

UN Committee on the Elimination of All Forms of Discrimination against Women (2004 - 2012)

JUNE 2013

SUMMARIES OF ALL DECISIONS on admissibility and merits taken by the UN Committee on the Elimination of All Forms of Discrimination against Women, through to November 2012. Produced by lawyers at the Open Society Justice Initiative, New York, in order to bring the decisions of global human rights tribunals to the widest possible audience.

Admissibility Decisions

[B.J. v. Germany](#) (Communication No. 1/2003)

Complaints stemming from a divorce in 2000 were still pending at the national level; the Committee found the communication inadmissible because the author failed to exhaust domestic remedies, and her divorce was finalized prior to the entry into force of the Optional Protocol.

[Muñoz-Vargas v Sainz de Vicuña v. Spain](#) (Communication No.7/2005)

The author claimed that the State engaged in sex-based discrimination by denying her right to inherit her father's title of nobility; the communication was inadmissible because the cause of action (discrimination) arose when title transferred to the author's brother, before the State became a party to the Convention.

[Rahime Kayhan v. Turkey](#) (Communication No. 8/2005)

A Turkish teacher was fired for wearing a headscarf; the communication was inadmissible due to exhaust domestic remedies since domestic petitions against her termination were still pending, and because the author had failed to include any discrimination complaints in her submissions at the national level.

[N.S.F. v. United Kingdom of Great Britain and Northern Ireland](#) (Communication No. 10/2005)

The author, a Pakistani woman challenging her deportation from the UK, failed to seek judicial review of the deportation decision in national courts, and did not raise her claims of sex-based discrimination at the national level; the Committee found her complaint inadmissible for failure to exhaust domestic remedies.

[Salgado v. United Kingdom of Great Britain and Northern Ireland](#) (Communication No. 11/2006)

The author's claims of sex-based discrimination, based on her inability to pass British citizenship onto her son, ceased when her son turned 18 years old in 1972; the Committee found the complaint inadmissible as the relevant event occurred prior to the entry into force of the Optional Protocol, and because the author failed to properly exhaust all domestic remedies available at the time.

[G.D. and S.F. v. France](#) (Communication No. 12/2007)

The authors, who were automatically given their fathers' last names pursuant to a customary law, despite being raised exclusively by their mothers, challenged the law as discriminating between the rights of husband and wife guaranteed under Article 16 of the Convention; the Committee held that the authors had no basis for invoking Article 16, because they themselves were not married and had no children.

[Dayras and Others v. France](#) (Communication No. 13/2007)

The authors, two of whom were mothers, complained of sex-based discrimination due to French legislation that limited mothers from passing their family name onto their children; the Committee held that two of the authors did not qualify as victims because they had no children, while others failed to exhaust all available domestic remedies, which rendered their claims inadmissible before the Committee.

[Zheng v. the Netherlands](#) (Communication No. 15/2007)

The author, a trafficking victim, was denied asylum and a residence permit in the Netherlands due to lack of documentation; the Committee found her communication inadmissible because her domestic application for judicial review was still pending, and thus domestic remedies had not yet been properly exhausted.

[Herrera Rivera v. Canada](#) (Communication No. 26/2010)

The author, a Mexican national taking refuge from her abusive (now ex-)husband in a women's shelter in Canada, claimed that return to Mexico would violate her rights to be free from discrimination; the

Committee found her communication inadmissible because she did not seek judicial review of the pre-removal risk assessment or a stay of deportation before the Canadian Federal Court.

[Mukhina v. Italy](#) (Communication No. 27/2010)

The author, a Russian national living in Italy, had her son removed due to deterioration of her mental state and her inability to support the child and claimed discrimination with respect to guardianship; the Committee found her complaint not sufficiently substantiated as she failed to explain specifically how her rights were violated.

[M.P.M. v. Canada](#) (Communication No. 25/2010)

The author, a Mexican national who fled to Canada allegedly to escape abuse by her former spouse (a judicial police officer), was denied refugee status, and did not apply for humanitarian reconsideration; she subsequently left Canada for Mexico and provided no explanation; the Committee therefore found the communication to be manifestly ill-founded.

[J.S. v. United Kingdom](#) (Communication No. 38/2012)

The author failed to challenge his denial of citizenship (on basis that his mother, as opposed to his father, was a UK citizen) under the UK Human Rights Act.

Decisions on the Merits

[A.T. v Hungary](#) (Communication No. 2/2003)

A victim of domestic violence had no mechanism for obtaining a protection order against her husband; the Committee held that the State had failed to enact sufficient legislative measures to combat sex-based stereotypes and end discrimination against women in the family setting.

[Nguyen v. The Netherlands](#) (Communication No. 3/2004)

The State denied the author maternity benefits from her second job as a co-worker in her spouse's business; the Committee held that the policy did not violate the Convention, as States have discretion to determine appropriate maternity benefits for different forms of employment.

[A.S. v. Hungary](#) (Communication No. 4/2004)

A Roma woman was sterilized by hospital staff without informed consent while undergoing an emergency caesarean section; the Committee found that the hospital's failure to obtain informed consent violated the author's right to healthcare and family planning under the Convention.

