United Nations CRC/C/90/D/99/2019

Convention on the Rights of the Child
advance unedited text

Distr.: General
13 July 2022

Original: English

Committee on the Rights of the Child

Views adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 99/2019*,**

Submitted by:	H.K. (represented by counsel, Ms. Julia Jensen)
Alleged victim:	S.K.
State party:	Denmark
Date of communication:	29 August 2019
Date of adoption of Views:	1 June 2022
Subject matter:	Deportation from Denmark to India
Procedural issues:	Substantiation of claims
Substantive issues:	Right to life; best interests of the child; torture and ill-treatment; appropriate protection and humanitarian assistance; non-refoulement
Articles of the Convention:	3, 6, 22 and 37(a)
Articles of the Optional Protocol:	7 (f)

1.1 The author of the communication is H.K. a national of India, born in 1982. She is submitting the communication on behalf of her daughter S.K., a national of India, born in 2017. Their application for asylum has been denied in the State party and the author claims that her daughter's rights under articles 3 and 22 of the Convention would be violated if they were to be deported to India. The author is represented by counsel. The Optional Protocol entered into force for the State party on 7 January 2016.

1.2 Pursuant to article 6 of the Optional Protocol, on 25 September 2019, the Working Group on Communications, acting on behalf of the Committee, requested the State party to refrain from deporting the author and her daughter to India while the communication was under consideration by the Committee. On 5 November 2021, the State party's request for the lifting of interim measures was denied.

** The following members of the Committee participated in the examination of the communication: Suzanne Aho, Aissatou Alassane Sidikou, Hynd Ayoubi Idrissi, Bragi Gudbrandsson, Philip Jaffé, Sopio Kiladze, Gehad Madi, Faith Marshall-Harris, Benyam Dawit Mezmur, Clarence Nelson, Mikiko, Zara Ratou, Luis Ernesto Pedernera Reyna, Ann Marie Skelton, Velina Todorova and Benoit Van Keirsbilck.

*** The text of a joint opinion by Committee members Benyam Dawit Mezmur, Ann Marie Skelton and Velina Todorova (dissenting) is annexed to the present decision.

The facts as submitted by the author

2.1 The author has a Master's Degree in Computer Design, which she has also taught at university in India. On 13 October 2013, she married A.S. in India. A.S. later travelled to Denmark on a student visa. On 17 September 2015, the author joined him in Denmark and was granted a residence permit as an accompanying family member. S.K. was born on 11 September 2017, in Denmark.

2.2 After approximately six months of marriage, the author was subjected to violence by her spouse while they were still residing in India. Her spouse continued to subject her to abuse on a daily basis while they were residing in Denmark. Approximately four months into the pregnancy with S.K., the author was hospitalized after having been assaulted by her husband. She was diagnosed with PTSD, depression and anxiety.

2.3 After the author's hospitalisation, A.S. was deported from Denmark. As a result, the residence permit of the author also lapsed and she continued to reside in Denmark without a residence permit, as she could not travel back to India allegedly because of the risk of violence by her husband. She applied for asylum in Denmark on 21 March 2017.

2.4 The author's application for asylum was rejected by the Immigration Services on 12 June 2018. The Immigration Service noted that as motive for seeking asylum the author had stated that she feared being killed by her husband if deported to India. She had also stated that she feared that her and her daughter would be physically hurt by her parents as she had married her husband against their will. She had stated that she had been physically abused by her husband on a regular basis, both in Denmark and in India, and that following his deportation he had sent her death threats on Facebook, which led her to deactivate her Facebook account. The Immigration Service accepted the author's claims that she had been subjected to domestic violence by her husband in Denmark, but it found, based on country reports, that she would have access to state protection in India. It noted that, according to a press release from the Ministry of Women and Children's Development, the Ministry has introduced a system for establishing one stop centres, known as Nirbhaya Centres, in all state areas to give medical assistance, police assistance, legal advice, psychosocial counselling and temporary shelter to women subjected to domestic violence and that these centres were to be completed in the period 2015-2017. The Immigration Service further found it conspicuous that the author had deactivated her Facebook account without saving evidence of the alleged threats from her husband. It also noted that in her initial asylum application in May 2017, the author had not mentioned any alleged threats from her parents. It was only in May 2018 that this claim was made. The Immigration Service found this to be an escalation of her asylum claims. It found her statements in regard to the alleged threats from her family to not be credible. The decision was upheld by the Refugee Appeals Board on 19 June 2019. The Board also noted that the author's statements regarding the alleged incidents of violence in India were contradictory, as were her statements regarding her contact with her family.

