



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 1127/2022^{*,**,*}

<i>Communication submitted by:</i>	R and B (represented by counsels, Nesrin Ulu and Fazil Ahmet Tamer)
<i>Alleged victim:</i>	The complainants
<i>State Party:</i>	Switzerland
<i>Date of complaint:</i>	1 February 2022 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State Party on 9 May 2022 (not issued in document form)
<i>Date of adoption of decision:</i>	17 April 2026
<i>Subject matter:</i>	Deportation to Iraq
<i>Procedural issue:</i>	Exhaustion of domestic remedies; admissibility – <i>ratione materiae</i>
<i>Substantive issue:</i>	Risk to life or risk of torture or other cruel, inhuman or degrading treatment or punishment, if deported to country of origin (non-refoulement)
<i>Article of the Convention:</i>	3

1.1 The complainants are R, born in 1994, and his partner B, born in 1992. They submit the communication on their own behalf and on behalf of their child O, born in 2018. The complainants are Iraqi nationals from the Kurdistan Region of Iraq who applied for asylum in Switzerland, but their applications were rejected. They are facing deportation to Iraq and submit that their deportation would constitute a violation by the State Party of article 3 of the Convention. The State Party made the declaration provided for in article 22 (1) of the Convention on 2 December 1986. The complainants are represented by counsels.

1.2 On 9 May 2022, pursuant to article 114 of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State Party not to deport the complainants to Iraq while their communication was being considered by the Committee.

* Adopted by the Committee at its eighty-fourth session (13 April–1 May 2026).

** The following members of the Committee participated in the examination of the communication: Jorge Contesse, Lorena González Pinto, Claude Heller, Erdogan Iscan, Peter Vedel Kessing, Liu Huawen, Maeda Naoko, Moulaye Abdallah Moulaye Abdallah, Ana Racu and Abderrazak Rouwane.

*** An individual opinion by Committee members Jorge Contesse, Lorena González Pinto and Peter Vedel Kessing (dissenting) is annexed to the present decision.



1.3 On 17 May 2022, the State Party informed the Committee that, in accordance with its established procedure, the State Secretariat for Migration had requested the competent authority to refrain from taking any steps to deport the complainants, so that they could be assured of remaining in Switzerland pending the consideration of their complaint by the Committee.

Factual background

2.1 The complainants entered Switzerland on 15 June 2018 and submitted asylum applications the following day. The State Secretariat for Migration interviewed R on 22 June 2018 and 19 December 2018, and B on 22 June 2018 and 26 July 2019.

2.2 In support of her asylum application, B submitted that she was forced into forced marriage by her father, but sought to prevent this by secretly having sexual intercourse with her partner R. By doing so, she hoped to make her father agree to marry R, but the father refused R's requests because he was poor and because he had already decided to marry her to her wealthy cousin. When they found out about their relationship, R was beaten by B's relatives. B unexpectedly became pregnant, which triggered the imminent danger of an honour killing. But her mother wanted to protect her, so she helped the complainants escape the country.¹ In virtue of tribal law, B's big brother was confined with the task of killing her, but he was against this, so B's brother also needed to leave the country with his family and with the complainants. Moreover, B's family attacked R's family with weapons, and the security authorities had to intervene to protect R's family. The matter had thus evolved into a blood feud, and B did not want to be locked up in a women's shelter for an indefinite period.

2.3 On 26 February 2020, State Secretariat for Migration rejected the complainants' request for asylum. It held that assaults by third parties or fears of being subjected to such assaults in the future were only relevant to asylum if the State does not fulfil its duty to protect or is not in a position to provide protection. In general, protection is guaranteed if the State takes appropriate measures to prevent persecution, for example through effective police and judicial bodies to investigate, prosecute and punish acts of persecution, and if complainants have access to this protection. In that connection, the State Secretariat invoked a landmark ruling of the Federal Administrative Court, which held that the Kurdish authorities were in principle willing to grant the inhabitants of the three northern Iraqi provinces protection from possible persecution.² In that decision, the Court found that persons who were persecuted or threatened by third parties because of a blood feud or because of family problems could count on State protection, unless there were well-founded indications that the authorities did not want to protect them.

