



Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning Communication No. 173/2021^{*,**}

Communication submitted by: Tahereh Mohammdi Bandboni et al (represented
by counsel, Florian Wick)

Alleged victim: The author

State party: Switzerland

Date of communication: 8 June 2021

References: Transmitted to the State party on 16 June 2021
(not issued in document form)

Date of adoption of Views: 15 May 2023

1.1 The author of the communication is Tahereh Mohammdi Bandboni, a national of the Islamic Republic of Iran born in 1986. She submits the communication on behalf of herself and her family: husband Amir Taher, born in 1980; and two children, Aran Amir Younes, born in 2014, and Ayan Mohammdi Bandboni, born in 2019. She claims that the State party has breached her rights under articles 1–3, 15 and 16 of the Convention. She submits that she would be at imminent risk of gender-based discrimination, death and torture in the Islamic Republic of Iran, if she were to be deported. The Convention and the Optional Protocol thereto entered into force for the State party on 26 April 1997 and 29 December 2008, respectively. The author is represented by counsel.

1.2 On 16 June 2021, when the communication was registered, the Committee, through its Working Group on Communications under the Optional Protocol, pursuant to article 5 (1) of the Optional Protocol and rule 63 of the Committee's rules of procedure, requested the State party to refrain from expelling the author while her communication was under consideration. On 2 July 2021, the State party informed

* Adopted by the Committee at its eighty-fifth session (8–26 May 2023).

** The following members of the Committee participated in the examination of the present communication: Brenda Akia, Hiroko Akizuki, Nicole Ameline, Marion Bethel, Leticia Bonifaz Alfonzo, Rangita De Silva de Alwis, Corinne Dettmeijer-Vermeulen, Esther Eghobamien-Mshelia, Hilary Gbedemah, Yamila González Ferrer, Dafna Hacker Dror, Dalia Leinarte, Marianne Mikko, Ana Pelaez Narvaez, Rhoda Reddock, Elgun Safarov, Natasha Stott Despoja and Genoveva Tisheva.



the Committee that it had requested the competent authority not to take any steps to remove the author while her communication was under consideration by the Committee and until the suspensive effect expired.

Facts as submitted by the author

2.1 The author is a national of the Islamic Republic of Iran, of Persian ethnicity, and a Shiite Muslim by religion. Her husband, A.T., is a dual national of the Islamic Republic of Iran and Iraq, of Kurdish ethnic origin, and a Sunni Muslim by religion. They both finished high school. However, after finishing high school, she was forbidden to work and only allowed to take courses at the mosque.

2.2 The author describes the dominant roles that her father and brother had in the family.¹ The father carried all relevant documents of the family on his person. His daughters had no liberties. They had to follow dress codes. The worst fate was her mother's, as she was beaten by her father with an electric cable every time she gave birth to a girl. The author's sisters had to marry the men chosen by her father. She submits that when A.T. wanted to marry her, his family first asked for her family's permission. However, the author's father objected to the marriage because of A.T.'s Iraqi origin and Sunni religion. He refused A.T.'s family entry when they appeared on his doorstep and threatened to kill the author if she soiled his honour. When the author's father and brother learned that the author was pregnant, they beat her and wanted to force her to undergo abortion.

2.3 Fearing that she would be ill-treated again, on the next day the author and A.T. moved to Zakhu, Iraq, and lived with A.T.'s uncle. In 2013, the author and A.T. got married, and in May 2014, she gave birth to their first child in Iraq.

2.4 In May 2015, the author's father, accompanied by a police officer, went to the house of her husband's father to demand the couple's contact information, at which point the author's father and brothers learned of her whereabouts. In several telephone calls, they threatened to harm her if she did not return, alone, to the Islamic Republic of Iran. For several months, the author and her family lived in constant fear that the author's brother would come to Iraq and abduct her. Therefore, in October 2015, the author and her family, with forged passports, left Iraq via Türkiye and arrived in Switzerland in 2016.

2.5 On 21 December 2018, the State Secretariat for Migration of Switzerland (formerly the Federal Office for Migration) rejected the asylum application of the author and her family. On 21 April 2021, the Federal Administrative Court dismissed their appeal.

2.6 Although the State Secretariat for Migration did not find credible the events as depicted by the author and her husband, the Migration Court explains at length the reasons why it considers the author's and her husband's accounts to be true. The Migration Court further accepts that the author's persecution and ill treatment in the past and her risk of ill treatment in the future have a gender dimension.

2.7 At the same time, the Migration Court notes that such risks do not emanate from the authorities but from private persons. It therefore examines whether the authorities of the Islamic Republic of Iran would be able and willing to protect the author, and concludes that law enforcement bodies and the judiciary operate properly in the Islamic Republic of Iran, and honour killings or other gender-based crimes mainly occur in rural areas with low-educated populations. Although women may face challenges if they ask for protection from the authorities, it cannot be said that the

¹ The author's father and brother allegedly had relations to the Basij or to the Sepah (one of the five forces of the Islamic Revolutionary Guard Corps).

authorities would not be able or willing to provide such protection to the author. Furthermore, the Migration Court considers that shelters for victims of gender-based violence are available in some cities, and finds it problematic that the author failed to bring her case before the Iranian authorities. According to the Migration Court, the author's argument that the authorities would not have been able to protect her is based on mere assumptions. In addition, the Migration Court deems that the author and her family would be able to relocate in the Islamic Republic of Iran, in any event.

