



**Submission by the Office of the United Nations High Commissioner for Refugees
in the case of *M.I. v. Switzerland* (Appl. No. 56390/21)
before the European Court of Human Rights**

1. Introduction*

1.1. The Office of the United Nations High Commissioner for Refugees ('UNHCR' or 'the Office') has been entrusted by the General Assembly of the United Nations with the mandate to provide international protection to refugees and, together with governments, seek solutions for them.¹ UNHCR is also responsible for supervising the application of international conventions for the protection of refugees.² The Office welcomes the opportunity to intervene in this case, as granted by the European Court of Human Rights ('the Court') by its letter of 9 September 2022.

1.2. In this submission, UNHCR outlines the Swiss legal framework and practice in relation to the assessment of asylum claims based on sexual orientation and/or gender identity (Part 2) and provides its authoritative interpretation of the relevant principles of international and European law on this topic, in particular on the so-called concealment reasoning (Part 3). In a separate Annex, the Office is sharing with the Court up-to-date country of origin information regarding the treatment of lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ+) persons³ in Iran.

2. The legislative framework and practice regarding the assessment of asylum claims based on sexual orientation and/or gender identity in Switzerland

2.1. Legislative framework

2.1.1. According to Article 2 of the Swiss Asylum Act of 26 June 1998 ('AsylA'),⁴ Switzerland grants asylum to applicants who fulfil the refugee definition in Article 3 AsylA. Asylum includes the right to stay in Switzerland⁵ and a status in accordance with the 1951 Convention relating to the Status of Refugees and its 1967 Protocol ('1951 Convention'). Switzerland is a State Party to both instruments.⁶

* This submission does not constitute a waiver, express or implied, of any privilege or immunity which UNHCR and its staff enjoy under applicable international legal instruments and recognized principles of international law. United Nations General Assembly (UNGA), *Convention on the Privileges and Immunities of the United Nations*, 13 February 1946, www.refworld.org/docid/3ae6b3902.html.

¹ UNGA, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), para. 1, www.refworld.org/docid/3ae6b3628.html.

² *Ibid.* para. 8(a); Article 35 *Convention relating to the Status of Refugees*, 28 July 1951, UNTS, vol. 189, p. 137, www.refworld.org/docid/3be01b964.html; Article II *Protocol Relating to the Status of Refugees*, 31 January 1967, UNTS, vol. 606, p. 267, www.refworld.org/docid/3ae6b3ae4.html.

³ While the acronym LGBTIQ+ and its constituent terms (lesbian, gay, bisexual, transgender, intersex, queer and other diverse identities) are now used globally to describe persons with non-conforming sexual orientation, gender identity or expression and sex characteristics (SOGIESC), these terms are culturally specific and are not always used by asylum-seekers and refugees to describe themselves. What is considered respectful terminology varies across countries, regions, linguistic communities and individuals. UNHCR uses LGBTIQ+ as an umbrella term to include all persons whose SOGIESC is not adequately addressed by the categories of lesbian, gay, bisexual, transgender and intersex, in particular persons whose gender identity is fluid or non-binary. For more information on terminology, see UNHCR, 2021 Global Roundtable LGBTIQ+ Persons in Forced Displacement and Statelessness: Protection and Solutions – Discussion Paper, 4 June 2021, Annex III, **Error! Hyperlink reference not valid.** <https://www.refworld.org/pdfid/611e16944.pdf>.

⁴ See Asylum Act of 26 June 1998 (Asylgesetz; SR 142.31 [systematic report] – AsylA).

⁵ See Article 2(2) AsylA.

⁶ States parties to the 1951 Refugee Convention including reservations and declarations: <https://www.unhcr.org/5d9ed32b4>, and States parties to its 1967 Protocol including reservations and declarations: <https://www.unhcr.org/5d9ed66a4>.

2.1.2. The Swiss State Secretariat for Migration (SEM) is responsible for refugee status determination. Negative decisions can be appealed before the Federal Administrative Court (FAC), against which no further ordinary legal remedy exists.

2.1.3. Article 3(1) AsyIA defines refugees as ‘persons who in their native country or in their country of last residence are subject to serious disadvantages or have a well-founded fear of being exposed to such disadvantages for reasons of race, religion, nationality, membership of a particular social group or due to their political opinions’. Despite some differences in the wording, Article 3(1) AsyIA broadly transposes the refugee definition of the 1951 Convention into the Swiss legal system.⁷ According to Article 3(2) AsyIA, the term ‘serious disadvantages’ includes ‘a threat to life, physical integrity or freedom as well as measures that exert intolerable psychological pressure’. Article 3(2) AsyIA also refers to reasons for flight specific to women,⁸ which in practice are interpreted more broadly as gender-specific grounds for flight and are also applied to LGBTIQ+ individuals.⁹

2.1.4. Article 3(4) AsyIA excludes most *sur place* claims from the national refugee definition and from asylum. Applicants falling under this clause are protected against *refoulement* and receive temporary admission according to Article 3(4) AsyIA in conjunction with Article 83(3) of the Foreign Nationals and Integration Act (FNIA).¹⁰ Applicants who do not meet the refugee definition contained in Article 3 AsyIA but for whom the enforcement of removal is not possible, not permitted or unreasonable, will also be granted temporary admission according to Article 83(1) FNIA. Removal is not permitted if it would be prohibited by Switzerland’s obligations under international law, such as Article 3 of the European Convention on Human Rights (ECHR).

2.2. The relevant practice

2.2.1. Over the past years, Switzerland has increasingly recognized gender-specific reasons for flight. This is evidenced by the SEM Handbook on Gender-related Persecution.¹¹ The SEM Handbook is largely in line with relevant international standards and provides interpretative guidance to decision-makers taking into account relevant legal provisions, doctrine, case law, and practice.

2.2.2. Referring *inter alia* to UNHCR’s Guidelines on International Protection No. 9 on Claims to Refugee Status based on Sexual Orientation and/or Gender Identity,¹² the SEM Handbook recognizes that ‘sexual orientation and gender identity [...] are fundamental constituents of human identity, analogous to the five grounds at the core of the refugee definition’¹³ and may therefore constitute grounds for serious disadvantages. The SEM Handbook lists people exposed to persecution based on sexual orientation, gender identity and expression, or sex characteristics (SOGIESC) among the seven groups which are recognized as a particular social group in accordance with Article 3(1) AsyIA.¹⁴ Other Convention grounds may apply depending on the individual case. The SEM Handbook also

⁷ The term ‘serious disadvantages’ is in principle interpreted analogously to the term ‘persecution’ contained in Article 1(A)(2) of the 1951 Convention.

⁸ Article 3(2) AsyIA: ‘Sont notamment considérées comme de sérieux préjudices la mise en danger de la vie, de l’intégrité corporelle ou de la liberté, de même que les mesures qui entraînent une pression psychique insupportable. Il y a lieu de tenir compte des motifs de fuite spécifiques aux femmes’ (official French version) :

<https://www.fedlex.admin.ch/eli/cc/1999/358/fr>. ‘Serious disadvantages include a threat to life, physical integrity or freedom, as well as measures that exert intolerable psychological pressure. Motives for seeking asylum specific to women must be taken into account.’ (English is not an official language of the Swiss Confederation and that this translation is provided for information purposes only and has no legal force): <https://www.fedlex.admin.ch/eli/cc/1999/358/en>.