[Goekce v. Austria](#) (Communication No. 5/2005)

A victim of repeated domestic violence was killed by her husband after filing multiple complaints with local authorities; the Committee held that by dismissing complaints against the male perpetrator, the State failed to protect the victim and uphold her right to equal treatment.

[Yildirim v. Austria](#) (Communication No. 6/2005)

A victim of repeated domestic violence was killed by her husband after filing multiple complaints with local authorities; the Committee held that by failing to arrest or detain the perpetrator, the State did not adequately protect the victim and violated her right to equal treatment under the law.

[Vertido v. the Philippines](#) (Communication No. 18/2008)

A government employee who was allegedly raped by her superior was subjected to negative stereotypes associated with rape victims during trial proceedings against the accused, which continued for eight years before resulting in an acquittal; the Committee held that the State improperly relied on sex-based stereotypes during the trial and failed to provide an effective remedy to the author.

[Da Silva Pimentel v Brazil](#) (Communication No. 17/2008)

Author received inadequate medical treatment in private medical clinic after she suffered miscarriage, and died as a result. Failure to meet distinctive maternal health needs of women violated the Convention, and State remains responsible even though direct provision by private clinic.

[V.K. v Bulgaria](#) (Communication No. 20/2008)

Author suffered domestic violence; no shelter was available initially, and court refused to grant a permanent protective order because it applied an overly restrictive definition of domestic violence, failed to consider history of abuse and placed excessively high standard of proof on the author.

[Abramova v Belarus](#) (Communication No. 23/2009)

Author detained in facility with only male officers, who inappropriately touched, mocked and harassed the author and could observe female detainees in the course of private activities; this constituted sexual harassment and discrimination.

[L.C. v. Peru](#) (Communication No. 22/2009)

The author's daughter attempted suicide after she became pregnant at age 13 as a result of sexual abuse, was refused surgery for her injuries due to pregnancy resulting from the abuse, and was unable to obtain a therapeutic abortion; this was a violation as the refusal of surgery was based on stereotype prioritizing welfare of foetus over mother.

[Jallow v. Bulgaria](#) (Communication No. 32/2011)

Authorities failed to protect author from domestic violence, and failed to consider the allegation of violence when denying author custody of her daughter.

Admissibility Decisions

B.J. v. Germany

14 July 2004, CEDAW, 1/2003

Inadmissible under Art. 4(1)-(2) OP; exhaustion of domestic remedies; jurisdiction ratione temporis

Facts. On 28 July 2000, the author's divorce from her husband of 30 years was finalized. She subsequently filed a petition in federal constitutional court claiming that her divorce proceedings resulted in an unequal distribution of pensions and other assets, which placed her at a financial disadvantage. The author also argued that German divorce laws discriminated against female divorcees by providing insufficient maintenance and unequal distribution of marital assets. The federal constitutional court refused to consider her petition. In April 2004, the regional court awarded the author a maintenance payment of 280 EUR per month, which she appealed; domestic proceedings regarding the maintenance amount were pending at the time of the author's submission to the Committee.

Decision. The Committee found the communication inadmissible, noting that the author's divorce proceedings became final prior to the entry into force of the Optional Protocol in April 2002, and she had not argued that there was a continuing violation of her rights under the Convention. Moreover, the author failed to exhaust domestic remedies, as some of the claims at national level had not been definitively settled at the time the communication was considered.

Link to [full decision](#) (PDF)

Muñoz-Vargas y Sainz de Vicuña v. Spain

9 August 2007, CEDAW, 7/2005

Inadmissible under Art. 4(2)(e) OP; jurisdiction ratione temporis

Facts. The author is a Spanish national and the firstborn daughter of a man who held the nobility title of "Count of Bulnes". Under a 1948 law, firstborns inherited the title, but a woman could inherit only if she did not have any younger brothers. Upon the death of the author's father in May 1978, her younger brother inherited the title, and in October 1980 a royal decree was issued in his name. In 1988, the author initiated legal action against her brother on the principle of equality and non-discrimination on sex, in accordance with the Spanish Constitution and article 2(c) and (f) of the Convention. The Constitutional Court, and later the Supreme Court, dismissed the author's claims, holding that neither the Spanish Constitution or the Convention were in effect at the time of the alleged violation (i.e., when her brother received title).

Decision. The communication was inadmissible under article 4 paragraph 2(e) of the Optional Protocol. The Committee held that the author's complaint of sex-based discrimination stemmed from the succession of her younger brother to the title by royal decree in October 1980, which was before the Convention had entered into force internationally and also well before it was ratified by the State Party in 1984.

