



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

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

Communication No. 54/2013*

**Decision on the admissibility adopted by the Committee at its
sixty-sixth session (13 February – 3 March 2017)**

<i>Submitted by:</i>	E.W. (represented by counsel, Mr Daniel Nørrung)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Denmark
<i>Date of communication:</i>	7 June 2013 (initial submission)
<i>References:</i>	Transmitted to the State party on 13 June 2013 (not issued in document form)
<i>Date of adoption of decision:</i>	28 February 2017

* The following members of the Committee took part in the consideration of the present communication: Ayse Feride Acar, Gladys Acosta Vargas, Nicole Ameline, Magalys Arocha Domínguez, Gunnar Bergby, Marion Bethel, Louiza Chalal, Náela Gabr, Hilary Gbedemah, Nahla Haidar, Yoko Hayashi, Dalia Leinarte, Rosario Manalo, Lia nadaraia, Theodora Nwankwo, Pramila Patten, Bandana Rana, Patricia Schulz, Wenyan Song and Aicha Vall Verges.



Decision on admissibility

1.1 The author is Ms E.W., a Chinese national born in 1958, whose asylum application has been rejected in Denmark and she faces deportation to China. She claims that her deportation would constitute a violation by Denmark of articles 1, 2, 3, 5 and 16 of the Convention on Elimination of All Forms of Discrimination against Women ("the Convention"). The author is represented by counsel, Mr. Helge Norrung. The Convention and the Optional Protocol thereto entered into force for Denmark on 21 May 1983 and 22 December 2000, respectively.

1.2 When registering the communication on 13 June 2013 and pursuant to article 5 (1) of the Optional Protocol and rule 63 of its rules of procedure, the Committee, acting through its Working Group on communications under the Optional Protocol, invited the State party not to deport the author pending the consideration of her case.

The facts as presented by the author

2.1 The author comes from a small village in Inner Mongolia, China. She married a member of the Tibetan minority¹ and they had a daughter. The author contends that they were discriminated by the authorities because of her husband's ethnicity. In 1996, following an earthquake which destroyed their home, the husband complained to the local authorities regarding land rights. In response, he was beaten by municipal officials. He travelled to a city to complain with the regional authorities and never came back. The local authorities informed the author that her husband had died. Later on, in 2007 she learned that her husband was in fact being held in detention and tortured for several years because of his Tibetan origin and due to his activities in the Inner Mongolian People's Party.

2.2 Following her husband's departure, the author, an illiterate, became fully dependent on the village leader for food, clothing and housing. From 1996 to 2007, she was raped, including gang-raped, on several occasions by public officials and village leaders, as well as by police officers. She was threatened with beatings if she did not obey, several of her teeth were forcibly removed with pliers by the village leader, and she was forced to live in very poor conditions, including by being left without clothes for days at some point. The author contends that she felt too helpless to leave her village or complain to the authorities, especially as she was being abused by the village leader himself. She chose not to move in with her sister in another village, as she thought that her harassment would continue there as well. Instead, the author sent her daughter to her older sister in the other village. Her daughter then left China to study in Denmark, where she was granted a student visa on 21 July 2005.

2.3 In 2007, the author was told by a friend that her husband was still alive. She left her village to join him in an unspecified locality. Her friend's husband arranged for them to be issued Chinese passports by bribing the authorities and hiding his Tibetan origins. On 9 October 2007, the author and her husband were issued a Schengen visa at the Danish Embassy in Beijing in order to visit their daughter. They arrived in Denmark on 1 November 2007, and stayed illegally there after the expiration of their visa. The author explains that they didn't apply for asylum, as they didn't know such possibility existed, and were afraid of approaching the authorities out of fear of being returned to China.

2.4 On 1 August 2008, the author's husband applied for asylum after being arrested by the police. On 20 August 2009, the Danish Refugee Board rejected his application. The author applied for asylum on 8 December 2011. She explains that she was unaware that both spouses should make separate applications; she believed that her husband's asylum proceedings also related to her.

¹ The husband was born in 1955 and he is from the Zang Tibetan minority.