2.4 The State Secretariat noted that the complainants did not attempt to approach the authorities to request protection. It found the reasons given for not doing so as not convincing. In the case of a threat of the intensity claimed, the State Secretariat deemed that it could have been expected that B would have taken every opportunity to find protection and a permanent solution to the problem claimed. There were no indications in her statements or in the files of an absence of the will to protect on the part of the authorities. Thus, the State Secretariat considered that the ability and willingness of her home State to provide protection was to be assumed.

2.5 The State Secretariat further noted in the cited landmark ruling that in spite of the State's information campaigns and the revisions of the Penal Code, it was still not to be assumed that police officers were willing to prevent crimes – such as honour killings – against women or to investigate them comprehensively, due to a lack of sensitivity and an insufficient protection infrastructure.³ In the complainants' case, however, the State Secretariat held that it would have been possible for them to ask the authorities for help. It held that B enjoyed the protection of her husband and it could be assumed that the Kurdish authorities would take

¹ No details were provided.

² Federal Administrative Court, judgment E-6982/2006 of 22 January 2008, para. 6.7.

³ *Idem*.

appropriate measures in the case of a couple. It observed that R's father worked as a peshmerga.⁴

2.6 The State Secretariat then noted R's statement that his family had experienced threats from B's family, but had received protection from the Kurdish authorities, who had intervened and told B's family not to approach. There was thus no evidence that the authorities would not have been able or willing to provide protection in the complainants' specific case for any reason, although it accepted that no State is in a position to grant absolute individual protection from non-State persecution.

2.7 The State Secretariat went further to reveal contradictions in the complainants' statements at the two interviews. R made conflicting declarations as to his marital status, the year when he met B, the persons from his family who went to B's family with the last marriage proposal, the moment when he learnt that B was pregnant, and the year when B's family attacked his family. When asked about some of these contradictions, R explained that he had been ill and stressed when he entered the State Party, which was not found convincing by the State Secretariat. Then B made conflicting declarations as to the whereabouts of her ID card and passport, the year when she met R, and the year when she found out and was supposed to marry her cousin.

2.8 On 31 March 2020, the complainants appealed. They argued that in the landmark decision invoked by the State Secretariat on Migration, the Federal Administrative Court had found that, in the case of private persecution by a family or a clan, especially honour killings of women, it could still not be assumed that the northern Iraqi police officers would be willing to protect the complainants or to comprehensively investigate such criminal offences against women due to a lack of sensitivity and insufficient protective infrastructure. For them, it was incomprehensible that this should be different because B was under the protection of her husband. The fact that R himself had been attacked by her family showed that this argument was not valid. The fact that they had not asked the northern Iraqi authorities for protection could not be held against them in view of the drastic measures that could have been expected from them. Moreover, the protection granted would only have been temporary. The complainants also contended that the State Secretariat for Migration had not dealt with the question of the reasonableness of any protective measures taken by the Kurdish authorities and had not sufficiently clarified whether honour killings were still taking place in Northern Iraq and what the situation was with regard to the ability of the authorities there to provide protection.

2.9 On 1 October 2021, the Federal Administrative Court dismissed the appeal. Contrary to the complainants' view, it held that the State Secretariat had sufficiently clarified and taken into account the relevant factual circumstances, explaining the reasons why it assumed that there was a functioning protection infrastructure in northern Iraq that the complainants could reasonably be expected to make use of. The fact that it came to a different conclusion than the complainants with regard to these questions does not in any case constitute a violation of the principle of investigation.

2.10 The Court accepted that, based on the evidence in the file, the conflict with B's family was credible. As the persecution invoked did not originate from State organs, but from private parties, it examined whether the complainants could find protection in their country of origin. In that connection, it referred to its previous landmark judgment invoked by the State Secretariat for Migration, where it explained in detail that the security authorities of the Autonomous Region of Iraqi Kurdistan are in principle able and willing to grant their inhabitants protection from persecution, and held that this assessment was later confirmed by the Court and continued to be valid.⁵ However, if the attacks originate from the majority parties, their organs or members, the State could not be expected to provide protection through the police and security forces due to the close interconnection of party and authority structures. According to the case law of the Federal Administrative Court, in cases of threats of persecution by private individuals, it must be taken into account that, in general, especially

⁴ The armed forces of the Kurdistan Regional Government in Iraq.

