It also recalls 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, is 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 subject to torture.¹⁸ It reaffirms the obligation of States parties to eliminate discrimination against women, including gender-based violence against women, and recalls that the obligation comprises two aspects of State responsibility for such violence: that which results

¹⁶ See, *J.K. and others v. Sweden* (application No. 59166/12).

¹⁷ See general recommendation No. 32, para. 17.

¹⁸ See general recommendation No. 19, para. 7.

from the acts or omissions of both the State party or its agents, on the one hand, and non-State actors, on the other¹⁹.

9.5 The Committee notes that, in the present case, the State party's asylum authorities found that the author's account lacked credibility owing to a number of factual inconsistencies and a lack of substantiation. The Committee further notes the State party's contention that, in her communication before the Committee, the author failed to adduce any new elements in support of her claims, other than the ones presented before the domestic asylum authorities. It also notes the State party's submission that, in any event, all of the author's allegations were thoroughly examined by the asylum authorities, including by the Refugee Appeals Board, but were dismissed in their entirety, in particular because of the lack of credibility of her claims.

9.6 The Committee recalls that it is generally for the authorities of States parties to the Convention to evaluate the facts and evidence in a particular case,²⁰ unless it can be established that this evaluation was biased or based on gender stereotypes that constitute discrimination against women, or that it was clearly arbitrary or amounted to a denial of justice.

9.7 In the light of the foregoing, and while not underestimating the concerns that may be reasonably expressed with regard to gender-based violence and discrimination in Jordan, the Committee considers that the author has failed to substantiate, for the purposes of admissibility, that the assessment of her case by the Danish asylum authorities, including the Refugee Appeals Board, resulted in any gender-based discrimination. The Committee also considers that no element on file permits it to conclude that the State party's authorities failed to give sufficient and adequate consideration to the author's application for asylum, or that in the process of the examination of her case – that of a female asylum seeker – any procedural defect or arbitrariness could be revealed.

10. The Committee therefore decides that:

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

¹⁹ See general recommendation No. 35 (2017) on gender-based violence against women updating the Committee's general recommendation No. 19, developing the Committee's interpretation of violence against women as a form of gender-based discrimination.

²⁰ See, for example, *R.P.B. v. Philippines* (CEDAW/C/57/D/34/2011), para. 7.5.