2.5 The Danish Immigration Service attempted to give the author a “manifestly unfounded negative decision”, finding preliminary that she clearly could not obtain asylum in Denmark. This outcome would have prevented her from appealing to the Danish Refugee Appeals Board. However, on 15 March 2012, the Danish Refugee Council² contested this procedure, stating, inter alia that dealing with this case under the accelerate procedure for evidently unfounded cases was not appropriate in light of the seriousness of the allegations.

2.6 On 23 March 2012, the Danish Immigration Service rejected her asylum application on the ground that having been raped by local officials was not “included in the asylum and protection definition in the *Aliens Act* article 7”, and that she should have sought protection from the Chinese authorities. Nevertheless, it referred the matter to the Refugee Appeals Board for a final decision. On 8 January 2013, the author’s counsel requested the Danish Refugee Appeal Board to re-open her husband’s case, to have it examined together with the author’s asylum application and to conduct an oral hearing of both spouses. Counsel invoked both the CEDAW Convention and the International Covenant on Civil and Political Rights. He also requested that the decision of the Board be postponed, so that a medical examination of the couple could be carried by Amnesty International experts.

2.7 On 12 February 2013, the Danish Refugee Appeals Board rejected the counsel’s request for re-opening of the husband’s case, as well as the author’s appeal. As a result, the husband was deported to China on 14 February 2013. At that time, the author was living with her daughter, who is a legal Danish resident.

2.8 On 26 February 2013, the author was examined by the Amnesty International Medical Team, which found out that her dental status corresponded to her testimony regarding her teeth being extracted, and that she suffered from “psychological symptoms [...] typical of torture survivors”, compatible with a Post-Traumatic Stress Disorder and associated with a major depressive disorder.³ According to the medical report, “it can be concluded that the examination of [the author] is consistent with the description of torture and the objective findings”.

2.9 The author lives in hiding since her husband’s deportation, as she fears the continuation of rape, torture and degrading treatment if she is forcibly returned back to China. She has not heard from her husband, and was informed that he never arrived in the town where he was supposed to be transferred from Beijing to meet a cousin, who was waiting for him.

2.10 The author explains that her communication has not been submitted to the European Court of Human Rights, and affirms she has exhausted all domestic remedies as a decision by the Danish Refugee Board is final.

Complaint

3.1 The author claims that she was a victim of serious gender-based violence for eleven years, in China, before being able to flee, and that by deporting her there, Denmark would breach its obligations under articles 1, 2, 3, 5 and 16 of the Convention, as there are substantial grounds to believe she would be at risk of being subjected to further sexual abuse, or she could even be killed. The author also highlights that the State party did not

² The Danish Refugee Council is a private, independent humanitarian organisation (NGO). Applications deemed manifestly unfounded by the Immigration Service are sent to the Danish Refugee Council for review.

³ The medical report also stated that the author suffers from chest and stomach pain, headaches, dizziness, impaired balance which causes her difficulties while walking, problems with her sexuality, anxiety, depression, sleep disorder, nightmares reliving the trauma, guilt, lack of appetite, memory problems, difficulties concentrating and suicidal thoughts.

conduct an oral hearing when the RAB examined her appeal, nor did it allow her enough time to present medical evidence in support of her claims.

3.2 The author argues that she would not be able to seek protection from the Chinese authorities. Complaining in China would prove to be ineffective or even dangerous for her, as she would be at risk of arbitrary imprisonment and torture for denouncing the wrongdoings of the local authorities, who kept her as a sexual slave for years. She contends that due to her husband's past complaints to the Chinese authorities, they were both persecuted and suffered during several years. Additionally, as a lonely illiterate woman, she would be too vulnerable to relocate in a different region in China.

State party's observations on admissibility and merits

4.1 By Note verbale of 12 December 2013, the State party provided its observations on admissibility and merits. The State party claims that the communication should be declared inadmissible. However, should the Committee find it admissible, the State party submits that returning the author to China will not constitute a violation of the Convention.

