



Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Decision adopted by the Committee under article 4 (2) (c) of the Optional Protocol, concerning communication No. 124/2018^{*,**}

<i>Communication submitted by:</i>	L.O. et al. (represented by counsel, Catherine Haenni)
<i>Alleged victims:</i>	The author, her two daughters and her son
<i>State party:</i>	Switzerland
<i>Date of communication:</i>	31 December 2017 (initial submission)
<i>References:</i>	Transmitted to the State party on 5 January 2018 (not issued in document form)
<i>Date of adoption of decision:</i>	6 July 2020
<i>Subject matter:</i>	Deportation to Mongolia
<i>Procedural issue:</i>	Exhaustion of domestic remedies; lack of substantiation
<i>Articles of the Convention:</i>	1, 2 (c)–(f) and 3
<i>Article of the Optional Protocol:</i>	4 (1) and (2) (c)

* Adopted by the Committee at its seventy-sixth session (29 June–9 July 2020).

** The following members of the Committee participated in the examination of the present communication: Gladys Acosta Vargas, Hiroko Akizuki, Tamader Al-Rammah, Nicole Ameline, Gunnar Bergby, Marion Bethel, Louiza Chalal, Esther Eghobamien-Mshelia, Naéla Mohamed Gabr, Hilary Gbedemah, Nahla Haidar, Dalia Leinarte, Rosario G. Manalo, Lia Nadaraia, Aruna Devi Narain, Ana Peláez Narváez, Bandana Rana, Rhoda Reddock, Elgun Safarov, Wenyan Song, Genoveva Tisheva and Franceline Toé-Bouda.



Background

1.1 The author of the communication is L.O., a national of Mongolia born in 1974. The communication is submitted on behalf of the author, her daughters K.B. and M.O., born respectively in 2002 and 2015, and her son K.B., born in 2004. The author's asylum application has been rejected and she risks deportation with her children. She claims that their deportation to Mongolia would violate their rights under articles 1, 2 (c)–(f) and 3 of the Convention. The Convention and the Optional Protocol thereto entered into force for Switzerland in 1997 and 2008, respectively. The author is represented by counsel, Catherine Haenni.

1.2 On 5 January 2018, the Committee, acting through its Working Group on Communications under the Optional Protocol, requested the State party to refrain from deporting the author and her children to Mongolia pending the consideration of the case by the Committee, pursuant to article 5 (1) of the Optional Protocol and rule 63 of the Committee's rules of procedure.

Facts as submitted by the author

2.1 The author was born in Ulaanbaatar. She worked as a kindergarten teacher and cook, and held other temporary jobs. In 1996, she met her partner, B.Y. In 2000, B.Y.'s alcohol consumption increased and he became abusive, both verbally and physically. When he was drunk, the author stayed with her mother. When her mother died in 2004, her partner started to abuse her on a regular basis. He also started to beat her daughter. The author explains that she has no siblings.

2.2 The author submits that B.Y. would repeatedly physically assault her, on average four or five times a week. He raped her on several occasions. He was also physically abusive towards the children. She recounts many instances of violence. On one occasion, he broke his daughter's hand. When his daughter was around eight years old, he locked her out in winter, with temperatures well below freezing, without warm clothes. She was left outside for several hours and suffered from frostbite. B.Y. frequently threatened the author and the children with a knife, and on several occasions stabbed or cut the author and the children. He once threw at the author a knife that cut into the corner of her eye. On another occasion, he tried to stab her. When she tried to protect herself, he sliced her fingers. She ended up in the hospital and needed stitches. In a separate incident, he threatened to gouge out her eyes; she put her hands in front of her eyes and he stabbed her in the hands. On another occasion, he tried to cut out her tongue, and cut through her lip. He also tried to attack their six-year-old son with a knife. Their daughter, K.B., who at the time was eight years old, tried to protect her brother, and B.Y. cut her hand, for which she needed stitches. Two months later, he cut K.B. again, injuring her abdomen.¹

2.3 When the author was pregnant with her youngest child, her partner came home with one of his friends. He was so drunk that he fell asleep. His friend tried to rape the author. She started to scream and her partner woke up. She told him what had happened, but he refused to believe her. She called the police, who arrested her partner. He was released the following day and, after this incident, became even more violent. The author's daughter could no longer attend school in Ulaanbaatar as her father would repeatedly show up drunk at her school, shout at her and order her to take her to the author so that he could get money from her. Finally, the school informed the daughter that this situation was too dangerous for the other children at the school and that she was therefore no longer allowed to attend.

