



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

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

Fifty-sixth session

30 September-18 October 2013

Communication No. 44/2012

**Decision adopted by the Committee at its fifty-sixth session,
30 September-18 October 2013**

Submitted by: M. K. D. A.-A. (not represented by counsel)
Alleged victims: The author and her son
State party: Denmark
Date of communication: 6 September 2012 (initial submission)
References: Transmitted to the State party on 19 November 2012
(not issued in document form)
Date of adoption of decision: 18 October 2013

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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 (fifty-sixth session)

Communication No. 44/2012, M. K. D. A.-A. v. Denmark*

<i>Submitted by:</i>	M. K. D. A.-A. (not represented by counsel)
<i>Alleged victims:</i>	The author and her son
<i>State party:</i>	Denmark
<i>Date of communication:</i>	6 September 2012 (initial submission)
<i>References:</i>	Transmitted to the State party on 19 November 2012 (not issued in document form)

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 18 October 2013,

Adopts the following:

Decision on admissibility

1.1 The author of the communication is K. D. A.-A., a national of the Philippines, who submits the communication on her own behalf and on that of her son, M. A. A.-A., also a national of the Philippines, born on 2 January 2009. The author claims that she and her son are victims of a violation by Denmark of their rights under articles 1, 2 (d), 5 and 16 (d) of the Convention on the Elimination of All Forms of Discrimination against Women.¹ The author and her son are not represented by counsel.

1.2 By note verbale of 22 January 2013, the State party challenged the admissibility of the communication and requested to have the admissibility issue examined first. At its fifty-fourth session, the Committee decided to accede to the State party's request and to examine the admissibility of the communication separately from its merits.

* The following members of the Committee participated in the examination of the present communication: Ms. Noor Al-Jehani, Ms. Nicole Ameline, Ms. Barbara Bailey, Ms. Olinda Bareiro-Bobadilla, Ms. Náela Gabr, Ms. Hilary Gbedemah, Ms. Nahla Haidar, Ms. Ruth Halperin-Kaddari, Ms. Yoko Hayashi, Ms. Ismat Jahan, Ms. Dalia Leinarte, Ms. Violeta Neubauer, Ms. Theodora Nwankwo, Ms. Pramila Patten, Ms. Silvia Pimentel, Ms. Maria Helena Pires, Ms. Biancamaria Pomeranzi and Ms. Patricia Schulz.

¹ The Optional Protocol to the Convention entered into force for Denmark on 22 December 2000.

Factual background

2.1 In 2005, the author arrived in Denmark and married Mr. M. A., a Danish national. Shortly after their marriage, Mr. M. A. began to abuse the author emotionally and mentally and threatened her with divorce. They left Denmark in 2007 and lived in various countries including the Philippines where their son was born in 2009. During her pregnancy, Mr. M. A. was particularly violent towards the author and their relationship deteriorated considerably. In January 2011, Mr. M. A. returned to Denmark because he had to settle his long-overdue student loans. He applied for a family reunification visa for the author. After his departure, the author informed him that she was reluctant to live in Denmark owing to their unhappy marriage and conjugal problems. Through e-mails and telephone calls, Mr. M. A. confirmed that he understood and respected her decision. Given that her 28-day visa had been approved and obtained in March 2011, the author was invited by Mr. M. A. to come for a two-week holiday with their child. Upon the undertaking of Mr. M. A. that she would be able to travel back to the Philippines with the child after that holiday, the author accepted his invitation and, on 7 May 2011, she and her son travelled to Denmark.