⁵ Federal Administrative Court, judgments E-6982/2006 of 22 January 2008; E-3737/2015 of 14 December 2015 and D-1927/2019 of 23 May 2019.

in cases of honour killings that primarily affect women, it cannot be assumed that the police are willing to prevent such crimes or investigate them thoroughly due to a lack of sensitivity and inadequate protection infrastructure.⁶

2.11 The Court then referred to the complainants' statements that they did not attempt to seek protection from the authorities in their country of origin, but was not convinced by B's explanation that she refrained from doing so because of the radical measures that the police might have taken, namely, forcing her to live in a women's shelter for an indefinite period. Given that B was not single, but could count on the support of her husband and his family, it could not be assumed that the Kurdish authorities would pressure her to move to a shelter which she would not be allowed to leave. The Court then found, based on the complainants' submissions, that R's family enjoyed protection from the Government of northern Iraq. Thus, R declared at the hearing before the State Secretariat for Migration that the government had intervened after his wife's family had attacked his relatives and that his family was under the protection of the Asayesh.⁷ B also declared that her father did not dare to take action against her husband's family because they were powerful and under the protection of former President Barzani.⁸ The Court therefore deducted that there was no reason to assume that the complainants could not also claim this protection. It thus held that their claim to the contrary, which was not substantiated in any detail, was not convincing. Nor was there any substantive evidence to support their argument that such protection would only be temporary.

2.12 In view of the above, the Court concluded that the complainants would not be defenceless in the face of possible domestic abuse, in particular by B's father. This finding was not inconsistent with the general findings of the previous landmark decisions. Therefore, the Court held that, based on the specific circumstances of the case, it could be assumed that the northern Iraqi authorities were willing and able to offer the complainants the protection they require. Furthermore, recourse to this protection could also be considered as being reasonably required. Consequently, the Court found no need for further clarification regarding the existence of honour killings in northern Iraq and the ability of the local authorities to provide protection. Lastly, the Court noted that in an interim order of the instruction judge of 14 April 2020, the complainants' requests for waiving the appeal legal costs and for being granted free legal aid had been accepted and that there were no indications in the file of a significant change in their financial circumstances.

2.13 On 25 November 2021, the complainants lodged a new request for asylum, requesting reassessment of their refugee status and reiterating their grounds for protection. R submitted that he had learned through his father and then from a lawyer that there was an arrest warrant issued against him on 14 October 2020, according to which he was accused under the Iraqi Penal Code of kidnapping a minor.⁹ He argued that if returned, he would be arrested and imprisoned, hence at risk of torture and inhuman and degrading conditions. B reiterated that she had been unable to contact the authorities in her country of origin to seek their protection. She also claimed that many members of her family were active in the security services.

2.14 On 1 December 2021, the State Secretariat for Migration considered the complainants' request to be a request for revision of the judgment of 1 October 2021, so it did not examine their request for lack of jurisdiction. On 9 December 2021, complainants appealed this decision to the Federal Administrative Court. They argued that the State Secretariat had wrongly treated their new application as a request for reconsideration and that their allegations relating to the arrest warrant had been wrongly treated as a request for revision. They also requested that the contested decision be overturned and that their asylum application be considered. The Federal Administrative Court dealt with the complainants' arguments in separate proceedings: partly as an application for revision against its judgment of 1 October 2021 with regard to their allegations concerning the arrest warrant of 14 October 2020 and B's allegations that many members of her family were active in the security services, and partly as an appeal against the State Secretariat for Migration's decision of 1 December 2021 not to consider the case.

⁶ Federal Administrative Court, judgments D-7100/2018 and D-7102/2008 of 24 February 2020.

⁷ The official intelligence and security agency of the Iraqi Kurdistan Region.

⁸ President of the Kurdistan Region of Iraq from 2005 to 2017.

⁹ The English translations of the domestic decisions mention "kidnapping a woman".

