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Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women
13 February–2 March 2012

Communication No. 25/2010

Decision adopted by the Committee at its fifty-first session, 13 February–2 March 2012

Submitted by:	M.P.M., represented by counsel, Mr. Stewart Istvanffy
Alleged victim:	The author
State party:	Canada
Date of communication:	25 March 2010 (initial submission)
Document reference:	Transmitted to the State party on 4 October 2010 (not issued in document form)
Date of decision:	24 February 2012

[Annex]

Annex

Decision of the Committee on the Elimination of Discrimination against Women under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

concerning

Communication No. 25/2010,* *M.P.M. v. Canada*

Submitted by:	M.P.M., represented by counsel, Mr. Stewart Istvanffy
Alleged victim:	The author
State party:	Canada
Date of communication:	25 March 2010 (initial submission)

The Committee on the Elimination of Discrimination against Women, established under article 17 of the Convention on the Elimination of All Forms of Discrimination against Women,

Meeting on 24 February 2012,

Adopts the following:

Decision on admissibility

1.1 The author of the communication, dated 25 March 2010, is M.P.M., born on 26 December 1964 in Córdoba, Mexico. She argues that by returning her to her country of origin without having considered fairly the risks she faced as a woman, Canada has violated articles 2 (c) and (d), 3, 15 and 16 of the Convention on the Elimination of All Forms of Discrimination against Women. She is represented by counsel, Mr. Stewart Istvanffy. The Convention and its Optional Protocol entered into force for the State party on 10 December 1981 and 18 October 2002 respectively.

1.2 At its forty-ninth session, the Committee decided, at the State party's request, to consider the admissibility separately from the merits.

The facts as submitted by the author

2.1 The author alleges that she was abused in her country of origin, Mexico, by her former spouse, a judicial police officer. She was in a relationship with him from 1998 to

* The following members of the Committee participated in the adoption of the present communication: Ms. Ayse Feride Acar, Ms. Magalys Arocha Domínguez, Ms. Violet Tsisiga Awori, Ms. Barbara Evelyn Bailey, Ms. Olinda Bareiro Bobadilla, Mr. Niklas Bruun, Ms. Naela Mohamed Gabr, Ms. Ismat Jahan, Ms. Soledad Murillo de la Vega, Ms. Violeta Neubauer, Ms. Pramila Patten, Ms. Silvia Pimentel, Ms. Victoria Popescu, Ms. Zohra Rasekh, Ms. Patricia Schulz, Ms. Dubravka Šimonović and Ms. Zou Xiaoqiao.

2000 but decided to end it because of his violence towards her. In 2005, her former spouse renewed contact with her and began to harass her, to the point that her life was in danger. After a particularly violent incident in November 2006, she filed a complaint against her former spouse. She also lodged a complaint against him with the municipal authorities in her city, Córdoba, and appeared on the Televisa television channel to complain about him. Her plight is known to many people in Córdoba. The author therefore decided to leave the country and to seek asylum in Canada in order to escape her former spouse.

2.2 The author arrived in Canada with her son. On 17 November 2006, she applied for refugee status on the ground of fear based on membership of a particular social group, namely women victims of domestic violence in Mexico. On 22 May 2008, the Refugee Protection Division decided that the author was not a refugee as defined in the Convention relating to the Status of Refugees of 1951. Her request for leave and judicial review was rejected on 15 September 2008. On 4 November 2008, the author submitted a request for a pre-removal risk assessment (PRRA), which was rejected on 7 April 2009. A request for leave and judicial review was submitted to the Federal Court on 20 May 2009, which the latter rejected on 18 January 2010. Prior to that, a request to postpone the deportation had been submitted in June 2009 and granted on 2 July 2009. The decision of 18 January 2010 rejecting her request for review brought to an end the proceedings before the domestic courts. The author did not submit an application for reconsideration on humanitarian grounds owing to the cost of the procedure and the low rate of acceptance of such applications. Furthermore, the author claims that the case file would inevitably be based on the same evidence of risk.