2.2 As previously agreed between them, upon their arrival in Denmark, the author stayed with her friends, while her son stayed with his father. Mr. M. A. took the child's passport on the ground that he needed to have identification for the child in case of emergency. While they had agreed to meet to discuss their future, in particular their divorce, the author had no contact with Mr. M. A. after 7 May 2011 and was able to have news about their child only through telephone calls and text messages. On 11 May 2011, Mr. M. A. telephoned the author and informed her that the child would not be travelling to the Philippines with her. The author immediately contacted the Immigration Service and the police. She also went to the home of Mr. M. A., who denied her access and refused to hand over the child to her. On the same day, the author sought the assistance of the police, but in vain. She was told that she and Mr. M. A. had joint custody of the child by default. She was advised to contact the Statsforvaltningen Sjælland (the Regional State Administration). On 12 May 2011, she submitted a complaint to that body and hired a lawyer. After unsuccessful negotiations between her lawyer and Mr. M. A., the author applied for the sole custody of her son to the Regional State Administration for Greater Copenhagen. In the meantime, Mr. M. A. allowed the author to see the child only for two hours, five days a week, or for four hours, twice a week, which, he claims, he was doing upon the advice of the "authorities". When her 28-day visa expired, Mr. M. A. did not allow the author to see the child pending consideration of her application for an extension. In June 2012, given that the case was pending before the courts, the author was granted a residence permit.

2.3 On 30 June 2011, the Regional State Administration ruled that it did not have jurisdiction over the matter because the child was resident in the Philippines. It confirmed that the child was on holiday in Denmark, even though the author had travelled on a family reunification visa. Its ruling also referred to the Hague Convention. On an unspecified date, Mr. M. A. appealed against that decision. The decision was upheld twice, once on 21 July 2011 and again on 15 August 2011. On 25 July 2011, the author and Mr. M. A. filed for divorce.

2.4 On 2 August 2011, the author was unable to recover her son, notwithstanding the supporting documents from the Regional State Administration and the assistance of the police and the consulate of the Philippines in Copenhagen.

2.5 On 23 August 2011, the Bailiff's Court held a hearing to determine whether the child could return to the Philippines with the author. On 29 August 2011, the Court concluded that it had no jurisdiction. At that time, the author had also initiated custody proceedings in the Philippines.

2.6 On 7 September 2011, the author was informed by the Immigration Service that her visa would not be extended and that she had to leave Denmark within a month. She left the country for two months and returned on an unspecified date in November 2011. Thereafter, the author saw the child only occasionally and for a few hours.

2.7 On 15 May 2012, the author went to visit her son at his kindergarten, but was denied access by a member of staff on the ground that, according to a decision of the municipality of Naestved, the author had been forbidden from seeing her son because she might kidnap him. On an unspecified date, the said decision of the municipality of Naestved was quashed.

2.8 On 23 July 2012, a court ruled in favour of the author, concluding that it would be in the child's best interests to live with his mother in the Philippines. Mr. M. A. appealed against the decision and refused to hand over the child to the author. On 31 August 2012, an appeals court decided to remit the case to the City Court of Naestved to decide on the competence of the Danish courts to hear the case. In the meantime, the author was able to see her son only for a limited number of hours per week and remained at the complete mercy of Mr. M. A.

2.9 The author requests the Committee to conduct a full investigation so as to shed light on the intolerable situation of foreign women, girls and children in the State party at the hands of Danish men, in addition to the behaviour of the Danish authorities. The author also requests the Committee to facilitate the immediate and urgent introduction of effective laws and measures in the State party towards the prevention of and effective response to kidnapping, threats, stalking, harassment and mental and physical abuse by Danish men of foreign women and children and with regard to her case, so as to ensure that she and her son can live together safely and in peace.

Complaint

3. The author claims that the State party has violated articles 1, 2 (d), 5 and 16 (d) of the Convention. In particular, she notes the intolerable situation in which she finds herself and which also affects many foreign women and their children in the State party. She further claims that the State party has failed to provide effective remedies and protection for her and her son from her former husband, Mr. M. A., and has passively neglected its positive obligations under international law. Lastly, she claims that the State party supports the continuation of a situation of ignoring violent abductions and crimes committed by ethnic Danish men against foreign women and children.

