



## International Covenant on Civil and Political Rights

Distr.: General  
19 December 2011  
English  
Original: French

### Human Rights Committee

### Communication No. 1819/2008

#### Decision adopted by the Committee at its 103rd session

17 October–4 November 2011

<i>Submitted by:</i>	A.A. (represented by counsel, Mai Nguyen)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Canada
<i>Date of communication:</i>	23 September 2008 (initial submission)
<i>Document reference:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 24 October 2008 (not issued in document form)
<i>Date of present decision:</i>	31 October 2011
<i>Subject matter:</i>	Author's removal to Iran, where she would be at a risk of stoning or forced marriage
<i>Procedural issues:</i>	Substantiation of allegations
<i>Substantive issues:</i>	Risk of being subjected to acts of torture or to cruel, inhuman or degrading treatment or punishment in the event of removal; risk of arrest and arbitrary detention; equality before the courts and tribunals; restrictions on freedom of expression; and discrimination against the author as a woman
<i>Articles of the Covenant:</i>	2 and 26; 7; 9, para. 1; 13; 14, para. 1; and 19, paras. 1 and 2
<i>Article of the Optional Protocol:</i>	2

## Annex

### **Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights (103rd session)**

concerning

#### **Communication No. 1819/2008\***

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*The Human Rights Committee*, established under article 28 of the International Covenant on Civil and Political Rights,

*Meeting* on 31 October 2011,

*Adopts* the following:

#### **Decision on admissibility**

1.1 The author of the communication, dated 23 September 2008, is A.A. She is an Iranian national born in 1973, who alleges she is a victim of violations by Canada of the rights recognized in articles 2 and 26, 7, 9, paragraph 1, 13, 14, paragraph 1, and 19, paragraphs 1 and 2, of the International Covenant on Civil and Political Rights, as well as articles 2 (d), 3, 15 and 16, paragraph 1 (b), of the Convention on the Elimination of All Forms of Discrimination against Women. The Optional Protocol entered into force for the State party on 19 August 1976. The author is represented by Mai Nguyen, member of the Bar of Quebec.

1.2 On 24 October 2008, the Committee, acting through its Special Rapporteur for New Communications, requested the State party not to return the author to the Islamic Republic of Iran while her case was being examined by the Committee.

#### **The facts as submitted by the author**

2.1 The author declares that between September 2003 and February 2004 she conducted a relationship in Iran with a man whom she believed to be divorced but who was in fact married. In March 2004, she was arrested by the Iranian police for conducting an “unlawful relationship” with a married man. She was consequently detained for four days and

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\* The following members of the Committee took part in the consideration of the present communication: Mr. Abdelfattah Amor, Mr. Lazhari Bouzid, Ms. Christine Chanut, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Mr. Michael O’Flaherty, Mr. Rafael Rivas Posada, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Margo Waterval.

subjected to threats of violent punishment, such as stoning, in an attempt to induce her to confess to the aforementioned relationship.

2.2 While she was in detention, the author's father attempted to secure her release by requesting the intervention of her cousin, in view of the latter's position and influence as a high-ranking colonel in the Sepah.<sup>1</sup> In exchange for his intervention, the cousin demanded that the author be given to him in marriage, as his second wife, failing which the proceedings against her would be reopened. The author's father, although opposed to this proposal of forced marriage, led the cousin to believe that he consented in order to secure his daughter's release. Following her cousin's intervention, the author was released after four days' detention.

2.3 In order to avoid a forced marriage to her cousin, the author attempted to obtain a visa to visit Canada, where her sister was living. However, her application was turned down in the summer of 2004. Meanwhile the author's cousin began to exert growing pressure on her and on her family and expressly threatened to reopen criminal proceedings against her if she did not marry him. On 26 May 2005, the author finally succeeded in leaving Iran and travelled to Austria with the help of an individual, to whom she paid a substantial sum of money in return for a visa. In Austria, the author was able to join her brother, who was resident in the country, and two weeks later she filed for refugee status.