4.2 The State party recalls the facts of the case: the author entered Denmark on 1 November 2007 together with her spouse, on valid travel documents - Chinese passports and Schengen visas valid until 29 January 2008. They came to visit their daughter, who holds a residence permit for Denmark, on the basis of family reunification as she had married a Danish resident of Chinese origin. On 1 August 2008, the author's spouse was arrested as he was found working without a work or residence permit. The next day he sought asylum. On 1 May 2009, the Danish Immigration Service refused to grant him asylum. On 20 August 2009, the Danish Refugee Appeals Board upheld this decision, emphasizing that the author's spouse had not applied for asylum until his arrest, and there were not enough reasons to conclude that he was persecuted by the Chinese authorities, as he had left the country legally. On 8 December 2011, the author applied for asylum. The Danish Immigration Service decided to recommend that her asylum application be processed under the manifestly-ill-founded procedure, provided by section 53b(1) of the Aliens Act. On 23 March 2012, the Danish Immigration Service refused to grant her asylum and on 12 February 2013, the Danish Refugee Appeals Board, henceforth RAB, upheld this decision.⁴

4.3 Regarding the background information provided by the author, the RAB accepted as facts that the family house was destroyed in an earthquake and that, consequently, they experienced conflicts with local authorities concerning help for reconstruction and land rights. However, it found it unlikely that the author has allegedly been subjected to sexual abuse for more than ten years and prevented to take any action to leave the village or seek protection from higher authorities, as in 2007 she could depart to Denmark without being hindered. Accordingly, the RAB found no reason to assume that, in China, the author would be at a real risk of persecution, as provided for by section 7(1) of the Aliens Act, or of being subjected to situations falling within section 7(2) of the Aliens Act.

4.4 The relevant evidence and information on the specific facts of the case and the background information have been assessed by RAB, in accordance with the requirements of the Aliens Act. According to the section 7(2) of the Aliens Act, a residence permit will be issued if the applicant is at risk of death penalty or of being subjected to torture or inhuman or degrading treatment or punishment in case of return to his or her country of origin. The conditions for such residence permit are met if the specific and individual factors render it probable that the asylum-seeker runs such a real risk in case of return.

⁴ A copy of the decision is provided.

4.5 The State party submits that decisions of the RAB are based on individual and specific circumstances of the case, as well as on information of the asylum seeker's country of origin. For this purpose, the Board has a memorandum describing in detail the legal protection of asylum-seekers afforded by international law and a comprehensive collection of general background material on the situations in the countries from which the State party receives asylum seekers.

4.6 The State party points out that the communication should be declared inadmissible as manifestly ill-founded and insufficiently substantiated, under article 4 (2) (c) of the Optional Protocol. In this connection, it observes that the author seeks to apply the State party's obligations under the Convention in an extraterritorial manner, concerning the treatment she would suffer if she is returned to China. The State party notes that according to the Committee's case law, the Convention applies when the woman to be returned will be exposed to a real, personal and foreseeable risk of serious forms of gender-based violence.⁵

4.7 In the State party's view, the author has failed to substantiate the claim that her removal from Denmark to China would expose her to a real, personal and foreseeable risk of serious forms of gender-based violence, and that the necessary and foreseeable consequence of her removal is that her rights under the Convention will be violated. The State party underlines that even if the invoked abuses as her grounds for asylum, specifically associated with her village's leaders, were accepted as facts, there seems to be no basis for assuming that she would be at a real risk of being subjected to similar abuses if she is returned to other parts of China. Therefore, the State party finds the author's communication manifestly ill-founded and thus inadmissible.

4.8 The State party considers that the author's statement, about being held captive by a village leader in Diquiau from 1996 to 2007 and subjected to torture and sexual abuse, is built on inconsistent and non-credible evidence, including the fact that at her first interview in Denmark, on 14 December 2011, the author said nothing about having allegedly been subjected to sexual abuse, but solely stated about her grounds for asylum that she and her husband had problems with public officials as a consequence of their application for compensation for their house destroyed in an earthquake in 1996.

4.9 Moreover, during the asylum proceedings, the author has made several other inconsistent arguments. The author stated that she had been detained by the village leader from 1996 to 2007, which diverges from her explanation about undergoing surgery in 2001 and 2002, and being able, when she decided in 2007, to leave the village and depart legally to Denmark via Beijing airport, together with her spouse, establishing her identity by means of her genuine passport provided with a Schengen visa without any problem.

4.10 The State party indicates that the author's statement about refraining from complaining against the village leader to higher authorities because she was a single and illiterate woman does not appear likely. In this relation, the State party notes that rape is a crime in China, punished between three years' imprisonment and the death penalty, and Chinese nationals whose rights or interests are infringed by public officials can lodge a complaint against such officials⁶. Hence, the State party finds improbable that the author had allegedly been subjected to sexual abuse for more than ten years without attempting to obtain help for complaining to higher authorities if she lacked the skills required for that. The State party also observes that, according to her statement, the author received assistance in 2007 for requesting the issuance of a Schengen visa.