Complaint

3.1 The author claims the violation of her rights under articles 1–3, 15 and 16 of the Convention, read in conjunction with general recommendation No. 19 (1992) on violence against women and general recommendation No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women. She claims that, if returned, she would be subjected to gender-based persecution and other forms of violence by her father and brothers, and that the Iranian authorities would not be in a position to provide her protection. She recalls the general recommendation No. 32, which states that gender-related forms of persecution may include the threat of violence and/or so-called “honour crimes”. She further recalls that harm perpetrated against women and girls is often at the hands of non-State actors, including family members, neighbours or society, and that, in such cases, article 2 (e) of the Convention requires States parties to assume their due diligence obligation and ensure that women are effectively protected from harm that may be inflicted by non-State actors.

3.2 The author underlines that her accounts have been considered credible at the domestic level and claims that the Migration Court's position that she would be offered protection against the risks she would face upon her return does not reasonably follow from the available country information. She cites findings from several reports to rebut the Migration Court's conclusion.²

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- ² Report of Department of Foreign Affairs and Trade of Australia of 14 April 2020: “There are no reliable statistics on the prevalence of ‘honour killings’ in Iran. Honour killings are defined as a murder committed or ordered by a relative as a punishment to a family member who is seen or suspected – to have damaged the family's reputation by their actions. Such actions can include **extramarital sex, refusal of an arranged marriage, choosing one's own spouse without the family's approval, becoming a victim of rape, homosexual acts, or liberal behaviour and dress.**” ... “In cases of honour killings, it is extremely unlikely for the head of the victim's family to demand punishment. Most perpetrators of honour killings therefore serve only a short prison sentence or avoid punishment altogether.” ... “Article 303 of the Penal Code states that judges cannot issue a ‘retribution crime’ punishment against fathers or grandfathers who kill their children.”
- Report of the Danish Refugee Council (also cited by the Migration Court): “A Western embassy (2) said it did not assume that a woman would seek protection from the authorities if she has a problem with her family regarding her marriage, as the authorities are considered to be less sympathetic to young women who have run away. The existing protection centres are unable to provide long-term support and are limited in numbers; furthermore, they are rare in rural areas, one source stated. A Western embassy (2) explained that there are social services in Iran. A few places being run by NGOs give advice to runaways and refer the women to other people who can help. There are no government supported shelters.” (...) “Internal relocation in Iran in connection with an honour-related conflict is possible in theory, but in practice it can be complicated. A source added that relocation is not a permanent stage as the family sooner or later will find the relocated person.”
 - Landinfo (also cited by the Court): “A woman who is threatened with honour killing or subjected to other forms of violence must seek help on her own. She is responsible for presenting evidence that she is in fact threatened by violence, which in certain cases can be impossible. The attitudes of the police or a local judge may have a decisive impact on her chance of being given real protection.” (...) “Asia Pacific Woman's Watch (2004) claimed that in cases where the police find that an honour killing has taken place, the family will support the perpetrator who either walks free or must serve a significantly reduced prison sentence.”

State party's observations on admissibility and the merits

4.1 On 15 February 2022, the State party submitted its observations on the admissibility and the merits of the communication. The State party recalls the facts of the case. Both the author and her husband, A.T., are originally from Qazvin, Islamic Republic of Iran. Since finishing secondary school (12 years), the author's husband has worked in various fields. The author also obtained a high school diploma but did not work afterwards. As the author and A.T. were in a romantic relationship, A.T. allegedly asked the family of the author for permission to marry her. The author's father was reportedly opposed to the marriage because A.T. is Kurdish and Sunni and his family is from Iraq. The author is said to have become pregnant and to have informed her family by the third or fourth month of her pregnancy, after which she was allegedly beaten by her father and brother. They allegedly ordered her to have an abortion. Fearing that she would again be subjected to ill treatment, the author and A.T. reportedly decided to leave the Islamic Republic of Iran on the next day. They reportedly went to Zakho, in the Kurdish region of northern Iraq, where they would live with an uncle of A.T. The couple's first child was born there in May 2014. In 2013, the couple had reportedly entered into a religious marriage. Around May 2015, the author's father and brother reportedly discovered her location. They allegedly called her four or five times and ordered her to return, alone, to their house in the Islamic Republic of Iran. The author had strong fears because of these calls, and the family reportedly decided to leave Iraq illegally in October 2015. Using false passports, they allegedly travelled to Switzerland, passing through Türkiye.

4.2 The author and her husband applied for asylum in Switzerland on 3 August 2016. On 11 August 2016, they were heard on their personal data. The Dublin procedure was closed on 25 August 2016. They were heard in detail on their grounds for asylum on 13 July 2018. On 21 December 2018, the State Secretariat for Migration rejected their asylum application. The family challenged this decision before the Federal Administrative Court, which dismissed their appeal on 21 April 2021. The author and A.T. argue that, if returned, they would be at immediate risk of harm to life and limb, and the author would be at risk of gender discrimination. She would also be at risk of suffering honour killing, violence, abuse, abduction and coercion. The Federal Administrative Court assessment that the Iranian authorities are able and willing to

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- Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, Javād Rehmān (Human Rights Council 46/50): “The Special Rapporteur is concerned that substantial discrimination exists against women and girls within family law, including laws vis-a-vis marriage, divorce, custody and guardianship. Iranian law requires a woman to receive permission from her father or paternal grandfather for marriage if she has not married previously, although if permission is withheld unreasonably, she can apply to a court to allow the marriage. The marriage of a Muslim woman to a non-Muslim man is unlawful and a marriage between an Iranian woman and a non-Iranian man requires government permission. (...) Patriarchal values and misogynist behaviours permeate many segments of Iranian family life, with discriminatory legal provisions, outlined in the present report, exacerbating the vulnerabilities of women to domestic abuse. Support systems for domestic violence survivors are insufficient. Law enforcement agencies are often reluctant to intervene in such cases, commonly using mediation to resolve them, even when a woman claims her life is threatened. The 28 shelters established in 27 out of 31 provinces since 2014 lack capacity to provide long-term support to victims and mostly focus on reconciling and returning victims home.”
 - United Kingdom of Great Britain and Northern Ireland, Home Office, “Country policy and information note Iran: women fearing ‘honour’-based violence”, 25 March 2021: “As Iran’s legislation is based on Islamic criteria that discriminate against women, men rule the justice system. Studies on the subject reveal that women have a negative attitude towards the justice system and their opportunities of getting justice through the system. Taking domestic violence cases to court is seen as shameful, which is why only few cases cover go that far. The formal justice system is therefore not enough of a guarantee of an individual’s rights, taking into account the underlying customs and sociocultural norms.”