¹ Various photographs of the author with scars are included in the complaint.

2.4 When the author was six months pregnant with her youngest child, her partner severely assaulted her with the intention of killing the baby. She was bleeding heavily and had to go to the hospital.² A month later, he assaulted her again. Shortly afterwards, one of B.Y.'s friends tried to rape her daughter, then 12 years old. She contacted the police, who refused to act, as the author's intervention had prevented the rape from being committed. At this point, the author decided to leave Mongolia as she could not find protection for herself and her children there.

2.5 The author sought the help of a women's shelter in Ulaanbaatar in 2009. She spent the night there but, in the morning, she was sent home because she did not have any police reports about the assaults. In 2014, B.Y. again attacked the author and her daughter with a knife, and a syringe that the author used for her allergy shots. The author once again tried to seek refuge at the shelter, but she was denied any help as the shelter had no room available. After this, she did not attempt to seek help at the shelter again. The author would sometimes stay at a friend's house; however, on one occasion, B.Y. came to the house and got into a fight with the friend's husband. Thereafter, the author could no longer stay there, as her friend was afraid of B.Y. In 2014, the author fled to Darhan to hide from B.Y. However, three months later, he found her and forced her to return to Ulaanbaatar.

2.6 The author contacted the police several times to submit complaints about the abuse that she was suffering. However, the police were unwilling to help, partly because the author and B.Y. were not married, and her complaints were not considered "valid". The police would occasionally detain B.Y. for a few hours and then release him. After he was released, the abuse towards the author and the children intensified. As a result, the author stopped notifying the authorities.

2.7 In September 2015, the author, who was seven months pregnant, left Mongolia with her two children. She fled to the Russian Federation, and from there they travelled to Switzerland with the support of a people smuggler. On 5 September 2015, the author applied for asylum in Switzerland and had her first interview. During her interview, she stated that she had fled Mongolia because of domestic violence committed by her ex-partner and the police's failure to protect her and her children. On 14 July 2016, she had her second interview, in which she added that the women's shelter had refused to help her and provide long-term protection.

2.8 On 17 January 2017, the State Secretariat for Migration requested the office of the Swiss embassy in Ulaanbaatar to follow up on the author's statements. On 27 April 2017, the State Secretariat informed the author of the findings, stating that the report was confidential, for the protection of the Government or the parties who had allegedly conducted the investigation in Mongolia. It stated that the information received contradicted the author's statements, as neither her partner nor her children could be located in the registers of the General Authority for State Registration of Mongolia; the death certificates of her parents could not be located in the registers either; the family had not lived at the address indicated by the author in her interviews; and B.Y. had never been registered at any police station or other institution as a domestic violence offender. The author submits that the tone of the letter was very offensive, as it clearly implied that the State Secretariat had concluded that she was lying.

² The author submits a medical report, dated 10 November 2017, from the Amgalan Maternity Hospital, Ulaanbaatar. According to the report, the author had internal bleeding, placenta abruption and large bruises on her arms and legs, and was at risk of a miscarriage. It is stated in the report that she had been beaten up by her partner and had to be hospitalized "for a while" to receive treatment in order to keep the baby. The author states that, during the asylum proceedings, she was unable to obtain the records related to the assault, as she did not dare to contact the Mongolian authorities out of fear that her partner would be informed of her whereabouts.