Link to [full decision](#) (PDF)

Rahime Kayhan v Turkey

27 January 2006, CEDAW, 8/2005

Inadmissible under Art. 4(1) OP; exhaustion of domestic remedies

Facts. The author, a teacher in Turkey, was charged with the crime of "breaking the peace, silence and working order of the institutions with ideological and political reasons" for wearing a headscarf to her place

of employment. On 9 June 2000, she was expelled from the civil service and her teaching position. On 23 October 2000, the author challenged her termination in an Administrative Court; the Court found the author's termination lawful and dismissed her complaint, as well as her subsequent appeal. On 20 August 2004, the author submitted a complaint to the Committee, arguing that by terminating her status as a civil servant for wearing a headscarf, the State had violated Article 11 (discrimination against women in the field of employment) of the Convention.

Decision. Although the author's employment was terminated before the entry into force of the Optional Protocol, the effects of this termination continued, thus eliminating any issue of temporal jurisdiction. However, the Committee still found the communication inadmissible, noting that the author failed to raise her claims of sex and employment discrimination in domestic courts before bringing these claims to the Committee. Thus, the author had not properly exhausted domestic remedies.

Link to [full decision](#) (PDF)

N.S.F. v. United Kingdom of Great Britain and Northern Ireland

12 June 2007, CEDAW, 10/2005

Inadmissible under Art. 4(1) OP; exhaustion of domestic remedies

Facts. The author, a Pakistani woman who was married there in 1996 and had two sons from the marriage, claimed that her husband subjected her to a range of repeated ill-treatment, including marital rape. In August 2002, the author divorced her husband, but he continued to harass her and threaten her life; police authorities failed to provide her with adequate protection. On 14 January 2003, the author and her two children fled Pakistan and immediately applied for asylum in the UK. Her request was denied by the Immigration and Nationality Directorate (IND) on 27 February 2003, and subsequent appeals were also denied. On February 1, 2005 the IND informed the author that she had no further right of appeal and thus no basis to stay in the UK.

Decision. The Committee acknowledged that the communication raised important issues regarding the risks of domestic violence against women. Nevertheless, the Committee found the communication inadmissible on the grounds that the author had not yet sought judicial review from the UK High Court to fight her deportation. Moreover, the author did not raise her claims of sex-based discrimination at the national level, and thus failed to exhaust domestic remedies before bringing her case to the Committee.

Link to [full decision](#)

Salgado v. United Kingdom of Great Britain and Northern Ireland

22 January 2007, CEDAW, 11/2006

*Inadmissible under Art. 4(1)-(2) OP; exhaustion of domestic remedies; jurisdiction *ratione temporis**

Facts. The author, a British national, left England in 1954 to live with her Colombian husband. The author's eldest son was born on 16 September 1954. She applied for British nationality for her son, but was told he was ineligible as citizenship passed through the paternal line. The British Nationality Act of 1981 amended the earlier law on nationality and conferred equal rights to men and women in respect of the nationality of their children under the age of eighteen. The author's son did not qualify for nationality due to his age. The author appealed to the British Consul and Home Office, which both confirmed her son's ineligibility for British citizenship.

Decision. The Committee found the communication inadmissible. The original discrimination against the author arose when her son was born in 1954, and ceased when he reached the age of majority in 1972; this

occurred well before the entry into force of the Optional Protocol in 2000. Moreover, the author did not exhaust domestic remedies, as she had failed to raise her citizenship and discrimination claims with domestic authorities before her son turned 18, which precluded the Committee from considering her complaint.

[Link to full decision \(PDF\)](#)

G.D. and S.F. v. France

4 August 2009, CEDAW, 12/2007

Inadmissible under Art. 2 OP; victim status

Facts. The authors are two French women who are unmarried and have no children. Both authors were automatically given their father's last name pursuant to a customary rule in force at the time of their birth. Although the authors were abandoned by their fathers by an early age, raised exclusively by their mothers, and used their mother's family name unofficially, they continue to be officially registered under their father's family name. On 26 May 2006, after unsuccessfully pursuing a number of administrative procedures at the domestic level, the authors appealed to the Committee under Article 16(1), which requires non-discrimination between the rights of husband and wife, including the right to choose a family name and to transmit the family name to children.

Decision. The Committee, while acknowledging the hardship encountered by the authors, held the communication inadmissible because the authors did not qualify as victims under the meaning of Article 2 of the Optional Protocol. Since both women were unmarried, did not live in husband-and-wife relationships, and did not have children, they could not assert their rights under Article 16 of the Convention, whose beneficiaries are only married women, women living in de facto union, or mothers.

[Link to full decision \(PDF\)](#)

Dayras and Others v. France

4 August 2009, CEDAW, 13/2007

Inadmissible under Art. 2 OP and Art. 4 OP; Exhaustion of Domestic remedies; Victim Status

Facts. The authors are several French citizens who complained of sex-based discrimination due to their inability to pass their family names to their children. Two of the women chose not to have children because of this problem, and others had children who did not qualify under new legislation that allowed both spouses to pass on their names. The authors did not avail all possible domestic remedies, arguing that such proceedings (under Article 61-1 of the French Civil Code) would be unreasonably prolonged, as the average period for completion of domestic procedures was approximately 10 years at the time.