protect the family is erroneous and contradicted by reports from non-governmental organizations (NGOs), State agencies and United Nations bodies. The removal of the family to the Islamic Republic of Iran would be contrary to articles 1–3, 15 and 16 of the Convention, read in conjunction with general recommendation No. 19 and general recommendation No. 32, as women are systematically discriminated against legally and socially and often do not have access to justice. According to available reports, the Iranian authorities are not able or willing to protect women at risk of violence. Similarly, the facilities available to house women at risk are reportedly limited in number and unable to provide long-term support. Given the applicable laws and the attitude of the Iranian authorities, it would be futile for a woman to seek justice from them. Women would have to provide evidence of alleged threats, which is often impossible. In addition, the judicial system is said to be corrupt and dependent to a large extent on personal relationships. Not only would the Iranian authorities be unwilling to help women who are exposed to deeply entrenched discriminatory societal norms, but they would actively contribute to the maintenance of these norms. It would also appear from the available reports that it would be difficult for women exposed to honour killings to move to another city in the Islamic Republic of Iran, that they would usually be found by their families after a certain period of time and that such moves would be particularly problematic for individuals belonging to a minority religion or ethnicity, as they would not easily find a community similar to their own.

4.3 As to the compatibility of the author's and her family's removal with the provisions of the Convention, the State party refers to the principles of the Convention. According to article 2 (d) of the Convention, States parties shall refrain from engaging in any act or practice of discrimination against women. Article 15 of the Convention provides that States parties shall accord to women equality with men before the law. Under article 16 of the Convention, States parties shall take all appropriate measures to eliminate discrimination against women in matters relating to marriage and family relations. The State party recalls that the Committee clarified the scope of the obligations under the Convention in the context of asylum procedures in general recommendation No. 32. According to the general recommendation, States parties have an obligation to ensure that no woman is expelled or returned to another State where her life, physical integrity, liberty and security of person would be threatened, or where she would risk suffering serious forms of discrimination, including serious forms of gender-based persecution or gender-based violence. What may constitute serious forms of discrimination against women, including gender-based violence, will depend on the circumstances of each case.³

4.4 Gender-based forms of persecution are directed against women because they are women, and they affect women disproportionately. Violence against women is one of the main forms of persecution that they face as refugees or asylum-seekers. Like other forms of gender-based persecution, violence against women may be contrary to specific provisions of the Convention. These forms of persecution constitute, *de jure* and *de facto*, legitimate grounds for international protection. The Committee has cited in that regard forced and early marriages, threats of violence, so-called honour crimes, severe forms of domestic violence, and persecution of those who refuse to conform to certain gender-based social norms or who claim their rights under the Convention.⁴ In the Committee's view, it is important that, at every stage of the asylum procedure, the particular situation of women is taken into account. This means that women's asylum claims must be processed within a system which, in its overall design and operation, is fully aware of the various specific forms of discrimination, persecution and human rights violations to which women are subjected on the basis of their gender.

³ General recommendation No. 32, para. 23.

⁴ *Ibid.*, para. 15.

Some women, because they fear honour crimes, stigmatization or traumatization, do not dare to denounce, or are even unable to report, the extent of the persecution that they have endured. It should also be taken into account that these women may continue to harbour a sense of fear of authority figures or fear of rejection or contempt on the part of their families or communities. In addition, they should have the right to appeal against decisions taken at first instance. It is also recommended that States parties should not consider that a woman seeking asylum lacks credibility simply because she cannot present all the required documents to support her claim. States parties should take into account that, in many countries, women are undocumented, and their credibility can be established by other means.⁵ In addition, reception facilities should take into account the special needs of victims of sexual abuse and exploitation, trauma, torture and ill treatment.⁶

4.5 The State party recalls that, on several occasions, the Committee has ruled in individual communications proceedings on whether these requirements have been met. It follows from these decisions that it is up to the author of the communication to demonstrate that, in the event of removal, she would be exposed to a real, personal and foreseeable risk of suffering serious forms of gender-based persecution.⁷ The Committee has also stressed that it does not replace national authorities in the assessment of the facts.⁸ According to the Committee, it is generally for the authorities of States parties to assess the facts and evidence or the application of national law in a particular case, unless it can be established that such assessment was biased or based on gender stereotypes that discriminate against women, was clearly arbitrary or amounted to a denial of justice.⁹ In addition, it is for each sovereign State party to define and implement its own procedures for determining status, provided that the basic procedural safeguards set out in international law are respected.¹⁰ The State party also recalls that, under article 4, paragraph 2 (c), of the Protocol, the Committee shall declare inadmissible any communication which is manifestly ill founded or insufficiently motivated. In particular, the author must provide sufficient information concerning the complaints raised.¹¹

4.6 The State party notes that the burden of proof is on the author to demonstrate that, in the event of removal, she would be exposed to a real, personal and foreseeable risk of suffering serious forms of gender-based violence. It is the general practice of international human rights monitoring bodies to take into account, where appropriate, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.¹² However, when examining a particular case, it is necessary to determine whether the person concerned would be personally at risk of being exposed to the alleged violations. It follows that the existence of a pattern of human rights violations does not, in itself, constitute sufficient grounds for concluding that the author would be at risk of being subjected to violence in case of return.¹³ The

⁵ Ibid., para. 43.

