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The Secretary General of the United Nations (Office of the High Commissioner for Human Rights) presents his compliments to the Permanent Representative of Denmark to the United Nations Office at Geneva and has the honour to transmit herewith the final text (advance unedited) of the Views adopted by the Committee on the Elimination of Discrimination against Women on 19 November 2015, concerning communication No. 53/2013, which was submitted for consideration under the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women, on behalf of Ms. A.

The Secretary General has the honour to draw the attention of the State party to the Committee's determination in paragraph 11 of the Views that article 2 (c) and (d) of the Convention have been violated. Pursuant to the Committee's request in paragraph 12, the State party is requested to inform the Committee, within six months of the transmittal of the Views, of all measures taken to give effect to the Views.

In accordance with established practice, the text of the Views will be made public.



7 December 2015





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

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**Advance unedited version**

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

**Communication No. 53 /2013**

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

*Submitted by:* A. (represented by counsel, Niels-Erik Hansen)

*Alleged victim:* The author

*State party:* Denmark

*Date of communication:* 11 April 2013 (initial submission)

*References:* Transmitted to the State party on 12 April 2013  
(not issued in document form)

*Date of adoption of views:* 19 November 2015

## Annex

### **Decision of the Committee on the Elimination of Discrimination against Women under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (sixty-second session)**

concerning

#### **Communication No. 53/2013\***

*Submitted by:* A. (represented by counsel, Niels-Erik Hansen)

*Alleged victim:* The author

*State party:* Denmark

*Date of communication:* 11 April 2013 (initial submission)

*The Committee on the Elimination of Discrimination against Women*, established under article 17 of the Convention on the Elimination of All Forms of Discrimination against Women,

*Meeting on 19 November 2015,*

*Adopts the following:*

#### **Views under article 7 (3) of the Optional Protocol**

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

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

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

**Facts as submitted by the author**

2.1 The author is an illiterate woman from the Christian minority in Punjab, who was raised in a village in Pakistan where she lived until she married her husband, a Pakistani with Danish permanent residence permit. The author and her husband have two children, born in 2009 and 2011. They met when her husband visited Pakistan in 2007. In 2008, they married in a church in Pakistan without the consent and knowledge of their respective families, because the author's husband was then expected to marry another woman. After the marriage, the author and her husband lived together for about two months in another village. The husband then returned to Denmark. Before his return, he found an accommodation for the author who had to live there alone because she was rejected by both families. During this period, The author was also supported financially by her husband. The husband then decided to take the author to Denmark. In 2009, she obtained a visit visa and was able to go there, but she had to return to Pakistan in May 2009 after her request for a permanent residence permit was rejected.<sup>1</sup> Back in Pakistan, she began working in a beauty salon in June 2009.

2.2 In July 2009, three men broke into the author's house, beat her, kicked her, threw inflammable liquid at her and set fire to her clothes, causing severe burns to her torso and arms. The men accused her of performing "dirty work", alleging that she was a prostitute. The attack occurred six days after a group of men had broken into the beauty salon and committed vandalism, accusing the employees of performing "dirty work" and calling the place a "sex clinic". After this attack, the author never returned to the salon. Following the attack at her house, the author stayed in a hospital for around seven or eight months to recover from her burns, period during which she gave birth to her first child. The author believes that the two attacks she suffered are linked and were organized by her husband's family. She claims that she did not make a complaint to the police because one of her acquaintances told her that, as she was considered a prostitute, the police did not take any action when her neighbors alerted them about the referred incident.

2.3 The author further alleges that in March 2010, while she was taking her son to the hospital in a taxi, unknown men on motorbikes shot at them. She considers that this was a deliberate act because the men came very close to the car to shoot at her. She was not injured, but the driver was. The author again did not report the incident to the police, because she knew that they would not take any action because of the rumors about her supposed work as a prostitute.