2.9 On 8 May 2017, the author provided a detailed response to the State Secretariat, noting that she did not know whether her ex-partner, B.Y., and not Y.B. as reported by the State party, had ever been included in the registers of the General Authority for State Registration of Mongolia. She also informed the State Secretariat that he had an additional surname that she did not know, that registration had only become mandatory in 1990 and that 160,000 people in Mongolia remained unregistered. She further informed the State Secretariat that registration of children was mandatory only once they turned 16 years of age. She also stated that her father, rather than her mother as reported by the State party, was O.C., and that her mother was B.D.; that her father had died in 1978, when she had been only four years old; and that she did not know where his death certificate was or where he was buried. She could not explain why her mother's death certificate could not be found, and reiterated the date of her mother's death, 9 April 2004. She also provided, once again, her address in Mongolia, including the telephone number of her former landlord and the amount of the family's monthly rent.

2.10 With regard to the lack of police reports, the author noted that she had called the police many times but that they would only pick up B.Y., detain him until he sobered up and then send him home. She provided the telephone number of a friend and the address of the shelter. She explained that, in order to obtain proof of her stay at the shelter, an official request should be made by the Swiss representative.

2.11 On 9 June 2017, the State Secretariat rejected the author's application for asylum. It found that her statements did not fulfil the credibility criteria, as the fact that her children had passports meant that they had to be registered in Mongolia. The author notes that it is not necessary for children to be registered in order to be issued passports, as parents can apply for passports on behalf of minor children. The State Secretariat further found that the author had not lived at the address she had provided, and faulted her for her inability to submit her parents' death certificates and police reports on the domestic abuse. In this connection, she notes that the State Secretariat did not contact her former landlord.

2.12 The State Secretariat considered that Mongolia had effectively implemented a law against domestic violence that had been in effect since 2005. It further noted that, according to the author's statements, she had on several occasions notified the police, who had responded to her calls. The State Secretariat found that that response demonstrated the capacity of the police to provide protection. The State Secretariat expressed the view that it would have expected the author to request assistance from a shelter, and noted that she had not done so, even though she had stated that she had sought help at a women's shelter. The State Secretariat also criticized her for not providing any documentation, ignoring her statement that all official documents had been taken by the people smuggler.

2.13 On 14 August 2017, the Federal Administrative Court rejected the author's appeal.

Complaint

3.1 The author asserts that the State party would breach its obligations under articles 1, 2 (c)–(f) and 3 of the Convention by returning her and her children to Mongolia.

3.2 The author claims that, by removing her and her children to Mongolia, the State party would expose them to a real, personal and foreseeable risk of being subjected to serious forms of discrimination against women, as they would be subjected to domestic violence by her ex-partner, and would not be able to rely on the protection of the authorities. She claims that the State Secretariat and the Federal Administrative Court failed to take a gender-sensitive approach to her application for asylum by stating that she should have known her partner's second surname, that she should have sought protection from a women's shelter and that the police responded adequately in her case. She submits that she has substantiated a real, personal and

foreseeable risk of being subjected to serious forms of discrimination if she returns to Mongolia. She has submitted sufficient details of the abuse, such as the name of her partner, the name of the police station, photographs of her and her children's injuries and the address of the women's shelter, information that, she argues, could have been verified by the Swiss authorities. She also argues that the State party has not made sufficient efforts to determine whether there are substantial grounds for believing that she and her children would be in danger of being subjected to serious forms of discrimination upon their return to Mongolia.

3.3 The author further argues that the country information available demonstrates that Mongolia displays a pattern of persistent and extreme violence directed against women, with a high prevalence of domestic violence and rape. In its concluding observations on the combined eighth and ninth periodic reports of Mongolia, the Committee expressed concern about the high prevalence of domestic violence and the fact that there was only one State-run shelter for victims of violence (see [CEDAW/C/MNG/CO/8-9](#), para. 18). In its concluding observations on the combined fifth, sixth and seventh periodic reports of Mongolia, the Committee expressed concern about the fact that the incidence of domestic violence remained high and that domestic violence continued to be seen as a private matter, including among law enforcement personnel, with a low rate of prosecution under the law against domestic violence (see [CEDAW/C/MNG/CO/7](#), para. 25). She states that only 20 cases have been prosecuted since the law's enactment on 7 November 2008. She further refers to a report by the Advocates for Human Rights, a non-governmental organization (NGO) of the United States of America, and argues that the Mongolian authorities are often unwilling to intervene in domestic violence cases, which they regard as trivial and view as cases of intoxication, with the perpetrator being detained overnight and released the next day, once sober. She also refers to the 2012 report on human rights in Mongolia of the United States Department of State, according to which:

No law specifically prohibits spousal rape, which authorities do not commonly recognize or prosecute. Victims were often stigmatized and accused of not fulfilling their marital duties. As a result many NGOs blamed law enforcement officials for spousal rape victims' silence.

According to NGOs police referred only a small number of rape cases for prosecution, generally claiming there was insufficient evidence. Additionally, NGOs alleged many rapes were not reported and claimed that police and judicial procedures stressed victims and tended to discourage reporting of the crime. Social stigma also deterred reporting.³

3.4 She further refers to the United States Department of State 2014 report on human rights in Mongolia, according to which:

Domestic violence remained a serious and widespread problem. There is no specific criminal law provision on domestic violence, making difficult any effort to tabulate reported cases. The noncriminal Law to Combat Domestic Violence (2004) provides a measure of protection for victims of domestic abuse, including the possibility of obtaining restraining orders, but a number of procedural and enforcement barriers make restraining orders difficult to obtain and implement. ... Domestic violence cannot be reported anonymously, and callers must often give their names and locations, thereby dissuading individuals from reporting domestic abuse due to fear their identity might be leaked to the perpetrator. NGOs reported restraining orders were rarely issued in cases involving domestic violence, and that, even when issued, restraining orders were poorly monitored and enforced.

³ United States of America, Department of State, *Mongolia 2012 Human Rights Report*, p. 17.

...

Individuals allegedly perpetrating domestic violence were sometimes detained under administrative law rather than criminal law provisions. Detainees under administrative law in such circumstances were typically fined 15,000 tugrugs (eight dollars) and were released after a maximum detention of 72 hours.⁴

3.5 The author claims that the country information clearly supports the credibility of her account. Her fear that she would be subjected to domestic violence by her partner if returned is well founded on the grounds of his previous actions and in the light of the country information available. She argues that her children would also risk being subjected to similar violence in revenge for their escape. She submits that her children, and particularly her daughters, are also directly affected by the consequences of gender-based persecution. She argues that domestic violence is regarded as a family matter in Mongolia and that the criminal justice system is marred by a lack of willingness to implement laws that are supposed to protect women. She notes that she reported her partner to the police repeatedly, but no restraining order was issued and her claims were not investigated. She argues that the Mongolian justice system is neither willing nor able to protect her and her children from gender-based persecution.

State party's observations on admissibility and the merits

4.1 On 29 June 2018, the State party submitted its observations on the admissibility and the merits of the communication.

4.2 On the question of whether the provisions raised by the authors constitute rights within the meaning of article 2 of the Optional Protocol, which could then form the basis of an individual complaint, the State party refers to its observations of 29 May 2018 in another case before the Committee. In its opinion, the provisions raised constitute general norms rather than individual rights. Therefore, the complaint should be inadmissible under article 2 of the Optional Protocol.

4.3 In the present case, the author cites article 3 of the Convention without substantiating her claim in the same way as her claim related to article 2 of the Optional Protocol. The article 3 claim is accordingly inadmissible.

4.4 With regard to the alleged violation of article 2 of the Convention, the State party also considers that the claims are insufficiently substantiated. It submits that, on several occasions, the Committee has given opinions, when considering individual communications, on respect for the requirements of the Convention concerning the asylum process. The Committee has emphasized that it is not a substitute for national authorities in the assessment of facts.⁵

4.5 The State party recalls that the author had two hearings with the State Secretariat, on 15 September 2015 and 14 July 2016, and that, at the second hearing, she was given the opportunity to explain in detail the reasons for her asylum claim. To verify her allegations, the State Secretariat contacted the office of the Swiss embassy in Ulaanbaatar, which conducted a verification with a trusted lawyer. Neither B.Y.⁶ nor the elder children of the couple could be found in the registers of the General Authority for State Registration in Mongolia. The registers did not contain records of the death of the parents of the author. Furthermore, the author, her children and B.Y. apparently never lived at the address indicated. Also, on the ground, nobody was able to confirm that they had ever lived there. Lastly, B.Y. has apparently never been registered with the police or other institutions as a domestic violence perpetrator.