⁶ Ibid., para. 34.

⁷ See *H.D. v. Denmark* (CEDAW/C/70/D/76/2014), para. 7.13.

⁸ See *N.Q. v. United Kingdom of Great Britain and Northern Ireland* (CEDAW/C/63/D/62/2013), para. 6.6.

⁹ See *H.H.M. v. Denmark* (CEDAW/C/69/D/85/2015), para. 9.7; *A.S. v. Denmark* (CEDAW/C/69/D/80/2015), para. 8.7; *N.M. v. Denmark* (CEDAW/C/67/D/78/2014), para. 8.6; *S.J.A. v. Denmark* (CEDAW/C/68/D/79/2014), para. 7.8; *A.M. v. Denmark* (CEDAW/C/67/D/77/2014), para. 8.4; *F.F.M. v. Denmark* (CEDAW/C/67/D/70/2014), para. 8.6; and *N.Q. v. United Kingdom of Great Britain and Northern Ireland*, para. 6.6.

¹⁰ See *A.M. v. Denmark*, para. 8.4.

¹¹ See *N. v. Netherlands* (CEDAW/C/57/D/39/2012), para. 6.7; see also *S. v. Canada* (CEDAW/C/59/D/49/2013), para. 9.7.

¹² See Committee against Torture, general comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22 (CAT/C/GC/4), para. 38.

¹³ See for example, Committee against Torture, *N.P. v. Australia* (CAT/C/22/D/106/1998), para. 6.5.

State party argues that the author limits herself to referring to reports on the general situation of women in the Islamic Republic of Iran. Thus, she has not sufficiently established the real, personal and foreseeable risk that she would be exposed to serious forms of violence if returned to the Islamic Republic of Iran. The State party therefore invites the Committee to declare the communication inadmissible under article 4, paragraph 2 (c), of the Optional Protocol.

4.7 The Federal Administrative Court considered the couple's allegations in the domestic proceedings to be credible, thus departing from the State Secretariat for Migration assessment. However, the author fails to mention that the Federal Administrative Court also found, with reference to various aspects of the authors' statements, that it was doubtful whether the author would actually be exposed to the alleged risks in the near future. The author deduces from various reports that the Iranian authorities are generally unable and unwilling to protect women at risk of gender-based persecution and honour killings. In the State party's view, the reports in question – and, more generally, the available sources – do not allow such an interpretation. In the Islamic Republic of Iran, a woman can marry without her family's approval with the permission of a court. In such cases, the court reviews the request before granting permission. Marriages without family approval may be considered shameful and are more common in cities than in rural areas. There is also the possibility of concluding a temporary marriage, for a given period of time. Such a marriage can be concluded without the approval or signature of the woman's father.¹⁴

4.8 Honour killings are committed all over the Islamic Republic of Iran and can occur in all ethnic groups. However, collective and ritual honour killings are not a tradition among the ethnic Persian population or in areas where ethnic Persians are in the majority. There is no social pressure in these areas to abuse or kill women family members who broke the code of traditional honour. Available sources suggest that honour killings are mainly committed within the tribal communities, which speak Kurdish, Lori, Arabic, Baluchi and Turkish languages. These groups are considered to be more socially conservative than the Persians, and discrimination against women in these groups is deeply rooted. They are predominantly Sunni and live in the least socioeconomically developed and most geographically remote areas.¹⁵ While honour killings can occur in families of different social classes and levels of education, the risk decreases with education, urbanization and access to social services.¹⁶ It is higher for women or girls from poorer, more traditional and religious families, in particular in rural or tribal areas.¹⁷ According to Islamic law, the victim or his or her family can request a punishment corresponding to the incriminated act in cases of murder or wilful bodily harm (*qisas*), so the punishment is the same as the offending act. In cases of honour killings or domestic violence, however, it is extremely rare for the head of the family to demand such punishment. Thus, perpetrators are often sentenced to short terms of deprivation of liberty or escape punishment entirely if the head of the family forgives the act. The principle of *qisas* is not applicable if a father or grandfather kills his own child or grandchild. In such cases, sentences vary from 3 to 10 years' deprivation of liberty.¹⁸

¹⁴ Danish Refugee Council, "Iran: relations outside of marriage in Iran and marriages without the accept of the family", February 2018, p. 8.

¹⁵ Landinfo, "Honour killings in Iran", 22 May 2009, p. 72; Australia, Department of Foreign Affairs and Trade, "Country information Iran", 14 April 2020, p. 503; and United Kingdom of Great Britain and Northern Ireland, Home Office, "Country policy and information note Iran", pp. 7 and 194.

¹⁶ Australia, Department of Foreign Affairs and Trade, "Country information Iran", p. 50.

¹⁷ United Kingdom of Great Britain and Northern Ireland, Home Office, "Country policy and information note Iran", p. 8.

¹⁸ Ibid., p. 10.