The complaint

3.1 The author considers that the State party violated article 2 (c) and (d), article 3, article 15 and article 16 of the Convention.

3.2 The author maintains that her deportation to Mexico would entail a violation of the right to life without discrimination, the right not to be subjected to inhuman treatment for being a woman, the right to privacy and the right to family protection. She maintains that her deportation to Mexico, where she is at risk of being detained in inhumane conditions or even being killed or assaulted by her former spouse, a member of the judicial police, constitutes a violation of her fundamental rights. According to the author, the State party is of the view that the State of Mexico protects women who are victims of abuse, whereas all human rights organizations and institutions that help women say the opposite. The author argues that abuses against women go unpunished and that the corruption and hostility of the judicial institutions make internal flight within Mexico impossible.[1]

3.3 With regard to article 2 (c), the author considers that the State party did not provide her with adequate legal protection. First of all, she claims that her application for refugee status was rejected on the basis of weak arguments, given that the State party's underlying assumption was that the protection system in Mexico was adequate. Secondly, the PRRA decision allegedly did not give any weight to the documents provided attesting to the lack of protection for women in Mexico, including a letter from the Mouvement contre le viol et

[1] In support of her argument, the author cites article 3.4 of the regional file on Mexico, information request MEX36237.EF, entitled: "Mexique: La violence conjugale et les recours offerts, en particulier dans les cas où l'agresseur est membre du service de police (1996–2000)"; and "Mexique: des autorités incapables d'arrêter les enlèvements et meurtres de femmes à Ciudad Juarez et Chihuahua", published by Amnesty International in 2003. The author also refers to the decision of the Federal Court of Canada of 8 February 2010 in the case of *Garcia Bautista v. Canada* (Citizenship and Immigration), 2010 FC 126.

l'inceste and a detailed affidavit from the director of the FCJ Refugee Centre. Furthermore, the author claims that the PRRA simply used the arguments which were put forward by the Immigration and Refugee Board of Canada (IRB) without conducting its own comprehensive review. According to the author, 98 to 99 per cent of PRRA appeals are currently rejected. She argues that, in support of her application for judicial review, which was rejected on 18 January 2010, she had submitted new conclusive evidence, such as letters from Televisa in Mexico and many pieces of medical and psychological evidence. The case law of the Federal Court of Canada regarding the lack of protection for women in Mexico attests to the risk she faced.

3.4 The author also invokes article 2 (d), which guarantees protection against any act or practice of discrimination by public authorities and institutions. She alleges that, by exposing her to a risk of, at the very least, being detained in inhumane conditions and, at worst, the likelihood of being killed by her former spouse or his friends from the judicial police, the State party has not complied with its obligation to ensure her protection.

3.5 Article 3, which guarantees the exercise and enjoyment of human rights and fundamental freedoms, was also allegedly violated, since the decision to deport her to Mexico exposed her to torture carried out with impunity.

3.6 The author considers that the State party has violated article 15 and her right to equality before the law, because her situation as a vulnerable woman was not a factor in the decision taken by the Canadian authorities.

3.7 Lastly, the author claims a violation of article 16 although she does not put forward any argument in support of this claim.

State party's observations on admissibility

4.1 In its observations of 6 December 2010, the State party challenged the admissibility of the communication under article 4, paragraphs 1 and 2, of the Optional Protocol.

4.2 Firstly, the State party argues that the communication is inadmissible because it is now moot, given that the author has returned to Mexico of her own accord. The primary remedy for which the communication was submitted, namely the request that Canada should not deport the author, is now moot. Secondly, the State party argues that domestic remedies have not been exhausted, as the author has not applied for visa exemption and permanent resident status in Canada on humanitarian grounds. Thirdly, the State party submits that the right claimed by the author — namely the right not to be deported to a country where there are grounds for believing that the person would face a real risk of a violation of the right to life, torture, or a violation of the right to protection against any cruel or unusual punishment — is not provided for in the Convention. The State party considers that the Convention should not be interpreted as granting this right.