2.5 The author claims that she was not informed that her and her daughter's applications for asylum would be examined jointly prior to the meeting before the Refugee Appeals Board. She was therefore not prepared for questions regarding her daughter, which she claims could be the reason why her testimony appeared contradictory. She claims that her daughter's application was not individually reviewed by the Refugee Appeals Board and that her daughter's independent claims for protection have not been taken into account.

Complaint

3.1 The author claims that S.K.'s life would be in imminent danger if she were to be removed to India in violation of her rights under articles 3 and 22 of the Convention, due to the threats that her husband has made against her and S.K., his abuse during the pregnancy and because of the lack of practical and legal opportunities for her to sufficiently protect her daughter against her husband.

3.2 The author claims that she has received multiple threats from her husband and that he has stated that he will kill her for getting him arrested and deported from Denmark. She claims that, due to this fact, her and S.K.'s lives would be in danger upon return to India. She claims that her family would not offer her any support as they have disowned her for marrying her husband against their will. Her father has also threatened her because of the family's

opposition to the marriage. She further claims that when she became pregnant her husband did not want to keep the baby so he demanded the author to have an abortion and he did not acknowledge being the father of S.K. He also stated that he believed that S.K. was born with Down's syndrome. The author notes that in Indian culture, it is a subject of shame to have an illegitimate child, a child with disabilities and a girl. The author states that her husband is capable of killing her and S.K. She claims that he has sent her a photo of a tomb he has built for her and that he has also stated that he intends to force S.K. into child prostitution. The author claims that S.K. would therefore be in imminent danger of being subjected to inhumane treatment if she is returned to India.

3.3 The author further claims that she would not have an internal flight alternative in India. It is stigmatizing to be a divorced woman in India and it is difficult or impossible for women to live alone in India. She refers to a country report according to which "women with children victims of domestic violence or family crime may find it difficult to relocate within India because they will be asked to provide details of their father's or husband's name to access accommodation and services".[1] She also notes that, according to country reports "child labour, child trafficking, and poor access to education for children from socially and economically marginalized communities remained serious concerns throughout India"[2]. The author also notes that under Indian law, the father of the child has custody rights. Because of this S.K. would risk being separated from her, as she wants to divorce A.S. The separation will be a trauma and feel like abandonment for S.K.

3.4 The author also claims that she does not have the opportunity to seek governmental protection in India as her husband and his family have political connections in India. The author therefore fears that he would find her no matter where she resides. Additionally, it would be difficult for her to seek help from the authorities due to the corruption in India and because her husband comes from a powerful family and is of a higher caste than she is. She claims that she has previously tried to seek protection in India, but the authorities were unable to provide protection or impose sanctions on her husband with the purpose of protecting her.

State party's observations on admissibility and the merits

4.1 On 25 March 2020, the State party submitted its observation on the admissibility and merits of the complaint. It submits that the communication should be found inadmissible as manifestly unfounded under article 7 (f) of the Optional Protocol. Should the Committee find the communication to be admissible, it submits that it is without merit.