⁴ United States, Department of State, *Mongolia 2014 Human Rights Report*, pp. 22–23.

⁵ *N.Q. and S.A. v. United Kingdom of Great Britain and Northern Ireland* (CEDAW/C/63/D/62/2013), para. 6.6, and *S.F.A. and H.H.M. v. Denmark* (CEDAW/C/69/D/85/2015), para. 9.7.

⁶ The State party refers to the author's ex-partner as Y.B.

4.6 In accordance with the right to be heard, these elements were communicated to the author on 27 April 2017. The author provided a detailed response on 4 May 2017. She explained that in Mongolia there were numerous official services where one could be registered. The city of Ulaanbaatar had at least 17 district registers. Similar registers existed, according to the response, in other towns or *aimags* (territorial units similar to cantons). In order to verify the registration of B.Y., it would be necessary to check all the registers. In theory, all information was centralized in the General Authority for State Registration. However, in reality, such centralization, according to the author, was incomplete or absent. In Mongolia, according to the author, children were registered and received identity papers only at the age of 16, which explained why her children had not yet been registered. Their birth certificates, according to the author, should be available at the civil register in Bayanzürkh district. B.Y. was of Kazakh ethnicity and had been born in 1974. Kazakhs had two family names, a first name and a second name. B. was her ex-partner's first name and Y. was one of his family names. The author, according to the embassy's response, did not know the second family name as she and B.Y. had never been married. According to the author, she did not know where B.Y. had been registered: to find the registration documents, one would need to verify all official registries. Moreover, according to the author, since the change of regime in 1990, many registers had been lost or neglected. For that reason, some 160,000 people in Mongolia were unregistered.

4.7 With regard to the death certificates of her parents, the author stated that the names of her parents had been reversed. Her father had died when she was four. Her mother had died in Ulaanbaatar in 2004. Research would be required in all the registers. The author stated that she lived with B.Y. and the children at the given address for 11 years, from October 2004 until October 2015. In general, apartments, rooms and yurts were rented informally, without a rental contract being declared with the authorities, for tax reasons. As there were few controls and people often moved, it was therefore entirely possible, according to the response, that nobody would be able to confirm that the family had lived there. In addition, locals would be reluctant to give information to foreigners, for fear of putting themselves in danger or of harming others. If the property owner had not changed, the author said that checks could be made by calling the telephone number provided.

4.8 In Ulaanbaatar, just as there were several civil registers, there were several police stations. According to her response, the author had filed multiple complaints against B.Y., and he had been detained and fined for alcohol abuse. On one occasion, he had attempted suicide. All of those incidents could be found in the records of police stations. However, as B.Y. had worked as a police officer for a while, it could well be possible, according to the response, that the police files had been "lost". According to the author, she had fled the family home on several occasions and could give the names of two families with whom she had found refuge. She had also solicited assistance from a shelter for women and children. When she arrived in Switzerland, the author had been examined by a doctor, who had seen bruises on her stomach, as a result of her having been beaten by B.Y. According to the response, the doctor could be contacted and would confirm the information.

4.9 On 9 June 2017, the State Secretariat rejected the author's asylum request. With respect to the explanations of the author regarding the registration of B.Y. and their children, the State Secretariat emphasized that, during the first hearing, the author had indicated that the two elder children each had a birth certificate and a passport that had been issued in 2013 and taken in Moscow by the people smuggler. When the identity documents had been given to the children, they must have been registered with the authorities. The State Secretariat also considered that it was not plausible that the author had not known the full name of her former partner, which whom she had had a relationship since 1996 and who was the father of her three children. It also

noted that the author had stated that she had filed a complaint with the police against B.Y. on several occasions and that different measures had been taken against him, without, however, being able to provide a single piece of supporting evidence.