⁹ This approach has been a longstanding practice of the SEM and is expressed in its handbook: SEM, *Asylum and Return Manual*, Article D2.1: *Gender-related persecution*, 27 July 2020, p. 4, www.sem.admin.ch/dam/sem/fr/data/asyl/verfahren/hb/d/hb-d2-f.pdf.download.pdf/hb-d2-f.pdf.

¹⁰ Federal Act on Foreign Nationals and Integration of 16 December 2005 (Bundesgesetz über Ausländerinnen und Ausländer und über die Integration, SR 142.20 [systematic report] – FNIA).

¹¹ SEM, *Asylum and Return Manual*, Article D2.1, note 9 above, p. 9.

¹² UNHCR, *Guidelines on International Protection No 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A (2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of refugees*, 23 October 2012, www.refworld.org/docid/50348afc2.html.

¹³ SEM, *Asylum and Return Manual*, Article D2.1, note 9 above, p. 9.

¹⁴ *Ibid.*, pp. 9-10.

underlines that the rejection of such claims cannot be based on the argument that persecution can be avoided ‘by adopting a more discreet or less ostentatious lifestyle (‘discretion’)’.¹⁵

2.2.3. When examining asylum claims based on SOGIESC, the SEM takes a case-by-case approach and examines whether the individual applicant meets the criteria of Article 3 AsylA. The concept of ‘group persecution’ (*Kollektivverfolgung*), which allows for the recognition of the refugee status of entire groups, has never been applied to groups persecuted on the grounds of their sexual orientation and/or gender identity. Despite the fact that severe penalties are in effect applied to LGBTIQ+ individuals in Iran, the concept of group persecution has been explicitly rejected by the FAC,¹⁶ based on the reasoning that not every LGBTIQ+ person in Iran is subjected to serious disadvantages.¹⁷

2.2.4. Under the Swiss jurisprudence and practice, the threshold for demonstrating serious disadvantages relating to SOGIESC is very high and requires a direct and serious danger of death, bodily harm consisting of serious (physical or psychological) injuries, or a threat to freedom consisting of detention of a certain duration and/or risks of ill-treatment in detention.¹⁸ Repeated or combined official controls, harassment, arbitrary detention, humiliation and ill-treatment carried out by non-state actors, for example, do not suffice.¹⁹ Serious disadvantages exist if same-sex conduct is punishable with a custodial sentence and if the punishment is applied in practice. Threats of punishment are not sufficient; there needs to be a regular practice of judicial decisions.²⁰ It is not necessary that criminal law provisions are tailored towards same-sex conduct; the application of general criminal law provisions, such as immorality and offences against the public order, or the prohibition of extramarital relationships against LGBTIQ+ individuals would suffice.²¹

2.2.5. If this threshold is not met, the asylum-seeker needs to demonstrate that the cumulation of the feared disadvantages amounts to unbearable psychological pressure. The requirements are demanding. The applicants must be systematically exposed to serious or repeated violations of their fundamental rights, which have such an intensity that a life in dignity is no longer possible, and they are forced to flee.²² For example, it is recognized that a combination of criminal liability for same-sex conduct in private, an increasing number of arrests, social discrimination combined with police action may amount to an unbearable psychological pressure.²³ The applicant needs to provide objective evidence of such factors, which often places an excessive burden of proof on people who are unable to live freely with their gender identity and/or sexual orientation in their community.

2.2.6. In relation to asylum applications from countries where the SEM recognizes that the consequences of one’s sexual orientation and/or gender identity amounts to serious disadvantages, the SEM will examine whether the fact of a particular individual’s sexual orientation and/or gender identity became known to potential persecutors. This has been found, for example, in cases involving gay men in Iran, where same-sex conduct is punished with the death penalty.²⁴

¹⁵ *Ibid.*, p. 10.

¹⁶ Federal Administrative Court, *Decision D-7284/2006*, 31 March 2009, E. 5.2; Federal Administrative Court, *Decision D-891/2013*, 17 January 2014, E. 5; Federal Administrative Court, *Decision E-6640/2018*, 16 May 2019, E. 6.1.3; Federal Administrative Court, *Decision D-6384/2019*, 9 April 2020, E. 4.1.

¹⁷ Federal Administrative Court, *Decision E-1284/2015*, 17 May 2017, E. 5.4.2; Federal Administrative Court, *Decision E-6768/2018*, 20 March 2020, E. 5.5.2.

¹⁸ Federal Administrative Court, *Decision D-5947/2010*, 18 August 2011, E. 3.3.

¹⁹ Federal Administrative Court, *Decision E-6768/2018*, 20 March 2020, E. 5.3; Federal Administrative Court, *Decision D-891/2013*, 17 January 2014, E. 6.4; Federal Administrative Court, *Decision D-5585/2017*, 12 September 2019, E. 8.2.2 ff.

²⁰ Federal Administrative Court, *Decision D-7524/2015*, 22 November 2017, E. 5.1 ff.

²¹ Federal Administrative Court, *Decision D-6539/2018*, 2 April 2019, E. 7.5.

²² Federal Administrative Court, *Decision E-6021/2012*, 7 July 2014, E. 4.4. For example, assaults and discrimination in relation to employment, housing and medical care, coupled with criminal liability for same-sex conduct do not constitute intolerable psychological pressure, Federal Administrative Court, *Decision D-5585/2017*, 12 September 2019, E. 8.2.3.

²³ Federal Administrative Court, *Decision D-6539/2018*, 2 April 2019, E.8.2; Federal Administrative Court, *Decision D-6722/2017*, 12 August 2020, E.6.7 and 6.8.

²⁴ Federal Administrative Court, *Decision D-5870/2019*, 2 June 2021, E.8.5.

2.2.7. Prior to this Court's decision in *B. and C. v. Switzerland*,²⁵ the SEM examined by default whether concealment would amount to unbearable psychological pressure. It also assessed whether its consequences made it objectively unreasonable to remain in the country of origin, if the applicants were not able to show that their sexual orientation was known; and/or that they were already subjected to serious disadvantages. This line of reasoning was in principle abolished after the *B. and C.* judgment and the SEM Handbook was adapted accordingly to reflect the Court's judgment. However, the practice of the SEM, as well as that of the FAC, remains inconsistent.