4.3 Fourthly, the State party maintains that the author's allegations concerning the risk of gender-based violence that she would face if she were returned to Mexico were thoroughly examined by the Canadian authorities, who concluded that the author's allegations were unfounded and that there is no evidence in the communication before the Committee to change that conclusion. Lastly, the State party considers that the communication is not sufficiently substantiated for the purposes of admissibility, given that the author has not demonstrated that the Canadian system for processing applications for refugee status and the remedies before the Canadian courts are pointless and ineffective.

4.4 The author has explained to the Canadian authorities her reasons for leaving Mexico with her son on 17 November 2006. In the personal information form submitted to the Immigration and Refugee Board on 12 December 2006, the author claimed that since 1998 her spouse had become increasingly aggressive. On 15 January 2000 he allegedly hit her,

causing injuries that required stitches. The physical and psychological abuse allegedly continued until June 2000, when the author managed to expel her spouse from the house. The author alleged that from 2005 her former spouse started visiting her from time to time, subjecting her to all kinds of abuse. On 13 November 2006 her former spouse allegedly hit her in the presence of a police officer friend of his. After that episode, the author allegedly filed a complaint with the public prosecution service and told her story on the Televisa television channel. Her former spouse then allegedly threatened to kill her and her son. At that point she and her son both left the country.

4.5 During the hearing of 22 May 2008, the Immigration and Refugee Board questioned the author extensively about her allegations concerning her former spouse, the fact that no claim for protection had been lodged with the Mexican authorities, and the absence of violence against or in the presence of her son. In the light of the inconsistencies and contradictions in the author's testimony, the Immigration and Refugee Board concluded that the author had completely fabricated a story to obtain refugee status in Canada and that she had not presented any credible or reliable evidence on which the Board could base a decision to grant her asylum. These inconsistencies included the lack of information about how she had publicly disclosed her situation through the media, such as the name of the journalist who had allegedly reported on her case, and the fact that she had not attempted to keep a tape of the broadcast. The State party also refers to the fact that the medical certificate had no evidential value, and that the author was unable to give any detailed information about her former spouse, such as his date of birth.

4.6 Regarding the author's request for a PRRA, the State authorities considered that the documents provided were general in nature and that they did not corroborate the author's story or her allegations; nor did they establish a link between her personal situation and the violations in Mexico. The PRRA officer concluded that the documents did not demonstrate that the author would face a personal risk within the meaning of articles 96 and 97 of the Immigration and Refugee Protection Act if returned to Mexico. On 17 April 2009, after the PRRA officer had already decided to reject the request, the author's counsel submitted four new pieces of evidence, consisting of a letter from a journalist from the Televisa television channel; a letter from a member of the municipal executive committee of the city where the author lived; letters from the author's mother and sister; and a letter from a teacher and friend of the author. The PRRA officer agreed to consider these new elements but then rejected them. She took the view that the letters from the author's sister, mother and friend were not impartial; that the letter from the Televisa journalist was vague and gave no indication of the date of the broadcast featuring the author; and that the letter from the member of the municipal executive committee attesting to the steps the author had taken to submit a complaint against her former spouse in November 2006 was not new evidence and should have been mentioned by the author to the Immigration and Refugee Board.

4.7 In its decision of 18 January 2010, the Federal Court of Canada took the view that the inferences drawn by the PRRA officer were reasonable. According to the Court, the author had not been able to establish that the PRRA officer's decision had been based on a misguided conclusion, or drawn in an improper or arbitrary manner or without taking account of the evidence before the officer. Lastly, it was of the opinion that the guidelines on "Women Refugee Claimants Fearing Gender-Related Persecution"[2] had been taken into account by the PRRA officer even though they had not been explicitly cited.

4.8 The State party notes that the author and her son left Canada on 1 April 2010. This came to light when the State party was gathering information to prepare its observations on the communication. The records of the State party indicate that the author and her son both

[2] http://www.irb-cisr.gc.ca/eng/brdcom/references/pol/guidir/Pages/women.aspx.

left Canada using their own air tickets after confirming their departure with the Canadian authorities. The same records indicate that their final destination was Mexico on a Mexicana Airlines flight.