2.15 In an interim decision of 22 December 2021, the Federal Administrative Court considered that the request for revision had no chance of success, noting that the complainants' arguments and the evidence produced were not such as to alter its assessment in the judgment of 1 October 2021. In addition to the low evidentiary value of the copy of the arrest warrant of 14 October 2020, the Court questioned the timing of submitting this evidence, because it was not clear what reasons could have justified the late production of this document. It recalled that revision required newly discovered facts or newly found evidence that existed before the judgment, and such facts must be legally relevant. Revision could not be used to remedy failures in earlier evidence gathering and is excluded when the significant facts could have been discovered during the earlier procedure through reasonable diligence. Thus, evidence is only admissible if the party could not have submitted it earlier.

2.16 The Court noted that the complainants relied on evidence dated 2019 and 2020, all predating the judgment of 1 October 2021. It also noted that the complainants themselves declared that it was only after receiving the judgment of 1 October 2021 that they took steps to clarify their situation in their region of origin and obtained the arrest warrant from a lawyer. However, the Court assessed that the complainants must have been in possession of this document shortly after receiving the ruling of 1 October 2021, given that the translation was already available on 1 November 2021. No plausible explanation was given for why the warrant was not submitted earlier.

2.17 In addition, the Court expressed doubts about the complainants' alleged investigations against R, given that there had been no mention during the ordinary asylum procedure of a possible criminal complaint by B's family or of proceedings against R. Given the time that had lapsed since the complainants left their country and until the judgment of 1 October 2021, the Court deemed that they should have been aware of any proceedings brought against them. The Court also found unconvincing the claimed problems that would be posed to B by her relatives allegedly connected with the security services.

2.18 The Court therefore concluded that the request for revision lacked prospects of success and denied the request for free legal aid due to lack of merit. It set a deadline for the complainants to pay 1500 Swiss francs (SwF) to cover legal costs. On 17 January 2022, the Federal Administrative Court declared the complainants' request for revision inadmissible on grounds of failure to pay the advance costs.

Complaint

3.1 The complainants claim that their deportation to the Kurdistan Region of Iraq would constitute a violation of their rights under article 3 of the Convention. Their three-year old child has already been suffering from psychological trauma for fear of being deported.¹⁰

3.2 The complainants submit that they were unable to pay the advance costs for their appeal and contest the way the Swiss authorities examined the current situation in the Kurdistan Region of Iraq with respect to the situation of women, honour killings and blood feuds. According to them, the 2008 landmark ruling of the Federal Administrative Court is no longer up to date. They contend that B has invoked gender-specific grounds for asylum and refer to reports on the situation of women in the Kurdistan Region of Iraq, including honour killings and access to shelters.¹¹

State Party's observations on admissibility and the merits

4.1 On 1 November 2022, the State Party submitted its observations. It contested the admissibility of the communication on the grounds that the complainants have not exhausted domestic remedies and that their allegations are inadmissible *ratione materiae*. Thus, the

¹⁰ No details were provided.

¹¹ UN High Commissioner for Refugees (UNHCR), *International Protection Considerations with Regard to People Fleeing the Republic of Iraq*, HCR/PC/IRQ/2019/05 Rev.2, May 2019, <https://www.refworld.org/policy/countrypos/unhcr/2019/en/123049>; Swiss Refugee Council (OSAR), *Irak: foyers pour femmes à Kirkouk*, 5 February 2018; and Danish Immigration Service, *Kurdistan Region of Iraq (KRI): Women and men in honour-related conflicts*, 9 November 2018, <https://www.refworld.org/reference/countryrep/dis/2018/en/122349>.

State Party notes that the complainants' request for revision has not been examined because they have not paid the advance costs and that they have not explained in their communication to the Committee the reason why they did not pay those costs.

4.2 The State Party contends that in their asylum proceedings, the complainants did not invoke treatment within the meaning of article 1 of the Convention. They claimed that in case of return, B will be killed by her father, which means that they invoked the right to life, which is not protected by the Convention. There is also no involvement of a public official in the alleged treatment.¹² For the State Party, the complainants simply claim that the authorities would not be able to protect them from B's father.

4.3 On the merits, the State Party submits that the general human rights situation in northern Iraq is not as such that a removal could be considered inadmissible. It notes that the complaints did not allege torture or ill-treatment in their country of origin and concludes that they have not demonstrated that there is a foreseeable, personal, present and real risk that they would be exposed to torture or inhuman or degrading treatment if returned to Iraq.