Decision. The Committee held the communication inadmissible; with regard to the two authors without children, the claims were inadmissible for lack of victim status. Other authors who wished to take their mothers' names had not shown that they had suffered from sex-based discrimination. Those authors with adult children had no claim once their children reached adulthood and could make their own assessment of what name they wanted. The remaining authors had insufficiently exhausted domestic remedies.

[Link to full decision \(PDF\)](#)

Zheng v. the Netherlands

7 October 2007, CEDAW, 15/2007

Inadmissible under Art. 4(1) OP; Exhaustion of Domestic Remedies

Facts. The author is a trafficking victim who was transported from China to the Netherlands without her consent and forced to work in the sex industry. On 28 April 2003, the Dutch Immigration and Naturalization Service (IND) denied the author's application for asylum because she could not give details regarding her trip to the Netherlands, did not provide identification, and waited for eight months before applying for asylum; the author did not appeal this decision. On 1 May 2003, the IND also denied the author's request for a resident permit. After several failed appeals, the author initiated an application for judicial review on 11 June 2007. This review was pending before the district court at the time the author submitted her petition to the Committee.

Decision. The Committee found the communication inadmissible because the author had failed to exhaust all available domestic remedies. While the Committee expressed sympathy for the author's inability to explain her situation to authorities due to language barriers and other practical obstacles, it pointed out that the author had failed to appeal the IND's asylum decision. Meanwhile, judicial review of the residence permit decision was still pending in domestic courts, and the author had not made any convincing argument that this domestic remedy was unreasonably prolonged or unlikely to bring effective relief. Accordingly, the Committee was unable to consider the author's communication at the time.

Link to [full decision](#) (PDF)

Herrera Rivera v. Canada

18 October 2011, CEDAW, 26/2010

Inadmissible under Art. 4(1) OP; Exhaustion of Domestic Remedies

Facts: The author is a Mexican national with two minor children. After taking refuge from her abusive (now ex-)husband in a women's shelter in Montreal on 25 April 2008, the women's association "Assistance aux femmes" filed a pre-removal risk assessment (PRRA) with Immigration Canada on 1 October 2008 and a humanitarian and compassionate grounds (H&C) application on 27 October 2008. They cited the husband's history of violence, death threats, and the inadequate State protection in Mexico for the author and her children. The PRRA application was rejected on 30 April 2009, her H&C application for permanent residence based on conjugal violence was dismissed on 27 October 2009, and review of the latter decision was denied on 1 June 2010. She submitted a second PRRA on 25 June 2010. The author claimed that if Canada deports her to Mexico, it would allow Mexico to violate her rights under Articles 1, 2 (a)-(d), 5 (a), and 24 of the Convention, relating to the obligations to eradicate discrimination in legislation, practice, and social and cultural patterns.

Decision: The Committee found that the author had failed to exhaust domestic remedies before making her complaint, and therefore the communication was inadmissible under Article 4, paragraph 1 of the Optional Protocol. The author failed to explain why she did not seek judicial review of her negative PRRA decision or a stay of deportation before the Canadian Federal Court whose favorable decision would render her communication moot before the Committee.

Link to [full text](#) of decision (PDF)

Mukhina v. Italy

18 October 2011, CEDAW, 27/2010

Inadmissible under Art. 4(2)(c) OP; substantiation

Facts: The author is a Russian national born in 1965. On 29 November 2005, the Rome Tribunal for Minors revoked the author's custody over her son (the unacknowledged son of her deceased employer) due to deterioration of her mental state and her inability to support the child. The author appealed the decision, and on 12 February 2008, the Rome Court of Appeals (minors' section) upheld the first decision. She unsuccessfully appealed the appellate decision on 28 April 2009. She claims to be a victim of a violation by the State party of her rights under Article 16 (f) of the Convention (discrimination with respect to guardianship).

Decision: The Committee found that the author failed to sufficiently substantiate her claims for the purposes of admissibility because she did not provide any specific explanation on why and how she considers that her rights under Article 16 (f) have been violated by Italian authorities.

Link to [full text](#) of decision (PDF)

M.P.M. v. Canada

24 February 2012, CEDAW, 25/2010

Inadmissible under Art. 4 (2) (c) OP; unfounded and insufficiently substantiated

Facts: The author is a Mexican national who fled to Canada allegedly to escape abuse by her former spouse, a judicial police officer. She claims that despite breaking off the relationship in 2000, he renewed contact and began harassing her in 2005, endangering her life. After a violent incident in November 2006, she lodged a complaint with municipal authorities as well as appearing on television to talk about her abuse. She applied for refugee status on 17 November 2006 after arriving in Canada, but was denied on 22 May 2008. Her application for judicial review was rejected on 15 September 2008, and a pre-removal risk assessment was rejected on 7 April 2009. The Federal Court rejected her request for judicial review on 18 January 2010, bringing an end to her proceedings before domestic courts. She did not submit an application for reconsideration on humanitarian grounds. The author and her son left Canada for Mexico on 1 April 2010, shortly after she submitted her complaint to the Committee.