State party's observations on admissibility

4.1 On 22 January 2013, the State party submitted its observations on the admissibility of the communication. It confirmed that the author, a national of the Philippines, married Mr. M. A., a Danish national, in 2005; that their son was born on 2 January 2009 in the Philippines; that they lived in various countries until January 2011, when Mr. M. A. returned to the State party; and that the author and her son arrived in Denmark on 7 May 2011. The State party pointed out that, while the author claims that she and her son went to Denmark on a two-week holiday to visit Mr. M. A., Mr. M. A. claims that they travelled to Denmark to settle there and that, after arriving in the State party, the author did not live with him because she had decided to seek a divorce and wished to return to the Philippines with her son.

4.2 The State party confirmed that Mr. M. A. refused to hand over the son to the author, registered him in the Danish Civil Registration System and put him on a waiting list for a kindergarten.

4.3 On 14 May 2011, the author applied to the Regional State Administration² for the sole custody of the minor child and the termination of the joint custody arrangement between her and Mr. M. A. On 30 June 2011, the Regional State Administration refused to process the application, stating that it had no international jurisdiction because the son was not domiciled in Denmark as required under section 448f of the Administration of Justice Act.

4.4 On 4 July 2011, Mr. M. A. also applied to the Regional State Administration for termination of the joint custody arrangement. His application was refused, pursuant to section 448f of the Administration of Justice Act, on 21 July 2011 and 15 August 2011. Mr. M. A. appealed against the decision of 15 August 2011 and, on 12 May 2012, the Eastern High Court upheld the decision, finding that, upon her entry into Denmark, the author had not intended to establish her domicile and that of her son in the State party and that she had not consented to the son's change of domicile to Denmark as referred to in section 448f of the Administration of Justice Act.

4.5 On 26 August 2011, the Bailiff's Court rejected the author's request to have her son handed over to her.

4.6 On 21 May 2012, the author again brought the custody matter before the Regional State Administration, stating that Denmark had jurisdiction to examine the case because the Bailiff's Court had refused on 26 August 2011 to order the son to be handed back to her.

4.7 In a judgement of 27 July 2012, the District Court of Naestved decided that the son was to take up domicile with the author. On 31 August 2012, the Eastern High Court quashed that judgement and remitted the case to the District Court for re-examination.

4.8 In September 2012, the author and Mr. M. A. were granted a divorce.

4.9 On 10 October 2012, the District Court of Naestved delivered a judgement in which it upheld the author's claim that the son was to take up domicile with her in

² The Regional State Administration has five independent regional offices that handle State tasks in areas such as legal separation and divorce, child maintenance, spousal maintenance, custody and domicile.

the Philippines. The District Court found no basis for assuming that the son would not be able to have a proper childhood and youth in the Philippines, nor that the author would seek to prevent Mr. M. A. from having access to or contact with the son. The District Court further observed that the author was the primary caregiver of the son, who had been born and raised in the Philippines until Mr. M. A. had retained him following his entry into Denmark at the beginning of May 2011. The District Court emphasized that Mr. M. A. had prevented the author from having access to the son since their arrival in Denmark, apart from two weekly periods of four hours each at Mr. M. A.'s residence. The District Court therefore found that, even if it was assumed that the son had settled in and was thriving in the kindergarten, it would be in his best interest to live with the author, even if she took him back to the Philippines.

4.10 On 14 January 2013, the Eastern High Court upheld the judgement of the District Court, rejecting an appeal by Mr. M. A. The Eastern High Court found it to be in the son's best interest to take up domicile with the author, who used to be his primary caregiver, and to whom he was deemed to be closely attached.