2.2.8. Some SEM adjudicators continue to hold the view that sexual orientation is a private matter²⁶ and that applicants can be expected to conceal their sexual orientation²⁷ (or their religion)²⁸ to avoid persecution. The decisions do not recognize that sexual orientation forms part of a person's individual identity and cannot be reduced to same-sex conduct. The FAC, which is also still using this argument, has recently nuanced its position. It now recognizes that concealment should not be required where such concealment would amount to an 'unbearable psychological pressure'. The FAC held that a person at risk of persecution because of their sexual orientation or gender identity may fall outside the refugee definition, despite the need for concealment to avoid persecution.²⁹ There are no uniform benchmarks for determining whether the applicant faces 'unbearable psychological pressure' that would bring them within the refugee definition.³⁰ Relevant factors are the risk of discovery and the severity of State and private persecution in the event of discovery.³¹ The greater the risk of discovery and the more serious the sanctions by state or non-state actors, the more likely it is to be found that the person is under unbearable psychological pressure.³²

2.2.9. The FAC's jurisprudence varies. In cases concerning transgender persons who were forced to live a socially expected role that they could not fulfil, under the threat of severe sanctions if discovered, the FAC found that this constitutes unbearable psychological pressure.³³ The FAC continues to hold that whether discretion qualifies as intolerable psychological pressure within the meaning of Article 3(2) AsyIA must be examined on a case-by-case basis.³⁴ In the case of a gay man from Iraq, the necessity of hiding his sexual orientation out of fear of strict legal sanctions, which were actually implemented, was considered a situation amounting to unbearable psychological pressure.³⁵ Conversely, in a more recent decision, the FAC expected a certain level of discretion from other gay asylum-seekers from Iraq.³⁶

2.2.10. The disclosure of one's sexual orientation in Switzerland is partly regarded as a subjective *sur place* claim in the sense of Article 54 AsyIA, which is excluded from asylum according to Article 3(4) AsyIA.³⁷ In cases where the request for asylum was rejected, the SEM examines whether there are other obstacles against removal, such as under Article 3 ECHR. However, when asylum has been rejected based on the argument that the applicant can exercise discretion, the Article 3 ECHR risk is rejected based on the same reasoning.³⁸

3. Relevant principles of international and European law on the determination of international protection needs of LGBTIQ+ individuals

3.1. The principle of *non-refoulement* under international refugee and human rights law

²⁵ *B. and C. v. Switzerland*, (Applications nos. 889/19 and 43987/16), Council of Europe: European Court of Human Rights, 17 November 2020: www.refworld.org/cases/ECHR_5fb4dd1b4.html.

²⁶ Federal Administrative Court, *Decision E-3401/2006*, 20 July 2009, E. 4.3.5.

²⁷ Federal Administrative Court, *Decision D-5585/2017*, 12 September 2019, E.8.2.2; Federal Administrative Court, *Decision D-3969/2018*, 26 August 2019, E. 5.2.

²⁸ Federal Administrative Court, *Decision D-4759/2019*, 7 October 2019, E. 4.2.1.

²⁹ Federal Administrative Court, *Decision E-223/2021*, 8 February 2021, E. 6.4; Federal Administrative Court, *Decision E-2109/2019*, 28 August 2020, E. 10.2.

³⁰ Federal Administrative Court, *Decision D-6539/2018*, 2 April 2019, E.8.2.

³¹ Federal Administrative Court, *Decision D-4952/2014*, 23 August 2019, E. 7.7.3; Federal Administrative Court, *Decision D-6539/2018*, 2 April 2019, E. 8.2.

³² Federal Administrative Court, *Decision D-6539/2018*, 2 April 2019, E.8.2.

³³ Federal Administrative Court, *Decision D-1219/2019*, 19 July 2022, E. 8.5.

³⁴ Federal Administrative Court, *Decision D-1219/2019*, 19 July 2022, E. 8.2.

³⁵ Federal Administrative Court, *Decision D-6539/2018*, 2 April 2019, E.8.6.

³⁶ Federal Administrative Court, *Decision E-223/2021*, 8. February 2021, E.6.4.

³⁷ SEM, *Asylum and Return Manual*, Article D2.1, note 9 above, p. 10.

³⁸ Federal Administrative Court, *Decision D-5870/2019*, 2 June 2021, E.13.3.

3.1.1. The right to seek and enjoy asylum is a basic human right under Article 14(1) of the Universal Declaration of Human Rights,³⁹ and is supported by the legal framework of the 1951 Convention.⁴⁰

3.1.2. Central to the right to seek asylum is the principle of *non-refoulement*. The obligation of States not to expel or return (*refouler*) individuals to territories where their life or freedom would be threatened is the cornerstone of international refugee law, most prominently expressed in Article 33 of the 1951 Convention, prohibiting States from expelling or returning refugees, in any manner whatsoever, to a territory where they would be at risk of threats to life or freedom. The principle of *non-refoulement* constitutes an essential binding and non-derogable component of international refugee protection, which has been restated in international⁴¹ and regional human rights instruments and courts.⁴² It is a norm of customary international law and is consequently binding for all States.⁴³

3.1.3. Applying these legal principles to the situation of LGBTIQ+ individuals at risk of persecution, the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity⁴⁴ underline that ‘*States shall ensure that no person is removed, expelled or extradited to any State where that person may face a well-founded fear of torture, persecution, or any other form of cruel, inhuman or degrading treatment or punishment, on the basis of that person’s sexual orientation or gender identity*’.⁴⁵

³⁹ UNGA, *Universal Declaration of Human Rights*, 10 December 1948, www.refworld.org/docid/3ae6b3712c.html.

⁴⁰ On the right to seek and enjoy asylum, see, for instance, Inter-American Court of Human Rights, *Advisory Opinion OC-25/18 requested by the Republic of Ecuador*, 30 May 2018, paras 112 ff.,

www.refworld.org/cases.IACRTHR.5c87ec454.html. See also Inter-American Court of Human Rights, *Familia Pacheco Tineo v. Estado Plurinacional de Bolivia*, 25 November 2013, www.refworld.org/cases.IACRTHR.52c53b154.html.

⁴¹ An explicit *non-refoulement* provision is contained in Article 3 of the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UNTS, vol. 1465, p. 85: www.refworld.org/docid/3ae6b3a94.html, which prohibits the removal of individuals to a country where there are substantial grounds for believing that they would be in danger of being subjected to torture. Obligations under the ICCPR, as interpreted by the UN Human Rights Committee (HRC), also encompass the obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by Articles 6 (right to life) and 7 (right to be free from torture or other cruel, inhuman or degrading treatment or punishment) of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed, thereby recognizing that the relevant provisions of the ICCPR entail the prohibition of indirect *refoulement*. See UN HRC, *CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, 10 March 1992, para. 9: www.refworld.org/docid/453883fb0.html and UN HRC, *General comment No. 31 [80]: The nature of the general legal obligation imposed on States Parties to the Covenant*, 26 May 2004, para. 12: www.refworld.org/docid/478b26ae2.html.

⁴² The jurisprudence of this Court has held that *non-refoulement* is an inherent obligation under Article 3 ECHR, which ‘*prohibits in absolute terms torture and inhuman or degrading treatment or punishment irrespective of the circumstances and of the victim’s conduct*’. See ECtHR, Grand Chamber, *M.S.S. v. Belgium and Greece*, App. No. 30696/09, para. 218, 21 January 2011, www.refworld.org/docid/4d39bc7f2.html; ECtHR, Grand Chamber, *Hirsi Jamaa and Others v. Italy*, App. No. 27765/09, 23 February 2012, para. 114, www.refworld.org/cases.ECHR.4f4507942.html. See also, the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (Article II (3)), and the 1984 Cartagena Declaration on Refugees (section III (5)).

⁴³ UNHCR, *Note on the Principle of Non-Refoulement*, November 1997, <https://www.refworld.org/docid/438c6d972.html>; Elihu Lauterpacht and Daniel Bethlehem, ‘The Scope and Content of the Principle of non-refoulement: Opinion’ in Feller, Turk and Nicholson (eds.), *Refugee Protection in International Law: UNHCR’s Global Consultations on International Protection* (Cambridge University Press, 2003) 87 at 163-164, www.refworld.org/docid/470a33af0.html; UNHCR, *Declaration of States Parties to the 1951 Convention and or Its 1967 Protocol relating to the Status of Refugees*, 16 January 2002, para. 4, www.unhcr.org/protection/globalconsult/3c2306cc4/declaration-states-parties-1951-convention-and-or-its-1967-protocol-relating.html. See also concurring opinion of Judge Pinto de Albuquerque in the case of *Hirsi Jamaa and Others v. Italy*, note 42 above.