Complainants' comments on the State Party's observations

5.1 On 21 July 2025, the complainants submitted comments in which they contested the State Party's arguments. As regards the alleged non-exhaustion of domestic remedies, they explain that following the rejection of their asylum application, asylum seekers are generally prohibited from working. As they were dependent on emergency asylum assistance, they were unable to pay the advance costs for their appeal. The complainants had different legal representatives in the two sets of proceedings, but the second representative is not aware of the specific reasons why the first representative did not submit the evidence in the proceedings. They also refer to the jurisprudence of the European Court of Human Rights, which ruled that a State's failure to take measures against domestic violence constituted a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).¹³ They thus contest the State Party's allegation that torture and inhuman treatment may only be carried out by State organs, and not by private parties.

5.2 The complainants submit that until the death penalty is finally carried out under the tribal law, both of them are exposed to various forms of physical and psychological violence at the hands of the security authorities and the family. Some of B's relatives work for the security services, so if she asked the authorities for protection, her relatives would just hand her over to her family, which would kill her. R has been sentenced to imprisonment for the abduction of a girl, so he will be arrested by the security services and, given B's relatives links with the security services, he would be tortured in detention.

5.3 The complainants refer to a report published in 2023 by the State Secretariat for Migration.¹⁴ Although the report mentions that it does not aim at providing a comprehensive picture of violence against women or of the phenomenon of so-called honour killings, the complainants allege that the entire text shows that murders and violence against women in Iraqi Kurdistan have not decreased despite the implementation of the Protection against Violence Act. The reason for this is that the willingness and ability of this authority to provide protection are limited by an Islamist-influenced government and old tribal laws. The complainants consider that the State Secretariat's general statements that there is a functioning government in Kurdistan Region of Iraq and that it is willing and able to protect women against violence and femicide are not accurate. They argue that their allegations are confirmed by this recent report of the State Secretariat for Migration.

¹² *G.R.B. v. Sweden* (CAT/C/20/D/83/1997), para. 6.5; and *K.N. v. Switzerland* (CAT/C/20/D/94/1997), para. 10.4.

¹³ European Court for Human Rights, *Opuz v. Turkey*, no. 33401/02, 9 June 2009.

¹⁴ In German, available at: <https://www.sem.admin.ch/dam/sem/de/data/internationales/herkunftslaender/asien-nahost/irq/irq-haeusliche-gewalt-d.pdf.download.pdf/irq-haeusliche-gewalt-d.pdf>.

5.4 The complainants have been living in Switzerland since 16 June 2018. Their children¹⁵ are now well integrated in Switzerland. Removal would jeopardise the safe and successful integration of the children. In addition, the children would be at risk if their mother and father became victims of a blood feud for the reasons. The rights of the children should also be taken into account. Losing one's parents through such acts of violence means being subjected to inhuman treatment.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any complaint submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. This rule does not apply where it has been established that the application of the remedies has been unreasonably prolonged or is unlikely to bring effective relief to the complainant.¹⁶

6.3 The Committee notes that the State Party challenges the admissibility of the complaint on the grounds of non-exhaustion of domestic remedies. The State Party asserts that the complainants' request for revision has not been examined because they have not paid the advance costs and that they have not explained in their communication to the Committee the reason why they did not pay those costs. However, the Committee notes that in their communication, the complainants clearly declared that they were unable to pay the costs, then in their comments of 21 July 2025, they explained that they could not work, as they did not have a work permit, and that they were dependent on emergency asylum assistance. It then recalls that under the State Party's domestic law, there are two cumulative conditions for the court to consider when deciding on a request for legal aid: that the complainant is indigent and that his or her claims do not appear to be bound to fail.¹⁷

6.4 In the present case, it is clear from the interim ruling of 22 December 2021 that the Federal Administrative Court found, after a *prima facie* examination of the case file, that the request for revision lacked prospects of success and that, consequently, the conditions for the provision of legal aid were not met due to lack of merit. The Committee also notes that in its judgment of 1 October 2021, the Federal Administrative Court mentions that the complainants' requests for waiving the appeal legal costs and for being granted free legal aid were accepted and that there were no indications in the file of a significant change in their financial circumstances. The State Party does not refute the presumption that the complainants' financial situation still had not changed between that judgment of 1 October 2021, when their indigence was noted, and the interim ruling of 22 December 2021, when they were requested to pay the legal costs without any consideration of their indigence. The Committee therefore finds that it is not precluded from considering the communication under article 22 (5) (b) of the Convention.