4.2 The State party notes that the author was granted a residence permit in Denmark on 17 August 2015 as an accompanying family member to her husband A.S., whom at the time was residing in Denmark on a student visa. On 9 September 2016, the Agency for International Recruitment and Integration decided not to extend the residence permit of A.S. On 21 November 2016, the Agency decided to revoke the author's residence permit, as grounds of her residence permit were no longer present. On 16 March 2017, a Danish court sentenced A.S. to deportation from Denmark, with an entry ban for six years. On 21 March 2017, the author applied for asylum for herself and her daughter, which was rejected by the Immigration Service on 2 June 2018. The decision was upheld by the Refugee Appeals Board on 19 June 2019.

4.3 The State party notes that in its decision the Refugee Appeals Board noted that the author is of Ramgarhia ethnicity, of Sikh faith, and is from Punjab, India. It noted that she had never been a member of any political or religious associations or organizations, or otherwise been politically active. It noted that, as grounds for asylum, the author had stated that she was afraid that her spouse would kill her if she were returned to India. The Refugee Appeals Board found that it could not accept parts of the author's statements regarding her grounds for asylum as facts, since she had given "diverging, elaborative and incoherent statements regarding several key points", including regarding her spouse's violent behaviour towards her. It noted that, during the asylum screening interview, she had stated that her

[1] UK Home Office 'Country Policy and Information Note. India: Women fearing gender-based violence', July 2018.

[2] Human Rights Watch, 'World Report 2019 – India'.

spouse had had an affair with her sister-in-law, and that the spouse might be the father of the sister-in-law's stillborn child, which caused the spouse to violently abuse her in India the first two times, facts which she had not stated in her asylum application form. It noted she had also provided contradictory statements regarding the assaults in Denmark, as she had stated during the Board hearing that her spouse locked her up over a long period of time, facts not mentioned in the asylum interview. In addition, she provided contradictory statements regarding the alleged threats made by her own family, as in her asylum screening interview she did not mention such alleged threats. The Board also noted that the author had given contradictory statements regarding her contact with her own family during the asylum proceeding as compared to the statements regarding her contact with the family she had made to the police. Regarding the assessment of the author's credibility, the Board also took into consideration that she chose to delete her Facebook account without securing the evidence in regard to the alleged threats made against her by her spouse. The Refugee Appeals Board concluded that the author had only substantiated that her spouse had abused her violently in Denmark, while it found her additional statements in regard to her relationship with her spouse, her own family, and her family-in-law, including the alleged threats made by them, to not be credible. It found that the author's daughter was covered by the decision made by the Board. It concluded that the author had not proven on a balance of probabilities that she would be at risk of persecution if returned to India and that if she were to be in need of protection upon return she could seek out such protection from the authorities in India.

4.4 The author's application to have her case re-opened before the Refugee Appeals Board was dismissed by the Board on 11 December 2019. It noted that no significant new information had been presented compared with the information available to the Board when the original case was reviewed. The author's claims that she did not know that the case hearing before the Board were about both hers and her daughter's asylum cases did not lead the Board to change its assessment. It noted in this regard that, in the summons to the hearing dated 4 June 2019, it was stated that the summons included both the author and her daughter and that on 17 June 2019, she was informed by the Board that her daughter would be included in the decision of the Board, just as she was also included in the decision by the Immigration Service.

4.5 The State party notes that, at the time of the processing of the author's and her daughter's application for asylum, the daughter was a child of a tender age, who was unable to give her own account of the grounds for asylum relied upon by her. Accordingly, her mother, H.K., gave a detailed account of her grounds for asylum to the asylum authorities. According to standard practice, the application for asylum lodged by the mother also comprised her daughter, and her case was thus considered together with her mother's case. The State party submits that therefore, due weight has been given to the author's daughter's views as prescribed by article 12 (2) of the Convention regarding the right of a child to express his or her views freely in all matters affecting his or her situation.