4.10 The State Secretariat considered that, despite the detailed statement of the author, the inconsistencies could not be ignored, and her allegations did not meet the credibility requirements in an asylum case. In considering all the available information, the State Secretariat concluded that the complainants' family situation and living arrangements, as well as the stated circumstances, were different from those in the version put forward by the complainants. The State Secretariat recalled that risks related to a third party were not taken into consideration in asylum claims, except where the State did not or could not fulfil its protection function. In general, protection was granted when the State took appropriate measures to avoid persecution, for example through effective police and judicial entities, which were better placed to examine, judge and penalize through prosecution measures, and if the persons concerned had access to such protection. Given the practice of the Swiss authorities, there was reason to believe, in general, that the Mongolian authorities had the will and the capacity to take protection measures, and that the infrastructure available for such measures was sufficient. In that sense, in line with a decision of the Federal Council, Mongolia was considered to be a secure State in terms of the right to asylum. That status presupposed a functional police and legal system. In 2005, a law against domestic violence had entered into force in Mongolia and was applied. Moreover, access to the police was guaranteed, in particular since the author had been to the police on several occasions and the police had taken action. The police had therefore demonstrated its willingness to offer protection and had met its obligations in that sense. The State Secretariat also considered the author's affirmation that she had suffered from violence over a number of years; it stated that, in those circumstances, she could have sought assistance from a specialized organization on the ground. The National Centre against Violence, in particular, managed several safe houses and a hotline to intervene in cases of crisis. The Centre also supported women who were looking for a home or a job, or who needed legal assistance. Considering all the available information, and that the author had no documents in support of her asylum application, the author's claim was rejected by the State Secretariat.

4.11 The State party submits that the author appealed to the Federal Administrative Court against that decision, on 18 June 2017. The author stated that all the documents had been taken by the people smuggler and that she had ended all contact with Mongolia, fearing that her partner would find her. On the advice of her representative, she had created an anonymous social media account, through which she had been able to contact the family of a friend. That family had been able to obtain a letter from her former landlord, in which he had confirmed the lease and the alcoholism of B.Y. The owner could still be reached on the number provided by the author, so the information could be confirmed easily. Concerning the police records related to the complaints against B.Y., she said that it would be difficult to find the files, all the more so from Switzerland.

4.12 In its interim decision of 28 June 2017, the Federal Administrative Court concluded that, after examination of the file and the appeal, the claims had little prospect of success. It therefore rejected the request for free legal aid. It also considered that the information gathered by the State Secretariat should be kept confidential, in order to allow the Court to comment, and that the author should be informed only of the main parts of the information.

4.13 The Federal Administrative Court added that the explanations of the author concerning the non-registration of the children in Mongolia did not explain why no registration documents related to B.Y. could be found. According to the Court, the explanation given by the author with regard to the information gathered on the ground did nothing to change the situation, as there was no reason to consider that the findings

of the State Secretariat had been based on incorrect information. The letter from the owner of the building changed nothing in the analysis of the situation as it could probably be considered to have emanated from someone complicit in the case. The photographs on file, showing scars, did not allow any conclusions to be drawn on the scars' origin. The lack of evidence concerning the violence suffered shows the lack of credibility of the alleged facts, all the more so since the author had stated that she had gone to the police on several occasions. The author's alleged difficulties in obtaining police documents were not plausible, as she had filed the complaint personally. The Court thus considered that the author's allegations of domestic violence and related problems were not plausible. It considered that, even if the allegations were true, the author would not have been able to reverse the presumption that Mongolia was in a position to offer protection from violence perpetrated by a third person, all the more so given that B.Y. had allegedly been detained on several occasions. The Court observed that the author had contradicted herself concerning the year of her mother's death, which she had stated as 2000 during the first hearing and 2004 during the second hearing, and that it had not been possible to confirm her personal and family situation. Also, since she had stated that she had always been able to meet the needs of the family, she would be able to carry on doing so were she to return to Mongolia.