6.5 The Committee then notes the State Party's plea of inadmissibility *ratione materiae* because the complainants did not invoke treatment within the meaning of article 1 of the Convention: there is no involvement of a public official in the alleged treatment and the complainants simply claim that the Kurdish authorities would not be able to protect them from B's father. The Committee expresses disagreement with this argument raised by the State Party, when the entire examination of its own administrative and judicial authorities – the State Secretariat for Migration and the Federal Administrative Court – focused precisely on the State's duty to provide protection against assaults by third parties. In that respect, it recalls its general comment No. 2 (2007), where it made clear that where State authorities or

¹⁵ In the meantime, the complainants had a second child.

¹⁶ See, for example, *E.Y. v. Canada*, (CAT/C/43/D/307/2006/Rev.1), para. 9.2; see also the Committee against Torture's general comment No. 4 (2017), para. 34.

¹⁷ *N.H. v. Switzerland* (CAT/C/82/D/1024/2020), para. 4.3.

others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such private actors consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts.¹⁸ Accordingly, the Committee finds the complainants' allegations admissible *ratione materiae*.

6.6 In the absence of any other obstacle to the admissibility of the present communication, the Committee proceeds with its consideration of the merits of the claims submitted by the complainants under article 3 of the Convention.

Consideration of the merits

7.1 In accordance with article 22 (4) of the Convention, the Committee has considered the communication in the light of all the information made available to it by the parties.

7.2 In the present case, the issue before the Committee is whether the return of the complainants to the Kurdistan Region of Iraq would constitute a violation of the State Party's obligation under article 3 of the Convention not to expel or to return (*refouler*) a person to another State where there are grounds for believing that he or she would be in danger of being subjected to torture.

7.3 The Committee must evaluate whether there are substantial grounds for believing that the complainants would be personally in danger of being subjected to torture upon return to the Kurdistan Region of Iraq. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable, present and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk.

7.4 The Committee refers to its general comment No. 4 (2017), according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. Although the risk does not have to be shown to be "highly probable", the burden of proof generally falls on the complainant, who must present an arguable case establishing that he or she faces a foreseeable, personal, present and real risk.¹⁹ The Committee recalls that it gives considerable weight to findings of fact made by organs of the State Party concerned, while, at the same time, it is not bound by such findings and instead has the power, under article 22 (4) of the Convention, to make a free assessment of the information available to it, taking into account all the circumstances relevant to each case.²⁰

7.5 In the present case, the complainants claim that they would be in danger of facing treatment contrary to article 3 of the Convention if returned to the Kurdistan Region of Iraq, as they would risk detention, acts of torture and ill-treatment because an arrest warrant has been issued for R for having kidnapped B and because B risks being killed by her father for having entered into a relationship with R and thus disobeying her father who wanted to marry her to another man. The Committee notes the State Party's reference to the contradictions that the asylum authorities had identified in the complainants' accounts. The complainants have not provided a convincing explanation for those discrepancies – neither to the Swiss asylum authorities nor to the Committee.

7.6 The Committee further notes that the Swiss authorities duly considered the complainants' allegations of lack of support from the authorities in their region. Both the

¹⁸ General comment No. 2 (2007), para. 18.

¹⁹ See, inter alia, *Dadar v. Canada* (CAT/C/35/D/258/2004), para. 8.4; and *A.R. v. Netherlands* (CAT/C/31/D/203/2002), para. 7.3.

²⁰ General comment No. 4 (2017), paras. 11, 39 and 50.

State Secretariat for Migration and the Federal Administrative Court examined the situation on the ground and concluded that the northern Iraqi authorities were willing and able to offer protection to the complainants. They have, however, pointed to the fact that the complainants had not even attempted to request protection from the Kurdish authorities. While the complainants suggest that the information used was obsolete because the Swiss authorities relied on a 2008 landmark judgment of the Federal Administrative Court, the Committee notes that in its 2021 judgment, the Federal Administrative Court cited landmark decisions from 2015 and 2019 to find that the information continued to be relevant.

