



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

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

**Views adopted by the Committee under article 7 (3) of the Optional  
Protocol, concerning communication No. 86/2015\*\***

<i>Communication submitted by:</i>	R.S.A.A. et al (represented by counsel, Marie Louise Frederiksen)
<i>Alleged victim:</i>	The author and her two daughters S.A. and H.A.
<i>State party:</i>	Denmark
<i>Date of communication:</i>	28 April 2015 (initial submission)
<i>References:</i>	Transmitted to the State party on 30 April 2015 (not issued in document form)
<i>Date of adoption of decision:</i>	15 July 2019

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\* Adopted by the Committee at its seventy-third session (1-19 July 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 Chahal, Esther Eghobamien-Msheila, Nâela Gabr, Hilary Ghedemah, Nahla Haidar, Dalia Leinarte, Rosario G. Manalo, Lia Nadaraia, Bandana Rana, Rhoda Reddock, Elgun Safarov, Wenyan Song, Genoveva Tisheva, Franceline Toe Bouda and Aicha Vall Verges.



### Background

1.1 The author of the communication is R.S.A.A., a Palestinian refugee from the Syrian Arab Republic, holding a Jordanian passport, born in 1970. The communication is submitted on behalf of the author and her daughters, S.A. and H.A., born in 1998 and 2005, respectively. The author claims that their deportation from Denmark to Jordan would violate their rights under articles 1 and 2 (d), read in conjunction with article 2 (e) and (f), and article 15 (4) of the Convention. The Convention and the Optional Protocol thereto entered into force for Denmark in 1983 and 2000, respectively. The author is represented by counsel, Marie Louise Frederiksen.

1.2 The author's application for asylum was rejected by the Danish Immigration Service on [REDACTED]. The Refugee Appeals Board dismissed the appeal against that decision [REDACTED]. By letter of [REDACTED], the author requested the Board to reopen the asylum proceedings. On [REDACTED] the Board refused to do so. On [REDACTED], the Danish authorities informed the author that her deportation to Jordan would take place within a few weeks.

1.3 On 30 April, the Committee, acting through its Working Group on Communications under the Optional Protocol, requested the State party to refrain from deporting the author and her children to Jordan pending the consideration of her case by the Committee, pursuant to article 5 (1) of the Optional Protocol and rule 63 of the Committee's rules of procedure. On 7 May, the Refugee Appeals Board suspended the time limit for the departure of the author and her children from Denmark until further notice, in accordance with the Committee's request.

1.4 On 4 February 2016 and 15 December 2016, the Committee denied the State party's requests to lift the interim measures.

### Facts as submitted by the author

2.1 The author is a stateless Palestinian, who was born and raised in [REDACTED] refugee camp of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, in Damascus. She has held a Jordanian passport since her marriage to a Jordanian national in 1990. Following her marriage, she resided in the Syrian Arab Republic and Jordan. The author has five children, three of whom are still residing in Zarqa', Jordan. The author's parents and siblings were granted refugee status in Denmark in 1994.

2.2 The author and her daughters arrived in Denmark in [REDACTED]. The author left Jordan because she and her daughters were subjected to threats and abuse from her husband and his family, who belong to a powerful clan in Jordan. The abuse escalated when the author opposed the forced marriage of her 20-year-old daughter to a much older man. The author raised objections to the marriage and, as a result, she was beaten up and tortured by her husband.

2.3 Subsequently, at the beginning of August 2012, an older man asked to marry the couple's middle daughter, who was 15<sup>1</sup> years old at the time. The man was about 35 years old. The author pretended to consent to the marriage but decided to flee to Denmark with her daughters, lying to her husband that they would only travel there to visit with the author's purportedly sick mother.

2.4 The author needed a declaration of consent, signed by her husband and registered with the police in Zarqa', in order to travel outside of Jordan without him. The author managed to convince her spouse of the necessity of her visit to Denmark

<sup>1</sup> As submitted by the author. Refers to S.A., who was 14 years old in August 2012.

and of her taking their two youngest daughters with her. The author presented the signed declaration to the authorities both in the context of the visa application process and at the airport before her departure.

2.5 On \_\_\_\_\_, the author and her two daughters entered Denmark with their Jordanian passports and valid visas issued by the Embassy of Denmark to Jordan.