⁴⁴ International Commission of Jurists (ICJ), *Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity*, March 2007, www.refworld.org/docid/48244e602.html. The Yogyakarta Principles were adopted in 2007 by a group of human rights experts and, although not binding, reflect well-established principles of international law. They set out the human rights protection framework applicable in the context of sexual orientation and/or gender identity.

⁴⁵ *Ibid.*, Principle 23.

3.1.4. Refugee status determination is the legal process aimed at ascertaining whether a person is entitled to international protection, including protection from *refoulement*, and to the fundamental rights attached to such protection.⁴⁶ This assessment is of crucial relevance, as the consequences of an erroneous evaluation of an asylum claim are potentially dramatic for the person concerned. The seriousness of the repercussions of this examination has been highlighted by the jurisprudence of this Court, which underlined ‘*the irreversible nature of the damage which may result if the risk of torture or ill-treatment materialises*’.⁴⁷ In the same vein, the Court of Justice of the European Union (CJEU) has underlined that such assessment ‘*must, in all cases, be carried out with vigilance and care, since what are at issue are issues relating to the integrity of the person and to individual liberties, issues which relate to the fundamental values of the Union*’.⁴⁸

3.1.5. The 1951 Convention does not regulate refugee status determination procedures. However, States Parties need to grant asylum-seekers access to fair and efficient asylum procedures to give effect to the provisions contained in the Convention, including the prohibition on *non-refoulement*.⁴⁹ Moreover, derived from the legal duty to implement treaty obligations in good faith enshrined in Article 26 of the *Vienna Convention on the Law of Treaties*,⁵⁰ States Parties are reasonably expected to commit themselves to do whatever is within their ability to ensure the recognition of refugees.⁵¹ Moreover, they are bound to ascertain all the relevant facts of the individual asylum claim in order to identify and recognize refugees entitled to the benefits of the Convention.⁵²

3.1.6. Accordingly, the determination of whether an applicant has a well-founded fear of persecution (or faces a risk of other irreparable harm) is informed by the findings of fact on points that are material to the asylum claim.⁵³ In the same vein, with regard to Article 3 ECHR claims, the Court has held that national authorities need to establish whether there are substantial grounds for believing that the applicant faces a real risk of being subjected to treatment contrary to that provision.⁵⁴ It has also emphasized that the assessment of whether the ill-treatment in question attains a minimum level of severity depends ‘*on all the circumstances of the case*’.⁵⁵

3.1.7. Against this background, the evaluation of asylum claims based on SOGIESC should fully take into account the role of public and private actors of persecution and the extent of any protection that the claimants would enjoy upon return. Such assessment should also focus on the levels of social discrimination, access to social, economic and cultural rights, taking into consideration the cultural and intersectional nature of sexual orientation and gender identity, as well as the complex detrimental impact of criminalizing laws – both secular and religious

⁴⁶ For an overview of the application of the determination of refugee status, see Guy S. Goodwin-Gill, Jane McAdam, Emma Dunlop, *The Refugee in International Law* (4th ed., OUP 2021) Pt. 1, Ch. 3. See also, Marion Couldrey, Jenny Peebles (eds), *Recognising Refugees. Challenges and Innovations in Refugee Status Determination* (2020) 65 Forced Migr. Rev. 4-59. Given its crucial importance, refugee status determination has been defined as the ‘gateway to refugeehood’, see Cathryn Costello, *On Refugeehood and Citizenship* in A. Shachar, R. Bauböck, I. Bloemraad, M. Vink (eds), *The Oxford Handbook of Citizenship* (OUP 2017).

⁴⁷ ECtHR, *M.S.S. v. Belgium and Greece*, note 42 above, para. 293.

⁴⁸ CJEU, Grand Chamber, *Salahadin Abdulla and Others v. Bundesrepublik Deutschland*, Joined Cases C-175/08, C-176/08, C-178/08 and C-179/08, 2 March 2010, para. 90, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62008CJ0175&from=EN>.

⁴⁹ Executive Committee of the High Commissioner’s Program, *ExCom Conclusion: Safeguarding Asylum No. 82 (XLVIII)*, 17 October 1997, para. (d)(ii), <https://www.refworld.org/docid/3ae68c958.html>.

⁵⁰ *Vienna Convention on the Law of Treaties*, 23 May 1969, UNTS, vol. 1155, p. 331: www.refworld.org/docid/3ae6b3a10.html.

⁵¹ James C. Hathaway and Michelle Foster, *The Law of Refugee Status* (2nd ed., CUP 2014) p. 119.

⁵² UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, April 2019, para. 29 and 205, www.refworld.org/docid/5cb474b27.html. See also UNHCR, *Interpreting Article 1 of the 1951 Convention Relating to the Status of Refugees*, April 2001, www.refworld.org/docid/3b20a3914.html, para. 8.

⁵³ UNHCR, *Beyond Proof. Credibility Assessment in EU Asylum Systems: Full Report*, May 2013, p. 28, www.refworld.org/docid/519b1fb54.html.

⁵⁴ ECtHR, Grand Chamber, *Mamatkulov and Askarov v. Turkey*, App. No. 46827/99 and 46951/99, 4 February 2005, para. 67, www.refworld.org/cases,ECHR,42d3ef174.html; ECtHR, Grand Chamber, *Ilias and Ahmed v. Hungary*, App. No. 47287/15, 21 November 2019, para. 124-126: www.refworld.org/cases,ECHR,5dd6b4774.html.

⁵⁵ ECtHR, *Hilal v. The United Kingdom*, App. No. 45276/99, 6 June 2001, para. 60: www.refworld.org/cases,ECHR,3deb99dfa.html.

- on everyday life.⁵⁶ Throughout this process, it is crucial that State authorities consider the unique vulnerability and specific needs of LGBTIQ+ asylum-seekers and refugees.⁵⁷

3.2. The irrelevance of concealment in the risk assessment

3.2.1. In various countries of the world, people are discriminated against, harassed, and abused on grounds of their sexual orientation, gender identity and expression, as well as of their sex characteristics. LGBTIQ+ individuals experience significant social pressure to hide or deny their authentic sexual orientation and/or gender identity. For this reason, they often do not live openly as LGBTIQ+ and some may not have had any intimate relationships.⁵⁸ Taking into account these behaviours, some administrative and judicial authorities make specific reference to concealment in refugee status determination proceedings and require LGBTIQ+ persons to restrain the free expression of their identity to avoid persecution in case of return in their country of origin.⁵⁹

3.2.2. UNHCR has repeatedly underlined that a ‘*proper analysis as to whether a LGBTI applicant is a refugee under the 1951 Convention needs to start from the premise that applicants are entitled to live in society as who they are and need not hide who they are*’.⁶⁰ The fact that an applicant may be able to avoid persecution by concealing or exercising ‘restraint’, or has done so in the past, is not a valid reason to deny refugee status. Applicants cannot be denied asylum based on the requirement that they hide their identity, opinions or characteristics in order to avoid persecution.⁶¹