7.7 The Committee notes that the Swiss authorities have not called into question the complainants' relationship. They have, however, considered that the complainants have not demonstrated that B's father exerts such an influence over the Kurdish authorities that would render futile any attempt by the complainants to seek protection. In that connection, the Committee observes that the complainants themselves admitted that B's family's attack over R's family was not successful because the Kurdish authorities intervened and effectively protected R's family. It also notes that R's father works as a peshmerga, that is, he has connection in the armed forces of the regional government. Moreover, it was the complainants themselves who declared before the Swiss authorities that R's family was under the protection of the security services and even under the protection of the former President. While the Committee notes that B alleges that members of her family are also active in the security services, it considers that the information in the file shows that R's family can benefit from protection by the authorities, which even occurred in practice when they were attacked by B's family. Therefore, the Committee considers that the complainants have not demonstrated that a request for protection from the Kurdish authorities would be to no avail. They have also not demonstrated that B's family exerts any influence over the Kurdish authorities.

7.8 As to the alleged arrest warrant issued on 14 October 2020 against R, the Committee notes that the Federal Administrative Court attributed to it a low evidentiary value because it was a copy and also questioned the timing of submitting this evidence, considering that the complainants may have been in its possession when the appeal proceedings were pending, but have not produced it at that procedural moment. The Committee does not accept the complainants' explanation that they had different representatives in the appeal and revision proceedings and that the second counsel "is not aware of the reasons why the evidence was not submitted".²¹ It thus appears from this formulation that the complainants' counsel does not even question *if* this evidence existed at the appeal stage, but *why* it was not submitted. The Committee then notes that the complainants do not provide more information about this arrest warrant, such as why this arrest warrant was issued only in October 2020 for facts that occurred in June 2018, based on who's complaint or what event has triggered the issuance of this arrest warrant, at what date exactly they became aware of the existence of this arrest warrant, what were the exact steps followed to enter into its possession or if the arrest warrant has been communicated to anyone from their families.

7.9 With respect to the argument relating to the worsening of the human rights situation in the northern part of Iraq, the Committee recalls that the occurrence of human rights violations in the complainant's country of origin is not, of itself, sufficient for it to conclude that the complainant is personally at risk of being tortured there. The Committee also notes that the complainants had ample opportunity to provide the State Secretariat for Migration and the Federal Administrative Court with supporting evidence and more information about their claims during the asylum proceedings. The Committee considers that the information in the file does not allow it to conclude that the decision of the domestic authorities was arbitrary in finding that the complainants have not demonstrated that they would face a real, foreseeable, personal and present risk of being subjected to torture if they were to be deported to the Kurdistan Region of Iraq or that the authorities of the State Party failed to conduct a proper investigation into their allegations.²²

²¹ As declared before the Committee by the complainants' counsel in her comments of 21 July 2025.

²² *S.A. v. Switzerland* (CAT/C/76/D/1017/2020), para. 7.8; *T.B. v. Switzerland* (CAT/C/73/D/862/2018), para. 7.11; and *K.M. v. Switzerland* (CAT/C/71/D/865/2018), para. 7.9.

8. On the basis of the above, and in the light of the material before it, including on the general situation of human rights in the Kurdistan Region of Iraq, the Committee considers that the complainants have not provided sufficient evidence to enable it to conclude that their deportation to their country of origin would expose them to a foreseeable, personal, present and real risk of being subjected to treatment contrary to article 3 of the Convention.

9. The Committee, acting under article 22 (7) of the Convention, concludes that the return of the complainants to Iraq would not constitute a breach of article 3 of the Convention by the State Party.

Annex

Individual opinion of Committee members Jorge Contesse, Lorena González Pinto and Peter Vedel Kessing (dissenting)

1. With all due respect, we are unable to agree with the Committee's conclusion that the complainants' removal to the Kurdistan Region of Iraq would not constitute a violation of article 3 of the Convention.² We agree with the Committee that the present communication is admissible *ratione materiae*, particularly in light of general comment No. 2, in which the Committee clearly established that acts of torture or ill-treatment committed by non-State actors may engage the international responsibility of the State when the authorities know or have reasonable grounds to believe that such acts are occurring and fail to act with due diligence to prevent, investigate, or punish them.

