



Convention on the Rights of the Child

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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* ** , ***

<i>Submitted by:</i>	H.K. (represented by counsel, Julia Jensen)
<i>Alleged victim:</i>	S.K.
<i>State party:</i>	Denmark
<i>Date of communication:</i>	29 August 2019
<i>Date of adoption of Views:</i>	1 June 2022
<i>Subject matter:</i>	Deportation to India
<i>Procedural issue:</i>	Substantiation of claims
<i>Substantive issues:</i>	Right to life; best interests of the child; torture and ill-treatment; appropriate protection and humanitarian assistance; non-refoulement
<i>Articles of the Convention:</i>	3, 6, 22 and 37 (a)
<i>Articles of the Optional Protocol:</i>	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 applications for asylum have been denied by the State party, and the author claims that her daughter's rights under articles 3 and 22 of the Convention would be violated if she and her daughter 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 the interim measures was denied.

* Adopted by the Committee at its ninetieth session (3 May–3 June 2022).

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

*** A joint opinion by Committee members Benyam Dawit Mezmur, Ann Skelton and Velina Todorova (dissenting) is annexed to the present Views.



Facts as submitted by the author

2.1 The author has a master's degree in computer science, a subject which she has taught at the university level 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 While the author and her husband were still residing in India, approximately six months into their marriage, she was subjected to violence by her spouse. Her spouse continued to subject her to abuse on a daily basis when they were residing in Denmark. Approximately four months into the author's pregnancy with S.K., the author was hospitalized, after having been assaulted by her husband. She was diagnosed with post-traumatic stress disorder, depression and anxiety.

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

2.4 The author's and S.K.'s applications for asylum were rejected by the Immigration Service 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 she were to be deported to India. She had also stated that she feared that she and her daughter would be physically hurt by her parents, because 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 through direct messages on her social media account, which led her to deactivate the 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 that, based on country reports, 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 of India, the Ministry had introduced a system for establishing one-stop crisis centres to provide medical assistance, police assistance, legal advice, psychosocial counselling and temporary shelter to women who had been subjected to domestic violence and that the centres were to be completed in the period 2015–2017. The Immigration Service further found it suspicious that the author had deactivated her social media account without saving evidence of the alleged threats made by her husband. It also noted that, in her initial asylum application of May 2017, the author had not mentioned any alleged threats from her parents. It was only in May 2018 that that claim was made. The Immigration Service found that to be an escalation of her asylum claims. It found her statements with regard to the alleged threats from her family not to 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 prior to the meeting before the Refugee Appeals Board that her and her daughter's applications for asylum would be examined jointly. 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 the author's husband has made against her and S.K., his abuse during the author's pregnancy and the lack of practical and legal opportunities for her to sufficiently protect S.K. from 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 that fact, her and S.K.'s lives would be in danger upon their return to India.

She claims that her family would not offer her any support, because 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 also claims that, when she became pregnant, her husband did not want to keep the baby, so he demanded that she have an abortion and has not acknowledged S.K. as his child. He also stated that he believed that S.K. was born with Down 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 that 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 were to be returned to India.

3.3 The author 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 of the Home Office of the United Kingdom of Great Britain and Northern Ireland, according to which women with children who are 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 acquire access to accommodation and services.¹ She also notes that, according to a country report of Human Rights Watch, "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 further notes that, under Indian law, the father of a child has custody rights. S.K. would therefore be at risk of being separated from the author, because she wants to divorce A.S, and such a separation would be a trauma and feel like abandonment to S.K.

3.4 The author claims that she does not have the opportunity to seek government protection in India, because her husband and his family have political connections in India. The author fears that he would find her no matter where she resides. In addition, 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 of a higher caste than hers. 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 to protect her.

State party's observations on admissibility and the merits

4.1 On 25 March 2020, the State party submitted its observations on the admissibility and the merits of the communication. It submits that the communication should be found inadmissible as manifestly ill-founded 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., who was residing in Denmark at the time 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 the grounds for 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 of six years. On 21 March 2017, the author applied for asylum for herself and her daughter, applications which were 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 was of Ramgarhia ethnicity and Sikh faith and was from Punjab State. It noted that she had never been a member of any political or religious associations or organizations or otherwise politically active. It also noted that, as grounds for asylum, the author had stated that she was afraid that her spouse would kill her if she were to be returned to India. The

¹ Home Office of the United Kingdom of Great Britain and Northern Ireland, "India: women fearing gender-based violence", country policy and information note, July 2018.

² Human Rights Watch, *World Report 2019*, "India: events of 2018".