4.6 The State party submits that the author has not sufficiently established that her daughter would be exposed to a real risk of irreparable harm if returned to India. It argues that the application for asylum comprising the author and her daughter was given thorough consideration by the Refugee Appeals Board and that the author has failed to identify any irregularity in the decision-making process or any risk factors that the Refugee Appeals Board failed to take properly into account. It notes in this respect that no essential new information has been provided in support of the author's submissions as compared with the information available when the Refugee Appeals Board made its decision on 19 June 2019 and argues that the communication to the Committee merely reflects that the author disagrees with the outcome of the assessment of the specific circumstances and the background information made by the Refugee Appeals Board in the case at hand. It refers to the decision of the Refugee Appeals Board according to which parts of the author's claims were found to not be credible due to her having provided contradictory statements during the asylum proceedings. It notes that the author had the opportunity to present her views, both in writing and orally, to the Board with the assistance of legal counsel.

4.7 The State party notes that, according to available background information, conditions in India for both women and girls can in some cases be characterized by hardship. However, it notes that the author is well educated, as she has a Master's Degree in Computer Science,

which she also taught at university. It argues that this suggests that her daughter would most likely also have access to education upon return to India. It further notes that there is nothing in the present case that indicates that the author's daughter would lack access to food, healthcare or other necessities upon return to India. The State party further notes that the author's submission that her daughter is at risk of being forced into child prostitution by her father, and that he has built a tomb for her, were not raised before the State party asylum authorities. In that regard, it notes the precarious timing of the statements, and argues that the claims should be found to be unsubstantiated. It further notes that in the communication the author has claimed that her husband believes that their daughter has Down's syndrome, and that in India it is shameful to have a child with disabilities. In this regard, the State party observes that the author has failed to document or in any other way substantiate that her daughter has Down's syndrome. The State party notes the Refugee Appeals Board's finding that it had not been substantiated that the author would not be able to seek the protection of both her family and – through their help – the authorities if necessary, upon return to India. As regards the author's submission that upon return to India her daughter would be at risk of being separated from her, as her husband could be granted custody, the State party submits that the fact that the father might be granted custody does not mean that the author has sufficiently established that her daughter would be exposed to a real risk of irreparable harm if returned to India. It submits that a country's custody laws do not in itself constitute an infringement of the Convention in a way that constitutes irreparable harm within the meaning of the Convention.[3]

4.8 The State party reiterates its argument that the Refugee Appeals Board made a thorough assessment of all relevant information and that the communication has not brought to light any information substantiating that the author's daughter would risks serious forms of harmful practices justifying asylum on her return to India. It submits that the author has not substantiated why the decision of the Refugee Appeals Board is arbitrary or amounts to a manifest error or denial of justice and that the author's communication merely reflects her disagreement with the assessment made by the Board.

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

5. On 8 July 2020, the author submitted her comments on the State party's observations. She maintains that the communication is admissible. She refers to her initial submission and argues that she has sufficiently substantiated that her daughter would be exposed to a real risk of irreparable harm if removed to India. She also notes that on 3 October 2019 she applied for legal aid in order to be able to further substantiate her claims. This was denied by the Appeals Admission Board on 9 March 2020, for which reason she argues that it has not been possible to establish further substantiated grounds regarding her claims. She also argues that her complaint does not merely express a disagreement with the findings of the domestic authorities but an assessment as to how those findings were in contravention of the Convention.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 20 of its rules of procedure, whether or not the claim is admissible under the Optional Protocol.

6.2 The Committee notes the author's claim that she has exhausted all effective domestic remedies available to her. In the absence of any objection by the State party in that connection, the Committee considers that the requirements of article 7 (e) of the Optional Protocol have been met.

6.3 The Committee notes the State party's argument that the communication should be found inadmissible under article 7 (f) of the Optional Protocol for failure to substantiate the claims for the purposes of admissibility. The Committee however notes the author's claims

[3] The State party refers to *A.S. v Denmark* (CRC/C/82/DR/36/2017), paras. 9.4, 9.7 and 9.8.

that S.K.'s life would be in imminent danger if she were to be removed to India due to the death threats that her husband has made against her and S.K., his abuse during the pregnancy and because of the lack of practical and legal opportunities for her to sufficiently protect S.K. against her husband. Taking the above into account the Committee considers that these claims have been sufficiently substantiated for the purpose of admissibility.