4.11 The State party challenges the admissibility of the present communication on several grounds. First, it submits that the present communication is inadmissible in relation to the author's son because he cannot claim to be a victim under the Convention. It recalls the text of article 2 of the Optional Protocol to the Convention and states that no provision of the Convention suggests that it is intended to protect males from discrimination. Furthermore, it is clear from the wording of article 2 of the Optional Protocol, read together with rule 68 of the Committee's rules of procedure, that only women whose rights under the Convention have been violated can be considered victims. The Convention concerns only discrimination against women, yet the term "women" is not clearly defined in the Convention. For biological reasons, males cannot be regarded as women and, consequently, in accordance with article 2 of the Optional Protocol, the author's son — a boy — cannot be a victim under the Convention.

4.12 The State party further submits that the author and her son cannot claim to be victims under the Convention in the light of the judgement of the Eastern High Court dated 14 January 2013, in which it was decided that the son was to take up domicile with the author. Therefore, at least in view of this judgement allowing the author's claim that the son was to take up domicile with her, the author can no longer claim to be a victim.

4.13 The State party further submits that the communication should be declared inadmissible under article 4 (1) of the Optional Protocol for non-exhaustion of domestic remedies because it relates to unsubstantiated gender-based discrimination claims that have not been adequately raised before the State party's authorities. According to the State party, the national proceedings had also not yet been completed at the time of the submission of the communication.

4.14 The State party refers to the Committee's jurisprudence under which the author must have raised, at the domestic level, the substance of the claim that she wishes to bring before the Committee.³ In this connection, the State party notes that, according to the information provided by the author, no allegation concerning

³ The State party refers to communication No. 8/2005, *Rahime Kayhan v. Turkey*, decision of 27 January 2006, para. 7.7.

gender-based discrimination against her or her son was ever made by her before the State authorities. Accordingly, the domestic authorities have yet had no opportunity to assess such allegations.⁴ The judgement of 10 October 2012 by the District Court of Naestved and that of 14 January 2013 by the Eastern High Court solely concerned the question of the domicile of the author's son. No complaint concerning discrimination against women whatsoever was put forward by the author.

4.15 Furthermore, the present communication was submitted to the Committee on 6 September 2012. More than one month later, on 10 October 2012, the District Court of Naestved issued its ruling in the case concerning the domicile of the author's son. This fact implies that, when the author submitted the communication to the Committee, she was conducting domestic proceedings simultaneously with the present proceedings before the Committee concerning matters of clear relevance to the case.

4.16 The State party adds that, in principle, the judgement of 14 January 2013 is final, but, to exhaust domestic remedies, the author or Mr. M. A. must apply to the Appeals Permission Board for leave to appeal against the judgement to the Supreme Court. The deadline for submitting such application is eight weeks (sect. 371 of the Administration of Justice Act). In this connection, the State party indicates that it is not aware whether Mr. M. A. has submitted such an application. It points out, however, that human rights treaty bodies require exhaustion of extraordinary remedies and ordinary remedies.⁵ It notes that the European Court of Human Rights has stated that an application to the Board for leave to appeal against decisions and judgements is required for domestic remedies to be exhausted.⁶ The State party therefore submits that not all available domestic remedies have been exhausted because no decision has been taken by the Board on whether to permit an appeal to the Supreme Court. The State party observes that it appears from article 4 (1) of the Optional Protocol that remedies do not need to be exhausted if their application is unreasonably prolonged or unlikely to bring effective relief. The remedy available to the author or Mr. M. A. is the possibility of applying to the Board for permission to appeal against the judgement to the Supreme Court. The State party maintains that the application of this remedy will not be unreasonably prolonged, nor is it unlikely to bring effective relief. It entails no costs to apply to the Board and the Board can grant permission to appeal to the Supreme Court.⁷

4.17 Furthermore, the State party notes that the author and her son lodged an application with the European Court of Human Rights on 13 May 2012. It was registered as No. 30108/12. The State party submits that an application to the Court

⁴ The State party refers to communication No. 10/2005, *N. S. F. v. the United Kingdom*, decision of 30 May 2007, para. 7.3, and *Rahime Kayhan v. Turkey* (see footnote 3).