4.9 The State party submits that, in June 2020, a new law was adopted in the Islamic Republic of Iran to improve the protection of children and young people. It provides for sanctions for certain acts that are detrimental to the safety and well-being of the child, such as physical harm or denial of access to education. The law also allows for the placement of a child when his or her safety is seriously compromised. Other issues, such as the marriage of minors or the imposition of the death penalty on them, are not addressed by the law.¹⁹ On 4 January 2021, the Government of the Islamic Republic of Iran passed a bill criminalizing violence against women, including acts or behaviour that harm their physical or mental integrity. To the State party's knowledge, however, the bill has not yet been passed by the parliament or approved by the Guardian Council of the Islamic Republic of Iran. The bill passed by the Government increases the penalties for physical violence, although alternative penalties are provided for if the perpetrator is the victim's spouse or relative. The bill also includes the creation of a national interministerial committee to develop strategies and coordinate government measures to combat violence against women, as well as an obligation for government ministries and agencies to adopt preventive and victim support measures, including the formation of special police units for such cases.²⁰

4.10 The State party admits that there are no official data on the possibility of obtaining legal protection for victims of domestic violence in practice. The Constitution of the Islamic Republic of Iran guarantees every citizen the right to access to justice, legal aid and legal advice. However, Iranian law is based on criteria that discriminate against women, and the judicial system is dominated by men. According to studies on this subject, women thus have a negative attitude towards the judicial system and the possibility of obtaining justice through the competent authorities. The system is also described as corrupt, with personal relationships helping to move a case forward or block it. Whether a domestic violence case will be prosecuted depends on the attitude of the local authorities, as authorities in tribal areas may be inclined to let the family deal with the matter.²¹ For some years now, Iranian courts have accepted forensic certificates as evidence in domestic violence cases. Such certificates regularly form the basis for complaints of domestic violence. If violence can be proven, sanctions are imposed.²²

4.11 Since approximately 1999, the State Welfare Organization of the Islamic Republic of Iran has established a support system for people exposed to social harm, especially women and children who are victims of domestic violence. This system includes an emergency social institution running two hotlines, outpatient teams and support centres in 232 cities across the country.²³ Victims can contact the emergency institution either by calling one of the hotlines or by visiting one of its centres. The centres offer counselling by a team usually consisting of a social worker, a psychologist, a psychiatrist, a doctor, a nurse and a legal advisor. In principle, the services are provided on an outpatient basis, but some centres can provide inpatient support for up to 20 days. If necessary, they refer people with more specific needs to other facilities offering longer-term treatment. There are also 28 safe houses²⁴ and 31 "health houses"²⁵ across the country, which accommodate approximately 2,000 women per year. However, these centres do not have the capacity to accommodate all

¹⁹ Ibid., p. 11.

²⁰ Ibid., p. 2.

²¹ Ibid., p. 24.

²² Switzerland, State Secretariat for Migration, "Focus Iran: Häusliche Gewalt", 27 February 2019, p. 20.

²³ Status: August 2020.

²⁴ For older or married women. Status: July 2020.

²⁵ For young or unmarried women. Status: 2019.

women who have experienced or been exposed to violence, nor do they offer long-term support.²⁶

4.12 In principle, the protection of the family, which is officially propagated, remains the decisive factor for the institutions offering protection. In practice, however, it appears that the protection authorities act realistically and pragmatically, accepting that many women cannot be returned to their families under the circumstances. This has been publicly acknowledged by the Head of the Vice-Presidency for Women and Family Affairs of the Islamic Republic of Iran.²⁷ The judiciary has also established counselling services for women and children. In accordance with a 2014 memorandum of understanding, these services are offered by State Welfare Organization centres, on the basis of guidelines and with the authorization of the judiciary.²⁸ Various NGOs also offer counselling and support services to women victims of domestic violence.²⁹ According to the information available, whether a woman can move to another part of the country depends on the particular circumstances of the case. According to one source quoted, such a move could be a solution for a woman who has been proposed marriage by one man and has had a premarital relationship with another. If a woman were to live in another part of the country, she would probably turn, for example, to friends, distant family or her network. Resettlement is easier in cities, where the lifestyle is more anonymous than in the countryside.³⁰

4.13 The State party notes that the author refers to the well-known case of Romina Ashrafi, which is also cited in various reports. According to the State party's information, the girl left home in 2020, at the age of 13, to marry a man who was 28 years of age (35 according to other sources) against her father's wishes. After five days, the couple was arrested by the police. Against her will and despite her fears of a violent reaction from her father, the girl was brought back to her family. Her father beheaded her to restore the family's honour. He was sentenced to nine years' imprisonment and payment of "blood money". In this case, State protection against honour killings failed. The length of the sentence and the strong reactions in society and politics indicate, however, that even the political authorities at the highest levels are determined to take measures to prevent such acts.³¹

4.14 The State party further recalls that the alleged risk of serious forms of gender discrimination in the event of removal is only relevant within the meaning of the right of asylum and the principle of non-refoulement if the person concerned cannot obtain adequate protection from the country of destination. The State party recognizes that respect for the rights of women is not always guaranteed in the Islamic Republic of Iran, either in law, by the authorities or in society. However, the situation varies greatly depending on the concrete circumstances of a case, and an assessment must be made on a case-by-case basis. In the State party's view, the abstract risk of discrimination did not justify the conclusion that the Islamic Republic of Iran was generally unable or unwilling to protect women exposed to violence. It should also be recalled in this context that it is for the author to demonstrate that she would be exposed to a real, personal and foreseeable risk of serious forms of gender discrimination within the meaning of the Convention in the event of removal.

²⁶ United Kingdom of Great Britain and Northern Ireland, Home Office, "Country policy and information note Iran", p. 27.

²⁷ Switzerland, State Secretariat for Migration, "Focus Iran: Häusliche Gewalt", p. 32.

²⁸ Ibid., p. 42.

²⁹ Ibid., p. 46.

³⁰ United Kingdom of Great Britain and Northern Ireland, Home Office, "Country policy and information note Iran", p. 29.