2.4 The author arrived in Denmark on 8 June 2010, on a visa valid until 20 September 2010. She requested family reunification on 19 July 2010, which was denied on 12 January 2011 by the Danish Immigration Service. She appealed this decision before the Ministry of Refugees, Immigration and Integration Affairs. On 17 June 2011, the Ministry upheld the decision of the Danish Immigration Service. On 15 September 2012, the author was arrested by the police for illegal stay in Denmark. She remained in detention until 15 October 2012. On 16 September 2012, she applied for asylum, claiming that she feared that her life would be in danger in case of return to

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

Pakistan. The Danish Immigration Service rejected her request for asylum on 22 January 2013<sup>2</sup>, considering that, according to background information, women in Pakistan were under the control of male family members, and that it was therefore unlikely that the author would have decided to marry without the consent of her family or of her husband's family. The Danish Immigration Service further considered that the author's argument to that regard was constructed for the purpose of the request. The Service also considered that the family of the author's husband had never threatened her, and that her fears were therefore groundless, and that the events referred by the author as evidence of threat (the attacks at the beauty salon, at the author's home and in the taxi), were general, isolated and passed criminal matters. Furthermore, the Service concluded that the author's allegations were not credible as it had taken her two years to apply for asylum after her arrival to Denmark, and that if her fears were justified, she could submit a complaint to the Pakistani authorities, even if she was really considered a prostitute.<sup>3</sup>

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

### **Complaint**

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

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

### **State party's observations on admissibility**

4.1 On 12 June 2013, the State party submitted its observations on the admissibility of the communication. It indicates that the author's husband obtained a residence permit for Denmark in May 2005 on the basis of his marriage to a Danish national in May 2002. The

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<sup>2</sup> The author provided an unofficial translation of the decision of the Danish Immigration Service.

<sup>3</sup> No further information is provided on the argument of the Danish Immigration Service.

author's husband divorced his then-spouse in March 2007 and married the author in Pakistan in 2008. The State party indicates that the author's children with her husband have residence permits in Denmark under the family reunification section of the Aliens Act. The author's application for family reunification, submitted on 19 July 2010, was rejected on 12 January 2011 by the Danish Immigration Service. On 17 June 2011, that decision was upheld by the Ministry of Refugee, Immigration and Integration Affairs, which requested the author to leave the country. On 15 September 2012, the national police came across the author, detained her, and charged her with illegal stay in Denmark. On 16 September 2012, the Service decided to expel the author, and she applied for asylum.

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

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

4.4 The State party argues that the communication should be declared inadmissible *ratione loci* and *ratione materiae* under articles 2 and 4 (2) (b) of the Optional Protocol because Denmark was not responsible under the Convention for the acts cited as the basis

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

for the author's communication. Whereas the Convention has no explicit jurisdiction clause limiting its scope of application, article 2 of the Optional Protocol clearly provides that communications "may be submitted by or on behalf of individuals ... under the jurisdiction of a State party, claiming to be victims of a violation of any of the rights set forth in the Convention by that State party". Accordingly, the right of individual petition is clearly limited by a jurisdiction clause. The State party acknowledges that the author is currently under Danish jurisdiction. However, her claims do not rest on any treatment that she would suffer in Denmark, but rather on consequences that she might suffer if she is returned to Pakistan. Therefore, the only conduct by a Danish authority of which the author has complained is the decision to remove her to a place where she will allegedly suffer discriminatory treatment contrary to the Convention. The decision to return the author to Pakistan, however, cannot engage the State party's responsibility under articles 1, 2 (c) and (d), 3, 12, 15 or 16 of the Convention.

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

4.6 The State party further submits that the question of extraterritorial effect has not been directly addressed in any published jurisprudence of the Committee, and that there is no jurisprudence to indicate that the relevant provisions of the Convention have any extraterritorial effect.<sup>5</sup> The European Court of Human Rights, however, clearly stressed in its case law<sup>6</sup> the exceptional character of the extraterritorial protection of the rights contained in the European Convention for the Protection of Human Rights and Fundamental Freedoms.

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

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

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

<sup>7</sup> The State party refers to Sarah Joseph, Jenny Schultz and Melissa Castan, eds., *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary*, 2nd ed. (New York,



4.8 The State party refers to the definition of gender-based violence as «a form of discrimination that can impair or nullify the enjoyment by women of their human rights, such as the rights to life, security of the person and not to be subjected to torture or ill-treatment». It considers that States parties are responsible only for obligations regarding individuals under their jurisdiction and cannot be held responsible for discrimination in the jurisdiction of another State party, even if the author could establish that she would be subject to discrimination contrary to the Convention owing to gender-based violence in Pakistan. Accordingly, the return of a woman who comes to Denmark simply to escape from discriminatory treatment in her own country, however objectionable that treatment may be, it cannot constitute a violation of the Convention. The State party therefore considers that it is not responsible under the Convention for the violations alleged by the author, and argues that the communication should be rejected as inadmissible *ratione loci* and *ratione materiae* pursuant to article 4 (b), read together with article 2, of the Optional Protocol.