3.2.3. In fact, the concealment of one’s sexual orientation does not merely require individuals to ‘be discreet’, but to live a lie for what concerns a fundamental aspect of their identity, while facing serious sanctions should their identity be discovered. In this respect, it is relevant to recall that the 2017 Yogyakarta Principles +10 explicitly provide that States shall ‘*ensure that no person is denied asylum on the basis that a person may conceal or change their sexual orientation, gender identity, gender expression or sex characteristics in order to avoid persecution*’.⁶²

3.2.4. The requisite analysis concerns what predicament applicants would face if they were returned to their countries of origin. Even if LGBTIQ+ individuals may so far have managed to avoid harm through concealment, their circumstances may change over time and secrecy may not be an option for the entirety of their lifetime. The risk of discovery may also not necessarily depend solely on their own conduct. It may result from rumours, growing suspicions, or even by accident.⁶³ Moreover, even if LGBTIQ+ individuals exercise discreet behaviour, they may still be at risk of exposure and related harm for not following heterosexual social norms (for example, getting married or having children). In fact, the absence of certain expected activities and behaviour identifies a difference between them and other people and may place them at risk of harm.⁶⁴ At the same time, it must be recalled that LGBTIQ+ people are as entitled to freedom of expression and association as others.⁶⁵

⁵⁶ UNHCR, *2021 Global Roundtable on Protection and Solutions for LGBTIQ+ People in Forced Displacement – Summary Conclusions*, 16 August 2021, p. 17: www.refworld.org/pdfid/611e20c77.pdf.

⁵⁷ *UN rights experts urge more protection for LGBTI refugees*. Joint OHCHR/UNHCR Press Release, 1 July 2019: www.ohchr.org/en/press-releases/2019/07/un-rights-experts-urge-more-protection-lgbti-refugees.

⁵⁸ UNHCR, *2021 Global Roundtable - Summary Conclusions*, note 56 above, p. 11.

⁵⁹ For a comparative overview of the notion of concealment in refugee status determination, see Janna Wessels, *The Concealment Controversy: Sexual Orientation, Discretion Reasoning and the Scope of Refugee Protection* (CUP 2021).

⁶⁰ UNHCR, *Intervention before the Supreme Court of the United Kingdom in the case of HJ (Iran) and HT (Cameroon) v. Secretary of State for the Home Department*, 19 April 2010, www.refworld.org/docid/4bd1abbc2.html.

⁶¹ UNHCR, *Guidelines on International Protection No. 9*, note 12 above, paras 30-31.

⁶² International Commission of Jurists (ICJ), *The Yogyakarta Principles Plus 10 - Additional Principles and State Obligation on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles*, 10 November 2017, Principle 23(F), www.refworld.org/docid/5c5d4e2e4.html.

⁶³ Australia, High Court, *Appellants S395/2002 and S396/2002 v. Minister for Immigration and Multicultural Affairs*, [2003] HCA 71, 9 December 2003, www.refworld.org/cases,AUS_HC,3fd9eca84.html.

⁶⁴ See UK Upper Tribunal (Immigration and Asylum Chamber), *SW (lesbians - HJ and HT applied) Jamaica v. Secretary of State for the Home Department*, CG [2011] UKUT 00251(IAC), 24 June 2011, www.refworld.org/cases,GBR_UTIAC,4e0c3fae2.html.

⁶⁵ UNHCR, *Guidelines on International Protection No. 9*, note 12 above, para. 31. In this respect, the Yogyakarta Principles No. 19 highlights that freedom of expression ‘*includes the expression of identity or personhood through speech, deportment, dress, bodily characteristics, choice of name, or any other means [...]*’.

3.2.5. Being compelled to conceal one's sexual orientation and gender identity is shaming and dehumanizing and may result in significant psychological harm, as it renders LGBTIQ+ individuals invisible and at risk of rejection, isolation, poor self-worth and even self-harm.⁶⁶ UNHCR highlights that a person's sexual orientation is as much part of personal identification as gender identity, and entails one's capacity to fully express their authentic sexual orientation in society without experiencing harm.⁶⁷ Discriminatory and disapproving attitudes may have a serious effect on the mental and physical health of LGBTIQ+ persons⁶⁸ and could lead to an intolerable situation amounting to persecution.⁶⁹

3.2.6. The case law of national and regional courts have confirmed that the requirement that a person conceal an aspect of their identity is inconsistent with respect for fundamental human rights. In *X., Y. and Z. v. Minister voor Immigratie en Asiel*,⁷⁰ the Court of Justice of the European Union (CJEU) applied for the first time to asylum cases based on sexual orientation its interpretation on the issue of concealment, which was previously developed in a case concerning religious persecution.⁷¹ The CJEU stated that '*requiring members of a social group sharing the same sexual orientation to conceal that orientation is incompatible with the recognition of a characteristic so fundamental to a person's identity that the persons concerned cannot be required to renounce it*'⁷² and that '*an applicant for asylum cannot be expected to conceal his homosexuality in his country of origin in order to avoid persecution*'.⁷³ In other words, according to the CJEU, the possibility of concealment and restraint in the expression of sexual orientation and/or gender identity is irrelevant to the determination of persecution.

3.2.7. This Court has also taken a clear stance on the issue of concealment in relation to Article 3 ECHR claims based on sexual orientation. In the cases of *I.K. v. Switzerland*⁷⁴ and *B. and C. v. Switzerland*,⁷⁵ the Court deemed concealment incompatible with the characterization of sexual orientation as fundamental to one's identity. Moreover, it underlined that concealment provides no guarantee against ill-treatment in case of return, irrespective of whether LGBTIQ+ individuals have successfully hidden their sexual orientation and/or gender identity in the past.

3.2.8. UNHCR recalls that in *B. and C. v. Switzerland*, the Court also discussed the role of public and private actors of persecution. The decision clarified that ill-treatment at the hand of members of national authorities may also take the form of persecutory acts carried out by 'rogue' officers⁷⁶, as highlighted by UNHCR in its Guidelines for International Protection No. 9.⁷⁷ Referencing the same Guidelines,⁷⁸ the Court affirmed that, while assessing asylum claims based on sexual orientation and/or gender identity, national authorities should take into consideration not only the risk of ill-treatment emanating from the family members of the applicant but also from

⁶⁶ UNHCR, *2021 Global Roundtable LGBTIQ+ – Discussion Paper*, note 3 above, p. 11.

⁶⁷ UNHCR, *2021 Global Roundtable - Summary Conclusions*, note 56 above, p. 15.

⁶⁸ Discrimination of LGBTIQ+ individuals has been associated with mental health issues. Studies have shown that internalized negative attitudes towards non-heterosexuality in LGBTIQ+ individuals were related to difficulties with self-esteem, depression, psychosocial and psychological distress, physical health, intimacy, social support, relationship quality, and career development. See APA, *Practice Guidelines for LGB Clients, Guidelines for Psychological Practice with Lesbian, Gay, And Bisexual Clients*, February 2021, www.apa.org/pi/lgbt/resources/guidelines.aspx?item=3.