2.6 On \_\_\_\_\_ the author submitted an application for asylum, which was rejected by the Danish Immigration Service on \_\_\_\_\_. On \_\_\_\_\_ the Danish Refugee Appeals Board upheld the refusal of the author's asylum application. The Board concluded that the author's claims lacked credibility, given that her explanations and account of facts were evasive, unclear and at some points inconsistent and appeared to have been fabricated.

2.7 In March 2014, the author learned that her husband was accusing her of kidnapping their two daughters who had accompanied her to Denmark. The author's son, who was still residing in Jordan, had overheard a conversation between the author's husband and his family in which reference was made to a warrant for the arrest of the author. A few weeks later, the author's son had the opportunity to take a photograph of the arrest warrant, according to which, on \_\_\_\_\_ August 2013, the author had been sentenced in absentia to two years' imprisonment for the abduction of her daughters.

2.8 On \_\_\_\_\_, the author requested the Refugee Appeals Board to reopen her asylum case on the basis of the arrest warrant. On \_\_\_\_\_, the Board rejected that request on the presumed grounds that the arrest warrant had been fabricated with a view to substantiating the author's asylum claim.

2.9 On \_\_\_\_\_ the Danish authorities informed the author that the deportation to Jordan would take place within a few weeks.

2.10 The author contends that she has exhausted all available domestic remedies and that the communication is not being examined under any other procedure of international investigation or settlement.

### Complaint

3.1 The author claims that the State party would breach its obligations under articles 1 and 2 (d), read in conjunction with article 2 (e) and (f), and article 15 (4) of the Convention by returning her and her daughters to Jordan.

3.2 With respect to articles 1 and 2 (d), read in conjunction with article 2 (e) and (f), she claims that, upon their return to Jordan, she and her daughters will be subjected to inhuman and degrading treatment, domestic violence and serious abuse. In particular, she fears the rage of her husband, because she has dishonoured him, and she fears that he will kill her and their daughters. The author noted that, for 25 years, she lived in a marriage in which she and her children were exposed to violence and degrading treatment and were under the permanent control of her husband and that she had no prospect of seeking protection from the Jordanian authorities, given their discriminatory practices and the powerful status of her husband's family, facts which together can be characterized as gender-related discrimination and violence. She claims that her travel to Denmark, the subsequent threats from her spouse and the warrant issued for her arrest have only intensified the conflict between her and her husband. She submits that, notwithstanding her repeated requests in the context of the asylum proceedings, the State party authorities failed to apply a gender-sensitive approach. In that regard, she refers to the Committee's general recommendation No. 19 (1992) on violence against women and general recommendation No. 32 (2014)

on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women.

3.3 The author also notes that, upon her return, she would not be able to seek protection from the Jordanian authorities, owing to legislation, legal practices and cultural norms that are discriminatory against women in the country.<sup>2</sup> She adds that, even though she holds a Jordanian passport, she is a stateless Palestinian refugee and her status renders her even more defenceless before the Jordanian authorities.

3.4 She submits that, considering that a warrant has been issued for her arrest and that she has been sentenced in absentia to two years' imprisonment, she will be arrested upon her return to Jordan. Her spouse will therefore be granted full custody of their daughters, whom she will be unable to defend. Furthermore, the author submits that she will be coerced into accepting the forced marriage of her daughter to a much older man.

3.5 The author also submits that weight should be given to the fact that she has no family ties in Jordan and has lived an isolated life, in which she has been controlled by her husband, and therefore has no social network to support her in case of her return.

3.6 The author further submits that, having been required to seek permission from her spouse to leave Jordan with her daughters, in accordance with the existing practice of the Jordanian authorities, amounts to a violation of her rights under article 15 (4) of the Convention.<sup>3</sup>

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

4.1 On 30 October 2015, the State party submitted its observations on the admissibility and the merits of the communication and requested that the Committee lift its request for interim measures of protection.