4.9 The State party further submits that the communication should be held inadmissible under article 4 (2) (c) of the Optional Protocol for lack of substantiation, given that the author did not clearly identify or explain which rights enshrined in the Convention would be violated in case of return to Pakistan, but only made a general reference to articles 1, 2 (c) and (d), 3, 12, 15 and 16 of the Convention and to general recommendations Nos. 12 and 19. The State party finally argues that applications for asylum are examined in the same manner and under the same procedure for men and women, meaning that women asylum are not subjected to a discriminatory treatment in Denmark.

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

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

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

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

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Oxford University Press, 2004), p. 94.

<sup>8</sup> See joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful

### State party's additional observations

6.1 On 14 October and 20 December 2013, the State party provided additional observations reiterating that the communication should be held inadmissible under article 4 (2) (c) of the Optional Protocol for lack of substantiation. The State party notes the recently adopted views of the Committee about the extraterritorial application of the Convention,, in according to which

States parties have the obligation to protect women from being exposed to a real, personal and foreseeable risk of serious forms of gender-based violence, irrespective of whether such consequences would take place outside the territorial boundaries of the State party from which the person is being deported. A State party would therefore violate the Convention when returning a person to another State where it is foreseeable that serious gender-based violence would occur.<sup>9</sup> Nevertheless, the State party considers that, under that jurisprudence, the Convention has an extraterritorial effect only in exceptional circumstances in which the person to be returned is at risk of being deprived of his or her right to life or of being exposed to torture and ill-treatment.

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

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

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practices, paras. 10-14 and 29-30.

<sup>9</sup> Ibid., para. 8.10.

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

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

reported as a prostitute and therefore did not take any action with regard to her case.<sup>12</sup> The State party therefore considers that the author did not sufficiently substantiate that the national authorities were unable to provide her with adequate protection, and that her claims to that regard should be held inadmissible.

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

#### Author's additional comments

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

7.2 The author indicates that she sufficiently substantiated her case, and had established a prima facie evidence that she was a victim of gender-based violence. She further indicates that burning attacks are a common form of gender-based violence in some regions of India and Pakistan, and that they disproportionately affect women. She alleges that she was subjected to such attack for being a woman behaving in a way not accepted by some sectors of society. The author reiterates that her marriage against the will of her parents and her husband's family could be the source of the attacks she suffered as well, but that she could not provide additional evidence in that regard. She finally considers that being a Christian woman living by her own and working in a beauty salon also made her vulnerable to such attacks. In this connection, the author refers to the Office of the United Nations High Commissioner for Refugees "Eligibility guidelines for assessing the international protection needs of members of religious minorities from Pakistan", which indicate that violent anti-Christian attacks occur throughout the country and that, in many instances, the authorities are unable or unwilling to protect the lives of Christians or to bring the perpetrators to justice.

7.3 The author further submits that she had not been able to go to the police herself after the attacks because she was in hospital recovering from the burns. Thereafter she did not dare to do so in the view of her neighbours' comment that, even though they had reported her case, the police did not investigate what had happened because she was considered as a prostitute.

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

<sup>13</sup> The author refers to the State party's observations provided on 14 October 2012. The author also refers to communication Nos. 33/2011, *M.N.N. v. Denmark*, and 35/2011, *M.E.N. v. Denmark* (see footnote 14 above).

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

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

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

##### *Consideration of admissibility*

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

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

8.3 The Committee recalls its general recommendation No. 28 on “The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women”, according to which the obligations of States parties apply without discrimination both to citizens and non-citizens, including refugees, asylum seekers, migrant workers and stateless persons, within their territory or effective control, even if not situated within the territory. States parties are “responsible for all their actions affecting human rights, regardless of whether the affected persons are in their territories” (para. 12). The Committee also recalls that under article 1 of the Convention, discrimination against women is defined as “any distinction, exclusion or restriction made on the basis of sex, which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women ... of human rights and fundamental

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

freedoms in the political, economic, social, cultural, civil or any other field". According to the Committee's general recommendation No. 19 on "Violence against women", gender-based violence is a form of discrimination against women and includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty (para. 6).