⁶⁹ UNHCR, *YD (Algeria) v. Secretary of State for the Home Department: Skeleton Argument of the Intervener*, 21 February 2020, Appeal No. C5/2018/0718 (B), pp. 18 ff., www.refworld.org/docid/5f3cdf314.html.

⁷⁰ CJEU, *X., Y. and Z. v. Minister voor Immigratie en Asiel*, Joined Cases C-199/12 and C-201/12, 7 November 2013: www.refworld.org/cases_ECJ_527b94b14.html.

⁷¹ CJEU, Grand Chamber, *Bundesrepublik Deutschland v. Y. and Z.*, C-71/11 and C-99/11, 5 September 2012, paras 76-78: www.refworld.org/cases_ECJ_505ace862.html.

⁷² CJEU, *X., Y. and Z.*, note 70 above, para. 70.

⁷³ CJEU, *X., Y. and Z.*, note 70 above, para. 71. This landmark decision was later mentioned by Judge Power-Forde in her dissenting opinion to the ECtHR Chamber judgment of 26 June 2014 in the case of *M.E. v. Sweden*, App. No. 71398/12:

www.refworld.org/cases_ECHR_53ad73534.html, and by Judges Ziemele, De Gaetano, Pinto de Albuquerque and

Wojtyczek in a joint separate opinion annexed to the Grand Chamber judgment in the case of *F.G. v. Sweden*, App. No. 43611/11, www.refworld.org/cases_ECHR_56fd485a4.html, where they rebutted the assumption that the applicant would have been able to avoid persecution in his country of origin, would he have engaged in a discreet practice of his religion.

⁷⁴ See ECtHR, *I.K. v. Switzerland*, App. No. 21417/17, 19 December 2017, <https://hudoc.echr.coe.int/eng?i=001-180412>.

⁷⁵ See ECtHR, *B. and C. v. Switzerland*, note 25 above.

⁷⁶ *Ibid.*, para. 59.

⁷⁷ UNHCR, *Guidelines on International Protection No. 9*, note 12 above, para. 34.

⁷⁸ ECtHR, *B. and C. v. Switzerland*, note 25 above, para. 61.

other actors, such as the local community or the broader national society.⁷⁹ This is in line with the previous case law of the Court, which has repeatedly stated that ill-treatment caused by private actors would fall within the scope of Article 3 ECHR, if the authorities of the receiving State were not able to obviate the risk by providing protection.⁸⁰

3.2.9. The Court has also addressed the issue of concealment in the case of *A.A. v. Switzerland*, regarding the risk of ill-treatment the applicant would have been exposed to upon return to Afghanistan, following his conversion to the Christian faith. By analogy, the reasoning of the Court is of particular relevance in this case, as it highlighted that the expectation that the applicant should only practice his faith in private would have serious implications for him, since he would be forced to live a lie and be compelled to give up all relationships with other Muslims, out of fear of being discovered.⁸¹

3.2.10. A comparable approach on the issue of concealment has been adopted in various national jurisdictions.⁸² For instance, the Australia High Court held in *Appellant S395/2002* that:

‘persecution does not cease to be persecution for the purposes of the Convention because those persecuted can eliminate the harm by taking avoiding action within the country of nationality. The Convention would give no protection from persecution [...] if it was a condition of protection that the person affected must take steps – reasonable or otherwise – to avoid offending the wishes of the persecutors.’⁸³

Similarly, the Supreme Court of the United Kingdom addressed this matter in the leading case *HJ (Iran)*, where Lord Hope affirmed that sexual orientation is an immutable characteristic. More specifically, he noted that *‘to pretend that it does not exist, or that the behaviour by which it manifests itself can be suppressed, is to deny the members of this group their fundamental right to be what they are’*.⁸⁴

3.2.11. In line with the above-mentioned jurisprudence, UNHCR considers that the implementation of the concealment reasoning would undermine the fundamental protection safeguards provided by the 1951 Convention.

⁷⁹ UNHCR, *Guidelines on International Protection No. 9*, note 12 above, para. 35.

⁸⁰ See ECtHR, Grand Chamber, *H.L.R. v. France*, App. No. 24573/94, 29 April 1997: www.refworld.org/cases,ECHR,5034e6ec2.html.

⁸¹ ECtHR, *A.A. v. Switzerland*, App. No. 32218/17, 5 November 2019, para. 55, www.refworld.org/cases,ECHR,5dca98354.html.

⁸² Refugee Review Tribunal of Australia, *RRT Case No. 1102877* [2012] RRTA 101, 23 February 2012, para. 96, www.refworld.org/cases,AUS_RRT,4f8410a52.html: “[b]ased on the applicant’s past conduct, the Tribunal is of the view that he would be able to avoid the harm he fears by being discreet. However, the Tribunal cannot require a protection visa applicant to take steps and modify his conduct to avoid persecution [...]. The applicant had acted discreetly in the past because of the threat of harm. As noted by the High Court, in these cases it is the threat of serious harm with its menacing implications that constitutes the persecutory conduct”. See also United States Court of Appeals for the Ninth Circuit, *Geovanni Hernandez-Montiel v. Immigration and Naturalization Service*, US, 225 F.3d 1084, A72- 994-275, (9th Cir. 2000), 24 August 2000, www.refworld.org/cases,USA_CA_9,3ba9c1119.html; Refugee Status Appeals Authority of New Zealand, *Refugee Appeal No. 74665*, 7 July 2004, www.refworld.org/cases,NZL_RSAA,42234ca54.html; Supreme Court of Norway (Norges Høyesterett – Dom), *HR-2012-667-A*, 29 March 2012, www.refworld.org/cases,NOR_SC,50084d772.html; Council of State of France (Conseil d’Etat), *Mbwene*, No. 349824, 27 July 2012, www.legifrance.gouv.fr/ceta/id/CETATEXT000026230121; National Court of Asylum of France (Cour nationale du droit d’asile), *No. 634565*, 7 July 2009, www.refworld.org/docid/4dad9db02.html; Federal Administrative Court of Germany (Bundesverwaltungsgericht), *BVerwG 10 C20.12*, 20 February 2013, www.bverwg.de/200213U10C20.12.0. See also, Administrative Court (VG) Würzburg, 6. Kammer, *W 6 K 16.31039*, 15 February 2017, in BeckRS 2017, 10595; and Administrative Court (VG) Würzburg, 8. Kammer, *W 8 K 22.30051*, 27 May 2022, in BeckRS 2022, 16862, where the Court considered it legally unjustifiable (*‘unvertretbar’*) to expect concealment; Administrative Court (VG) Karlsruhe, 8. Kammer, *A 8 K 13288/17*, 11 May 2021, in BeckRS 2021, 22791. See further references in Thomas Spijkerboer, *Sexual identity, normativity and asylum*, in T. Spijkerboer (ed) *Fleeing homophobia. Sexual orientation, gender identity and asylum* (2013 Routledge), p. 232, n. 7.

⁸³ High Court of Australia, *Appellant S395/2002 v. MIMA* (2003) 216 CLR 473, 9 December 2003, www.refworld.org/cases,AUS_HC,3fd9eca84.html.

⁸⁴ UK Supreme Court, *HJ (Iran) and HT (Cameroon) v. Secretary of State for the Home Department*, [2010] UKSC 31, 7 July 2010, para. 11: https://www.refworld.org/cases,UK_SC,4c3456752.html.