4.2 The State party recalls the facts of the case,<sup>4</sup> and provides a comprehensive description of the organization, composition, duties, prerogatives and jurisdiction of the Refugee Appeals Board. It also takes into account the guarantees safeguarding the fairness of asylum proceedings, including legal representation, the presence of an interpreter and the right to appeal. It notes that the Board has a comprehensive collection of general background materials on the human rights records of the

<sup>2</sup> In that regard, she refers to various background materials, such as the concluding observations of the Committee against Torture on the second periodic report of Jordan (CAT/C/JOR/CO/2); the report of the Special Rapporteur on violence against women, its causes and consequences on her mission to Jordan (A/HRC/20/16/Add.1); and the study of women's rights in the Middle East and North Africa conducted by Freedom House in 2010. Available from <https://freedomhouse.org/report/women039s-rights-middle-east-and-north-africa/womens-rights-middle-east-and-north-africa-2010>.

<sup>3</sup> Under the Provisional Passport Law of Jordan, women are no longer required to seek their husband's permission before obtaining or renewing their travel documents, however, social norms continue to play a major role in that regard and, in practice, women and their children are barred from traveling by their husbands.

<sup>4</sup> The State party submits that the author entered Denmark with her two minor children on \_\_\_\_\_ with a valid Schengen visa for Denmark issued by the Norwegian Embassy in Amman. The State party notes that, according to the facts as presented before the Danish authorities, the author, after having stayed in Denmark for about one month, then travelled on to Sweden, where she applied for asylum on \_\_\_\_\_. On \_\_\_\_\_, Sweden requested that Denmark take back the author, in compliance with the relevant provisions of the Dublin Regulation. On \_\_\_\_\_ Denmark agreed to that request. The author entered Denmark on \_\_\_\_\_ and applied for asylum on the same date.

countries of origin of asylum seekers, which is regularly updated and duly considered in decision-making processes.

4.3 The State party submits that, insofar as the author relies on the Convention having extraterritorial effect, the Convention has such an 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>5</sup> Given that the author has failed to substantiate that she faces such a risk should she be forcibly returned to Jordan, the communication should be declared inadmissible as manifestly ill-founded, under article 4 (2) (c) of the Optional Protocol.

4.4 Should the Committee find the communication to be admissible and consider the merits of the case, the State party asserts that the author has not sufficiently substantiated the claim that she would be exposed to a real, personal and foreseeable risk of serious forms of gender-based violence if, together with her children, she were to be returned to Jordan. The State party observes that the author has failed to produce new and specific information on her situation additional to the information on the basis of which the Refugee Appeals Board denied her asylum request.

4.5 The State party recalls that the author's statements before the Danish Immigration Service and the Refugee Appeals Board were inconsistent. During the interviews before the Danish authorities, the author submitted that she had lived in an oppressive and violent relationship in which she was being surveilled and was not allowed to leave the house without being accompanied by a man. The State party found it unlikely that, had that been the case, the author's spouse would have allowed her to travel unaccompanied to another country with their daughters, especially considering that one of them was about to be married. It is even more doubtful, considering the fact that the author had expressly objected to the forced marriage of their older daughter, so her position regarding the issue must have been clear to her husband and should have raised doubts as to the author's explanation for her travel.

4.6 The State party also finds the author's assertion that her husband allowed their daughters to accompany the author to Denmark only because they were too young to take care of themselves to be non-credible. In that connection, the State party submits that the author, according to her own statement, had lived together with her husband's family in Jordan, so it is therefore implausible that there was no one who could look after her daughters, who were born in 1998 and 2005.

4.7 In addition, the State party questions the author's statement in which she claimed that she had convinced her husband to allow her to travel to Denmark by voluntarily assisting him in his illegal activities. The State party also doubts the author's statement about the killing of her cousin by her spouse. In that respect, the State party notes that the author mentioned that information for the first time at her meeting with counsel on \_\_\_\_\_ and repeated it at the hearing before the Refugee Appeals Board on \_\_\_\_\_ had failed to mention any of it earlier, despite its importance and her numerous opportunities to do so either in the application itself or subsequently, during the interview process.<sup>6</sup> The State party does not find the author's excuse in that regard, that she could not reveal the information because she was afraid of retaliation by her family, to be credible. The State party submits that the author must have realized the importance of the information from the perspective of the assessment of her asylum request, and that the author was duly informed of the Danish authorities' duty of confidentiality with regard to all

<sup>5</sup> The State party refers to the decision of the Committee in *M.N.N. v. Denmark* (CEDAW/C/55/D/33/2011), in that regard.

