



**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. 49/2013

**Decision adopted by the Committee at its fifty-ninth session
(20 October-7 November 2014)**

Submitted by: S.O. (represented by counsel, William Sloan)
Alleged victim: The author
State party: Canada
Date of communication: 21 February 2013 (initial submission)
References: Transmitted to the State party on 1 March 2013
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Date of adoption of decision: 27 October 2014

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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-ninth session)

concerning

Communication No. 49/2013*

Submitted by: S.O. (represented by counsel, William Sloan)

Alleged victim: The author

State party: Canada

Date of communication: 21 February 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 27 October 2014,

Adopts the following:

Decision on admissibility

1.1 The author of the communication is S.O., a Mexican national born on 23 January 1973, who sought asylum in Canada. Her application was rejected and, at the time of submission of the communication, she was awaiting deportation from Canada to Mexico. She claims that such deportation would constitute a violation by Canada of articles 1 to 3 of the Convention on the Elimination of All Forms of Discrimination against Women. The author is represented by counsel, William Sloan. The Convention and the Optional Protocol thereto entered into force for the State party on 10 December 1981 and 18 January 2003, respectively.

1.2 The author requested interim measures of protection in accordance with article 5 (1) of the Optional Protocol.

1.3 On 1 March 2013, the Committee granted the interim measures and requested the State party not to deport the author to Mexico while her case was pending before the Committee.¹

* The following members of the Committee participated in the examination of the present communication: Ayse Feride Acar, Nicole Ameline, Olinda Bareiro-Bobadilla, Niklas Bruun, Náela Gabr, Hilary Gbedemah, Yoko Hayashi, Ismat Jahan, Dalia Leinarte, Violeta Neubauer, Theodora Oby Nwankwo, Maria Helena Lopes de Jesus Pires, Biancamaria Pomeranzi, Patricia Schulz, Dubravka Šimonović and Xiaoqiao Zou.

¹ On 7 June 2013, the State party requested the Committee to lift the interim measures. On 5 August 2013, the Committee informed the State party that it had decided to keep the interim measures in place pending its consideration of the author's case.

Facts as submitted by the author

2.1 In November 2008, the author began to live with K.R. in the State of Morelos in Mexico. He admitted soon thereafter that he was living in Mexico with false identity papers, that he had escaped from prison in the Bolivarian Republic of Venezuela, where he had been convicted of armed robbery, and that he was a member of a criminal gang in Mexico. She claims that she first was a victim of domestic violence in December 2008. Incidents of domestic violence occurred again in January, February and March 2009. Following the incident in March 2009, the author was hospitalized for three days. After each incident, she filed a complaint with the police, but no action was taken. During the incident in March 2009, the author's partner told her that he was aware of her previous complaints to the authorities.

2.2 When the author was released from hospital in March 2009, she decided to live with a friend. She also sought legal advice on how to obtain protection from her partner. Because the lawyer told her that she could not obtain protection in Mexico, she decided to leave on 25 May 2009. She indicates that, after her departure, her partner telephoned her family and friends to ask about her location. In May and September 2011, he twice visited the author's mother to enquire about the author's whereabouts. During the second visit, while drunk, he assaulted the author's mother by slapping her on the face when she refused to tell him where the author was.

2.3 The author applied for refugee protection in Canada on 30 December 2011 on the grounds that she would be a victim of domestic violence if she were returned to Mexico. Her application was subject to the pre-removal risk assessment procedure, given that she had, in 1999, submitted a claim for refugee protection with her former partner, which had been rejected in 2000. After a hearing on 22 October 2012, the author's application was rejected on 5 December 2012 and the decision was communicated to the author on 24 January 2013. The decision does not dispute that the author was a victim of domestic violence and that she unsuccessfully sought to obtain protection in Mexico. It concludes, however, that an internal flight alternative existed for the author in Mexico City and stressed in particular that, even if the situation in Mexico concerning conjugal violence was not ideal, some remedies and services existed to which the author could have access, in particular in Mexico City, and that the author had failed to demonstrate why, in case of return, she could not relocate to Mexico City, where she previously lived and worked, and, if necessary, have access to the protection services there.