8.4 As stated in its general recommendation No. 32 on "the gender-related dimensions of refugee status, asylum, nationality and statelessness of women", the Committee recalls that "the provisions of the Convention reinforce and complement the international legal protection regime for refugees and stateless women and girls, especially because explicit gender quality provisions are absent from relevant international agreements, notably the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto, the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.<sup>15</sup> The Committee further notes that, under international human rights law, the principle of non-refoulement imposes a duty on States to refrain from returning a person to a jurisdiction in which he or she may face serious violations of human rights, notably arbitrary deprivation of life or torture or other cruel, inhuman or degrading treatment or punishment. The principle of non-refoulement also constitutes an essential component of asylum and international refugee protection.<sup>16</sup> The essence of the principle is that a State may not oblige a person to return to a territory in which he or she may be exposed to persecution, including gender-related forms and grounds of persecution.<sup>17</sup>

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

8.6 The Committee recalls that, under article 2 (d) of the Convention, States parties undertake to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions act in conformity with that obligation. That positive duty encompasses the obligation of States parties to protect women from being exposed to a real, personal and foreseeable risk of serious forms of gender-based violence, irrespective of whether such consequences would take place outside the territorial boundaries of the State party: if a State party takes a decision

<sup>15</sup> See General recommendation No. 32, para 10

<sup>16</sup> See article 33 of the 1951 Convention relating to the Status of Refugees.

<sup>17</sup> See communication No. 33/2011, *M.N.N. v. Denmark*, para. 8.8, and communication No. 35/2011, *M.E.N. v. Denmark*, para. 8.7 (see footnote 14 above).

<sup>18</sup> See Human Rights Committee, communications No. 2149/2012, *M.I. v. Sweden*, views adopted on 25 July 2013 and No. 1465/2006, *Kaba v. Canada*, views adopted on 25 March 2010. It is also worth noting that the European Court of Human Rights and the Inter-American Commission on Human Rights have found instances of rape of detainees to be tantamount to acts of torture. In addition, "rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity" constitutes a crime against humanity under the Rome Statute of the International Criminal Court.

relating to a person within its jurisdiction, and the necessary and foreseeable consequence is a violation of that person's rights under the Convention in another jurisdiction, the State party itself may be in violation of the Convention. A State party would therefore violate the Convention if it returns a person to another State where it is foreseeable that serious gender-based violence will occur<sup>19</sup>. 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>20</sup>

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

#### *Consideration of the merits*

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

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

<sup>19</sup> See communication No. 33/2011, *M.N.N. v. Denmark*, para. 8.8, and communication No. 35/2011, *M.E.N. v. Denmark*, para. 8.7 (see footnote 14 above).

<sup>20</sup> See also communication No. 35/2011, *M.E.N. v. Denmark*, para. 8.8 (see footnote 14 above).

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

9.4 The Committee has given due consideration to the State party's submission that the author did not sufficiently substantiate her claim that the Pakistani authorities would be unable to provide her with the protection necessary to obviate the alleged risk. The Committee also notes the author's submission that she did not go to the police because she was in hospital recovering from severe burns, and that she did not dare to do so thereafter because she was informed by her neighbours that, despite the fact that they had reported the severe attacks she had suffered to the Police, they refused to investigate because they considered that she was a prostitute. The Committee has given due consideration to the unchallenged submission by the author that she did not complain to the Police. In that regard, the Committee recalls that, in line with its general recommendation 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".<sup>21</sup> In the present case, the Committee is of the view that the fact that the author has not sought the protection of the State or made a complaint to the authorities before her departure from Pakistan should not have prejudiced her asylum claim, especially taking into account the level of tolerance towards violence against women and the pattern of failure in responding to women's complaints of abuse which are reflected in the information provided by the author, and make it unrealistic to require the author to have sought protection in advance of her flight.

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

<sup>21</sup> General recommendation 32, paragraph 29

recalls the UNHCR Guidelines for assessing the protection needs of religious minorities from Pakistan, which highlight that women from Christian minority are in danger of gender specific violence and that “[...] violent anti-Christian attacks reportedly occur throughout the country and in many instances, the authorities are reportedly unable or unwilling to protect the lives of Christians or to bring perpetrators of such violence to justice”.<sup>22</sup> The Committee further recalls that gender-related claims to asylum may intersect with other proscribed grounds of discrimination, including ethnicity and religion.