<sup>6</sup> The information at issue was not mentioned by the author in her initial submission to the Committee either.

information revealed by the author in the context of the proceedings. The State party observes that the Refugee Appeals Board also attached importance to several other inconsistent statements.<sup>7</sup>

4.8 With regard to the author's request to reopen the asylum proceedings, the State party observes that the author's general credibility is weakened by the fact that the Refugee Appeals Board could not accept as facts the author's statements concerning her original grounds for asylum. In addition, the Board found the author's statement that her children had gained knowledge about the arrest warrant by coincidence, when they happened to overhear the author's spouse talking about it in May 2014, to be unconvincing, in particular given that she failed to provide a reasonable explanation for how the document had come into her children's possession. The State party submits that it agrees with the finding of the Board that the arrest warrant was fabricated for the occasion. The State party notes in that respect that, given the assessment of the author's credibility, there was no reason to request verification of the authenticity of the document.<sup>8</sup> It is also observed that the author has produced no further documentation evidencing the action brought against her in Jordan for kidnapping her daughters.

4.9 With regard to the author's vulnerable status before the Jordanian authorities as a Palestinian refugee, the State party observes that, although she was born in a refugee camp, the author is a Jordanian national and holds a Jordanian passport and that she can therefore rely on the same rights as other Jordanian nationals. Given that the State party authorities were unable to accept the author's allegations as facts regarding her ill-treatment throughout her marriage or the future risk of being subjected to ill-treatment, the State party did not find it necessary to assess whether the Jordanian authorities were able to ensure protection for the author and her daughters upon their return.

4.10 The State party underlines that the fact that the Refugee Appeals Board made no explicit reference to the Convention in its decision does not mean that its provisions were not taken into account. It is recognized in the case law of the Board that certain kinds of abuse against women perpetrated by private individuals, including their spouses, may be of a scope or intensity as to amount to persecution if the authorities are not able or willing to offer protection to the woman concerned. The

<sup>7</sup> At the hearings on — and — before the asylum authorities and at the meeting with counsel on — the author stated that she could not report the ill-treatment inflicted by her husband to the police because she was not allowed to leave the house unaccompanied and due to the powerful position of her husband's family, which had good connections with the authorities. However, at the hearing before the Refugee Appeals Board on —, the author asserted that she had contacted the local authorities on one occasion. In addition, the author has also submitted conflicting information about whether it was her son or her daughter who had accompanied her to the Embassy of Denmark to Jordan, in Amman, and had knowledge of her real plan of not returning to Jordan. Other inconsistencies in the author's statements have also been detected: on one occasion, she claimed not to have had any contact with her husband since her departure, whereas on other occasions she alleged that it was her husband who had threatened to kill her cousin on the phone and who eventually informed her about the killing of her cousin.

<sup>8</sup> When determining whether to request verification of the authenticity of documents produced by asylum seekers, the Refugee Appeals Board makes an overall assessment of, inter alia, the nature and contents of the documents. It also considers whether such verification could lead to a different assessment of evidence, the timing and circumstances of the production of the documents and the credibility of the asylum seeker's statement in the light of the general background information available on the particular country. In order to substantiate that the Board is under no obligation to request verification of authenticity of the documents in all cases, the State party refers to the decision of 23 August 2016 of the European Court of Human Rights in *J.K. and others v. Sweden* (application no. 59166/12).

State party's immigration authorities have specifically focused on clarifying the author's fear of gender-related persecution upon her return to Jordan.

4.11 The State party observes that due weight was accorded to the fact that the author did not apply for asylum<sup>9</sup> until five months after her departure from her country of origin and that she decided to destroy her passport and provided no other documents to substantiate her statements.

4.12 The State party considers that the overall situation in Jordan cannot independently justify the granting of asylum. The State party has taken into account the background information available on Jordan,<sup>10</sup> which could not provide justification for the author's asylum request in terms of the alleged risk of persecution.