6.4 The Committee further notes that, although not explicitly invoked by the author, the claims raised by her in substance also appear to raise issues regarding S.K.'s rights under articles 6 and 37 (a) of the Convention and also declares these admissible.

6.5 Accordingly, the Committee declares the author's claims based on articles 3, 6, 22 and 37 (a) of the Convention admissible and proceeds with its consideration of the merits.

Consideration of the merits

7.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 10 (1) of the Optional Protocol.

7.2 The Committee notes the author's argument that S.K.'s life would be in imminent danger if she were to be removed to India due to the threats that her husband has made against her and S.K., the violence to which he subjected her, and because of the lack of practical and legal opportunities for her to sufficiently protect her daughter against her husband. It also notes her claim that her family would not offer her or S.K. any support if removed to India and her claim that she would not have an internal flight alternative in India due to the difficulty for a divorced woman to live alone in India. It further notes her claim that S.K. would be at risk of being separated from her, as in case of divorce her husband may gain custody. It finally notes her claims that she does not have the opportunity to seek governmental protection in India as her husband and his family have political connections in India as well as due to the corruption in the country. The Committee also notes the State party's argument that the author's and her daughter's asylum applications were given thorough consideration by the State party authorities and that the author has failed to identify any irregularity in the decision-making process or any risk factors that the State party authorities failed to take properly into account, as well as its submission that the communication merely reflects the author's disagreement with the outcome of the assessment made by the migration authorities. The Committee notes the State party's argument that some of the author's claims were found to not be credible due to the author having provided contradictory statements during the asylum proceedings. The Committee also notes the State party's argument that there is nothing in the present case that indicates that S.K. would lack access to food, healthcare, education or other necessities upon return to India. It finally notes the State party's argument that its domestic authorities found that it had not been substantiated that the author would not be able to seek the protection of both her family and the authorities if necessary, upon return to India, as well as its argument that the fact that her husband might be granted custody does not mean that the author has sufficiently established that her daughter would be exposed to a real risk of irreparable harm if returned to India.

7.3 The Committee refers to its general comment No. 6 (2005), in which it states that States are not to return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child, such as, but by no means limited to, those contemplated under articles 6 and 37 of the Convention, and that such non-refoulement obligations apply irrespective of whether serious violations of those rights guaranteed under the Convention originate from non-State actors or whether such violations are directly intended or are the indirect consequence of action or inaction. The assessment of the risk of such serious violations should be conducted in an age- and gender-sensitive manner.[4] Such an assessment should be carried out following the principle of precaution and, where there are reasonable doubts about the ability of the receiving State to protect the child from such risks, States parties should refrain from deporting the child.[5] The Committee reiterates that the best interests of the child should be a primary consideration in decisions concerning the

[4] General comment No. 6 (2005), para. 27 and Committee on the Elimination of Discrimination against Women, general recommendation No. 32 (2014), para. 25.

[5] *K.Y.M. v. Denmark* (CRC/C/77/D/3/2016), para. 11.8 ; *Y.A.M. v Denmark* (CRC/C/86/D/83/2019), para. 8.7.

deportation of a child and that such decisions should ensure – within a procedure with proper safeguards – that the child will be safe and provided with proper care and enjoyment of rights.[6]

7.4 The Committee also recalls that it is for the national authorities to examine the facts and evidence and to interpret and enforce domestic law, unless their assessment has been clearly arbitrary or amounts to a denial of justice. It is therefore not for the Committee to assess the facts of the case and the evidence instead of the national authorities but to ensure that their assessment was not arbitrary or tantamount to a denial of justice and that the best interests of the children were a primary consideration in that assessment.[7]