⁵ The State party refers to *M.N.N v Denmark* communication No. 33/2011, CEDAW/C/55/D/33/2011 (2013).

⁶ The State party refers to the *Country Report on Human Rights Practices 2012*, published by the U.S. Department of State.

4.11 In the State party's view, the fact that the author only applied for asylum more than four years after her arrival in Denmark and more than two years after her spouse had been refused asylum, weakened the credibility of the author's grounds for asylum. In that connection, it cannot be found—as stated by the author's counsel in the communication to the Committee—that the author believed that she was covered by her spouse's asylum application, as she did not mention this reason during the asylum proceedings and the author's spouse stated, throughout his asylum proceedings, that he did not know the whereabouts of his wife. It should be noted in this respect that the author's spouse only applied for asylum when he was arrested by the Danish police, eight months after his arrival in Denmark. Consequently, the State party finds the communication insufficiently substantiated and thus inadmissible.

4.12 Regarding the examination for signs of torture carried out by Amnesty International on 22 February 2013, the State party finds that it cannot lead to a review of the case. The fact that the dental status is consistent with the alleged method of torture defined by the author is found not in itself to render it probable that the author has been subjected to the torture and persecution described justifying asylum. The State party observes, in that connection, that the author was not given a gynaecological examination in connection with the examination for signs of torture because she refused to consent to it.

4.13 On the merits, the State party argues that, contrary to what is stated in the author's communication, the Danish Immigration Service—as it appears from its decision of 23 March 2013—did not make any assessment of the credibility of the author's grounds for asylum. The Danish Immigration Service stated that regardless of whether it can be found that the author has been subjected to rape by local officials, this does not fall within the concept of asylum and protection set out in section 7 of the Aliens Act. Those acts are criminal acts committed by private individuals and one must therefore be referred to seeking the protection of higher authorities. Hence, the Danish Immigration Service found that the rapists did not, when abusing the author, act in their capacity as authority representatives, and observed that their acts were not sanctioned by higher authorities in China as the author did not seek protection. The Danish Immigration Service also noted that the author's contention that these authorities would not be willing to protect her was only based on her own assumption. Consequently, the State party agrees with the RAB's assessment of the author's asylum case, which upholds the decision of the Danish Immigration Service.

4.14 Finally, the State party requests the Committee to examine the admissibility of the communication separately from its merits and believes, based on the above considerations, that the communication should be declared inadmissible under article 4 (2)(c) of the Optional Protocol, as the author has failed to sufficiently substantiate her claim that her return to China would expose her to a personal and foreseeable risk of serious forms of gender-based violence. Regarding the request for interim measures, the State party invited the Committee to review its decision.

Author's comments on the State party submissions

5.1 On 10 March 2014, author's counsel provided comments on the State party's observations. Regarding the admissibility, counsel notes that when the author applied for asylum in 2011, she was a relatively elderly woman who had reported of gross physical abuse, including many instances of rape for several years by her local village leaders in China. He emphasizes that the abuses reported are both probable and consistent, taking into account the general record of human rights violations at that time and place in China, and the fact that the author is illiterate and her husband from Tibet place her in a very vulnerable situation.

5.2 Counsel submits, that the author related consistently the many years of abuse she suffered in the period between 1996 and 2007, until she succeeded to locate her husband and leave China along with him. Her explanation before the Danish Immigration Service of the constant abuses she suffered is not contradictory with the version she gave to the Danish Refugee Council. Counsel submits that such differences can be explained by the fact that she had been more open to relate the abuses when she talked to the female case handler in the Danish Refugee Council. Moreover, counsel argues that the author did not complain to higher authorities in China about the sexual abuses because she was told that her husband had been killed for having tried to complain about his harassment by local authorities on the ground of his Tibetan origin and the failure to help him rebuild the house after the earthquake. On this basis, counsel claims that, at the time of the author's asylum application in 2011, the State party should have assessed that if the author is returned to China she would be exposed again to a real, personal and foreseeable risk of serious forms of gender-based violence.