Board found that it could not accept parts of the author's statements regarding her grounds for asylum as facts, because 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 spouse had had an affair and that her spouse might be the father of a stillborn child born as a result of the affair, which had caused him to violently abuse the author in India the first two times, facts which she had not stated in her asylum application form. It also noted that the author had also provided contradictory statements regarding the assaults in Denmark, given that she stated during the Board hearing that her spouse had locked her up over a long period of time, facts not mentioned in the asylum interview. In addition, she had provided contradictory statements regarding the alleged threats made by her own family, given that, in her asylum screening interview, she did not mention those alleged threats. The Board noted that the author had given contradictory statements regarding her contact with her own family during the asylum proceedings, compared with the statements regarding her contact with her family that she had made to the police. Regarding the assessment of the author's credibility, the Board took into consideration the fact that she had chosen to delete her social media account without securing the evidence with regard to the alleged threats made by her spouse. The Board concluded that the author had only substantiated that her spouse had abused her violently in Denmark, and it found her additional statements with regard to her relationship with her spouse, her own family and her husband's family, including the alleged threats made by them, not to be credible. It found that the author's daughter was also 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 she were to be returned to India and that, if the author were to be in need of protection upon their return, she could seek out such protection from the authorities in India.

4.4 The author's application to have her case reopened 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 had been reviewed. The author's claim that she did not know that the hearing before the Board was to be about both her and her daughter's asylum cases did not lead the Board to change its assessment. It noted in that regard that, in the summons to the hearing dated 4 June 2019, it was stated that the hearing would include both the author's and her daughter's application and that, on 17 June 2019, she was informed by the Board that the author's and her daughter's cases would be considered jointly in the decision of the Board, just as they were in the decision of the Immigration Service.

4.5 The State party notes that, at the time of the processing of the author's and her daughter's applications for asylum, S.K. 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. In accordance with standard practice, the application for asylum lodged by S.K.'s mother included her daughter, and S.K.'s case was therefore considered together with her mother's case. The State party submits that therefore due weight has been given to S.K.'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 she were to be returned to India. It argues that the applications for asylum of the author and her daughter were 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 Board failed to take properly into account. It notes in that regard that no essential new information has been provided in support of the author's submissions, as compared with the information available when the Board made its decision on 19 June 2019, and argues that the communication lodged with the Committee merely reflects that the author disagrees with the outcome of the assessment of the specific circumstances made by the Board on the basis of the background information. With regard to the decision of the Board according to which parts of the author's claims were found not to 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, with a master's degree in computer science, a subject which she taught at the university level. It argues that that suggests that S.K. would most likely also have access to education upon her return to India. It notes that there is nothing in the present case that indicates that the author's daughter would lack access to food, health care or other necessities upon her return to India. The State party also notes that the author's assertions 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 asylum authorities of the State party. In that regard, it notes the precarious timing of the statements and argues that the claims should be found to be unsubstantiated. It also notes that, in the communication, the author has claimed that her husband believes that their daughter has Down syndrome, and that in India it is shameful to have a child with disabilities. In that regard, the State party observes that the author has failed to document, or in any other way substantiate, that her daughter has Down syndrome. The State party refers to the Refugee Appeals Board's finding that it had not been substantiated that the author would not be able to seek protection from both her family and, through their help, the authorities, if necessary, upon her return to India. With regard to the author's submission that, upon her return to India, her daughter would be at risk of being separated from her because 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 she were to be 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 the assertion that the author's daughter would be at risk of serious forms of harmful practices, should she be returned to India, which would justify asylum. It submits that the author has not substantiated why the decision of the 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 on admissibility and the merits. 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 she were to be removed to India. She notes that, on 3 October 2019, she applied for legal aid in order to be able to further substantiate her claims. That request was denied on 9 March 2020, on the basis of which she argues that she has not been able 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 the rules of procedure under the Optional Protocol, whether or not the claim is admissible under the Optional Protocol.

6.2 The Committee takes note of 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

³ *A.S. v. Denmark* (CRC/C/82/D/36/2017), paras. 9.4 and 9.7–9.8.

connection, the Committee considers that the requirements of article 7 (e) of the Optional Protocol have been met.

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

6.4 The Committee 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.

6.5 Accordingly, the Committee will proceed to consider the merits of the author's claims, with regard to articles 3, 6, 22 and 37 (a) of the Convention.

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 takes note of the author's arguments that, if she and her daughter were to be removed to India: S.K.'s life would be in imminent danger, due to the threats that the author's husband has made against her and S.K., the violence to which he subjected the author and the lack of practical and legal opportunities for the author to sufficiently protect her daughter from her husband; the author's family would not offer her or S.K. any support; the author would not have an internal flight alternative in India, due to the difficulties faced by divorced women living alone there; S.K. would be at risk of being separated from her, given that, in case of divorce, her husband might gain custody; and the author does not have the opportunity to seek governmental protection in India, because her husband and his family have political connections in India and because of the corruption in the country. The Committee also takes note of the State party's arguments that: the author's and her daughter's asylum applications were given thorough consideration by the State party's authorities; the author has failed to identify any irregularity in the decision-making process or any risk factors that the State party's authorities failed to take properly into account; the communication merely reflects the author's disagreement with the outcome of the assessment made by the migration authorities; some of the author's claims were found not to be credible, due to the author having provided contradictory statements during the asylum proceedings; there is nothing in the present case that indicates that S.K. would lack access to food, health care, education or other necessities upon her return to India; its domestic authorities found that it had not been substantiated that the author would not be able to seek protection from her family and/or the authorities, if necessary, upon her return to India; and the fact that the author's 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 she were to be returned to India.