7.5 In the present case the Committee notes that, in its decision of 19 June 2019, the Refugee Appeals Board examined the author's claims and accepted her claim that she had been subjected to gender based violence by her husband during their stay in Denmark. The Board however found that the author would have access to State protection in India, should this be needed, through the Nirbhaya Centres for victims of domestic violence. The Committee recalls that in its concluding observations on the consolidated third and fourth periodic reports of India it expressed deep concern about the pervasive discrimination against girls and women in India and the persistent patriarchal attitudes and deep-rooted stereotypes and practices that perpetuate discrimination against girls.[8] It also reiterated its concern regarding reports of widespread violence, abuse, including sexual abuse, and neglect of children in India.[9] The Committee also notes that country reports have expressed serious concerns about the lack of implementation of the Protection of Women from Domestic Violence Act and about the deeply entrenched patriarchal attitudes of police officers, prosecutors, judicial officers and other relevant civil servants, with regard to the handling of gender based violence cases, contributing to victims not reporting, withdrawing complaints and not testifying.[10]

7.6The Committee notes that in the present case it is unrefuted that the author has been subjected to gender based violence by her husband. The Committee further notes the author's claim that she fears being subjected to repeated violence by her husband if removed to India, and that S.K.'s safety would also be at risk due to threats made against her and S.K., following her husband's deportation. The Committee notes the State party's finding that state protection would be available to the author and her daughter if removed to India. It however finds that in light of the country reports expressing concern about the availability in practice of state protection in India, that the State party authorities failed to accord sufficient weight and to examine in detail the author's claim that state protection would in practice be unavailable to her and her daughter in India if removed there, especially taking into account her claims that she would not be able to seek assistance from her family in India as they have disowned her and that she would not be able to seek governmental protection due to her husband's and his family's political connections. The Committee therefore finds that the State party authorities, in taking the decision to remove the author and her daughter, failed to properly consider these matters and the real and personal risk of a serious violation of S.K.'srights, such as being a victim of or witness to violence with the associated trauma In the light of the foregoing, the Committee concludes that the State party failed to adequately take the best interests of the child as a primary consideration into account when assessing the author's and her daughter's asylum request and to protect S.K. against a real risk of irreparable harm in returning her to India in violation of S.K.'s rights under articles 3, 6, 22 and 37 (a) of the Convention.

[6] See joint general comment No. 3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No.22 (2017) and of the Committee on the Rights of the Child, paras. 29 and 33.

[7] See inter alia *C.E. v. Belgium* (CRC/C/79/D/12/2017), para. 8.4; *E.A. and U.A. v.* Switzerland (CRC/C/85/D/56/2018), para. 7.2.

[8] CRC/C/IND/CO/3-4, paras. 33-34.

[9] Ibid. para. 49.

[10] Report of the Special Rapporteur on violence against women, its causes and consequences, Mission to India, 1 April 2014, A/HRC/26/38/Add.1, paras. 59 and 63.

8. The Committee, acting under article 10 (5) of the Optional Protocol, is of the view that the facts of which it has been apprised amount to a violation of S.K.'s rights under articles 3, 6, 22 and 37 (a) of the Convention.

9. Accordingly, the State party is obligated to reconsider the decision to deport S.K. and her mother to India, ensuring that the best interests of the child are a primary consideration in its reconsideration, while taking into account the particular circumstances of the case.

10. Pursuant to article 11 of the Optional Protocol, the Committee wishes to receive from the State party, as soon as possible and within 180 days, information about the steps it has taken to give effect to the Committee's Views. The State party is also requested to include information about any such steps in its reports to the Committee under article 44 of the Convention. Lastly, the State party is requested to publish the present Views and have them widely disseminated in its official language.

Annex

Joint dissenting opinion of Committee members Benyam Dawit Mezmur, Ann Marie Skelton and Velina Todorova

1. We present a dissenting opinion in this matter for the reasons set out below.

2. We agree with majority's view that the requirements of article 7(e) of the Optional Protocol were met. We are also of the view that the majority's acceptance that the case is admissible in respect of the author's claims based on articles 3 and 22 of the Convention were sufficiently substantiated for the purposes of admissibility, and that the threshold for admissibility under article 7(f) of the Optional Protocol is met.