⁵ Concerning the Convention, the Committee's decisions indicate that the authors of communications are required to exhaust any judicial, administrative and extraordinary remedy that is available in practice, provides relief for the harm suffered and is effective for the objective sought by the author in the particular circumstances of the case. See Marsha A. Freeman, Christine Chinkin and Beate Rudolf, eds. *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford, Oxford University Press, 2012), p. 637.

⁶ The State party refers to application No. 11968/04, *Ugilt Hansen v. Denmark*, European Court of Human Rights, decision of 26 June 2006.

⁷ If the appeal concerns a case that may have implications for rulings in other cases, or if the case is of special interest to the public.

constitutes a procedure of international investigation or settlement within the meaning of article 4 (2)(a) of the Optional Protocol. In this connection, the State party refers to the jurisprudence of the Committee against Torture concerning cases in which the same matter has been or is being examined by another international procedure. Furthermore, it notes that, at its twentieth session, the Working Group on Communications under the Optional Protocol decided to discontinue its consideration of communication No. 21/2009 owing to the clear intention expressed by the author of the communication to pursue her case before the Court.⁸

4.18 In this regard, the State party observes that, in *Rahime Kayhan v. Turkey*,⁹ the Committee referred to case law of the Human Rights Committee regarding this issue and noted from communication No. 075/1980, *Fanali v. Italy*, that “the concept of ‘the same matter’ within the meaning of article 4 (2)(a) of the Optional Protocol had to be understood as including the same claim concerning the same individual, submitted by him or someone else who has the standing to act on his behalf before the other international body”. The State party further notes that the claims must be identical to the extent that they must refer to the same facts and events¹⁰ and that they must also relate to the same substantive rights.¹¹

4.19 In the light of the foregoing, the State party notes that the application dated 15 May 2012 to the European Court of Human Rights is extremely comprehensive, complaining of a violation of article 8 and other articles, in addition to invoking the discrimination provision under article 14. The provisions invoked by the author under the Convention are also anti-discrimination provisions. The State party therefore contends that the issue at hand is the same matter, given that the same persons are applicants and authors, the same matter is the basis of both complaints and the same substantive rights are being relied upon by the author in both complaints. The State party submits that the case can be regarded as being examined by the Court. According to the information available, no decision has yet been taken by the Court on the case.

4.20 Given that the same matter is already being examined under another procedure of international investigation or settlement — the European Court of Human Rights — through the application dated 15 May 2012, the State party submits that the present communication should be declared inadmissible pursuant to article 4 (2)(a) of the Optional Protocol.

4.21 In addition, the State party submits that the author’s communication should be declared inadmissible under article 4 (2)(c) of the Optional Protocol because it is manifestly ill-founded and not sufficiently substantiated. The author has failed to substantiate why or how her and her son’s rights under articles 1, 2 (d), 5 and 16 (d) of the Convention have been violated. She has completely failed to indicate or specify how particular decisions, acts or omissions by the State party’s authorities have allegedly entailed a violation of rights under the Convention.

4.22 The author alleges that the application of domestic remedies in the State party is unnecessarily prolonged and unlikely to bring effective relief. Furthermore, she

⁸ A/67/38, annex VI, para. 11 (d).

⁹ Para. 7.3.

¹⁰ Communication No. 421/1990, *Thierry Trebutien v. France*, decision of 18 July 1994, para. 6.3.

¹¹ Communication No. 1115/2002, *Werner Petersen v. Germany*, decision of 1 April 2004, para. 6.3.

alleges that many foreign women and their children are affected by the intolerable situation and that the State party's authorities have failed to provide effective protection from and remedies against her Danish former husband. She further alleges that there is no protection, no justice system and no social security system for foreign girls and mothers in the State party.