5.3 Counsel notes that if the Danish Immigration Service doubted the author's account, they should have requested a medical examination in order to have a better basis for determining her credibility, before they made a decision with the following wording: "Regardless whether it is [grounded] that you have been subjected to rape by local authority persons, we do not find this to be included in the asylum and protection definition in the aliens act article 7".⁷

5.4 Counsel states that the author's credibility is also consistent with her husband's report, elaborated three years earlier, in 2008⁸. In counsel's view, this report makes it evident that by that time, the Danish authorities were aware of both spouses' presence in Denmark, however, the author did not apply for asylum until 2011 because she thought that her case was being handled in connection to her husband's. Counsel recalls that he was assigned to the author's case in December 2012, when her husband was already awaiting deportation in the Ellebaek detention centre, without having been sent for a medical examination, despite consistent account of severe torture. This is the reason why counsel sent an application to the Refugee Appeals Board requesting the re-examination together with the case of the author, with a conduct of medical examination, and a chance for both spouses to appear at an oral hearing before the Refugee Appeals Board. However, the RAB quickly rejected this request and deported the author's husband back to China a few days after issuing its decision. Counsel highlights that, as a result, the Danish authorities forcibly separated two spouses who have consistently claimed having been unwillingly separated for many years in China.

5.5 Referring to the author's medical examination, counsel finds rather problematic the State party's failure to refer to the conclusions of the Amnesty International's Medical Team, but only made sparse comments on the physical symptoms.⁹ On the other hand, he also argues that the wording of the Board's final decision with sentences as "even if the abuses invoked were to be accepted as facts in the case..." or "regardless whether it is grounded that you have been subjected to rape..." reveal some doubts which cannot simply be ignored. Thus, counsel concludes that the State party might have come to a different conclusion should they had authorized the medical examination before, and also states that they should have given her an expert medical examination so as not to leave her without treatment of her severe psychological trauma. In the light of the above, counsel considers that the author's communication is not ill-founded.

⁷ The counsel refers to Annex 2, page 2, of the author's initial communication.

⁸ The counsel refers to the Annex 7, pages 5-7 and following.

⁹ The counsel points out that the medical examination was carried out in accordance with the principles described in UN's Manual of the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment. See Annex 5, page 1.

5.6 Counsel adds that the author has sufficiently substantiated her claims. He notes that the lack of information during her interview, on 14 December 2011, should not be used to her disadvantage because it must be noted that the interviewer was a policeman, it was a policeman who raped her in China and she had many psychological symptoms, as indicated in the Amnesty International medical report. Besides, as the State party is well aware, it is not the obligation of the police to take full account of the applicant's background for seeking asylum at the registration interview. About the author's ability to leave the village and complain to higher authorities, the author explained, after further counsel's questions on the matter, that she was totally dependent on the village leader's mercy and if she had left without his consent she would have been dragged back immediately, she was illiterate and she could not write to anyone outside the village. Furthermore, she was told that her husband was killed when he tried to complain in the city, and feared that the same could happen to her, as most of her rapists were employed by local authorities.

5.7 Lastly, in the counsel's opinion, the author has given a very detailed, consistent, and, in view of her illiteracy and psychological condition, fully credible account of very severe gender-based atrocities. Therefore, the communication is substantiated.

5.8 With regard to the State party's observation on the merits, counsel notes that the State party mainly reflects whether there has been made a different credibility assessment on the author's account by the Immigration Service than by the Danish Refugee Appeals Board. Counsel argues that the Immigration Service decision is ambiguous, whereas the Refugee Appeals Board decision totally rejects the author's credibility on very weak ground.

5.9 Counsel reiterates that the author's return to China would constitute a violation of the Convention. He adds that the author and her daughter still have no news from the author's husband since his deportation in February 2013. After his flight to Beijing, he was supposed to fly to Baotou, where the author's nephew was to wait for him.¹⁰ He had enough money and his family phone's numbers, but never arrived in Baotou. The author's nephew even travelled to Beijing one month after the author's husband arrival, but the airport police said they knew nothing.