3. However, we disagree with the majority's decision that it would act of its own accord and, on the basis of the same facts referred to in para 7.3, add further claims regarding S.K.'s rights under articles 6 and 37 (a) which had not been specifically raised by the author. While we accept that the Committee may act of its own accord and raise violations in this manner, it should only do so in cases where the basis of the claim is strong in fact. Regrettably, we do not consider that to be the case in this matter, for reasons provided in paragraphs 5-7 below. Furthermore, articles 6 and 37(a) are centrally relevant to a determination of a real risk of irreparable harm. This should give rise to a cautious approach by the Committee in raising claims under these articles of its own accord, and in our view it was not necessary to do so in this case, as other claims had been found admissible.

4. Accordingly, we would have declared the author's claims based on articles 3 and 22 of the Convention admissible and would have proceeded with a consideration of the merits on those claims.

5. The majority accepted that the author's argument that S.K's life would be in imminent danger if she were to be removed to India due to the threats that her husband has made against both her and S.K. However, we note that the information provided regarding these threats was unsubstantiated due to the fact that the author did not save the evidence of the alleged threats from her Facebook before she deactivated it, despite the fact that she is highly skilled in the computer design. Other allegations were implied such as that the father thought the child had been Downs' syndrome and 'it is a subject of shame to shame to have an illegitimate child, a child with disabilities and a girl'. However, the child was not illegitimate and there was no direct allegation that the child had a disability, nor was any evidence submitted regarding any such disability.

6. In our view, the majority failed to take into adequate consideration the State party's submission that the claims regarding the alleged threats against the daughter were not raised by the author during the domestic proceedings, in which she stated that her husband had threatened her, but did not mention any threats he had made against their daughter.

7. We note, furthermore, that the author has not refuted the State party's argument that she was informed of this fact both in the summons to the hearing dated 4 June 2019 and in information provided by the Board on 17 June 2019. We also note the fact that, as the child was unable to give her own account of the grounds for asylum due to her very young age (not yet 2 years old), and that the claims were therefore considered together with her mother's, who was provided with the opportunity to give detailed statements both in writing and orally as to the particular situation of S.K., with the assistance of counsel.

8. We disagree with the majority's reliance on the author's claim that she would not be able to seek governmental protection in India because her husband and his family have political connections in India and as it would difficult for her to seek help from the authorities due to the prevailing corruption. In our view, the majority opinion should have taken stronger notice of the fact that the Refugee Appeals Board found that the author would have access to State protection in India, should this be needed, through the Nirbhaya Centres for victims of domestic violence, including medical assistance, police protection, legal advice, psychosocial

counselling and temporary shelter. In this regard, we note that the author has not provided any specific information as to why she would be unable to access assistance through the Nirbhaya Centres.

9. In previous decisions, the Committee has found that in cases where children were in need of medical treatment the Committee considers that the principle of non-refoulement does not confer a right to remain in a country solely on the basis of a difference in health services that may exist between the State of origin and the State of asylum, or to continue medical treatment in the State of asylum, unless such treatment is essential for the life and proper development of the child and would not be available and accessible in the State of return.[11] Although this case deals with support services for victims of domestic violence rather than health care, in our view the legal considerations do not differ substantially from the considerations in these previous cases, and we are therefore of the view that the majority was wrong to depart from its usual approach in such matters.

10. Taking the above-mentioned facts and legal issues into account as well the State party's argument on the availability of State protection in India, we cannot conclude that the State party authorities failed to assess all the claims raised by the author in the domestic proceedings nor conclude that the evaluation made by the State party authorities was manifestly arbitrary or equivalent to a denial of justice, or that S.K.'s best interests as a child were not a primary consideration in this evaluation.

11. We therefore would have found, acting under article 10 (5) of the Optional Protocol, is that the facts before it do not disclose a violation of articles 3 or 22 of the Convention.

[11] *D.R. v Switzerland* (CRC/C/87/D/86/2019) para. 11.6, *K.S. and M.S. v. Switzerland* (CRC/C/89/D/74/2019), para. 7.4.