4.9 Given the author's voluntary departure, the Committee should find the communication inadmissible on the ground that it is moot, all the more so given that the author departed voluntarily. The State party also notes that since the author's departure to Mexico in April 2010, it has not received any report, either directly from her representative or from the Committee, stating that the author has suffered gender-based violence. The State party considers that this reason is sufficient to resolve the issue of the admissibility of the communication. However, it submits that the communication would have been inadmissible even if the author had remained in Canada.

4.10 The State party is of the view that the author has not exhausted domestic remedies under article 4, paragraph 1, of the Optional Protocol. First of all, under article 25 of the Immigration and Refugee Protection Act, the author had the option of applying for visa exemption and residence status and submitting a request for leave and judicial review to the Federal Court of Canada in the event of a negative decision. Moreover, while the author claims that the Canadian procedure for determining refugee status is discriminatory, she never raised this issue during the internal procedure and did not attempt to lodge an appeal on the basis of that claim, either pursuant to article 15 of the Canadian Charter of Rights and Freedoms, which guarantees the right to equality and protects against all forms of discrimination based on the grounds listed or analogous grounds, including sex, or pursuant to the Canadian Human Rights Act, which prohibits discrimination based on 11 grounds. In this regard, the State party cites the Committee's jurisprudence in the case of *N.S.F. v. The United Kingdom of Great Britain and Northern Ireland*, in which the Committee decided that the author, who said that she feared for her life if returned to her country, should have sought a domestic remedy for her allegations of sex discrimination and that the communication was therefore inadmissible in accordance with article 4, paragraph 1, of the Optional Protocol.[3]

4.11 The State party also maintains that the communication is inadmissible because it is incompatible with the Convention, in accordance with article 4, paragraph 2 (b), of the Optional Protocol. The State party points out in particular that the Convention does not guarantee the right not to be returned to a country where there are substantial grounds for believing that the person would face a real risk of a violation of the right to life, of being subjected to torture, or of a violation of the right to protection against any inhuman or cruel and unusual punishment, and that the Convention does not apply extraterritorially. Thus, the articles cited by the author in her communication, namely articles 2 (c) and (d), 3, 15 and 16, do not guarantee an explicit right not to be returned to a country where the person is at risk of suffering gender-based violence. Rather, these rights are guaranteed either by article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, or by articles 6 and 7 of the International Covenant on Civil and Political Rights. The Committee against Torture and the Human Rights Committee have been very careful not to impose an implicit obligation not to return a person, except in cases where there would be a serious violation of human rights, in order to limit the extraterritorial effect of the obligations arising from human rights treaties.[4]

[3] Communication No. 10/2005, inadmissibility decision of 30 May 2007, para. 7.3.

[4] The State party cites the decision of the Human Rights Committee adopted on 25 July 2006 in the case of *Khan v. Canada*, communication No. 1302/2004 (para. 5.6), which cites Human Rights Committee general comment No. 31.

4.12 The State party adds that under international law it is the prerogative of States to prescribe the conditions for foreigners' entry to and departure from their territory, including the terms of return, subject to their international obligations. This power derives from the sovereignty of States and any exception to this power is limited to cases where the person concerned would suffer serious and irreparable harm. The State party therefore invokes the communication's incompatibility with the Convention insofar as the author claims the State party is in violation of its obligations under the Convention for discriminatory practices that allegedly took place in Mexico. The State party is of the view that it is not responsible for discrimination carried out in and by another country, since it is only responsible for discriminatory acts that fall within its jurisdiction.