2.4 On 28 June, the author's sister, who was resident in Canada, received a telephone call from a man demanding in a threatening tone to know the author's whereabouts. In July 2005, the author's brother received a similar call from a man who said that he worked for the Iranian Embassy in Austria and gave the brother to understand that he was in a position to cause the author harm. In the meantime, the author had also heard from her parents who had stayed in Iran that, on the orders of her cousin, the Iranian security services had been exerting pressure on them to reveal her whereabouts. Her cousin had also told them that he knew where she was and that colleagues of his had been sent to cause her harm.

2.5 The author maintains that, as she no longer felt safe in Austria, she left the country and travelled to Canada on 20 August 2005 on a false passport. Six days after arriving in Canada, she filed for refugee status with the Canadian Immigration and Refugee Board (IRB). On 12 April 2006, IRB rejected the author's application on the grounds that her allegations lacked credibility regarding the existence of her cousin, her supposed delay in leaving Iran and claiming asylum in Canada, and the absence of any document corroborating her asylum applications in Austria and in Canada.

2.6 In May 2006, the author lodged an application with the Federal Court of Canada to authorize a judicial review of the IRB decision, which was rejected on 19 July 2006.

2.7 In December 2006, the author applied to Citizenship and Immigration Canada (CIC) for a Pre-Removal Risk Assessment (PRRA), and on 15 January 2007 this application was also rejected on the grounds that the author's allegations lacked credibility.

2.8 In January 2007, the author submitted an application to CIC for permanent residence on humanitarian grounds. On 6 February 2007, an order was issued for her removal to Iran, which was to take effect on 11 March 2007.

2.9 On 21 February 2007, the author lodged an application with the Federal Court of Canada to authorize a judicial review of the PRRA decision. On 27 February 2007, she also submitted an application to the Federal Court for a stay of removal. On 6 March 2007, the Federal Court agreed to a stay of removal pending a decision on her application for judicial

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<sup>1</sup> The Sepah or Islamic Revolutionary Guard Corps is a paramilitary organization of the Islamic Republic of Iran which reports directly to the Leader of the Revolution, the Iranian Head of State.

review of the PRRA decision. On 27 February 2007, the author also lodged an application with the Federal Court for stay of removal. On 6 March 2007 the Federal Court granted a stay of removal pending its decision on the application for judicial review of the PRRA decision. On 27 June 2007, the Federal Court granted the request for judicial review of the PRRA decision. On 13 December 2007, however, the Court rejected the application for judicial review of the PRRA decision on the merits. According to the author, following that decision the stay of removal ceases to be valid.

2.10 On 20 March 2008, the author asked CIC to have her application for permanent residence on humanitarian grounds examined by a different officer from the one initially assigned, on the grounds that she feared he might be biased because he had already rejected her PRRA request. On 1 and 16 April 2008, CIC informed the author that, despite her objection, the officer in question would remain in charge of examining her application. On 27 June 2008, the author's application for permanent residence on humanitarian grounds was rejected by CIC.

2.11 On 25 July 2008, the author lodged an application with the Federal Court to authorize a judicial review of the decision handed down on her application for permanent residence on humanitarian grounds. This application was rejected on 25 February 2009. In July 2008, the author also lodged a complaint against the decision rendered on her application for permanent residence on humanitarian grounds and submitted a request for intervention to the Minister of Citizenship and Immigration, asking the Minister to use her discretionary powers to have the author granted permanent residence in Canada. On 1 August 2008, the Minister rejected the request to intervene in the author's case. The author was subsequently summoned to appear before the Canada Border Services Agency (CBSA) on 30 September 2008 and ordered to be in possession of a plane ticket and valid travel documents with a view to her return to Iran by 31 October 2008. The author maintains that she has thereby exhausted all available domestic remedies.

2.12 In the meantime, in June 2006, a summons ordering the author to appear in court in Iran on charges of conducting an "unlawful relationship" was allegedly delivered to her parents' home.

2.13 During her stay in Canada, the author joined the Association of Iranian Women in Montreal. According to the author, this organization works to support women of Iranian origin in Montreal, as well as to promote equality and basic rights for women.