³¹ "Der Ehrenmord, der Rechtsgeschichte schreiben könnte", Süddeutsche Zeitung, 28 May 2020.

4.15 The State party reminds the Committee that the author is from Qazvin, Islamic Republic of Iran, the capital and largest city of the province of the same name, which has approximately 400,000 inhabitants. She and A.T. are now 35 and 41 years of age, respectively, and both have acquired a secondary education (i.e. high school certificate). Although the author was not allowed to work in the Islamic Republic of Iran, she did attend courses there and took part in cultural activities at the Mosque, where she was a moderator for shows. As for A.T., he worked in various jobs as a labourer until the couple left the Islamic Republic of Iran. Moreover, despite the father's role in the family, the author claimed that she had spoken to him on several occasions about her intention to marry A.T. and had informed him of her pregnancy. When her father allegedly suggested that she marry other men, she refused and said that she had already made up her mind. Therefore, it seems that a dialogue was possible between the author and her father and that she put forward her interests.

4.16 The State party notes that it appears that the author's relationship with A.T. was supported by part of her family and by his family. According to the author's statements, her mother and sister actively supported her – the former, in her exchanges with her father and brother about her marriage plans, and the latter, in organizing the couple's meetings after the author's father refused to agree to the desired marriage. With regard to A.T.'s family, it appears from the couple's statements that the family went to the author's home for the marriage proposal. The couple was also hosted by A.T.'s uncle in Iraq for more than a year and a half before continuing to Switzerland. According to her own statements, the author has never approached the authorities or a support organization for help in the Islamic Republic of Iran. According to her, women are not valued in the Islamic Republic of Iran. If they received more support, they would not have so many problems. The author did not even seek protection from the authorities when her father asked her to have an abortion, although abortion is illegal in the Islamic Republic of Iran. According to the State party, as the author was from a sizeable city and had a good educational background, it would have been possible for her to seek protection through the available structures. There is no indication in the present case that the Iranian authorities were unable or unwilling to provide the author with adequate protection or that the author did not have the opportunity to approach them. The fact that, according to the couple's assertions, a police officer accompanied the author's father when he went to A.T.'s father's house to obtain his telephone number, does not alter this assessment given that, by that time, she had already left the Islamic Republic of Iran. Consequently, nothing can be inferred from this event as to the attitude that the Iranian authorities would have adopted towards her if she had approached them in person.

4.17 Moreover, according to the couple's claims, the author's father and brother only found her in Iraq because A.T.'s father had given them A.T.'s telephone number, not because of their alleged membership in the Basij or the Sepah. It could not, therefore, be said that the couple could not have settled in another Iranian town, if necessary, with the support of the local authorities or with the assistance of a support organization. The State party also notes, in this context, that the author had relatives in various parts of the Islamic Republic of Iran. In her communication, the author refers several times to the case of Romina Ashrafi. The State party, however, considers that the author's situation is not comparable to that of the girl, who was 13 years old at the time of the events and lived in a rural part of Gilan Province, in a village with fewer than 1,000 inhabitants. She was not able to go to a support structure, such as those found in the cities. Owing to her age, educational background and life experience, the author is in a very different situation from the victim in that case.

4.18 Lastly, the State party observes that the domestic authorities took account, in the decisions that they took in the present case, of all the elements of the case, in particular the information contained in the available reports on the situation of women

in the Islamic Republic of Iran. Their decisions, which were fully reasoned, could not be considered discriminatory within the meaning of the provisions invoked. In the light of all the elements of the case, the State party considers that the author has failed to demonstrate that she would be exposed to a real, personal and foreseeable risk of serious forms of gender discrimination within the meaning of the provisions invoked in the event of her removal to the Islamic Republic of Iran. It therefore invites the Committee to declare the communication inadmissible under article 4, paragraph 2 (c), of the Optional Protocol, as manifestly ill-founded or, in the alternative, to find that there has been no violation of the Convention.

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

5.1 On 12 December 2022, the author contested the State party's arguments on the admissibility and merits of the case. The author commented that the State party's information is not up to date. On 16 September 2022, Mahsa Amini, 22 years of age, was killed by morality police in the Islamic Republic of Iran for allegedly not wearing her headscarf properly. The ensuing protests have been brutally repressed by the regime, with security forces firing live ammunition. More than 500 protesters have died, and more than 14,000 persons have been arrested. A first demonstrator has already been executed.

5.2 These events show the true face of the Islamic Republic of Iran: misogynous, patriarchal, undemocratic and totalitarian. The nationwide protests make clear how backward the regime is when it comes to women's issues. The slogan of the unrest, "Woman, life, freedom", names the cornerstones that are missing in the Islamic Republic of Iran. A return of the author to that country would violate her rights under the Convention, as she would have to face harassment, imprisonment and ill treatment.

Issues and proceedings before the Committee

Consideration of admissibility

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

6.2 In accordance with article 4 (2) (a) 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 In accordance with article 4 (1) of the Optional Protocol, the Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted, unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief. The Committee notes that the author claims to have exhausted all domestic remedies and that the State party has not challenged the admissibility of the communication on those grounds. Therefore, the Committee concludes that it is not precluded from considering the author's claims under article 4 (1) of the Optional Protocol.

6.4 The Committee notes that, relying on articles 1–3, 15 and 16 of the Convention, the author claims that, should the State party return her and her family to the Islamic Republic of Iran, she would be personally exposed to a risk of serious forms of gender-based violence. The Committee also notes the State party's argument that the communication should be declared inadmissible under article 4 (2) (c) of the Optional Protocol, owing to a lack of substantiation.