9.6 In the present case, the Committee considers that the author has been subjected to gender-based violence in Pakistan, given that she was attacked, either because she was a woman living on her own and working at a beauty salon which was perceived as “immoral” by her community or because she married against the wishes of her husband’s family and her family, or both. In that connection, the Committee recalls its general recommendation No. 32 on “the gender-related dimensions of refugee status, asylum, nationality and statelessness of women”, according to which States parties should institute gender-sensitive procedural safeguards in asylum procedures to ensure that women asylum seekers are able to present their cases on an equal basis with men and without discrimination.<sup>23</sup> States parties should take into account that the threshold for accepting asylum applications should be measured not against the probability, but against the reasonable likelihood that the claimant has a well-founded fear of persecution or that she would be exposed to persecution upon her return. In the present case, the Committee therefore considers that the author has sufficiently substantiated that, if returned to Pakistan, she would be at risk of being subjected to serious forms of gender-based violence.

9.7 The Committee also recalls its concluding observations on Pakistan, in which it expressed concern about the persistence of patriarchal attitudes and deep-rooted stereotypes concerning women’s roles and responsibilities that discriminate against women and perpetuate their subordination within the family and society, all of which has recently been exacerbated by the influence of non-State actors in the State party. In this connection, the Committee recalls that *qisas* and *diyat* ordinances continue to be applied to offences committed in the name of so-called honour, resulting in perpetrators being given legal concessions and/or being pardoned and not being prosecuted and punished (CEDAW/C/PAK/CO/4, para. 21) according to the provisions of the Criminal Code. It is reported that 70 per cent of perpetrators of those kinds of crimes go unpunished.<sup>24</sup>

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

<sup>22</sup> See UNHCR Guidelines for assessing the protection needs of religious minorities from Pakistan, 14 May 2012 pp. 25-30.

<sup>23</sup> General recommendation No. 32, para. 50.

<sup>24</sup> United Kingdom, Home Office, *Country Information Guidance, Pakistan: Women*. Available from [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/331642/Pakistan\\_CIG.Women.2014.07.16.v1.0.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/331642/Pakistan_CIG.Women.2014.07.16.v1.0.pdf). See also para. 9.4.



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

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

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

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

(b) In general, and in line with the Committee's general recommendation No.32 on "the gender-related dimensions of refugee status, asylum, nationality and statelessness of women", the Committee requests the State party:

(i) To take all measures necessary to prevent similar violations in the future;

(ii) To take all measures necessary to ensure that victims of gender-related forms of persecution who are in need of protection, regardless of their status or residence, are not returned under any circumstance to any country in which their life would be at risk or where they might be subjected to gender-based violence, or to torture or ill-treatment;

(iii) To adopt gender-sensitive procedural safeguards in asylum procedures to ensure that women asylum seekers are able to present their case on the basis of equality and non-discrimination. That includes that interviewers use techniques and procedures that are sensitive to gender, age and other intersectional grounds of discrimination and disadvantage that compound the human rights violations that women refugees and asylum seekers experience; that a supportive interview environment is established so that the claimant can provide her account, including disclosure of sensitive and personal information, especially for survivors of trauma, torture and/or ill-treatment and sexual violence and that sufficient time is allocated for interviews; and that mechanisms for referral to psychosocial counselling and other support services, where necessary, both before and after the asylum interview, are made available;

(iv) To ensure that the threshold for accepting asylum applications be measured not against the probability but against the reasonable likelihood that the claimant has a well-founded fear of persecution or that she would be exposed to persecution on return;

(v) To ensure that, whenever necessary, examiners use all the means at their disposal to produce the necessary evidence in support of the application, including by seeking and gathering gender-relevant information from reliable governmental and non-governmental sources on human rights in the country of origin, and taking all necessary measures to that regard;

(iv) To ensure that a gender-sensitive approach is integrated when interpreting all legally recognized grounds for asylum; classify gender-related claims under the

grounds of membership of a particular social group, where necessary; and consider adding sex and/or gender and other status to the list of grounds for refugee status in the national asylum legislation;

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

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

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

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