7.3 The Committee refers to its general comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin, in which it indicated that States were not to return a child to a country where there were substantial grounds for believing that there was 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 applied irrespective of whether serious violations of those rights guaranteed under the Convention originated from non-State actors or whether such violations were directly intended or were 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 deportation of a child and that such decisions should ensure, within a procedure with proper safeguards, that the child concerned will be safe, be provided with proper care and be able to enjoy his or her rights.⁶

7.4 The Committee 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, but to ensure that their assessment was not arbitrary or tantamount to a denial of justice and that the best interests of the child or children concerned 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 it be needed, through crisis centres for victims of domestic violence. The Committee recalls that, in its concluding observations on the combined 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 perpetuated discrimination against girls.⁸ In the same document, it reiterated its concern regarding reports of widespread violence, abuse, including sexual abuse, and neglect of children in India.⁹ The Committee notes that the Special Rapporteur on violence against women, its causes and consequences, in her report on her visit to India, expressed 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

7.6 The 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 takes note of the author's claims that she fears being subjected to repeated violence by her husband, if she were to be removed to India, and that S.K.'s safety would also be at risk, due to threats made against the author and S.K., following the author's husband's deportation. The Committee takes note of the State party's assertion that State protection would be available to the author and her daughter if they were to be removed to India. However, in the light of the concerns expressed by the Special Rapporteur on violence against women, its causes and consequences, about the availability in practice of State protection in India, the Committee finds that the State party's 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 they were to be removed there, especially taking into account the author's claims that she

⁴ Committee's general comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin, para. 27; and Committee on the Elimination of Discrimination against Women, general recommendation No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, para. 25.

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

⁶ 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 of the Committee on the Rights of the Child (2017) on the general principles regarding the human rights of children in the context of international migration, paras. 29 and 33.

⁷ See, for example, *C.E. v. Belgium* (CRC/C/79/D/12/2017), para. 8.4; and *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.

⁹ *Ibid.*, para. 49. See also CRC/C/15/Add.228, para. 50.

¹⁰ A/HRC/26/38/Add.1, paras. 59 and 63.

would not be able to seek assistance from her family, because 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's authorities, in taking the decision to remove the author and her daughter, failed to properly consider those matters and the real and personal risk of a serious violation of S.K.'s rights, such as being a victim of, or witness to, violence, with the trauma associated therewith. In the light of the foregoing, the Committee concludes that the State party failed to adequately take into account the best interests of the child as a primary consideration when assessing the author's and her daughter's asylum requests, so as 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.

8. The Committee, acting under article 10 (5) of the Optional Protocol, is of the view that the facts before it 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 requested to include information about any such steps in its reports to the Committee under article 44 of the Convention. The State party is also requested to publish the present Views and have them widely disseminated in its official language.

Annex

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

1. We agree with majority's view that the requirements of article 7 (e) of the Optional Protocol were met. We also agree that 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 was met.
2. However, we disagree with the majority's decision that the Committee should act of its own accord and, on the basis of the same facts referred to in para 7.3 of the Views, add further claims regarding S.K.'s rights under articles 6 and 37 (a) that were not 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. We do not consider that to be the case here. 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 those articles of its own accord, and, in our view, it was not necessary to do so in this case, given that other claims had been found admissible.
3. 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 alone.
4. 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 had made against both the author and S.K. However, we note that the information provided regarding the threats was unsubstantiated; the author did not save the evidence of the alleged threats from her social media account before she deactivated it, despite the fact that she is highly skilled in computer science. Other allegations were implied, such as that the father thought that S.K. had been born with Down syndrome and that it is a subject of shame to have an illegitimate child, in particular 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.
5. 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.
6. We note that the author has not refuted the State party's argument that she was informed, both in the summons to the hearing dated 4 June 2019 and in the information provided by the Refugee Appeals Board on 17 June 2019, that her application and that of her daughter would be considered together. We also note that 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 S.K.'s 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.
7. 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 there and because it would be difficult for her to seek help from the authorities due to the prevailing corruption in the country. In our view, the majority opinion should have taken stronger notice of the fact that the Refugee Appeals Board had found that the author would have had access to State protection in India, if needed, through the crisis 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 acquire assistance through those centres.

8. In previous decisions, the Committee has found that, in cases where children were in need of medical treatment, the principle of non-refoulement did not confer a right to remain in a country solely on the basis of a difference in health services that might exist between the State of origin and the State of asylum, or to continue medical treatment in the State of asylum, unless such treatment was essential for the life and proper development of the child and would not be available and accessible in the State of return.¹ Although the present 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 the previous cases, and we are therefore of the view that the majority was wrong to depart from its usual approach in such matters.

9. 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's authorities failed to assess all the claims raised by the author in the domestic proceedings, nor that the evaluation made by the State party's authorities was manifestly arbitrary or equivalent to a denial of justice, nor that S.K.'s best interests were not a primary consideration in its evaluation.

10. We would have found therefore that the facts before the Committee did not disclose a violation of articles 3 or 22 of the Convention.

¹ *G.R. et al. v. Switzerland* (CRC/C/87/D/86/2019) para. 11.6; and *K.S. and M.S. v. Switzerland* (CRC/C/89/D/74/2019), para. 7.4.