6.5 The Committee reiterates that, according to its jurisprudence, the Convention has extraterritorial effect only when the woman to be returned will be exposed to a real, personal and foreseeable risk of serious forms of gender-based violence.³²

6.6 The Committee recalls that, under article 2 (d) of the Convention, States parties undertake to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions act in conformity with that obligation. The Committee refers to its general recommendation No. 32, in paragraph 21 of which it noted that, under international human rights law, the non-refoulement principle imposed a duty on States to refrain from returning a person to a jurisdiction in which he or she might face serious violations of human rights, notably arbitrary deprivation of life or torture or other cruel, inhuman or degrading treatment or punishment. The Committee also refers to its general recommendation No. 19, in paragraph 7 of which it noted that gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, was discrimination within the meaning of article 1 of the Convention, and that such rights included the right to life and the right not to be subjected to torture. The Committee further developed its interpretation of violence against women as a form of gender-based discrimination in its general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19. In paragraph 21 of general recommendation No. 35, the Committee reaffirmed the obligation of States parties to eliminate discrimination against women, including gender-based violence against women, stating that the obligation comprised two aspects of State responsibility for such violence: that which resulted from the acts or omissions of both the State party or its actors, on the one hand, and non-State actors, on the other. A State party would therefore violate the Convention if it returned a person to another State where it was foreseeable that serious gender-based violence would occur. Such a violation would also occur when no protection against the identified gender-based violence can be expected from the authorities of the State to which the person is to be returned. What amounts to serious forms of gender-based violence depends upon the circumstances of each case and must be determined by the Committee on a case-by-case basis at the stage of consideration of the merits, provided that the author has made a *prima facie* case by sufficiently substantiating her allegations.³³

6.7 In the present case, the author submits that, by returning her and her family to the Islamic Republic of Iran, the State party would expose her to serious forms of gender-based violence inflicted by non-State (her family) or State actors. In view of the information provided, the Committee considers that the author's claims are sufficiently substantiated for the purposes of admissibility. Accordingly, it proceeds with the examination of the merits of the communication.

Consideration of the merits

7.1 The Committee has considered the present communication in the light of all the information made available to it by the author and by the State party, in accordance with the provisions of article 7 (1) of the Optional Protocol.

7.2 The Committee takes note of the author's claims that, if returned, she would be subjected to gender-based persecution and life-threatening forms of violence by her father and brothers, and that the Iranian authorities would not protect her effectively. She will have no prospect of seeking protection from the Iranian authorities, owing to discriminatory legal practices in the Islamic Republic of Iran and the powerful

³² See, for example, *M.N.N. v. Denmark* (CEDAW/C/55/D/33/2011), para. 8.10; and *R.S.A.A. et al v. Denmark* (CEDAW/C/73/D/86/2015), para. 7.7.

³³ See *A. v. Denmark* (CEDAW/C/62/D/53/2013), para. 8.6; and *R.S.A.A. et al v. Denmark*, para. 7.8.

status of protection afforded to the patriarchal family. The attitudes of the local police or a judge may have a decisive impact on her chance of being given real protection. The Committee further takes note of the fact that a police officer accompanied the author's father when he went to the house of A.T.'s father to obtain information about the couple and a telephone number to contact them. The Committee takes note of the author's assertion that her father and brother threatened to harm her and to abduct her against her will, if she did not return, alone, to the Islamic Republic of Iran.

7.3 The Committee recalls the State party's contention that all the author's allegations were thoroughly examined by the State party immigration authorities. It observes that the Federal Administrative Court found the author's account credible and sufficiently substantiated. Notably, the Federal Administrative Court considered the couple's allegations in the domestic proceedings to be credible, thus departing from the assessment of the State Secretariat for Migration. This argument is advanced by the author as established in her communication to the Committee and not contested by the State party.

7.4 The Committee further takes note, however, that the Federal Administrative Court also found that it was doubtful whether the author would actually be exposed to the alleged risks in the near future. The Committee notes the State party's submission that the alleged risk of serious forms of gender discrimination in the event of removal is only relevant within the meaning of the right of asylum and the principle of non-refoulement if the person concerned cannot obtain adequate protection from the country of destination. It further observes that the State party recognizes that respect for the rights of women is not always guaranteed in the Islamic Republic of Iran, either in law, by the authorities or in society. It takes note, also, of the State party's argument that the situation varies greatly depending on the concrete circumstances of a case, and an assessment must be made on a case-by-case basis, as the abstract risk of discrimination does not justify the conclusion that the Islamic Republic of Iran is generally unable or unwilling to protect women who have been exposed to violence.

7.5 In that connection, the Committee recalls that it is generally for the authorities of States parties to the Convention to evaluate the facts and evidence and the application of national law in a particular case,³⁴ unless it can be established that the evaluation was biased or based on gender stereotypes that constitute discrimination against women, was clearly arbitrary or amounted to a denial of justice. The issue before the Committee, therefore, is whether there was any irregularity or arbitrariness in the decision-making process regarding the author's asylum application to the extent that the State party authorities failed to properly assess the risk of serious gender-based violence in the event of the return of the author to the Islamic Republic of Iran. The Committee reiterates that, in carrying out their assessment, States parties should give sufficient weight to the real and personal risk that a person might face if deported.

7.6 In the present case, the Committee considers that it was incumbent upon the State party to undertake an individualized assessment of the real, personal and foreseeable risk of gender-related persecution and honour-related violence that the author would face. On one hand, the author's vulnerability, as a Persian Shiite Muslim woman who has disobeyed her father's will, "dishonoured" her family by becoming pregnant out of wedlock, been beaten during pregnancy, been threatened with death and pressured to undergo an abortion, and has married religiously the father of her child – a Kurdish Sunni Muslim from Iraq, not accepted by her family owing to his ethnicity and religious denomination – was acknowledged by the Federal

³⁴ See, for example, "The Committee recalls that it does not replace the national authorities in the assessment of the facts, nor does it decide on the alleged perpetrator's criminal responsibility" (*R.P.B. v. Philippines* (CEDAW/C/57/D/34/2011), para. 7.5).