Decision: The Committee found the communication inadmissible due to the author's failure to explain her voluntary departure from Canada and the fact she did not follow up her initial complaint. Therefore, the communication was manifestly unfounded and not sufficiently substantiated, rendering it inadmissible under Article 4, paragraph 2 (c) of the Optional Protocol.

Link to [full text](#) of decision (PDF)

J.S. v. United Kingdom

27 November 2012, CEDAW, 38/2012

Inadmissible under Art. 4(1) OP; failure to exhaust local remedies

J.S., an Indian national, was born in 1976. When he was born, the British Nationality Act 1948 prevented his mother from passing her U.K. citizenship onto him. Under section 5 of the Act, only fathers could pass their citizenship onto their children. The applicant applied for UK citizenship, but this was rejected. He did not challenge this rejection by judicial action under the Human Rights Act 1998, because he claimed could not afford to. The Committee declared the communication inadmissible under Article 4(1) of the Optional

Protocol due to the failure of J.S. to exhaust domestic remedies, noting that J.S. had not established that such remedies had been unreasonably prolonged or were unlikely to bring him effective relief. Having found the Committee inadmissible under Article 4(1), the Committee decided not to examine any other inadmissibility grounds and remained silent on the author's legal standing, as a man, to bring a communication under the Optional Protocol to CEDAW.

Link to [full text](#) of decision (PDF)

Decisions on the Merits

A.T. v Hungary

26 January 2005, CEDAW, 2/2003

Violations of Art. 2(a), (b), (e) (ensure equality in law); Art. 5(a) (modify norms to discrimination) in conjunction with Art. 16 (eliminate discrimination in relation to family and marriage); Discrimination; Domestic Violence

Facts. The author is a Hungarian woman whose husband repeatedly subjected her to domestic violence, which resulted in several hospitalizations. As Hungarian law did not provide a mechanism for the author to obtain a protection order against her husband, she submitted a motion for injunctive relief for her exclusive right to the family apartment. The Regional Court denied the motion and held that the author's husband had a property-based right to return and use their apartment. In her complaint to the Committee, the author requested the introduction of adequate and immediate protection for victims of domestic violence in Hungary, as well as effective interim measures.

Decision. The Committee held that Hungary's domestic violence jurisprudence was rooted in sex-based stereotypes, which constituted a violation of the State's Article 2 obligation to facilitate sex-based equality. Hungary's lack of specific legislation to combat domestic and sexual violence led the Committee to conclude that the State had violated its Article 5 obligation to eliminate prejudices and customs grounded in female inferiority, and its Article 16 obligation to end discrimination against women in matters relating to marriage and the family. The Committee recommended that the State "take immediate and effective measures to guarantee the physical and mental integrity of [the applicant] and her family." The Committee also instructed Hungary to enact domestic and sexual violence legislation, and allow victims to apply for protection and exclusion orders which forbid the abuser from entering or occupying the family home.

Link to [full decision](#) (PDF)

Nguyen v. The Netherlands

14 August 2006, CEDAW, 3/2004

No violation of Art. 11(2)(b) (eliminate discrimination in the workplace); Discrimination; Employment; Maternity Benefits

Facts. The author worked part-time as a salaried employment agency worker and also as a co-worker in her husband's business. For her salaried employment, the author was insured under the Sickness Benefits Act (ZW), and for work at her husband's enterprise she was insured under the Self-Employed Person Act (WAZ). When she applied for maternity leave in 1999, she received benefits from her ZW insurance, but her WAZ insurance denied her coverage because of an "anti-accumulation clause" which allowed payment of benefits only insofar as they exceed benefits payable under the ZW policy. In 2002 and 2003, domestic courts dismissed the author's complaints regarding the withheld benefits. In December 2003, she submitted a communication to the Committee, arguing a violation of Article 11(2)(b) of the Convention, under which State parties are obligated to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority, or social allowance.

Decision. The Committee found no violation of Article 11(2)(b), explaining that States have discretion to determine appropriate maternity benefits under this provision. Accordingly, separate rules for self-employed women that accounted for fluctuated income and related contributions did not amount to a violation of the Convention. However, three judges dissented, finding that the law may serve to indirectly

discriminate against women, since in the Netherlands those who part-time as salaried workers in addition to working part-time in family enterprises are primarily women.

[Link to full decision \(PDF\)](#)

A.S. v. Hungary

14 August 2006, CEDAW, 4/2004

Violations of Art. 10 (h) (family planning), Art. 12 (eliminate discrimination in health care) and Art. 16(1)(e) (right to decide the number and spacing of children); Discrimination; Roma; Sterilization

Facts. The author, a Roma woman, claimed she was subjected to sterilization without informed consent at a Hungarian hospital during an emergency caesarean section procedure. Immediately prior to the procedure, hospital staff asked her to provide written consent to tubal ligation by signing an illegible handwritten note that described the procedure in terms she did not understand; she was shocked to learn that she had been sterilized. The author complained in domestic court that the hospital was negligent by failing to obtain her informed consent. The Court held that the hospital was at least partially negligent in its legal duties to the author, but rejected her claim on the basis that she failed to prove a causal relationship between the conduct of the hospital's doctors and the permanent loss of her reproductive capacity.