### **The complaint**

3.1 The author maintains that the facts described above reveal a violation by the State party of rights guaranteed under articles 2 and 26; 7; 9, paragraph 1; 13; 14, paragraph 1; and 19, paragraphs 1 and 2, of the Covenant, as well as under articles 2 (d), 3, 15, and 16, paragraph 1 (b), of the Convention on the Elimination of All Forms of Discrimination against Women. The author asserts that if returned to Iran she risks arrest, detention, persecution and torture owing to the outstanding charge against her in that country of conducting an "unlawful relationship" and the threat posed by her cousin. She also cites her activities in Canada within the Association of Iranian Women in Montreal — especially her political opinions, her opposition to the present regime in Iran and her feminist views — as well as her fragile state of health.

3.2 The author contends that the IRB decision of 12 April 2006 to refuse her asylum application is flawed in fact and in law. She draws the Committee's attention to the fact that IRB had not expressed any doubts regarding the fact that she, an unmarried woman, had conducted an unlawful relationship with a married man, and that in Iran the penalties for such conduct may include torture or cruel treatment such as stoning. She adds that sentencing so-called "adulterous" women to death by hanging or stoning, as provided for

under Islamic criminal law, remains a widespread practice in Iran, despite having been repeatedly condemned by independent organizations that monitor the status of women's rights. Such practices are made even worse according to the author by the enforced waiting on death row, which in itself constitutes cruel treatment. The author maintains that the mere fact that she is an Iranian woman exposes her to the risk of being convicted of adultery, and therefore to the form of public chastisement inflicted upon women. According to the author, IRB failed to look into the risks to which, as a woman, she is exposed in the specific circumstances of the case.

3.3 The author points out that as the Iranian authorities monitor the overseas activities of opponents of Islam very closely in other countries, they may easily be aware of the fact that she participates in the activities of the Association of Iranian Women in Montreal, and that this places her at risk of persecution and detention in Iran. According to the author, all political opposition to the regime is severely punished in Iran, where women's rights are violated in many ways, such as stoning, flogging, arbitrary detention for prolonged periods, summary executions, disappearances and the routine use of torture. The author affirms that her political activities in Canada constitute new facts which have arisen subsequently to the IRB decision and which the deciding officer failed to take into account in either the PRRA or the application for permanent residence on humanitarian grounds decisions. The officer in question ruled that the correspondence from the Association of Iranian Women in Montreal that had been submitted in evidence did not prove that the organization was perceived as an opposition group by the Iranian authorities, whereas the said letters expressly stated that the author's participation in the activities of the association raised fears for the author's life in Iran, a country where demands for equality between men and women are deemed a threat to national security. The author is therefore justified in considering that the deciding officer violated her right to equality before the law without any discrimination on the ground of sex (articles 2 and 26 of the Covenant) and her right to freedom of opinion and expression without fear of reprisal (articles 7, 9, paragraph 1, 13 and 19 of the Covenant), in addition to the violation of article 14, paragraph 1, of the Covenant, due to the bias shown by the CIC deciding officer. The author justifies her allegation of bias by the fact that it was that same officer who had refused the applications for both PRRA and permanent residence on humanitarian grounds. The officer was prejudiced against the author and female opponents of the Iranian regime, which had led him to draw unreasonable and biased conclusions that were contrary to the evidence.

3.4 Furthermore, the author considers that the PRRA decision of 15 January 2007 and the Federal Court judgement rejecting her application for judicial review of that decision were handed down without due account being taken of the evidence submitted. Consequently, the PRRA procedure was in violation of her right to be heard before an independent and impartial tribunal. The author adds that neither PRRA requests nor applications for permanent residence on humanitarian grounds are effective remedies. Under the Immigration and Refugee Protection Act, the evidence admissible in PRRA applications was limited to items arising after the rejection of the asylum application. In the application for permanent residence on humanitarian grounds, on the other hand, the decision was taken by a minister on purely humanitarian and not therefore legal grounds.