4.13 The State party concludes that the Refugee Appeals Board, a collegial body of a quasi-judicial nature, made a thorough assessment of the author's credibility, all the background information available on the particular country and the author's specific circumstances. They led to the conclusion that the author had failed to render it probable that upon their return to Jordan, she and her daughters would risk persecution or abuse justifying their request for asylum. The author's communication merely reflects her disagreement with the assessment of her case by the Board, and she has failed to identify any irregularity in the decision-making process or any risk factors that the Board failed to duly consider. The author attempts to use the Committee as an appellate body to have the factual circumstances in support of her claim for asylum reassessed by the Committee. The State party submits that the Committee must give considerable weight to the determination of the Board, which is better placed to assess the factual circumstances of the author's case. It is therefore the view of the State party that there is no basis for doubting, let alone setting aside, the assessment made by the Board, according to which the author failed to establish that there are substantial grounds for believing that she would be at risk of being subjected to a real, personal and foreseeable risk of persecution if she and her daughters were returned to Jordan. It would therefore not constitute a breach of articles 1 and 2 (d), read in conjunction with article 2 (e) and (f), or article 15 (4) of the Convention to return the author and her children to Jordan.

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

5.1 On 26 January 2016, the author contested the State party's arguments on both the admissibility and merits of her case.

5.2 With regard to the author's credibility, she claims that the threshold for accepting asylum applications should be measured not against the probability, but against the reasonable likelihood, that the claimant has a well-founded fear of persecution or that she would be exposed to persecution upon return.<sup>11</sup> She argues that, in the assessment of her credibility, the State party failed to adopt a gender-sensitive approach and gender-sensitive procedural safeguards. She asserts that the background material submitted in her initial complaint should have been taken into account irrespective of the State party's assessment of her credibility. She submits that the State party failed to consider the cumulative effects of the presented facts and to address significant issues such as: (a) her grievances experienced throughout her

<sup>9</sup> She applied for asylum in Sweden first, in \_\_\_\_\_.

<sup>10</sup> In addition to the background materials cited in her initial complaint, she refers to the country reports on human rights practices issued by the Department of State of the United States of America in 2014.

<sup>11</sup> In that regard, the author refers to the Committee's general recommendation No. 32 and its views in *A. v. Denmark* (CEDAW/C/62/D/53/2013).

marriage in the past; (b) her fear for her daughters, especially her middle daughter, who faces forced marriage upon her return;<sup>12</sup> (c) the author's fear of being returned to Jordan; (d) the fact that she left behind her other children; (e) her Palestinian refugee status that may force her to seek refuge in a settlement for internally displaced persons or a refugee camp upon her return, owing to her lack of family ties or social network in Jordan.

5.3 The author reiterates that her removal to Jordan would constitute a breach of articles 1 and 2 (d), read in conjunction with article 2 (e) and (f), and article 15 (4) of the Convention.

#### **State party's additional observations**

6.1 On 7 November 2016, the State party submitted its additional observations.

6.2 The State party upholds its observations of October 2015 and, in response to the author's specific comments on the lack of a gender-specific approach in the assessment of her case, it submits that, in the course of examining the author's case, the State party authorities specifically focused on clarifying the issue of gender-specific persecution, which was exactly what was at stake for the author in the particular case, so the assessment therefore must have had a gender-specific dimension.

6.3 In relation to the author's claims challenging the decision of the Refugee Appeals Board not to request verification of the authenticity of the arrest warrant, the State party upholds its arguments as set out in its previous observations.

6.4 Regarding the alleged vulnerability of the author as a Palestinian refugee, the State party reiterates that the author holds a Jordanian passport and, as a Jordanian national, that she has the same rights as other Jordanian nationals. The State party refutes the author's assertion that it did not take into account the background material submitted in her initial complaint and submits that the Refugee Appeals Board undertook an overall assessment of all circumstances relied upon by the author together with all available background information on Jordan, including those submitted by the author.

6.5 In the light of the above, and considering that the author's additional comments do not give rise to a different assessment of her case, the State party submits that the communication should be declared inadmissible as not being sufficiently substantiated. Should the Committee consider the case on the merits, the State party is of the view that the removal of the author would not constitute a violation of the Convention.

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

##### *Consideration of admissibility*

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

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

<sup>12</sup> The author contends that the State party failed to adopt a gender-sensitive approach not only with regard to her claims but with regard to her children's claims as well and, in that regard, invokes articles 3 and 22 of the Convention of the Rights of the Child, in conjunction with article 5 (a) of the Convention on the Elimination of All Forms of Discrimination against Women.

7.3 The Committee notes that the author claims to have exhausted all domestic remedies and that the State party has not challenged the admissibility of the communication on that 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.