2.4 On 29 January 2013, the author applied for leave to seek judicial review of the decision of 5 December 2012 before the Federal Court. On 31 January 2013, she also submitted a motion to stay her removal while the judicial review was pending, in which she argued that the possibility of an internal alternative flight was not an aspect of State protection. Her motion was denied on 18 February 2013. The Court determined that the finding of the procedure regarding the internal flight alternative was within the spectrum of possible conclusions in the light of the facts and the law in the case. The author was then informed that her deportation was scheduled for 27 February 2013.²

² It is indicated in the deportation notice that she was to return to Mexico by 28 February 2013.

Complaint

3.1 The author claims that, by deporting her to Mexico, Canada would violate articles 1 to 3 of the Convention, read in conjunction with the Committee's general recommendation No. 19. She submits that, in case of forcible return to Mexico, she would be a victim of gender-based violence inflicted by her former partner in the form of physical, mental and sexual violence and that she would not obtain adequate protection from the Mexican authorities.

3.2 The author maintains that she suffered an injustice during the national proceedings because the evidence that she submitted was rejected or disregarded. She considers that the State party denied her refugee protection on the basis of an erroneous assessment by the pre-removal risk assessment officer, who concluded that protection for victims of gender-based violence was available in Mexico City. She further asserts that the decision wrongly suggested that she could have an internal flight alternative in Mexico City, where protection was available to her. In this regard, she submits that the State of Morelos, where she was living, borders Mexico City and almost constitutes a suburb of it, meaning that her former partner would not find it difficult to have access to her should she return to Mexico City. She also recalls that she was unable to obtain effective protection from the Mexican authorities.

3.3 With regard to the exhaustion of domestic remedies, the author recalls that her application to stay her removal pending judicial review was denied, meaning that she has no additional remedy available. She compares her case with a communication in which a victim of domestic violence was being deported to Pakistan, where she would not have adequate protection from the authorities. The author contends that, in that case, the Committee had ruled the author's claim admissible, but then considered the communication inadmissible for failure to exhaust domestic remedies, given that the author had not availed herself of judicial review.³ The author suggests that her case should be admissible because she did seek judicial review.

State party's observations on admissibility

4.1 On 7 June 2013, the State party submitted its observations on the admissibility of the communication, challenging the admissibility on three grounds. The State party argues, first, that the author has not exhausted all domestic remedies in respect of her allegation that the Canadian refugee protection system is discriminatory. Second, it indicates that the claim that Canada has an obligation of non-refoulement is incompatible with the provisions of the Convention. Third, it states that the submission is manifestly ill-founded or the author has not sufficiently substantiated her claim that she would face risk of torture or risk to life if she were returned to Mexico.

4.2 With regard to the facts of the case, the State party indicates that the author arrived in Canada on a visitor's visa and that, when her visa expired, her overstay

³ 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. The Committee determined that the author had failed to exhaust domestic remedies and, on that basis, declared the communication inadmissible under article 4 (1) of the Optional Protocol. The failure of the author to raise sex discrimination before the national authorities was central to the Committee's finding, which did not make determinations relating to the other grounds of admissibility.

came to the attention of the authorities in December 2012. The author was detained and offered a pre-removal risk assessment. The State party stresses that it was the second time that the author was seeking protection in Canada, her first application under the Immigration and Refugee Protection Act having been denied in 1999. She was then subject to a removal order, but voluntarily left Canada and returned to Mexico in April 2000.

4.3 The State party further explains that, because the author had already had a refugee determination, albeit in respect of another claim, her new allegations of risk of persecution, risk to life or risk of torture or cruel or unusual treatment or punishment were assessed through a pre-removal risk assessment rather than through another refugee determination. The State party submits that pre-removal risk assessment applications are considered by officers who are specially trained and duly informed about international human rights obligations, including with regard to gender and children's issues, and the risks specific to victims of domestic violence, given that persecution based on one's gender, including domestic violence, can sustain a claim for protection in Canada.

4.4 The State party recalls the facts presented by the author in her pre-removal risk assessment application and indicates that she also adduced evidence of her history and past incidents of domestic violence suffered in Mexico, such as medical documents, letters from family members attesting to the abusive behaviour of her former partner and documentation from the Mexican authorities attesting to the complaints that she submitted to the competent authorities. The author also presented several reports prepared by human rights bodies on the situation faced by victims of gender-based violence in Mexico. Despite finding her allegations credible, the jurisdictions of the State party determined that the author had a reasonable internal flight alternative within Mexico and that she had not presented compelling evidence demonstrating that she could not return to live apart from her abusive former partner in other areas of that country.