State party's additional observations

6.1 On 25 June 2014, the State party provided additional observations, reiterating its submission of 12 December 2013. It adds that the Committee should give considerable weight to the findings and decisions of the Danish Refugee Appeals Board, noting that it is better placed to assess the findings of fact in the author's communication.¹¹

6.2 The State party argues that counsel's request before the Refugee Appeals Board to reopen the asylum proceedings in the case of the author's spouse cannot lead to a different assessment of the author's own case. Moreover, such request was rejected on 12 February

¹⁰ Counsel explains that Baotou is the greater city near the author's village and the place where the daughter was staying with the author's sister and her family since the husband left to complain before higher authorities and all the atrocities began.

¹¹ The State party refers to the Human Rights Committee case *P.T v Denmark* (Communication 2272/2013) §7.3: "The Committee recalls its jurisprudence that important weight should be given to the assessment conducted by the State party, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice, and that it is generally for the organs of the States parties to the Covenant to review or evaluate facts and evidence in order to determine whether such a risk exists. In this connection, the Committee notes the assessment made by the State party authorities that the author did not face personal risk if returned to Sri Lanka, which is based on the lack of evidence of his affiliation with or activity for LTTE, and of indication that the Sri Lanka authorities or EPDP would have been looking for him".

2013 and the fact that the author did not succeed in reaching her spouse by telephone after his removal to China, in itself, cannot lead to a different assessment of the case either.

6.3 Finally, the State party reiterates that the communication is manifestly ill-founded and insufficiently substantiated and should be rejected as inadmissible under article 4 (2)(c) of the Optional Protocol. Likewise, the State party maintains that, should the Committee declare the communication admissible, returning the author to China will not constitute a violation of the Convention and requests the Committee again to review its request for interim measures.

Author's additional information

7.1 On 23 September 2014 author's counsel submitted additional information. Her daughter had informed her that her father had died. The daughter had travelled to China for the funeral. On 1 June 2014, the daughter had received a phone call from a cousin who informed her that her father's body rested in a mortuary in Baotou, which inquired whether the family was willing to pay for the disposal or cremation. Counsel highlights that this was a terrible shock for the whole family, because they had not heard from the author's husband since his deportation on 14 February 2013.

7.2 The author's daughter emphasized that the family had been very worried for her father's wellbeing and the cousin had even paid a bribe to the police in order to try to find some information of what could have happened to him. However, the police gave no information.

7.3 From 2 to 16 June 2014, the author's daughter went to Baotou for the funeral.¹² The author could not accompany her because she fears for her life in China. According to the author, it was impossible to get any information on the cause of her husband's death; the relatives only knew that he died in Baotou and was brought to the mortuary by an unknown individual and it was not possible to examine the body for possible further marks of torture. Counsel explains that most likely the husband was arrested in Beijing and transferred by the police or security to his home area in Baotou and kept confined there. Counsel contends that this situation makes clear that the author's arguments were well-founded and substantiated, and that, if deported, she would face a personal and foreseeable risk.

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

8.1 On 7 September 2015, the author's counsel submitted comments on the State party's additional observations of 25 June 2014. Counsel first refers to his comments of 10 March 2014. With respect to the State party's submission that "the Refugee Appeals Board is better placed to assess the findings in the author's case", he reiterates that the RAB's decision was made without an oral hearing, thus, the numerous allegations of 11 years of sexual abuse could not be properly addressed.

8.2 In addition, he argues that the negative decision of 12 February 2013 was made in direct connection to the planned removal of the author's husband two days later, on 14 February 2013.¹³ He emphasizes that the author is very frightened and looking forward to the Committee's decision on the communication.

¹² The author's daughter provided a copy of her plane ticket to China and two photographs taken allegedly from the funeral in which a portrait of her father is seen, next to lit candles, and a photograph of a grave plate.

¹³ Counsel states that as no oral hearing was given by the Refugee Appeals Board in the author's case, the reference to *Communication No.2272/2013* is not appropriate.

State party's further observations

9.1 On 14 July 2016, recalling its observations of 12 December 2013, the State party adds, regarding the author's submission of 7 September 2015, that its authorities have indeed taken into account the author's examination for signs of torture performed by Amnesty International on 22 February 2013, but this was not found in itself to justify a different decision on the author's asylum application¹⁴.