3.5 Lastly, the author points out that her removal to Iran would entail a severe risk of deterioration of her already fragile state of health. The psychological assessment report of February 2008 certifies that the author suffers from post-traumatic stress, anxiety and depression symptoms due to her arrest in Iran, aggravated by the threat of removal. According to the author, the deciding officer in the case of her application for permanent residence on humanitarian grounds arbitrarily rejected the psychological assessment report, which raises a reasonable suspicion of bias on his part.

**State party's observations on admissibility and the merits**

4.1 In a note verbale dated 30 April 2009, the State party argues that it is under no obligation to refrain from returning the author to Iran even if there is a risk of a violation by Iran of the rights referred to in articles 9, 19 and 26 of the Covenant, read in conjunction with article 2. States parties to the Covenant should not be held responsible for violations that do not have the degree of gravity and irrevocability of a violation of articles 6 or 7 of the Covenant. The State party therefore maintains that the allegations of violations of articles 2, 9, 19 and 26 of the Covenant fall outside the Committee's subject-matter jurisdiction, pursuant to article 3 of the Optional Protocol. The State party adds that the author has at all events failed to demonstrate a *prima facie* violation of the articles in question.

4.2 The State party recalls that article 2 of the Covenant does not establish an independent right to reparation but merely defines the scope of States parties' legal obligations.

4.3 The State party contends that the communication is inadmissible under article 2 of the Optional Protocol with regard to the author's allegation related to article 7 of the Covenant, since the author has failed to demonstrate that she faces a real and personal risk of being tortured or subjected to cruel, inhuman or degrading treatment if returned to Iran. More specifically, the author's allegation that she was facing charges of maintaining an unlawful relationship was not deemed credible and she failed to demonstrate that she had criticized the Iranian regime either before or after leaving the country. Thus the author was unable to provide basic information to corroborate either the existence of her cousin, her arrest in Iran or the charges brought against her, given that it was not possible to verify the authenticity of the photocopy of the summons to appear in court in Iran. Furthermore, the author failed to provide a reasonable explanation for her delay in leaving Iran, despite the fact that she was in possession of a valid passport and an exit visa. The Canadian authorities have ascertained that, in any event, conducting an unlawful relationship in Iran is punishable by flogging, not stoning, which applies only to adultery. However, the author fails to demonstrate that she runs a personal risk of flogging if returned. With regard to the author's activities with the Montreal Association of Iranian Women in Canada, the Canadian authorities have concluded that there is nothing to suggest that the Montreal Association of Iranian Women as a group is opposed to the regime in Iran: rather its objective is to promote the integration and rights of Iranian women in Canada. Moreover, there appears to be no evidence to confirm that the author has taken part in activities opposed to the Iranian regime. The State party concludes that the fact that discrimination and violence against women are widespread in Iran does not mean that the author is personally at risk of being subjected to the treatment or punishment to which article 7 of the Covenant refers. The State party adds that the author holds a university degree, that she held a job in Iran prior to departing and that she has liberal parents who are still living there. According to the State party, there would be nothing to prevent the author from returning to live in Iran.

4.4 With regard to article 13, the State party argues that the author had the opportunity to challenge her expulsion on three occasions: firstly, before IRB (including the opportunity to be heard by IRB members), and then when submitting her PRRA request and her application for permanent residence on humanitarian grounds. The State party points out that the deciding officers dealing with the asylum, PRRA and permanent residence on humanitarian grounds applications considered all the evidence submitted by the author but concluded that the author's allegations lacked credibility.

4.5 The State party recalls that the purpose of the PRRA process is to determine the risks to which a person subject to a removal order is exposed by examining any fresh items of evidence that might substantiate those risks. The State party recalls that the Committee

has concluded on several occasions that the PRRA process does constitute a useful and effective remedy. In the event, after considering all the items of evidence submitted by the author, the officer dealing with the PRRA application concluded that they did not constitute grounds for refuting the IRB decision.