Decision. The Committee found that the State party failed, through hospital personnel, "to provide appropriate information and advice on family planning," which constituted a violation of the author's right to information under Article 10(h) of the Convention. The State also violated the author's Article 16 right to equality in marriage and family matters by permanently depriving her of her natural reproductive capacity without consent. The Committee further held that the failure to obtain informed consent constituted a breach of the obligations under Article 12 to ensure the delivery of acceptable medical services in a manner that respects a woman's dignity. Accordingly, the Committee recommended the State provide compensation to the author and amend its Public Health Act to provide clearer guidelines regarding the administration of sterilization procedures.

[Link to full decision \(PDF\)](#)

Goekce (deceased) v. Austria

6 August 2007, CEDAW, 5/2005

Violations of Art. 2(a), (c)-(f) (equality), Art. 3 (ensure equal exercise of rights); Discrimination; Domestic Violence; Failure to Protect

Facts. In 2002, the author's husband shot and killed her in front of their two daughters. Before her death, the author had obtained three expulsion and prohibition-to-return orders against her husband in response to repeated episodes of domestic violence. The local prosecutor denied requests to detain the husband and terminated proceedings against him two days prior the author's death. Police reports show that the law enforcement failed to respond in a timely fashion to the dispute that resulted in the author's death. Representatives of the author submitted a complaint to the Committee, alleging that Austria's Federal Act for the Protection against Violence within the Family provided inadequate protection for victims of spousal abuse, and stating that women are disproportionately affected by the State's failure to effectively respond to domestic violence.

Decision. The Committee found that although Austria had adopted progressive legislation to address domestic violence, State authorities needed to investigate and respond to such complaints with increased diligence. Accordingly, the Committee concluded that the police knew or should have known that the author was in serious danger; thus, they were accountable for failing to protect her. By allowing the

perpetrator's rights to supersede the victim's right to life and to physical and mental integrity, Austrian law enforcement violated its obligations under Article 2 to end sex-based discrimination through appropriate legislation, and its Article 3 duty to guarantee women's equal access to human rights. The Committee recommended that Austria strengthen its implementation and monitoring of the Federal Act for the Protection against Violence within the Family, respond to complaints of domestic violence with due diligence, and provide adequate sanctions for the failure of authorities to do so.

Link to [full decision](#) (PDF)

Yildirim (deceased) v. Austria

6 August 2007, CEDAW, 6/2005

Violations of Art. 2(a), (c)-(f) (equality), Art. 3 (ensure equal exercise of rights); Discrimination; Domestic Violence; Failure to Protect

Facts. Beginning in July 2003, the victim was subject to repeated death threats from her husband, who also threatened to kill her children. On 6 August 2003, police authorities issued an expulsion and prohibition-to-return order against the husband. Despite a police report that the husband had made criminal threats against the author and should be detained, the public prosecutor rejected this request. On 14 August 2003, the author made a formal statement to the police describing her husband's dangerous threats, but the prosecutor once again denied the request to detain him. On 11 September 2003, the author's husband fatally stabbed her outside their apartment. In July 2004, the authors (two Austrian women's rights organizations and the victim's relatives) submitted a communication to the Committee alleging that the State had violated Articles 1, 2, 3 and 5 of the Convention by failing to protect the victim's right to life and personal security.

Decision. The Committee noted that the victim made positive and determined efforts to save her life, and found the State's failure to respond effectively to constitute a breach of its obligations to protect the victim under Articles 1, 2 and 3 of the Convention. The Committee also held that the perpetrator's rights—including the presumption of innocence, right to private life, and right to personal liberty—should not supersede the woman's human rights to life and to physical and mental integrity. Finally, the Committee recommended enhanced training of, and coordination amongst, the State's law enforcement and judicial officers, to ensure that all levels of the national criminal justice system worked together to protect victims of sex-based violence.

Link to [full decision](#) (PDF)

Vertido v. the Philippines

16 July 2010, CEDAW, 18/2008

Violations of Art. 2(c) and (f) (equality) and Art. 5(a) (modify norms to eliminate discrimination); Discrimination; Effective Remedy

Facts. The author, a government employee, claimed that she was raped by a senior member of her organization in 1996. She immediately underwent medical examinations and reported the incident to police authorities. In 1997, a trial against the alleged perpetrator commenced and continued for eight years before the Regional Court acquitted the defendant in 2005. Throughout the trial, the Court appeared to rely on negative stereotypes associated with female rape victims, and questioned the credibility of the victim's testimony on the grounds that "an accusation of rape can be made with facility." The trial court also failed to apply Supreme Court precedent establishing that a victim's failure to escape does not negate the existence of rape. In her November 2007 communication to the Committee, the author argued that the Court's actions subjected her to re-victimization and violated articles 2(c), 2(f), and 5(a) of the Convention,

as well as and CEDAW General Recommendation 19, which obligates States to modify or abolish laws, regulations, and practices that constitute discrimination against women.