4.23 In this connection, the State party submits that the allegations are unsubstantiated because they are not supported by any evidence or documentation and no link is made to the facts of the actual case, including any act or omission by the State party's authorities. On the contrary, the author has succeeded in her claim concerning custodial rights, most recently in the judgement of 14 January 2013.

4.24 Lastly, the State party submits that the communication should be declared inadmissible under article 4 (2)(d) of the Optional Protocol because it constitutes an abuse of the right to submit a communication. The author has clearly failed to exhaust domestic remedies, she cannot claim to be a victim, she has lodged a similar application to the European Court of Human Rights and her communication is unsubstantiated. Under rule 58 of the Committee's rules of procedure, the Secretary-General may request the author of a communication to clarify issues or submit additional information, including the objective of the communication; the facts of the claim; steps taken by the author and/or victim to exhaust domestic remedies; the provisions of the Convention allegedly violated; and the extent to which the same matter is being or has been examined under another procedure of international investigation or settlement. The State party is unaware whether such information has been requested. In principle, the State party observes that the author of a communication should clarify such issues before the Committee transmits a particular communication to a State party for its observations.

Author's comments on the State party's observations

5.1 On 26 January 2013, the author submitted her comments on the State party's observations. In relation to the assertion that her son cannot be a victim, she notes that her son is a small child and, under article 5 of the Convention, has the status of victim within the meaning of the Convention along with her. She also notes that the State party's authorities have failed to take into account the best interests of the child as required under this provision of the Convention.

5.2 As to her lack of victim status, the author at length reiterates the facts of the case mentioned in her initial submission and maintains that there is nothing to stop the State party from allowing her former husband to repeat his actions with the support of the State party when she next goes to Denmark.

5.3 Regarding the requirement to exhaust available domestic remedies, the author notes that, according to the Committee's case law,¹² the rule of exhaustion of domestic remedies may be mitigated in circumstances in which the authorities have failed to act with due diligence. In this connection, she states that, since 2011, she has unsuccessfully sought to resolve the issue before the national authorities, given that they claim to lack jurisdiction. She further states that she and her son have been subjected to terrorizing threats, harassment, kidnapping, illegal detention, abuse and

¹² The author refers, among others, to communication No. 5/2005, *Goekce v. Austria*, decision of 6 August 2007, para. 7.3, and communication No. 6/2005, *Yildirim v. Austria*, decision of 6 August 2007, paras. 7.3 and 7.4.

violence by Mr. M. A. and that the State party's authorities are not functioning duly. She further submits that she has doubts as to whether the Supreme Court of Denmark would have properly examined her case because the Convention has not been incorporated into the State party's legislation.

5.4 Concerning the State party's argument that the same matter is being examined by the European Court of Human Rights, the author submits that her application (she claims that it was submitted as a group application) was not registered by the Court. She further submits that she has withdrawn her application.

5.5 As to the failure to sufficiently substantiate her claims, the author submits that the very nature of her complaint is founded on the existence of conclusively proven gender-based abuse experienced by her, which in itself breaches the provisions of the Convention. Gender-based abuse and abuse of the rights of children have been explicitly deemed to be a form of discrimination against women by the Committee in its general recommendation No. 19, on violence against women. She further states that her former husband was verbally and physically abusive. Because of his behaviour and the actions of the State party's authorities after he abducted her child in the State party, she lost her job. When she sought the authorities' protection, she was ignored because her former husband was Danish. The authorities denied her her rights as a mother to seek information about her son and to be with him when her former husband kidnapped him in Denmark. She was unable to see him in Denmark owing to constant threats and the passive/aggressive behaviour of the authorities. According to her, there has therefore been a breach of article 16 (1)(d) of the Convention.

5.6 On 9 July 2013, the author stated that she and her son had left Denmark on 6 February 2013, that they were both living happily in the Philippines and that her son maintained contact with his father through the Internet. The author added that, even though she was in the Philippines with her son, she wished to pursue the communication against the State party because she did not have sole custody of the child and might go through the same ordeal if she ever returned to Denmark. The author also added that what happened to her should not happen to other foreign women married to Danish nationals.