7.4 The Committee notes the author's claim of violations under articles 3 and 22 of the Convention on the Rights of the Child. In the absence of any other information of pertinence on file, the Committee considers that part of the communication to be inadmissible under article 4 (2) (c) of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

7.5 The Committee also notes the author's claim under article 15 (4) of the Convention, insofar as, according to Jordanian authorities' practice, she was required to seek her husband's permission to leave Jordan with their children. The Committee considers that the author's claim in this respect does not fall under the responsibility of the State party but that of Jordan. Furthermore, the Committee is not satisfied that such practice would amount to a serious form of gender-based violence, and therefore, in the absence of any other information of pertinence on file, the Committee considers that part of the communication to be inadmissible under article 4 (2) (c) of the Optional Protocol.

7.6 The Committee notes that, relying on articles 1 and 2 (d), read in conjunction with article 2 (c) and (f), of the Convention, the author claims that, if the State party returned her and her daughters to Jordan, they would be personally exposed to a risk of serious forms of gender-based violence. 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 owing to a lack of substantiation.

7.7 The Committee reiterates that, according to its jurisprudence, the Convention has extraterritorial effect only when the woman to be returned will be exposed to a real, personal and foreseeable risk of serious forms of gender-based violence.<sup>13</sup>

7.8 The Committee further recalls that, under article 2 (d) of the Convention, States parties undertake to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions act in conformity with that obligation. The Committee further refers to its general recommendation No. 32, in paragraph 21 of which it noted that, under international human rights law, the non-refoulement principle imposed a duty on States to refrain from returning a person to a jurisdiction in which he or she might face serious violations of human rights, notably arbitrary deprivation of life or torture or other cruel, inhuman or degrading treatment or punishment. Furthermore, the Committee notes that State parties must prevent statelessness through legislative provisions making the loss or renunciation of nationality contingent on possession or acquisition of another nationality, and allow the reacquisition of nationality for women left stateless owing to the absence of such safeguards.<sup>14</sup> The Committee also refers to its general recommendation No. 19, in paragraph 7 of which it noted 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, was discrimination within the meaning of article 1 of the Convention, and that such rights included the right to life and the right not to be subjected to torture. The Committee further developed its interpretation of violence against women as a form of gender-based

<sup>13</sup> See, for example, *M.N.N. v. Denmark*, para. 8.10.

<sup>14</sup> General Recommendation No. 32, para. 63(e).

discrimination in its general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19. In paragraph 21 thereof, it reaffirmed the obligation of States parties to eliminate discrimination against women, including gender-based violence against women, stating that the obligation comprised two aspects of State responsibility for such violence, that which resulted from the acts or omissions of both the State party or its actors, on the one hand, and non-State actors, on the other. A State party would therefore violate the Convention if it returned a person to another State where it was foreseeable that serious gender-based violence would occur. Such violation also occurs when no protection against the identified gender-based violence can be expected from the authorities of the State to which the person is returned. What amounts to serious forms of gender-based violence will depend upon the circumstances of each case and needs to be determined by the Committee on a case-by-case basis at the merits stage, provided that the author has made a prima facie case by sufficiently substantiating her allegations.<sup>15</sup>

7.9 In the present case, the author submits that, by returning her and her daughters to Jordan, the State party would expose them to serious forms of gender-based violence inflicted by her husband and his family. In view of the information provided, the Committee considers that the author's claims are sufficiently substantiated for the purposes of admissibility. Accordingly, it proceeds to their examination on the merits.

#### *Consideration of the merits*

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

8.2 The Committee takes note of the author's claims that she was subjected to gender-based violence during her marriage and further that she and her daughters were subjected to threats and abuse from the husband and his family. The Committee also takes note of the author's assertion regarding the intensified conflict between her and her husband and her fear that, if deported, she and her daughters would continue to be exposed to gender-related violence and abuse by her husband and his family and to be under their control, in the absence of a network there. She will have no prospect of seeking protection from the Jordanian authorities, owing to discriminatory legal practices in Jordan and the powerful position of her husband's family. In addition, her status as a Palestinian refugee renders her even more defenceless before the Jordanian authorities. The Committee further takes note of the alleged conviction of the author in Jordan for having kidnapped her own daughters and the arrest warrant subsequently issued against her. The Committee also takes note of the author's claim that the eldest daughter was forcibly married and that, upon return, her middle daughter will be subjected to forced marriage, as well.