4.5 The State party indicates that the findings were established not only by risk assessment experts, but also by an independent court, which did not support the idea that the author would be exposed to a substantial personal risk if returned to Mexico. In this regard, the State party refers to the decision of the Federal Court of 18 February 2013, by which the author's application to stay the removal proceedings was dismissed. It is indicated that the author was afforded the opportunity to present additional evidence following her oral hearing to refute the availability of an internal flight alternative. The pre-removal risk assessment officer carefully considered the evidence, but ultimately decided that the author had the possibility of an internal flight alternative and that the additional evidence presented did not refute that finding. The State party further notes that the author's application for leave to seek judicial review of that decision has not yet been decided by the Court and that her application does not automatically defer her removal, which is currently under an active valid order.⁴

4.6 With regard to the exhaustion of domestic remedies, the State party observes that the author had applied for permanent residence on humanitarian and

⁴ The State party does not allege non-exhaustion of domestic remedies because the Federal Court had not ruled yet on the judicial review. It merely noted that the proceedings had not yet been concluded and acknowledged that in any case it would not stay the removal of the author. The Federal Court handed down its ruling on 7 June 2013, as mentioned in paras. 7.7 and 8.6 below.

compassionate grounds in February 2000, but had not made a second such application since her arrival in Canada in 2009, although there was no legal obstacle preventing her from applying afresh on the basis of her new factual situation. The State party explains that, following legislative changes to the refugee system in 2010, applications on humanitarian and compassionate grounds are no longer based on an assessment of risks, but on the hardship potentially faced by applicants in their country of origin.⁵ The State party therefore submits that, although a pending application on humanitarian and compassionate grounds would not prevent her removal, the author did have further domestic remedies available to her, which she did not pursue.

4.7 In addition, according to the State party, the Convention does not contain an implicit obligation of non-refoulement, unlike article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or articles 6 and 7 of the International Covenant on Civil and Political Rights. Articles 1 to 3 of the Convention on the Elimination of All Forms of Discrimination against Women therefore do not include a guarantee not to be returned to a country where there is a risk that a person would face gender-based violence. The State party disputes that the Committee ever took such a view in previous jurisprudence, including in *N.S.F. v. the United Kingdom of Great Britain and Northern Ireland*, in which the Committee considered the communication to be inadmissible for failure to exhaust domestic remedies and did not comment on whether the non-refoulement principle was protected by the Convention. The State party also submits that a good-faith interpretation of the ordinary meaning of the text of the Convention, in the light of its object and purpose, does not support such an implicit obligation and refers to the *travaux préparatoires* in suggesting that the negotiating parties never contemplated or intended to include such an obligation. The State party submits that the Committee should therefore not seek to extend the interpretation of the Convention to include a guarantee of non-refoulement.

4.8 The State party further recalls that it is within their sovereignty for States to determine the conditions of entry and stay of foreigners on their territories, including the modalities of their removal, and that only the most serious breaches of fundamental rights can constitute exceptions, such as in cases of irreparable and grave prejudice to the individual being returned. The State party observes that the Human Rights Committee has been cautious in accepting an implicit obligation on States parties not to return individuals and that the Committee should adopt a similarly cautious approach. The State party submits that the author's communication is therefore incompatible with the provisions of the Convention.

4.9 The State party adds that the author's communication rests mainly on her disagreement with the assessment and findings of the pre-removal risk assessment officer in rejecting her application, in particular regarding the existence of an internal flight alternative. The State party considers that merely expressing such disagreement is not sufficient for the author to substantiate her allegations that articles 1 to 3 of the Convention have been violated. The State party recalls that it is not the role of the Committee to re-evaluate facts and evidence unless it is manifest that the evaluation conducted by the national authorities was arbitrary or amounted

⁵ The State party states that some examples of such hardship include the lack of critical medical or health care, discrimination that does not amount to persecution and adverse country conditions that have a direct negative impact on the applicant.

to a denial of justice. The arguments and documents submitted by the author cannot support a conclusion that the decisions taken at the national level suffered from any such defects. The State party further notes that the reports by human rights bodies about generalized violence in Mexico, to which the author refers in her communication, were presented to and duly evaluated by the pre-removal risk assessment officer.