Decision. The Committee found that the Trial Court improperly relied on sex-based stereotypes regarding the crime of rape and its victims, in violation of Articles 2 and 5 of the Convention. The Committee also emphasized that the State had an obligation to provide an effective remedy, which requires the fair, impartial, and timely adjudication of cases involving allegations of rape and other sexual offenses. Finally, the Committee recommended that the State provide the author with appropriate compensation, review the definition of rape under existing law to ensure that lack of consent is an essential element of the crime, and require training for judges, lawyers, and law enforcement officers on the crime of rape and other sexual offenses.

Link to [full decision](#) (PDF)

Da Silva Pimentel v Brazil

25 July 2011, CEDAW, 17/2008

Violations of Art. 2(c) and (e) (access to justice and regulating private actors) and Art 12 (access to health); Unduly Prolonged Remedies; Medical Care; Discrimination

Facts. The author's daughter, who was of African descent and from a lower socio-economic background, received inadequate care when she suffered a miscarriage. Tests were not conducted promptly, complications post-delivery were also not identified promptly, surgery was then conducted in an ill-equipped private clinic, and when her condition deteriorated it took eight hours to transfer her to the a hospital (two hours away), where treatment was further delayed because her medical records had not been transferred with her. As a result, the author's daughter died. Domestic proceedings brought by her mother were still unresolved more than four years later. Her mother then complained to the Committee, arguing that Brazil had failed to fulfill her daughter's right to health care, with a special focus on the needs of vulnerable women, and ensure access to quality medical treatment during delivery. She claimed these failings were emblematic of systemic problems in the management of health care resources in Brazil.

Law. Given that domestic proceedings were still unresolved at the time of the Committee's consideration, almost eight years after the claim, those remedies were unduly prolonged and the case was admissible. The State agreed that the victim needed individualized treatment which she did not receive, and the Committee considered that the State remains responsible for the actions of private institutions when it outsources medical services and always maintains the duty to monitor and regulate private health care institutions. The lack of appropriate maternal health care services failed to meet the distinctive health needs of women, violating Art 12(2), and also constituting discrimination against women and adversely impacting women's right to life. She also suffered discrimination on the basis of her background and socio-economic status. Delays in resolving a civil claim and rejection of applications which could have expedited that claim also violated obligation to ensure effective judicial protection.

Link to [full decision](#) (PDF)

V.K. v Bulgaria

25 July 2011, CEDAW, 20/2008

Violations of Art. 2(c)-(f) (ensure equality in law); Art. 5(a) (modify norms to discrimination) in conjunction with Art. 16 (eliminate discrimination in relation to family and marriage); Discrimination; Domestic Violence

Facts. The author, Bulgarian, was victim of domestic abuse for many years. Her husband filed for divorce in June 2007, and in July 2007 the author left the home for a shelter in Poland where her husband was working. The husband kept custody of their son, and prevented the author from seeing him. When she found his kindergarten, the husband came threatened the author and hit her, and was restrained by the police. The author took her children back to Bulgaria, but was unable to immediately find a place in a shelter due to overcrowding. She applied for protective orders, and although the courts issued an immediate protection order, they refused a permanent protection order because they considered the only violence in the last month (at the kindergarten) was not shown to be serious enough

Decision. Refusal to issue permanent protective order in this case was arbitrary and discriminatory. Domestic violence is not limited to physical harm, but also emotional and psychological suffering. The domestic court applied an overly restrictive definition inconsistent with the state's obligations under the Convention, and also refused to consider the history of violence and imposed an inappropriate standard of proof on the applicant. The court used inflexible standards and preconceived notions of domestic violence as an essentially private matter. Lack of an available shelter when the author and her children returned from Poland also violated obligations to provide immediate protection from domestic violence.

Link to [full decision](#) (PDF)

Abramova v Belarus

25 July 2011, CEDAW, 23/2009

Violations of Art. 2(a), (b), (d)-(f) (equality), Art. 3 (ensure equal exercise of rights) and Art. 5(a) (modify norms to eliminate discrimination); Discrimination; Detention

Facts. Author was detained, and although cell contained only women, all of the officers in the detention facility were men. When initially admitted, she was poked or touched and one guard threatened to strip her. The conditions of detention were poor, there was not adequate privacy in the cell when using the toilet, and the guards could observe the detainees in the course of private activities through the hole in the door. The guards also mocked the author and other female detainees, and the head of the facility verbally insulted the author saying she was “not a woman”.

Decision. Ensuring that women prisoners are attended and supervised only by women officers is an important safeguard to ensure non-discrimination against women. Respect for women prisoners' privacy and dignity must be a high priority for prison staff. The disrespectful treatment of the author by the male prison staff, including inappropriate touching and unjustified interference with privacy, constitutes sexual harassment and discrimination.