3.3. Effective remedies in *non-refoulement* cases

3.3.1. This Court has often reiterated that, given the importance of Article 3 ECHR and the irreversible nature of the harm likely to be caused in the event of ill-treatment, it is the duty of national authorities to conduct a thorough and rigorous assessment to dispel any doubt concerning the fact that the specific asylum claim was ill-founded.⁸⁵ For this reason, under Article 13 ECHR, the effectiveness of a remedy ‘*imperatively requires*’ an independent and careful scrutiny.⁸⁶ Moreover, in the context of an Article 3 ECHR claim, ‘*a remedy will only be effective if it has automatic suspensive effect*’.⁸⁷

3.3.2. In relation to asylum claims based on sexual orientation and/or gender identity, the assessment should include an objective and fact-specific examination of the nature of the applicant’s predicament and whether this amounts to persecution. In this context, the role of the decision-maker is to assess risk - whether the fear of persecution is well-founded, and not demand conduct - pronounce upon what the applicant should or should not do.⁸⁸

3.3.3. Considering the above, the examining authority is expected to assess all the relevant elements that are material to a determination of their refugee status. In this connection, the Court found that the rejection by State authorities of relevant documentary evidence submitted by the applicant without sufficient investigation was at odds with that close and rigorous scrutiny requirement.⁸⁹

4. Conclusion

4.1. In UNHCR’s view, denying refugee status by compelling individuals to be ‘discreet’⁹⁰ or to conceal their sexual orientation and/or gender identity may have a serious impact on both mental and physical health and could lead to an unbearable situation amounting to persecution.⁹¹ Moreover, it is inconsistent with the protective purpose of the 1951 Convention. Therefore, applying concealment reasoning to asylum cases concerning individuals at risk of ill-treatment for reasons of sexual orientation, gender identity and expression, or sex characteristics is at variance with the legal obligations enshrined in Article 3 ECHR, as well as in Article 13 ECHR in conjunction with Article 3 ECHR.

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⁸⁵ ECtHR, *Singh and Others v. Belgium*, App. No. 33210/11, 2 October 2012, para. 103, <https://hudoc.echr.coe.int/eng/?i=001-113660>; ECtHR, *M.S.S. v. Belgium and Greece*, note 42 above, paras 387-388: ‘*the Court reiterates that it is also established in its case law [...] that any complaint that expulsion to another country will expose an individual to treatment prohibited by Article 3 of the Convention requires close and rigorous scrutiny*’; ECtHR, *NA. v. The United Kingdom*, App. No. 25904/07, 17 July 2008, para. 111, www.refworld.org/cases,ECHR,487f578b2.html; ECtHR, *Jabari v. Turkey*, App. No. 40035/98, 11 July 2000, para. 50: www.refworld.org/cases,ECHR,3ae6b6dac.html; ECtHR, *Hirsi Jamaa and Others v. Italy*, note 42 above, para. 200.

⁸⁶ See, for instance, ECtHR, *M.K. and Others v. Poland*, Apps No. 40503/17, 42902/17 and 43643/17, 23 July 2020, para. 143: <https://hudoc.echr.coe.int/eng/?i=001-203840>.

⁸⁷ ECtHR, *D.A. and Others v. Poland*, App. No. 51246/17, 8 July 2021, para. 38: www.refworld.org/cases,ECHR,60fae2984.html; ECtHR, *Čonka v. Belgium*, App. No. 51564/99, 5 February 2002, paras 81-83: www.refworld.org/cases,ECHR,3e71fdfb4.html; ECtHR, *Hirsi Jamaa and Others v. Italy*, note 42 above, para. 199.

⁸⁸ UNHCR, *Intervention before the Court of Justice of the European Union in the cases of Minister voor Immigratie en Asiel v. X, Y and Z*, 28 September 2012, C-199/12, C-200/12, C-201/12, 28 September 2012, para. 5.2.3, www.refworld.org/docid/5065c0bd2.html.

⁸⁹ ECtHR, *Singh and Others v. Belgium*, note 85 above, paras 103-104.

⁹⁰ As Lord Hope JSC said in *HJ (Iran)*, note 84 above, para. 22, of the alternative term ‘discretion’, ‘this euphemistic expression does not tell the whole truth’; and see Lord Collins JSC at para. 101, ‘the use of words such as “discretion” and “discreetly” tends to obscure the point that what is really involved is concealment of sexual orientation’.

⁹¹ See UNHCR’s submission in *YD (Algeria) v. Secretary of State for the Home Department*, note 69 above, where it is underlined that ‘*long-term suppression of one’s sexuality may, of itself, amount to persecution*’, pp. 18 ff.

- ANNEX I -

**Up-to-date country of origin information (COI)
on the treatment of LGBTIQ+ individuals in the Islamic Republic of Iran**

- **USDOS, “2021 Country Report on Human Rights Practices: Iran”, 12 April 2022.**

“Acts of Violence, Criminalization, and Other Abuses Based on Sexual Orientation and Gender Identity: The law criminalizes consensual same-sex sexual activity, which is punishable by death, flogging, or a lesser punishment. The law does not distinguish between consensual and nonconsensual same-sex intercourse, and NGOs reported this lack of clarity led to both the victim and the perpetrator being held criminally liable under the law in cases of assault. The law does not prohibit discrimination based on sexual orientation and gender identity.

Acts of Violence, Criminalization, and Other Abuses Based on Sexual Orientation and Gender Identity: While few details were available for specific cases, lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) activists expressed concern that the government executed LGBTQI+ individuals under the pretext of more severe, and possibly specious, criminal charges such as rape. Security forces harassed, arrested, and detained individuals they suspected of being LGBTQI+. In some cases, security forces raided houses and monitored internet sites for information on LGBTQI+ persons. Those accused of “sodomy” often faced summary trials, and evidentiary standards were not always met. The Iranian Lesbian and Transgender Network (6Rang) noted that individuals arrested under such conditions were traditionally subjected to forced anal or sodomy examinations – which the United Nations and World Health Organization stated may constitute torture – and other degrading treatment and sexual insults. Punishment for same-sex sexual activity between men was more severe than between women.

According to Amnesty International, on May 4, 20-year-old Alireza Fazeli Monfared, who identified as a nonbinary gay man, was abducted by male relatives in his hometown of Ahwaz in Khuzestan Province. The next day these men reportedly told Monfared’s mother they had killed him and dumped his body under a tree. Authorities confirmed his throat was slit and announced an investigation; however, according to Amnesty International in September, none of the suspected perpetrators had been arrested.

According to an August factsheet by CHRI, a 2020 survey by 6Rang of more than 200 individuals living in the country and identifying as LGBTQI+ found that 46 percent reported being victims of sexual violence at their school or university, 49 percent reported being victims of sexual violence by their peers, and more than 52 percent reported being victims of sexual violence in public spaces. Anonymous respondents reported being beaten, detained, and flogged by security authorities.

The government censored all materials related to LGBTQI+ status or conduct. Authorities particularly blocked websites or content within sites that discussed LGBTQI+ issues, including the censorship of Wikipedia pages defining LGBTQI+ and other related topics. There were active, unregistered LGBTQI+ NGOs and activists in the country.