Administrative Court. On the other hand, the persistent institutionalized discrimination against women and girls in public and private life enshrined within civil and penal law and practice in the Islamic Republic of Iran, the patriarchal values and misogynist behaviours that permeate many segments of Iranian family life, and the law enforcement agencies' reluctance to intervene in domestic violence and honour crime cases were not sufficiently addressed in the context of the case at stake. In that connection, the Committee expresses concern about the persistence of deep-rooted gender-based violence and discriminatory patriarchal stereotypes in the Islamic Republic of Iran³⁵ concerning the roles and responsibilities of women and men in the family and in society, which overemphasize the traditional role of women, thereby undermining women's social status, safety and security, autonomy, educational opportunities and professional careers. It also notes with concern that gender-based violence and patriarchal attitudes are on the rise among State authorities, including within law enforcement agencies, and that gender equality was being openly and increasingly challenged by the Iranian authorities.

7.7 The Committee notes the author's contention that she has no prospect of seeking protection from the Iranian authorities, given their discriminatory practices and the powerful status of her family. The Committee observes that the State party assessed whether the Iranian authorities were indeed unable to ensure adequate protection for the author and her family upon their return. In that regard, the Committee recalls that, in line with paragraph 29 of general recommendation No. 32, as a matter of international law, the authorities of the country of origin are primarily responsible for providing protection to the citizens, including ensuring that women enjoy their rights under the Convention, and that it is only when such protection is not available that international protection is invoked to protect the basic human rights that are seriously at risk. The Committee further recalls that, while the woman asylum claimant normally bears the burden of proving her asylum case, the duty to ascertain and evaluate all the relevant facts is shared between the claimant and the examiner. The threshold for accepting asylum applications should be measured not against the probability but against the reasonable likelihood that the claimant has a well-founded fear of persecution or that she would be exposed to persecution on return. In the present case, the Committee is of the view that the author's claims that she could not seek the protection of the authorities in the Islamic Republic of Iran prior to her departure and that she would not be able to do so upon her return should not have been rejected outright by the State party authorities solely on the basis of the author never having asked the authorities for protection and, therefore, had not given them the opportunity to protect her, without taking into consideration her reasons for not turning to the authorities. The Federal Administrative Court, while crediting all the facts as put forward by the author, considers the author's fear of not being able to obtain protection from the authorities as "pure guesswork". The Federal Administrative Court notably considers the fact that the author is from a large city, is educated and would have the support of her husband's family as protective circumstances. Furthermore, the Federal Administrative Court does not accord any weight to the circumstance that the author's father was accompanied by a policeman when extracting her whereabouts.

7.8 The Committee considers that the State party acknowledged the author's vulnerable status yet concluded that Iranian authorities could protect her. Taking into account the level of tolerance and incitement³⁶ towards violence against women in the Islamic Republic of Iran, the Committee considers that a more thorough risk assessment in connection with the capacity of Iranian authorities, including law

³⁵ Not a State party to the Convention or the Optional Protocol.

³⁶ See general recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women (CEDAW/C/GC/32, subpara. 50 (g)).

enforcement agencies, to protect women and girls would have been required by the exigencies of the case.

7.9 In view of the above findings, the Committee concludes that the State party failed to give sufficient consideration to the real, personal and foreseeable risk of serious forms of gender-based violence faced by the author should she be returned to the Islamic Republic of Iran.

8. Accordingly, acting under article 7 (3) of the Optional Protocol to the Convention, the Committee concludes that the State party has failed to fulfil its obligations and that the deportation of the author would amount to a breach of articles 1–3, 15 and 16 of the Convention, taking into consideration general recommendation No. 19, general recommendation No. 32 and general recommendation No. 35, updating general recommendation No. 19.

9. The Committee makes the following recommendations to the State party:

(a) Concerning the author of the communication and her family:

(i) Reopen their asylum case, taking into account the Committee's views;

(ii) Refrain from forcibly returning them to the Islamic Republic of Iran, where the author would be exposed to a real, personal and foreseeable risk of severe forms of gender-based violence, while the case is under re-examination;

(b) General:

(i) Take all measures necessary to ensure that victims of gender-based forms of persecution who are in need of protection are not returned under any circumstance to any country in which their life would be at risk or where they might be subjected to gender-based violence or to torture or ill treatment;

(ii) Ensure that the threshold for accepting asylum applications is measured not against the probability but against the reasonable likelihood that the claimant has a well-founded fear of gender-based persecution or that she would be exposed to gender-based persecution upon her return;

(iii) Ensure that, whenever necessary, examiners use all the means at their disposal to produce and/or verify the necessary evidence in support of the application, including by seeking and gathering information from reliable governmental and non-governmental sources on human rights in the country of origin, in particular relating to the situation of women and girls, and taking all necessary measures in that regard;

(iv) Ensure, when interpreting all legally recognized grounds for asylum, the classification of claims for asylum on the basis of gender on the grounds of membership of a particular social group, where necessary, and consider adding sex and/or gender and other status to the list of grounds for refugee status in national asylum legislation.

10. In accordance with article 7 (4) of the Optional Protocol, the State party shall give due consideration to the views of the Committee, together with its recommendations, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee. The State party is also requested to publish the Committee's views and recommendations and to have them widely disseminated in order to reach all relevant sectors of society.