8.3 The Committee recalls the State party's contention that all of the author's allegations were thoroughly examined by the State party immigration authorities and observes that they were dismissed in their entirety because the authorities found that the author's account lacked credibility, owing to a number of factual inconsistencies and also based on lack of substantiation.<sup>16</sup> Apart from the author's contentions, the

<sup>15</sup> See communication No. 53/2013, *A. v. Denmark*, (CEDAW/C/62/D/53/2013), para. 8.6.

<sup>16</sup> In considering the author's statement that she was being kept under permanent surveillance in Jordan, the asylum authorities found it to be unlikely that, had that been the case, the author's spouse would have allowed her to travel unaccompanied to another country with their daughters, especially given that one of them was about to be married. Taking into account that the author, according to her own statement, had lived together with her husband's family in Jordan, the asylum authorities also found it implausible that she had only managed to gain the consent of her husband by telling him that their children were too young to take care of themselves and that no

Refugee Appeals Board also found the arrest warrant against the author, on which ground she requested the reopening of her case, to be fabricated for the occasion, given the circumstances of how the author came into possession of the document. The Committee notes in this respect that, on the basis of the assessment of the author's credibility, the Refugee Appeals Board did not find it necessary to request the verification of the authenticity of this document.

8.4 In this connection, the Committee recalls that it is generally for the authorities of States parties to the Convention to evaluate the facts and evidence and the application of national law in a particular case,<sup>17</sup> unless it can be established that the evaluation was biased or based on gender stereotypes that constitute discrimination against women, was clearly arbitrary or amounted to a denial of justice. The issue before the Committee is therefore whether there was any irregularity and arbitrariness in the decision-making process regarding the author's asylum application to the extent that the State party authorities failed to properly assess the risk of serious gender-based violence in the event of her and her daughters' return to Jordan. The Committee reiterates that in carrying out their assessment, States parties should give sufficient weight to the real and personal risk that a person might face if deported.

8.5 In the present case, the Committee considers that it was incumbent upon the State party to undertake an individualized assessment of the real, personal and foreseeable risk that the author would face as a woman who has knowingly abandoned her violent husband and fled the country with their two under-aged daughters who risked a forced marriage in Jordan, rather than relying exclusively on a number of inconsistent statements and the inferred non-credibility of the author. In this connection, the Committee recalls its most recent concluding observations on Jordan published in 2017, in which it expressed concern about the persistence of deep-rooted discriminatory stereotypes concerning the roles and responsibilities of women and men in the family and in society, which overemphasize the traditional role of women as mothers and wives, thereby undermining women's social status, autonomy, educational opportunities and professional careers. It notes with concern that patriarchal attitudes are on the rise within State authorities and society, and that gender equality is being openly and increasingly challenged by conservative groups.<sup>18</sup> These observations are particularly relevant not only to the assessment of risks the author herself allegedly faces upon her return, but also in relation to the assessment of risks her daughters would face, namely forced marriage in Jordan. In that respect, the Committee notes that this latter claim in relation to the author's daughters, however, does not seem having given any specific consideration by the Refugee Appeals Board or other authority.

8.6 The Committee further observes that relying heavily on the author's credibility assessment, the Board decided not to request verification of the authenticity of the arrest warrant issued against her and, presuming that the document indeed existed, to assess the risks the author as a woman and as a citizen of Palestinian origin, would face if she was prosecuted for the abduction of the children.

8.7 The Committee also notes the author's contention that she has no prospect of seeking protection from the Jordanian authorities, given their discriminatory practices

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one else could look after them. Furthermore the State party found the author's statements regarding her husband's illegal activities and her alleged involvement in such activities, as well as the killing of her cousin, to be non-credible. The author's explanation for not bringing that important information to the knowledge of the asylum authorities in her initial complaint or during the subsequent interviews was also deemed to be non-credible.

<sup>17</sup> See, for example, *R.P.B. v. Philippines* (CEDAW/C/57/D/34/2011), para. 7.5.