In 2019 a revolutionary court sentenced Rezvaneh Mohammadi, a gender-equality activist, to five years in prison. According to CHRI, authorities arrested Mohammadi in 2018 and held her in solitary confinement for several weeks at Evin Prison, where they pressured her, including via threat of rape, to confess to receiving money to overthrow the government. Mohammadi was reportedly freed on bail.

Hate-crime laws or other criminal justice mechanisms do not exist to aid in the prosecution of bias-motivated crimes.

The law requires all male citizens older than age 18 to serve in the military but exempts gay men and transgender women, who are classified as having mental disorders. Military identity cards list the subsection of the law dictating the exemption. According to 6Rang, this practice identified gay or transgender individuals and put them at risk of physical abuse and discrimination.

While LGBTQI+ status and conduct are criminalized, many clerics believed that LGBTQI+ persons were trapped in a body of the wrong sex, and NGOs reported that authorities pressured LGBTQI+ persons to undergo gender reassignment surgery. Reports indicated these procedures disregarded psychological and physical health and that many persons recommended for surgery did not identify as transgender but were forced to comply to avoid punishment for their LGBTQI+ identity. According to a July 2020 report by 6Rang, the number of private and

semigovernmental psychological and psychiatric clinics allegedly engaging in “corrective treatment” or reparative therapies of LGBTQI+ persons continued to grow. The NGO 6Rang reported the increased use at such clinics of electric shock therapy to the hands and genitals of LGBTQI+ persons, prescription of psychoactive medication, hypnosis, and coercive masturbation to pictures of persons of the opposite sex. According to 6Rang, one such institution was called the Anonymous Sex Addicts Association of Iran, with branches in 18 provinces.”

- **US Commission on International Religious Freedom (USCIRF), ‘2022 Annual Report; – USCIRF Recommended for Countries of Particular Concern (CPC): Iran’, April 2022.**

“The Iranian government also targets and fails to protect members of the lesbian, gay, bisexual, transexual, and intersex (LGBTI) community. Iran actively executes people who engage in same-sex relations, citing religious grounds. The Islamic Revolutionary Guard Corps (IRGC) arrested a lesbian woman in November on charges including “supporting homosexuality.” In May, authorities failed to fully prosecute the honor killing of a 20-year-old gay nonbinary person.”

- **Amnesty International, ‘The State of the World's Human Rights - Iran 2021’, 29 March 2022.**

“The murder in May of Alireza Fazeli Monfared, who self-identified as a non-binary gay man, highlighted how the criminalization of consensual same-sex sexual conduct and gender non-conformity with punishments ranging from flogging to the death penalty perpetuated violence and discrimination against LGBTI people.

State-endorsed “conversion therapies” amounting to torture or other ill-treatment remained prevalent, including against children.

Gender non-conforming individuals risked criminalization unless they sought a legal gender change, which required gender reassignment surgery and sterilization.

The military continued to characterize homosexuality as a “perversion”. Military exemption cards issued to gay and transgender individuals indirectly disclosed their sexual orientation or gender identity without their consent, putting them at risk of violence.”

- **Freedom House, ‘Freedom in the World 2022 – Iran’, 28 February 2022.**

“Members of the LGBT+ community face harassment and discrimination, though the problem is underreported due to the criminalized and hidden nature of these groups in Iran. The penal code criminalizes all sexual relations outside of traditional marriage, and Iran is among the few countries where individuals can be put to death for consensual same-sex conduct.”

- **Human Rights Watch, ‘World Report 2022 – Iran’, 13 January 2022.**

“Same-sex conduct is also punishable by flogging and, for men, the death penalty. Although Iran permits and subsidizes sex reassignment surgery for transgender people, no law prohibits discrimination against them.”

- **UN Office of the High Commissioner for Human Rights (OHCHR), ‘Iran: UN experts demand stay of execution for two women, including LGBT activist’, 28 September 2022.**

“Iran must immediately halt the executions of two women sentenced to death in relation to their support for the human rights of LGBT people, UN experts said today.*

Iranian judicial authorities prosecuted human rights defender Zahra Sedighi-Hamadani and Elham Choubdar in August 2022 and notified them on 1 September 2022 that they had been convicted and sentenced to death by the Islamic Revolution Court of Urumieh.

They were convicted on charges of “corruption on earth” and “trafficking”.

“We strongly condemn the sentencing of Ms. Sedighi-Hamadani and Ms. Choubdar to death and call on authorities to stay their executions and annul their sentences as soon as possible,” the experts said. “Authorities must ensure the health and well-being of both women, and promptly release them from detention.”

Iran’s legal system explicitly prohibits homosexuality and same-sex relations are punishable by death under the country’s penal code.

While the judicial decision and sentencing order are not public, the experts were informed that the charges concerned speech and actions in support of the human rights of lesbian, gay, bisexual, and trans and other gender-diverse (LGBT) persons who face discrimination in Iran based on their sexual orientation and gender identity. The experts also received reports that the trafficking charges against the women were related to their efforts to assist persons at risk to leave Iranian territory.

The experts have expressed concerns to the Government of Iran that the two women may have been arbitrarily detained, ill-treated, and prosecuted on the discriminatory basis of sexual orientation or gender identity, including criminalisation of LGBT people whose human rights they were supporting through speech and peaceful action. To date, no response has been received.

Sedighi-Hamedani was arrested on 27 October 2021 by Islamic Revolutionary Guards near the Iranian border with Türkiye. Choubdar was arrested on an unknown date afterwards. Sedighi-Hamedani was reportedly forcibly disappeared for 53 days following her arrest and subjected to abuse and discriminatory insults in a detention centre in Urumieh, where she was held from October to December 2021.

“We urge Iran’s authorities to investigate the alleged ill-treatment of Ms. Sedighi-Hamadani while in detention, her enforced disappearance for 53 days, and the failure of judicial authorities to ensure due process in both women’s cases, which may also have violated their right to a fair trial among other human rights,” the UN experts said. “We call on Iran to repeal the death penalty, and at a minimum reduce the scope of its application to only criminal actions that meet the threshold of the most serious crimes,” the experts said.

“Authorities have an international obligation to ensure that all human rights defenders in Iran can conduct peaceful and legitimate activities without fear of persecution or reprisals, including those working on sensitive issues such as sexual orientation and gender identity,” they said.

The UN experts are closely monitoring the situation and remain in contact with Iranian authorities.

**The experts: Miriam Estrada-Castillo (Chair-Rapporteur), Mumba Malila (Vice-chairperson), Elina Steinerte, Priya Gopalan, and Matthew Gillett, Working Group on arbitrary detention; Melissa Upreti (Chair), Dorothy Estrada Tanck (Vice-Chair), Elizabeth Broderick, Ivana Radačić, and Meskerem Geset Techane, Working Group on discrimination against women and girls; Luciano Hazan (Chair-Rapporteur), Aua Baldé (Vice-Chair), Gabriella Citroni, Angkhana Neelapaijit, Grazyna Baranowska. Working Group on enforced or involuntary disappearances; Victor Madrigal-Borloz, Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; Morris Tidball-Binz, Special Rapporteur on extrajudicial, summary or arbitrary executions; Irene Khan, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Mary Lawlor, Special Rapporteur on the situation of human rights defenders; Javaid Rehman, Special Rapporteur on the situation of human rights in the Islamic Republic of Iran; and Reem Alsalem, Special Rapporteur on violence against women and girls, its causes and consequences.”*