4.6 The State party points out that it is well established in Canadian case law that the fact that a same officer makes the decisions in both a PRRA and a permanent residence on humanitarian grounds application is not grounds to suspect bias in the treatment of the applications. In the case of the latter application, the officer carefully considered all the evidence, including the items of evidence initially submitted and the documentary evidence regarding the status of women in Iran, and concluded that the author did not face a substantiated risk to her safety and liberty in Iran.

4.7 With regard to the request for leave to apply for judicial review of the IRB decision, the State party points out that, as the Committee against Torture has recognized,<sup>2</sup> this remedy is not a mere formality, since the Court looks at the substance of a case so long as the applicant can show that the case is defensible, which the author has not succeeded in doing. The State party maintains that the author is seeking to obtain a review of the Canadian authorities' decisions; however, unless decisions handed down in domestic courts are patently unreasonable, it is not for the Committee to review them. The State party concludes that the author's complaint under article 13 is inadmissible under article 2 of the Optional Protocol, given the absence of a prima facie violation.

4.8 According to the State party, the communication is inadmissible under article 2 and article 3 of the Optional Protocol with respect to article 14 of the Covenant, since it is not the latter article, but article 13, which applies to proceedings involving the removal of an alien, besides which the author fails to establish a prima facie violation.

4.9 With regard to the alleged violations of the provisions of the Convention on the Elimination of All Forms of Discrimination against Women, the State party points out that the Committee is not competent to rule on such violations.

4.10 For all the reasons set out above, the State party requests that the Committee find the communication inadmissible and, subsidiarily, unfounded.

#### **Author's comments on the State party's observations**

5.1 The author commented on the State party's observations on 21 September 2009. She notes firstly that the deportation officer instructed her to go to the Iranian Embassy in Canada to request travel documents, despite her justifiable fears for her safety if she appeared at the Embassy in person.

5.2 The author affirms that she is not asking the Committee to act as a fourth jurisdiction to review the facts and evidence. Rather, she is challenging the serious irregularities that were committed in her case due to manifest errors, abuse of process and bias on the part of the deciding officers.

5.3 The author recalls that Canadian case law expressly establishes that asylum-seekers benefit from a presumption of credibility, which is rebuttable only if there are reasons to doubt it. According to that case law, IRB should not cite a lack of corroborating evidence as grounds to conclude that the allegations of an asylum-seeker are not credible. The author adds that the request for authorization to apply for judicial review of the decision not to

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<sup>2</sup> The State party cites the decisions of the Committee against Torture in *T.A. v. Canada*, communication No. 273/2005, decision of 15 May 2006, para. 6.3; and *L.Z.B. v. Canada*, communication No. 304/2006, para. 6.6.

grant her permanent residence on humanitarian grounds, handed down on 27 June 2008, was rejected by the Federal Court without reasons. She contends that the officer considering the request for PRRA is not bound by the IRB conclusions regarding credibility and can re-examine the entire file, which was not done in the case in hand.

#### **Additional observations by the State party**

6.1 On 17 September 2010, the State party informed the Committee that it had undertaken additional research through the Canadian Embassy in Iran to verify the authenticity of the photocopy of the Iranian court summons submitted by the author, and it turns out that there is no section 14 within the region 2 court in Fardis, to which, according to the document, the author had been summoned to appear, nor was there one in 2006 when the summons was issued. This finding corroborates the conclusions reached by CIC, namely that its research showed that in criminal proceedings in Iran summons are never addressed to a family but only to the individual concerned. CIC research also showed that if a person summoned does not appear in court on the specified date the court may pass sentence in absentia.

6.2 The State party points out that it agreed not to remove the author while her case was being considered by the Committee and that no attempt was made to induce her to visit the Iranian Embassy to request travel documents.

6.3 The State party reiterates its initial reservations regarding the admissibility and merits of the communication.

#### **Issues and proceedings before the Committee**

##### *Consideration of admissibility*

7.1 Before considering a complaint contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant on Civil and Political Rights.

7.2 The Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement and that all available domestic remedies have been exhausted. Accordingly, the Committee considers that the requirements of article 5, paragraphs 2 (a) and (b), of the Optional Protocol are met.