<sup>18</sup> See Concluding Observations on the sixth periodic report of Jordan (Concluding observations (2017) CEDAW/C/JOR/CO/6), adopted by the Committee at its sixty-sixth session (13 February-3 March 2017).

and the powerful status of her husband's family. The Committee observes the State party's submission in response to this claim declaring that since the State party authorities were unable to accept the author's allegations as facts regarding her ill-treatment throughout her marriage or the future risk of being subjected to ill-treatment, the State party did not find it necessary to assess whether the Jordanian authorities were indeed unable to ensure adequate protection for the author and her daughters upon their return. In that regard, the Committee recalls that, in line with paragraph 29 of its general recommendation No. 32, "as a matter of international law, the authorities of the country of origin are primarily responsible for providing protection to the citizens, including ensuring that women enjoy their rights under the Convention, and that it is only when such protection is not available that international protection is invoked to protect the basic human rights that are seriously at risk". In the present case, the Committee is of the view that the author's claim that she could not seek the protection of the authorities in Jordan prior to her departure and that she will not be able to do so upon her return should not have been rejected straightforwardly by the State party's authorities, especially taking into account the level of tolerance towards violence against women, in particular the persistence of so-called honor crimes despite recent legal amendments, the pattern of failure in responding to women's complaints of abuse in Jordan, and the continuous recourse of the Jordanian authorities to administrative detention or "protective custody" of women and girls at risk of becoming victims of those crimes, which are reflected in the Committee's concluding observations on Jordan and further country information provided by the author.<sup>19</sup>

8.8 Lastly, the Committee also considers that the State party accorded no due weight to the author's vulnerable status as a Palestinian refugee especially in light of the concluding observations on Jordan and other reports, in which concern was expressed about instances of arbitrary withdrawal of Jordanian nationality from citizens of Palestinian origin, including women. The Committee underlines that the withdrawal of nationality in the author's case would render her stateless and that the Committee has already expressed its concerns about the vulnerable status of stateless women in Jordan particularly in relation to the gender-related dimension of their situation. Therefore, the Committee considers that a more thorough risk assessment would have been required by the exigencies of the case.

8.9 In view of the above findings, the Committee concludes that the State party failed to give sufficient consideration to the author's and her daughter's real, personal and foreseeable risk of serious forms of gender-based violence in case of return to Jordan.

9. Accordingly, acting under article 7 (3) of the Optional Protocol to the Convention, the Committee concludes that the State party has failed to fulfil its obligations and the author's and her daughters' deportation would amount to a breach of articles 2 (d) (e) and (f) of the Convention, read in conjunction with article 1 of the Convention, taking into consideration general recommendations No. 19 and No. 35.

10. The Committee therefore makes the following recommendations to the State party:

- (a) Concerning the author of the communication and her daughters:
  - (i) To reopen the author's and her daughters' asylum case taking into account the Committee's views and;

<sup>19</sup> Concluding Observations on Jordan, see para. 33.

- (ii) To refrain from forcibly returning them to Jordan, where they would be at real, personal and foreseeable risk of being subjected to severe forms of gender-based violence.
- (b) General:
- (i) To take all measures necessary to ensure that victims of gender-related forms of persecution who are in need of protection, regardless of their status or residence, are not returned under any circumstance to any country in which their life would be at risk or where they might be subjected to gender-based violence, or to torture or ill-treatment;
- (ii) To ensure that the threshold for accepting asylum applications is measured not against the probability but against the reasonable likelihood that the claimant has a well-founded fear of persecution or that she would be exposed to persecution on return;
- (iii) To ensure that women asylum seekers have timely information on the importance of the first interview and what constitutes relevant information in that context;
- (iv) To ensure that, whenever necessary, examiners use all the means at their disposal to produce and/or verify the necessary evidence in support of the application, including by seeking and gathering gender-relevant information from reliable governmental and non-governmental sources on human rights in the country of origin and taking all necessary measures in that regard;
- (v) To ensure when interpreting all legally recognized grounds for asylum; to classify gender-related claims under the grounds of membership of a particular social group, where necessary; and to consider adding sex and/or gender and other status to the list of grounds for refugee status in the national asylum legislation;
11. In accordance with article 7 (4) of the Optional Protocol, the State party shall give due consideration to the views of the Committee, together with its recommendations, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee. The State party is also requested to publish the Committee's views and recommendations and to have them widely disseminated in order to reach all relevant sectors of society.