9.2 With regard to the author's submission of 23 September 2014, the State party observes that the photographs, allegedly taken at the funeral of her spouse, cannot lead to a different assessment of the author's claims for asylum as the reason of the death of the author's husband has not otherwise been further substantiated or proven in written form by a death certificate or similar supporting documentation. Moreover, although it might be considered a fact that the author's husband is dead, this fact cannot lead to a different assessment either, because no information has been provided on the circumstances or context of his death, nor on the connection or significance this would have on the author's claim for asylum. Therefore, the State party finds that the author's comments in this regard are quite unsubstantiated and based on mere speculation.

9.3 The State party finds that the RAB took into account in its decision all relevant information and that the communication has not brought to light any elements substantiating that the author risks persecution or abuse justifying granting her asylum. The State party emphasizes, in this respect, that the Committee must give considerable weight to the findings of fact made by RAB, as it cannot be found that there is an absence of evidence establishing that its decision was manifestly unreasonable, arbitrary or amounted to a manifest error or to a denial of justice¹⁵. The State party, thus, underlines that there is no basis for doubting the assessment made by the RAB.

9.4 The State party reiterates that the communication should be declared inadmissible as manifestly ill-founded and insufficiently substantiated under article 4 (2) (c) of the Optional Protocol. Should the Committee find the communication admissible, the State party further maintains that the author has failed to establish that there are substantial grounds for believing that returning the author to China would constitute a violation of the Convention.

Author's additional comments

10.1 On 21 November 2016, counsel provided additional comments. He states that the cause of death indicated on one certificate is "sudden death" and on another "various diseases".¹⁶ Counsel believes that the fact that the cause of death is vaguely described in two different ways shows that this is an attempt from the Chinese authorities to dissimulate the actual reason of her husband's death.

10.2 Counsel emphasizes that the husband's death should be considered as fact, based on the repeated information on the subject and documentation and photographs provided. He contends that the State party tries to question it, as it has been done with other facts during

¹⁴ The State party also provides statistics from the Danish immigration authorities, which show inter alia, the recognition and rejection rates for asylum claims from the ten largest national groups of asylum seekers decided by the Refugee Appeals Board between 2013 and 2015, with the success rate indicated.

¹⁵ The State party draws attention to Human Rights Committee's cases *P.T v Denmark* (Communication No. 2272/2013) §7.3; *K v. Denmark* (Communication No. 2393/2014) §§7.4 and 7.5, *Mr. X and Ms. X v Denmark* (Communication No. 2186/2012) §7.5, *N v. Denmark* (Communication No. 2426/2014) §6.6 and *Z v. Denmark* (Communication No. 2329/2014) §7.4.

¹⁶ Counsel encloses the author's husband death certificate and the certificate for annulment of household registration due to death made by one his daughters' request, in Chinese, with English translation. The death certificate indicates "sudden death" as cause of death.

the asylum proceedings without conducting a conclusive investigation. In this regard, he specially refers to the lack of medical examination of the author by the Danish Immigration Service or the Refugee Appeals Board.

10.3 Counsel claims that the death of the author's husband is now proven by the death certificates. He agrees that the husband's death is not directly linked to the author's claims for asylum. However, he states that the knowledge of his death should give raise to caution regarding the risk for the author, and lead to re-evaluation of her asylum claim, this time with a proper oral hearing at the Danish Refugee Appeals Board.

10.4 Moreover, regarding the State party's observation that no information on the circumstances or context of the husband's death was provided, counsel indicates that all available information on his whereabouts at the time is contained in the comments of 10 March 2014; and also in the additional comments of 23 September 2014 regarding how the family in Baotou was asked to pick up the body at the mortuary.

10.5 Counsel also refers to the State party's statement that the examination performed on 22 February 2013 by the Amnesty International torture team did not contain a gynaecological examination due to the author's lack to consent to one. In this relation, he argues that the author's physiological condition, which is fully substantiated in the report, makes understandable the reasons for the author's refusal.¹⁷ He emphasizes that the Amnesty International report came after the negative decisions on the asylum cases. The timing of the handling of the asylum case did not allow for any medical examination of either spouse to be considered, because both final rejections from the Refugee Appeals Board were given on 12 February 2013, the husband was deported on 14 February 2013 and the torture examination of the author took place on 22 February 2013.

10.6 In conclusion, counsel informs that the author is still not being treated for her post traumatic stress disorder condition. He argues that she is housed by her daughter, in private asylum housing the access to non-emergency treatment is very limited, she is very shy and stays inside most of the time. Counsel adds that during his last meeting with the author, she cried repeatedly and she seems to be in a very bad condition.