4.10 The State party submits that the author has not provided sufficient evidence to establish that the risk of domestic violence upon return rises to the level of risk of persecution, risk to life or risk of torture or of cruel or unusual treatment or punishment and that Mexico would be unwilling or unable to protect her in the face of such a risk. The State party also submits that the author has not shown that she cannot live safely in other parts of Mexico if faced with a risk of domestic violence in Morelos and that the hardship resulting from relocation would amount to a human rights violation that is sufficiently severe to justify the application of the Convention, should the Committee take the view that it contains an obligation of non-refoulement.⁶ The State party considers that the author's allegations should be declared inadmissible, given that they are manifestly ill-founded and not sufficiently substantiated.

4.11 The State party observes that the violations alleged by the author appear to also pertain to the State party's discriminatory treatment of female refugees claiming gender-based violence. In this regard, the State party submits that it does not discriminate against women submitting claims based on gender-based violence and rejects as unfounded any suggestion by the author regarding systematic discrimination against women in its immigration system. Furthermore, the State party submits that the author has never presented evidence in respect of such claims. The author has also failed to demonstrate that the lack of a real risk of domestic violence thanks to the existence of an internal flight initiative was in any way the result of systemic or case-specific discrimination by the authorities. The State party considers, to the contrary, that the appropriate laws, policies and practices were strictly followed in the author's case, such that the author was treated fairly, justly and without discrimination. The State party concludes that the author's communication, to the extent that it claims discrimination within the Canadian immigration system, is inadmissible pursuant to article 4 (1) of the Optional Protocol for failure to exhaust domestic remedies. It also considers that this aspect of the communication is inadmissible for being manifestly ill-founded or not sufficiently substantiated.

Author's comments on State party's observations on admissibility

5.1 On 7 July 2013, the author submitted her comments on the State party's observations on admissibility. She maintains that the State party has an obligation of non-refoulement under the Convention and that it bears responsibility for the direct and foreseeable consequences of its actions, namely her potential removal to Mexico. The author reiterates that the Committee has confirmed the existence of

⁶ The State party refers to the following communications submitted to the Committee against Torture in which it expressed the view that resettlement to another part of a country, although causing hardship, did not amount to torture: communication No. 183/2001, *B.S.S. v. Canada*, views adopted on 12 May 2004, para. 11.5, and communication No. 245/2004, *S.S.S. v. Canada*, decision adopted on 16 November 2005, para. 8.5.

such an obligation, at least for the purposes of admissibility, in its decision in *N.S.F. v. the United Kingdom of Great Britain and Northern Ireland*. According to the author's interpretation of that case, the Committee did not consider the allegation based on the risk of gender-based violence upon deportation to Pakistan as a ground of inadmissibility.

5.2 The author asserts that, contrary to the State party's contentions, the harm that she would face if returned to Mexico amounts to a threat to life and that the physical abuse that she has suffered constitutes cruel and unusual punishment or treatment, which has been recognized by the Committee in its general recommendation No. 19 as discrimination within the meaning of article 1 of the Convention. The author further disputes that treaty bodies have obligations limited to "only the most serious breaches of fundamental rights" in the context of removal to third parties. She observes that the Human Rights Committee has found, in cases of deportation, that States parties have obligations beyond those set forth in articles 6 and 7 of the International Covenant on Civil and Political Rights, given that it has previously found violations of articles 17 (1) (unlawful or arbitrary interference with family), 23 (protection of the family unit) and 24 (1) (protection of minors) of the Covenant.⁷

5.3 Concerning the State party's contention that it is not the role of the Committee to review the evaluation of facts and evidence by the national authorities, the author submits that she suffered a denial of justice in the decision-making process because her claim was credible, that the evidence that she submitted was not taken into account and that she should not be deported.

5.4 The author claims that the State party has violated article 2 of the Convention, but indicates that she was not treated in a discriminatory manner by the authorities in the processing of her asylum claim. She does not allege the commission of any act of gender-based discrimination by the authorities of the State party during the immigration proceedings or within the immigration system, indicating that her complaint to the Committee relates only to the risk that she would face if returned to Mexico.