Link to [full decision](#) (PDF)

L.C. v. Peru

17 October 2011, CEDAW, 22/2009

Violations of Art. 2(c) and (f)(equality); Art. 3(ensuring equal exercise of rights); Art. 5 (modifying norms to eliminate discrimination); Art. 12 (eliminating discrimination in health care)

Facts: The author submitted the communication on behalf of her daughter, L.C., a Peruvian citizen born in 1993. As a result of sexual abuse, L.C. became pregnant at the age of 13 and attempted suicide in March 2007 by jumping from a building. Her neurosurgeon recommended emergency surgery to prevent paraplegia and other injuries from worsening, leaving her disabled. On the scheduled day of surgery, L.C. was informed that her surgery had been postponed due to her pregnancy. On 18 April 2007, the author and her daughter requested a legal termination of the pregnancy, but this was denied despite the Medical College of Peru advising that L.C. faced serious complications if pregnancy continued and that a therapeutic abortion would be justified. The author requested reconsideration of this denial on 7 June 2007, but L.C. spontaneously miscarried on 16 June, 11 days before the director of the hospital ruled that the decision was not subject to appeal. On 11 July 2007, L.C. had spinal surgery and was discharged on 31 July 2007, but did not receive the required physical therapy and rehabilitation until 10 December 2007. After two months, L.C. had to abandon her treatment for lack of means, remaining paralyzed from the neck down with only partial movement in her hands, and devastating her family's economic and social stability because of the constant care she now requires.

Decision: The Committee recognized a direct relationship between the withdrawal of the surgery and L.C.'s pregnancy, and that the surgery was necessary and should have been performed as early as possible. The Committee found a violation of L.C.'s rights under Article 1, together with Articles 12 and 5 because "the decision to postpone the surgery due to the pregnancy was influenced by the stereotype that protection of the foetus should prevail over the health of the mother". The Committee also held that the lack of effective remedy available to L.C. and failure to take all appropriate measures to modify or abolish existing laws which constitute discrimination against women due to the absence of a procedure for requesting and granting a legal therapeutic abortion constitute a violation of Articles 2 (c) and (f) and 3.

[Link to full decision \(PDF\)](#)

Jallow v. Bulgaria

28 August 2012, CEDAW, 32/2011

Violation of Art. Articles 2(b)-2(f) (eliminate discrimination), 5(a) (modify social patterns), and Articles 16(1)(c),(d) and (f) (eliminate discrimination in marriage and family matters); domestic violence; custody

Isatou Jallow moved from the Gambia to Bulgaria after marrying A.P., a Bulgarian national. Once in Bulgaria, A.P. allegedly became abusive toward Jallow and subjected her to physical and psychological violence, including sexual abuse, and attempted to force her to take part in pornographic films and photographs. Even after social workers and police became involved, authorities took no measures to protect Jallow from further domestic violence and sexual abuse. In March 2009, prosecutors—without interviewing Jallow—refused to continue investigating the alleged domestic violence due to insufficient evidence. An order granting A.P. custody of the couple's daughter was issued solely on the basis of A.P.'s statement and the Court did not consider Jallow's allegations of domestic violence. In November 2010, Jallow submitted a communication to the Committee on behalf of her daughter and herself claiming that Bulgarian authorities failed to provide adequate protection against domestic violence and that the state's actions relative to her situation amounted to gender-based discrimination.

The Committee concluded that Bulgaria had violated Articles 2(b)-2(f), 5(a), 16(1)(c), 16(1)(d) and 16(1)(f) of CEDAW, read in conjunction with Articles 1 and 3, when it failed to investigate allegations that A.P. had committed domestic violence against Jallow and her daughter. In the Committee's view, these actions, together with the State's failure to inform Jallow properly about her daughter's whereabouts and her condition, violated Articles 2(b) and 2(c). The Committee determined that Bulgaria had also failed to protect Jallow's rights to equality within marriage and as a parent, and to treat her daughter's interests as

paramount, in violation of Articles 5(a), 16(1)(c), 16(1)(d) and 16(1)(f). The Committee explained that Bulgaria's actions were based on stereotypes concerning the roles of women and men within marriage, according to which men are perceived to be superior to women. The authorities' reliance on these stereotypes caused them to act on the statements and actions of A.P. and to disregard Jallow's allegations of violence. It also meant that they ignored Jallow's vulnerable position and disregarded evidence concerning the disproportionate impact of domestic violence on women. The Committee urged Bulgaria to compensate Jallow and her daughter for violating their rights under CEDAW. It also recommended that the State Party adopt measures to ensure that women victims/survivors of domestic violence, including migrant women, have effective access to justice and other services (e.g., translation services). It also called on Bulgaria to provide regular training on CEDAW and the Optional Protocol and to adopt legislative and other measures to ensure that domestic violence is taken into account in the determination of custody and visitation rights of children.

Link to [full decision](#) (PDF)

**E-mail: info@justiceinitiative.org
www.justiceinitiative.org**



The Open Society Justice Initiative uses law to protect and empower people around the world. Through litigation, advocacy, research, and technical assistance, the Justice Initiative promotes human rights and builds legal capacity for open societies. Our staff is based in Abuja, Amsterdam, Bishkek, Brussels, Budapest, Freetown, The Hague, London, Mexico City, New York, Paris, Phnom Penh, Santo Domingo, and Washington, D.C.