¹ However, we consider that the Committee did not consistently apply this standard in its assessment of the merits.

3. Based on the facts and evidence before the Committee, we are not persuaded that B would benefit from effectively being protected against the risk of honour-based violence perpetrated against her by her family if returned to Iraq.

4. The relationship between the complainants – R and B – is deemed credible. As noted by the majority, “the Swiss authorities have not called into question the complainants’ relationship” (see para. 7.7 of the Committee’s decision). Likewise, the Committee confirms that, based on the evidence, the Swiss Federal Administrative Court accepted that the conflict with B’s family was credible (see para. 2.10).

5. It follows that the domestic authorities, as well as the majority of the Committee, acknowledged both the existence of the relationship and the consequent risk of honour-based violence perpetrated against B.

6. The determinative issue is therefore whether sufficient and effective protection would be available to B upon return.

7. The State Party and the majority of the Committee rely on the abstract proposition that the “authorities of the Autonomous Region of Iraqi Kurdistan are, in principle, able and willing to provide protection against persecution” (see para. 2.10). From this premise, they conclude that the complainants could have sought protection from the domestic authorities and that their failure to do so undermines their claims under the Convention.

8. However, this reasoning is untenable when considered in light of the Federal Administrative Court’s established case law, cited in the Committee’s decision. According to that jurisprudence, “in cases of threats of persecution by private individuals, it must be taken into account that, in general, *especially in cases of honour killings that primarily affect women*, it cannot be assumed that the police are willing to prevent such crimes or investigate them thoroughly due to a lack of sensitivity and inadequate protection infrastructure” (see para. 2.10, emphasis added). Previous isolated interventions by the authorities are insufficient to establish the existence of effective, durable and accessible protection against a persistent threat emanating from family members.

9. In our view, this finding creates a fundamental inconsistency in the State Party’s assessment. On the one hand, the complainants are faulted for not seeking protection from the Iraqi authorities. On the other hand, it is expressly acknowledged that, in comparable cases, those authorities cannot be relied upon to provide effective protection. The majority of the Committee does not reconcile this contradiction.

10. The majority further relies on the fact that the Kurdish authorities were willing and able to provide protection to R’s family against attacks from B’s family in the past, and on that basis

¹ General comment No. 2 (2007), para. 18.



concludes that the complainants have not demonstrated that seeking protection from the authorities would have been futile (see para. 7.7).

11. We are not persuaded by this line of reasoning. As reflected in the case law of the Swiss Federal Administrative Court, the fact that the Kurdish authorities may have been willing to protect R's family – particularly in the specific circumstances, including the affiliation of R's father with the peshmerga armed forces of the Kurdistan Regional Government (see para. 2.5.) – does not establish that they would be equally willing to protect B against honour-based violence perpetrated by her own family. These are materially different situations. The available information – as described in the case law of the Federal Administrative Court – indicates that women at risk of honour crimes face particular and well-documented obstacles in accessing effective protection, and this dimension is in our view not adequately reflected in the majority's analysis.

12. The case file contains sufficient information to conclude that the complainants' situation involves vulnerabilities stemming from honour-based violence and family and tribal structures that may significantly limit their effective access to State protection. In such contexts, the Committee must exercise the principle of rigorous scrutiny with particular rigor, especially where a woman and young children may be exposed to serious harm.

13. The Committee has consistently held that the availability of protection must be both practical, accessible and effective, and not merely theoretical or illusory.² In the present case, we are not satisfied that the State Party has demonstrated that such protection would be available to B in practice.

14. Taking into account all the circumstances of the case, considered as a whole, we conclude that substantial grounds exist for believing that the complainants would face a foreseeable, personal, present and real risk of treatment contrary to article 3 of the Convention if returned to the Kurdistan Region of Iraq. Consequently, their removal constitutes a violation by the State Party of its obligations under article 3 of the Convention.

² For example, *Njamba and Balikosa v. Sweden* (CAT/C/44/D/322/2007), para. 9.5; *E.K.W. v. Finland* (CAT/C/54/D/490/2012), para. 9.7; and *Sylvie Bakatu-Bia v. Sweden* (CAT/C/46/D/379/2009), para. 10.6.