4.13 With regard to the asylum procedure, contrary to the author's allegations, her case was heard and considered on many occasions. It is clear from the decisions of the Immigration and Refugee Board and the PRRA officer that the decision makers bore in mind the risk of gender-based violence in Mexico. The Immigration and Refugee Board was of the view that the author had not provided credible evidence of the alleged threats. Despite this, taking into account the guidelines on "Women Refugee Claimants Fearing Gender-Related Persecution", the Immigration and Refugee Board gave the author many opportunities to explain her situation in Mexico. The Board concluded, however, that the author's testimony was riddled with unexplained contradictions and inconsistencies. Moreover, it is clear from the PRRA procedure that all the evidence was taken into account, but that the risk alleged by the author could not be identified. The State party emphasizes that PRRA officers receive awareness training on the situation of women victims of domestic violence and take that situation into account when evaluating the evidence. The State party adds that the Federal Court of Canada has recognized that PRRA officers are sufficiently independent.[5] Lastly, a request for leave and judicial review was submitted regarding both the procedure before the Immigration and Refugee Board and the PRRA request.

4.14 Given that the author has not provided any new evidence that might call into question the proceedings before the national authorities, the State party concludes that the author's claims of discrimination in the Canadian procedure for determining refugee status are manifestly ill-founded and not sufficiently substantiated (pursuant to article 4, paragraph 2 (c) of the Optional Protocol).

Author's comments on the State party's observations

5.1 In a letter dated 16 June 2011, the author's counsel, without explaining the author's situation in Mexico since her departure from the State party, makes general allegations that the Canadian courts do not adequately protect persons in cases similar to that of the author.

5.2 In a letter dated 6 July 2011, the author's counsel simply states that the author was facing difficult circumstances in Mexico, that she was very frightened, and that comments on the State party's observations would be submitted to the Committee as soon as possible. Despite several reminders, these comments have never been submitted to the Committee; nor has the Committee been provided with any information supporting the counsel's statements.

[5] The State party refers to the judgement in *Say v. Canada (Solicitor General)*, [2006] 1 F.C.R. 532; and *Hamade et al. v. Canada (Solicitor General)*, IMM 7864-04 (29 September 2004).

Issues and proceedings before the Committee

Consideration of admissibility

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

6.2 In accordance with article 4, paragraph 2, of the Optional Protocol, the Committee is satisfied that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.3 The Committee takes note of the author's claims in her initial communication that her deportation to Mexico, where she was at risk of being abused and even killed by her former spouse, a judicial police officer, would constitute a violation by the State party of article 2 (c) and (d), article 3, article 15 and article 16 of the Convention. The Committee notes the State party's observation that the author and her son returned to Mexico using their own air tickets, that they did so of their own accord on 1 April 2010 — that is, after the submission of the initial communication — and that they confirmed their departure to the Canadian authorities. The Committee notes the State party's argument that since the risk in the event of her deportation was the very subject of the communication, the author's voluntary return renders the communication moot and therefore inadmissible. The Committee further notes that the State party says it has not received any report, directly from the author or her representative, stating that the author has suffered gender-based violence since her return to Mexico. The Committee also notes the State party's argument that the claims the author put forward in her application for asylum had been rejected by the Immigration and Refugee Board and then by the PRRA officer on the grounds of non-substantiation and lack of credibility, and that no new evidence has been submitted to the Committee.

6.4 The Committee notes that the author has not provided any explanation regarding her motives for her voluntary departure to Mexico. The author's counsel simply made a general statement that she was facing difficult circumstances in Mexico and that she was frightened, but he never commented on the State party's challenge to the admissibility of the communication or, in particular, on the issue of her voluntary departure to Mexico and the reasons for it. In the light of the information available to it, the Committee concludes that the author's departure from Canada without giving any explanation to the Committee and without following up her initial complaint, despite several reminders, renders the communication both manifestly unfounded and not sufficiently substantiated. It therefore considers the communication inadmissible pursuant to article 4, paragraph 2 (c), of the Optional Protocol.

6.5 Having found the communication inadmissible under article 4, paragraph 2 (c), of the Optional Protocol, the Committee does not consider it necessary to examine the other challenges to admissibility submitted by the State party.

7. The Committee therefore decides:

(a) That the communication is inadmissible under article 4, paragraph 2 (c), of the Optional Protocol;

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

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