7.3 The Committee must decline jurisdiction with regard to the author's submission under the Convention on the Elimination of All Forms of Discrimination against Women and finds it inadmissible under article 3 of the Optional Protocol.

7.4 With regard to the alleged violation of article 2 of the Covenant, the Committee takes note of the State party's argument that this allegation is inadmissible since article 2 may not be invoked independently. In this case, the Committee is of the view that the alleged violations which relate solely to article 2 of the Covenant are inadmissible under article 2 of the Optional Protocol. However, it notes that the author invoked this article in relation to article 26 and will therefore consider the alleged violation of article 2 read in conjunction with article 26.

7.5 The Committee notes that the author submits she is a victim of a violation of article 26 owing to the alleged discrimination she was subjected to as a woman during asylum proceedings, but without substantiating this allegation. She has failed to show in what way the process used to determine whether or not she was eligible for refugee status was discriminatory due to the fact that she was a woman. The Committee is therefore of the opinion that the allegation is inadmissible under article 2 of the Optional Protocol.



7.6 The Committee also notes that the author has not substantiated her application under articles 9 and 19 of the Covenant and therefore finds it inadmissible under article 2 of the Optional Protocol.

7.7 With regard to the author's allegations under articles 13 and 14, the Committee recalls that the guarantees of impartiality, fairness and equality enshrined in article 14, paragraph 1, and article 13 of the Covenant must be respected by all bodies exercising a judicial function.<sup>3</sup> However, the Committee takes note of the State party's observations that the author had the opportunity to make representations challenging her removal on three occasions, including in the course of a hearing. The Committee further observes that both IRB and CIC considered the facts and the items of evidence submitted by the author in detail and that the decisions of both bodies were in turn reviewed by the Federal Court. The Committee therefore considers that the author has not substantiated this part of her complaint for purposes of admissibility and finds it inadmissible under article 2 of the Optional Protocol.

7.8 With regard to article 7 of the Covenant, the Committee recalls that States parties must not expose individuals to the risk of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by virtue of their extradition, expulsion or refoulement.<sup>4</sup> The Committee recalls that, generally speaking, it is for the organs of States parties to the Covenant to review or evaluate facts and evidence in order to determine whether such a risk exists.<sup>5</sup> In the case in hand, the Committee observes that both IRB and CIC examined all written and oral evidence provided by the author in detail but concluded that this evidence was insufficient to substantiate the facts on which the risks invoked were based and that the author's allegations therefore lacked credibility. This conclusion was confirmed by extensive verifications conducted on both the author's past experience in Iran and her activities in Canada with the Montreal Association of Iranian Women. The Canadian authorities consequently concluded that the author did not face a real risk of being subjected to the treatment to which article 7 refers. Moreover, the Committee considers that the author has failed sufficiently to substantiate her submission based on allegations that the proceedings suffered from evident flaws and therefore finds it inadmissible under article 2 of the Optional Protocol.

8. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under article 2 and article 3 of the Optional Protocol;
- (b) That this decision shall be transmitted to the State party and to the author of the communication.

[Adopted in English, French and Spanish, the French text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

<sup>3</sup> See general comment No. 32 (art. 14), decision of 23 August 2007, para. 7; and the Committee's decision on admissibility in *Everett v. Spain*, communication No. 961/2000, decision of 9 July 2004, para. 6.4.

<sup>4</sup> See general comment No. 20 (art. 7), decision of 10 March 1992, para. 9; see also the Committee's decisions on admissibility in *A.C. v. the Netherlands*, communication No. 1494/2006, decision of 22 July 2008, para. 8.2; *Khan v. Canada*, communication No. 1302/2004, decision of 25 July 2006, para. 5.4; and *P.K. v. Canada*, communication No. 1234/2003, decision of 20 March 2007, para. 7.2.

<sup>5</sup> See the Committee's decision in *Pillai et al v. Canada*, communication No. 1763/2008, decision of 25 March 2011, para. 11.2.