5.5 With regard to the exhaustion of domestic remedies, the author argues that an application for permanent residence on humanitarian and compassionate grounds is not an effective remedy, given that it would not suspend her removal from the State party and the relevant officers would no longer be able to consider alleged risks pertaining to persecution, torture or cruel treatment. She also recalls the jurisprudence of the Committee against Torture, which has established that an application on humanitarian and compassionate grounds is based on purely humanitarian criteria, is *ex gratia* in nature and is not a remedy that must be exhausted to satisfy the necessary requirements.⁸

State party's additional observations on admissibility

6.1 On 8 October 2013, the State party made further submissions on inadmissibility, while reiterating its initial grounds for considering the communication inadmissible.

⁷ See communication No. 1011/2001, *Madafferi v. Australia*, views adopted on 26 July 2004, and communication No. 930/2000, *Winata v. Australia*, views adopted on 26 July 2001.

⁸ See communication No. 133/1999, *Falcon Ríos v. Canada*, decision adopted on 23 November 2004, para. 7.3.

6.2 While noting the jurisprudence of the Committee in *M.N.N. v. Denmark*,⁹ the State party disputes the interpretation of the Convention made by the Committee to the effect that the principle of non-refoulement can be included in the Convention. It reiterates that a good interpretation of the ordinary meaning of the text of the Convention, in the light of its object and purpose, does not support an implicit obligation of non-refoulement. It refers again to the *travaux préparatoires*, which do not indicate that the negotiating parties ever contemplated that the Convention would include a guarantee against removal in case of torture or other similar threats to the life and security of the person. It recalls that the focus of the Convention is national action to improve the condition of women in the areas covered by the Convention, meaning that women who face gender-based forms of torture, risk to life or other irreparable harm should use the existing complaint mechanisms before the Human Rights Committee and/or the Committee against Torture, which are competent to assess such risks.

6.3 In addition, contrary to the author's assertion, the State party considers that the definition of discrimination contained in article 1 of the Convention does not include an obligation of non-refoulement where women may face a risk of gender-based violence. It therefore claims that acceptance of the assertion by the Committee would unduly extend States parties' obligations under the Convention. The State party submits that the author's claims would fall within the purview of the Convention only if she were alleging gender-based discrimination in the Canadian refugee and protection system or domestic violence in Canada without an adequate response by the Canadian authorities. The State party recalls that the author's claims relate to the inadequate response of the Mexican authorities and that, as such, her complaint should be directed at Mexico. The State party cannot be held responsible for discrimination in the jurisdiction of another State.

State party's observations on the merits

7.1 On 8 October 2013, the State party also submitted its observations on the merits. It considers that the author's claims lack merit for failure to establish substantial grounds for believing that she would be subjected to a risk of irreparable harm if returned to Mexico.

7.2 The State party submits that, in international law, the principle of non-refoulement requires a high threshold, in that there must be a foreseeable, real and personal risk of irreparable harm in the country of return, such as a risk to life or a risk of torture, for a State to be constrained by the obligation of non-refoulement. It considers that the risk of a violation of any human right, such as the right to non-discrimination, cannot impose an obligation of non-refoulement. The State party stresses that the Human Rights Committee and the European Court of Human Rights have established implicit obligations of non-refoulement only in cases of the most serious levels of violation of human rights in order to limit the extraterritorial effects of human rights instruments to exceptional circumstances.¹⁰

⁹ Communication No. 33/2011, *M.N.N. v. Denmark*, decision of inadmissibility adopted on 15 July 2013.

¹⁰ The State party refers to communication No. 1302/2004, *Khan v. Canada*, decision of inadmissibility adopted on 25 July 2006, para. 5.6, citing the Human Rights Committee's general comment No. 31, para. 12, and *Soering v. the United Kingdom*, judgement of 7 July 1989.