Issues and proceedings before the Committee concerning admissibility

11.1 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 72 (c), it is to do so before considering the merits of the communication.

11.2 The Committee notes, first, the author's claim that her deportation to China would constitute a violation, by Denmark, of articles 1, 2, 3, 5 and 16 of the Convention. The Committee also takes note of the State party's argument that the communication should be declared inadmissible under article 4 (2) (c) of the Optional Protocol for lack of substantiation and for being manifestly ill-founded.

11.3 In terms of substantiation, the Committee notes that the author has claimed that she fears being subject of gender based violence by her local leader of the village, or even being killed. She alleges that she would not be able to survive in other parts of China because she will be in a vulnerable situation as she is single, illiterate and ill and because the Chinese authorities will not protect her.

11.4 The Committee further notes that the Danish immigration authorities have duly examined the author's allegations but have concluded that the author has failed to sufficiently substantiate them. This relates in particular to her failure to seek protection

¹⁷ Counsel refers to Annex 5 of the initial communication, which states that the author meets the criteria for a major depressive disorder, typical of torture survivors.

from higher authorities for the alleged sexual abuse, continuing for more than ten years, and the reasons for which she refrained from leaving her village with her daughter and to take up residence with her sister in another village. It further notes that, according to the Danish immigration authorities, the reasons advanced by the author to explain her failure to complain to higher authorities in China or to leave the village is inconsistent with the fact that later she was able to obtain, without any difficulty, a valid passport, and a Schengen visa for herself and her husband and managed to leave her village and China in 2007 and to travel to Denmark legally and without any obstacle whatsoever, with her husband. The Committee also notes the author's claims that her illiteracy prevented her from complaining and given what had happened to her husband before, she feared that if she moved to her sister's village, local officials would come and harass both of them there.

11.5 The Committee takes note of the author's claims that the Danish immigration authorities have failed to conduct a medical examination and an oral hearing before the Refugee Appeals Board within the author's asylum proceedings. The Committee also notes the State party's affirmation that there is no reason to question the comprehensive assessment made by the Refugee Appeals Board stating that the author's explanation falls outside the framework to grant asylum; the medical examination by Amnesty International is not found as basis to reach a different conclusion capable to change the outcome in the asylum case. The Committee observes in this regard that nothing in the case file permits to confirm that the State party's evaluation is manifestly arbitrary or constitutes a denial of justice. Moreover, considering the information on file, the author has been afforded adequate opportunity for independent examination of her personal situation and specific claims. Neither a medical examination nor an oral hearing within the proceeding could have led to a different conclusion, as the author has not been able to provide relevant information in the corresponding procedural instances to substantiate her claims. In addition, the Committee takes note of the fact that more than 9 years have elapsed following the author's departure from China in October/November 2007, and that no information is provided whatsoever in order to verify the current situation of the alleged perpetrator – the village local leader. In light of the above considerations, the Committee finds that there is no substantial information for assuming that the author will be at a risk of particular forms of gender-based violence if returned to China.

11.6 The Committee observes that the material on file does not permit to conclude that the Danish immigration authorities have failed in any manner in their duties or acted in a biased or otherwise arbitrary manner when examining the author's asylum application. The additional information provided by the author regarding her husband's death cannot per se, according to the Committee, substantiate her claims about the individual risk she would face in case of return to China. Thus, the Committee considers that the author has failed to substantiate her claims of violations of articles 1, 2, 3, 5 and 16 of the Convention.

11.7 Regarding the author's claims that the fact that she is a single and illiterate woman constitutes a supplementary factor of risk for her in China, the Committee points out, in the light of the information contained on file, that the author has a network back in China, as she has several close relatives in Inner Mongolia, China, including her sister, her nephew and others. Therefore, the Committee finds that the author cannot be considered as a particularly vulnerable single woman if returned to other parts of China, where she could be supported by her family.

11.8 In these circumstances, the Committee is of the view that the author's claim that her removal to China would expose her to a real personal and foreseeable risk of serious forms of gender-based violence is insufficiently substantiated for the purpose of admissibility. Therefore, the Committee considers that this communication is inadmissible under article 4 (2) (c) of the Optional Protocol.

12. The Committee therefore decides that:

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

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