Issues and proceedings before the Committee: consideration of admissibility

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

6.2 The Committee notes that the State party challenges the admissibility of the present communication under articles 2, 4 (1) and (4) (2)(a), (c) and (d) of the Optional Protocol.

6.3 The Committee takes note of the submissions of the State party to the effect that the communication should be declared inadmissible under article 2 of the Optional Protocol inasmuch as the author and her son cannot claim to be victims in the light of the judgement of the Eastern High Court dated 14 January 2013, in which the Court upheld the lower court's decision and ruled that the child was to take up domicile with the author. Under article 2 of the Optional Protocol, communications may be submitted by or on behalf of individuals or groups 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. The Committee further notes the submissions of the author confirming that, following the said judgement of the Eastern High Court, she and her son left Denmark on 6 February 2013, that they are both living happily in the Philippines and that her son is maintaining contact with his father through the Internet. The Committee takes note that, even though she is well settled in the Philippines with her son, the author has expressed, in correspondence dated 9 July 2013, her wish to pursue the communication against the State party on two grounds: because she does not have sole custody of the child and may go through the same ordeal if she ever returns to Denmark; and because she is motivated by the desire that “what happened to her should not happen to other foreign women married to Danish nationals”.

6.4 The Committee observes that the Regional State Administration to which both the author and Mr. M. A. applied for the sole custody of the child ruled on 30 June 2011, 21 July 2011 and 15 August 2011 that it had, pursuant to section 448 (f) of the Administration of Justice Act, no jurisdiction to decide upon the custody application because the child was not domiciled in Denmark. The District Court of Naestved upheld the author’s claim on 10 October 2012 that her son was to take up domicile with her in the Philippines. The Court took into consideration the fact that she was the primary caregiver of the child, who had been born and raised in the Philippines until Mr. M. A. had retained him in May 2011 following his arrival in Denmark. The Committee further notes that, on 14 January 2013, the said judgement of the District Court was upheld by the Eastern High Court, which also found it to be in the best interests of the author’s son to live and take up domicile with her in the Philippines.

6.5 The Committee considers that it is immaterial that the author does not have sole custody of the child because she can apply for such custody before the national courts in the Philippines, where the child is domiciled. The Committee states that, after the Eastern High Court dismissed the appeal filed by Mr. M. A. and upheld the judgement of the District Court of Naestved, the author and her child ceased to be victims within the meaning of article 2 of the Optional Protocol — if indeed they were victims of discrimination before that judgement. The Committee acknowledges the suffering of the author and her son during the period when she had only very limited access to him, before they were able to return to the Philippines following the judgement of the Eastern High Court of 14 January 2013, in which the judgement of the District Court of Naestved of 10 October 2012 was confirmed. The Committee recalls, however, that the Optional Protocol excludes any *actio popularis*. Accordingly, it cannot continue to consider the present communication for the sake of “other foreign women married to Danish nationals”. The Committee further observes that article 2 of the Optional Protocol excludes communications on behalf of groups of individuals without their prior consent, unless the absence of consent can be justified. The author has not addressed the question of consent of the “other foreign women married to Danish nationals”.

6.6 In the circumstances, the Committee concludes that the author lacks the locus standi to pursue the present communication, given that, after the Eastern High Court handed down its judgement on 14 January 2013, she and her son ceased to be victims within the meaning of article 2 of the Optional Protocol — if indeed they were victims of discrimination until that judgement.

6.7 In the light of the above conclusion, the Committee does not deem it necessary to examine any other inadmissibility grounds invoked by the State party.

7. The Committee therefore decides:

(a) That the communication is inadmissible under article 2 of the Optional Protocol;

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

[Adopted in Arabic, Chinese, English, French, Russian and Spanish, the English text being the original version.]