7.3 The State party notes that the principle of non-refoulement as defined in the 1951 Convention relating to the Status of Refugees may include gender-related forms of persecution. It also notes that the Committee against Torture has included gender-based forms of violence as falling within the scope of torture. The Convention against Torture contains an explicit obligation of non-refoulement. The State party asserts that, should the scope of article 1 of the Convention on the Elimination of All Forms of Discrimination against Women contain the principle of non-refoulement, however, such obligation should be interpreted in a similarly cautious and restricted manner. It therefore submits that the Convention can impose an obligation not to return women to countries where they may face a risk of gender-based violence only if there is a serious risk of gender-based violence that is foreseeable, real and personal and that would cause irreparable harm, such as a risk to life, a risk of torture or a risk of cruel, inhuman or degrading treatment or punishment.

7.4 The State party disputes the author's assertion that *Madaferreri v. Australia* and *Winata v. Australia* provide examples of the application of the principle of non-refoulement by the Human Rights Committee in relation to the protection of family life. It submits that, in fact, the cases illustrate a different principle, given that the Committee considered the interference in family life caused by the removing State as amounting to a breach of the International Covenant on Civil and Political Rights. It was not a matter of a risk in the country of return.

7.5 The State party further submits that the author has not established that she faces a personal risk of irreparable harm through gender-based violence. It recalls that, to the contrary, she had a reasonable internal flight alternative. Referring to the relevant guidelines of the Office of the United Nations High Commissioner for Refugees,¹¹ the jurisprudence of the Committee against Torture¹² and the jurisprudence of the European Court of Human Rights,¹³ the State party submits that it is well established in international refugee law that individuals must seek to minimize their risk of harm, where possible, through internal relocation or resettlement within their own State. The principle is also recognized in the national jurisprudence of States parties to the 1951 Convention relating to the Status of Refugees. Thus, under Canadian law, the principle of an internal flight alternative is an integral part of the refugee determination process.

7.6 The State party contends that the principle of non-refoulement does not require States parties to refrain from removing non-citizens because their home country does not guarantee their safety in a situation of serious generalized violence. The State party considers that the prevalence of domestic violence in Mexico is a cause

¹¹ Office of the United Nations High Commissioner for Refugees, "Guidelines on international protection: 'internal flight or relocation alternative' within the context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees", guideline No. 4 (HCR/GIP/03/04).

¹² The State party refers to *S.S.S. v. Canada* (note 6 above), para. 8.5, in which the Committee against Torture noted the evidence on an internal flight alternative, concluding that the complainant would be able to lead a life free of torture in other areas of India.

¹³ The European Court of Human Rights considered the availability of an internal flight alternative in determining possible violations of article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms. In *Vilvarajah and others v. the United Kingdom*, it considered that large parts of Sri Lanka remained peaceful and subsequently concluded that there was no violation of article 3 (para. 109).

for serious concern. Drawing from the jurisprudence of the Committee against Torture, however, it notes that the existence of a pattern of gross or flagrant violations of human rights in a particular country does not constitute sufficient grounds for determining that a particular individual would be in danger of being subjected to death, torture or inhuman treatment upon his or her return to that country.¹⁴ The author must demonstrate that she would personally be at risk. The State party recalls that it was found in the author's case that the risks alleged did not rise to the level of persecution, torture, serious threats to life or cruel and unusual treatment. The State party also recalls that, while recognizing that the situation for Mexican women facing domestic violence was not ideal, the pre-removal risk assessment officer noted that some protection services were available, in particular in Mexico City, where the author had lived and worked for a number of years, and that she had not demonstrated that she could not find refuge in another part of Mexico, outside of her home town. The officer also considered the human rights reports filed by the author and discussed the briefing by Amnesty International to the Committee in 2012. He determined that the document presented a pertinent overview of violence against women in Mexico, but did not refute the possibility of an internal flight alternative for the author. Furthermore, the State party observes that, while the many challenges faced by victims of spousal violence in Mexico are highlighted in recent human rights reports, some progress has been made, given that the Government has enacted significant reforms of federal and state laws to improve protection.¹⁵

7.7 The State party recalls that the author benefitted from two independent assessments of the risk that she alleged that she would face upon return to Mexico. It also mentions that her application for leave to seek judicial review was dismissed without reasons on 7 June 2013.

7.8 Lastly, the State party reiterates that the Committee should not act as another level of appeal. It also reiterates that the findings made by national decision makers, including that the author can safely relocate to another part of Mexico, were neither arbitrary nor a denial of justice to the point of requiring the intervention of the Committee. The State party asserts that its immigration system does not minimize the particular risks faced by women fleeing violence or persecution, but considers that the author was provided with a fair assessment of her claim for protection.

7.9 The State party considers that the author's communication is based on the same facts and evidence already presented to the national authorities and maintains that the author has not provided evidence to establish that the risk of domestic violence that she faces is both country-wide and rises to the level of the most serious human rights violations, such as torture, or other similarly serious threats to life and security of the person.

¹⁴ The State party refers to communication No. 282/2005, *S.P.A. v. Canada*, decision adopted on 7 November 2006, para. 7.7, and communication No. 203/2002, *A.R. v. the Netherlands*, decision adopted on 14 November 2003, para. 7.3.

¹⁵ The State party refers to a report prepared in 2011 by the Department of State of the United States of America, in which it is indicated that there are some 70 shelters for women and their children funded at least in part by the Government, mostly for victims of gender-based violence.

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

8.1 On 20 December 2013, the author commented on the State party's observations on the merits. She refers to her previous submission and reiterates her argument that Canada bears responsibility for the foreseeable consequences of its actions if she is returned to Mexico, where she will be exposed to gender-based violence. The author further stresses that the Committee has adopted such a position in its decision in *M.N.N. v. Denmark*.

8.2 The author also reiterates that States parties are under an obligation to refrain from removing individuals where the foreseeable consequence would be a violation of their rights under the International Covenant on Civil and Political Rights, even in cases where the breach falls short of a risk to life, risk of torture or risk of cruel, inhuman or degrading treatment. She considers, in any event, that the alleged risk does amount to a threat to life and that the physical abuse that she has suffered and to which she would again be exposed upon return also constitutes cruel and unusual punishment or treatment.

8.3 The author reiterates that she is a victim of a denial of justice by the Canadian immigration authorities, which justifies the intervention of the Committee, given that the evaluation of the internal flight alternative by the pre-removal risk assessment officer was based on selective use of some of the credible evidence that she submitted in support of her claim. For example, the officer arbitrarily ignored the report by Human Rights Watch on Mexico and drew unreasonable conclusions from the briefing by Amnesty International to the Committee. The author further submits that, in its decision on her application to stay her removal, the Federal Court made no reference to the arguments, documents and case law that she submitted.

8.4 The author disputes the position taken by the State party in its memorandum to the Federal Court, arguing that the availability of protection is not a factor in whether Mexico City can be an internal flight alternative.

8.5 The author refers to further reports released in 2013 by Human Rights Watch and Amnesty International regarding the lack and inadequacy of protection for victims of gender-based violence in Mexico.

8.6 As to the exhaustion of domestic remedies, she indicates that her application for leave to seek judicial review of the pre-removal risk assessment decision was dismissed without reasons on 7 June 2013 and that she has no access to any further domestic remedy.

Issues and proceedings before the Committee concerning admissibility

9.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol. Pursuant to rule 72 (4), it is to do so before considering the merits of the communication.

9.2 As required under article 4 (2)(a) of the Optional Protocol, the Committee is satisfied that the same matter has not already been examined or is being examined under another procedure of international investigation or settlement.

9.3 The Committee notes the author's claims that her deportation to Mexico would constitute a violation of articles 1 to 3 of the Convention, read in conjunction with the Committee's general recommendation No. 19, grounded in the alleged risk of gender-based violence that the author would face if she were returned to Mexico,

given that she was previously a victim of domestic violence and the Mexican authorities failed to protect her. The Committee notes that the State party challenges the admissibility of the communication for failure to exhaust domestic remedies under article 4 (1) of the Optional Protocol. The Committee also notes that the State party maintains that the communication should be considered inadmissible, in accordance with articles 4 (2)(b) and (c) of the Optional Protocol, on the ground that the author's claims are incompatible with the provisions of the Convention, manifestly ill-founded and not sufficiently substantiated.

9.4 With regard to the non-exhaustion of domestic remedies, the Committee notes the State party's argument that the author could have applied for permanent residence on humanitarian and compassionate grounds, yet she failed to do so. The Committee takes notes of the State party's contention that a pending application on such grounds would not halt the author's deportation and that applications on humanitarian and compassionate grounds are no longer based on an assessment of the risk upon return. The Committee considers that, by having sought a stay of deportation and judicial review of the negative pre-removal risk assessment decision of 5 December 2012 before the Federal Court, the highest judicial body in the State party, the author exhausted the domestic remedies available to her for the purposes of admissibility under article 4 (1) of the Optional Protocol.¹⁶ In the circumstances, the Committee is of the view that the author's failure to submit such an application on humanitarian and compassionate grounds does not affect the exhaustion of remedies and that such submission is not necessary to satisfy the requirements of article 4 (1) of the Optional Protocol.

9.5 With regard to the State party's argument that the author's claims are incompatible with the provisions of the Convention, which, it submits, do not contain an obligation of non-refoulement, the Committee stresses 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 this obligation. The Committee also stresses that, according to its established jurisprudence, article 2 (d) 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 sending State party.¹⁷ The Committee further recalls that 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.¹⁸ However, the Committee has established that what amounts to serious forms of gender-based violence triggering the protection afforded under article 2 (d) depends on the circumstances of each case and is determined by the Committee on a case-by-case basis at the merits stage, only if the author has made a *prima facie* case before the Committee by sufficiently substantiating such allegations.¹⁹

¹⁶ See, *a contrario*, communication No. 26/2010, *Herrera Rivera v. Canada*, decision of inadmissibility adopted on 18 October 2011.

¹⁷ See, for example, *M.N.N. v. Denmark* (note 9 above), paras. 8.5-8.10; communication No. 35/2011, *M.E.N. v. Denmark*, decision of inadmissibility adopted on 26 July 2013, paras. 8.4-8.9; and communication No. 39/2012, *N. v. the Netherlands*, decision of inadmissibility adopted on 17 February 2014, paras. 6.6-6.8.

¹⁸ See general recommendation No. 19, para. 6.

¹⁹ See note 17, above.

9.6 The Committee notes that the State party does not dispute that the author was a victim of domestic violence in Mexico and had unsuccessfully sought the protection of the Mexican authorities. The Committee acknowledges that women and girls in Mexico face widespread gender-based violence, including domestic violence. The Committee notes, however, that the author fails to provide sufficient elements to enable the Committee to conclude that her former partner would remain a threat to her, five years after the alleged events, which occurred between December 2008 and March 2009. In this regard, the Committee notes that, according to the information on file, the author's former partner last enquired about the author's whereabouts in September 2011 when he went to her mother's house while drunk.²⁰ The Committee observes that the author provides no information about the reason that she could not move elsewhere in Mexico if she decided that she had to leave Morelos to avoid being exposed to violence at the hands of her former partner.²¹ The Committee also observes that the author left Mexico two months after the last incident of domestic violence and provides no information on other remedies pursued in Mexico after unsuccessfully filing complaints with the police. In the circumstances, the Committee considers that the author has therefore not provided sufficient information to demonstrate that she would face a real, personal and foreseeable risk of serious forms of gender-based violence if returned to Mexico and thereby to substantiate her claim under articles 1 and 2 of the Convention, read in conjunction with general recommendation No. 19.

9.7 In addition, the Committee notes that the author provides no explanation as to why and how she considers that her rights under article 3 of the Convention, which pertains to the advancement of women's human rights, have been violated by the State party's rejection of her asylum application and decision to deport her.

9.8 The Committee recalls that article 4 (2)(c) of the Optional Protocol precludes the Committee from declaring a communication admissible if it is not sufficiently substantiated. In the view thereof, and in the absence of any other pertinent information before it, the Committee considers that the facts as presented by the author do not permit it to conclude that she has sufficiently substantiated, for the purposes of admissibility, the claim that her removal from Canada to Mexico would expose her to a real, personal and foreseeable risk of serious forms of gender-based violence. The author has therefore not made a prima facie case to substantiate her allegations of violation of articles 1 to 3 of the Convention by the State party. Accordingly, the Committee concludes that the communication is inadmissible under article 4 (2)(c) of the Optional Protocol.

10. The Committee therefore decides:

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

²⁰ The author does not mention any event thereafter in her pre-removal risk assessment claim or before the Committee.

²¹ See communication No. 40/2012, *M.S. v. Denmark*, decision of inadmissibility adopted on 22 July 2013, para. 7.8.