4.14 On 14 August 2017, the Federal Administrative Court rejected the author's appeal. It considered that, even with a third child, the author would be able to provide for her children, since, according to her own statements, it had been possible for her to return to work four months after the birth of her second child. The Court concluded that there were no grounds for believing that the author and her children would face existential difficulties upon their return, all the more so given that the author had friends in Mongolia, friends with whom the family had found refuge in the past, and that the eldest daughter, now almost 15, would be able to look after the youngest child. Also, in the analysis of the Court, the children's medical conditions could be treated at the existing medical facilities in Mongolia. Taking into account the best interests of the children, the Court considered that the two elder children were good students and had demonstrated the flexibility that would be necessary to readjust to life in Mongolia, even though they could face difficulties associated with reintegration upon their return, and that they would be able to draw on their experience from their time in Switzerland.

4.15 The State party indicates that it can be concluded from the above that the author was able to express herself completely during the asylum process. It is worth noting that the hearing on the reasons for asylum was led by a woman, and that the interpretation was also provided by a woman.

4.16 As the author was not able to provide documents in support of her case, the State Secretariat conducted checks on the ground through the embassy in Ulaanbaatar. The lack of documentation was not interpreted as disadvantaging the author. On the contrary, the State Secretariat actively tried to verify whether the author's allegations could be confirmed, by hiring a trustworthy lawyer. Following these checks, the State Secretariat communicated the result to the author for comment.

4.17 The State party does not share the author's assessment that the tone of the letter from the State Secretariat of 27 April 2017 was offensive. The letter briefly summarizes the arguments of the author, then provides information in an objective manner about the checks carried out and their results. The tone of the letter is informative and neutral.

4.18 The author's asylum claim was rejected on the basis of all the evidence, in particular the result of the checks conducted on the ground and the inconsistencies detected in her narrative. The outcome of the procedure has no link with the sex of the complainant or the fact that the allegations concern motivations to flee that are

specific to women. The relevant authorities acknowledge possible inconsistencies that can appear equally in all asylum cases, irrespective of whether the case concerns a man or a woman. Also, the author's alleged difficulties in obtaining documents were not a decisive factor; the lack of documentation was considered by the authorities as one factor among others.

4.19 The State party also recalls that, in accordance with the practice of the Committee, in order for a communication to be admissible, the author must provide sufficient information as to whether she would be exposed to a real, personal and foreseeable risk of being subjected to serious gender-based violence in case of a return.⁷ It appears that, in its decisions on the matter, the Committee attaches great importance to the examination by internal authorities of the motives for the asylum request. The communications have therefore been declared inadmissible or rejected on the merits. It refers, in particular, to paragraph 6.7 of *N. v. Netherlands* (CEDAW/C/57/D/39/2012), which concerned a Mongolian woman who claimed that she had been subjected to violence by her former employer. The communication was declared inadmissible because it was insufficiently substantiated.

4.20 The State party submits that the author attached to her communication to the Committee several documents that the Swiss authorities did not have at the time of their examination of the author's asylum claim. As the documents were not available at the time when decisions were made by the national authorities, the State party is of the opinion that the author has not exhausted domestic remedies in this regard. It considers that, as it did not have copies of these documents, it cannot judge their authenticity. In any case, the documents are not of a nature that would modify the State party's assessment of the author's request.

4.21 The State party indicates that the domestic violence law of Mongolia was reviewed on 1 February 2017 and that many related measures were taken in that year.⁸ Those measures reportedly led to a 19.6 per cent drop in the number of cases of domestic violence in the first eight months of 2017, compared with the same period of the previous year. Across the country, there were nine one-stop service centres and 16 temporary shelters in 2017, and the construction of a further 10 one-stop service centres was planned for 2018.

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

5.1 On 9 January 2019, the author submitted her observations on the State party's observations.

5.2 She submits that the Committee has considered many cases involving claims under articles 1, 2 and 3 of the Convention.⁹ Therefore, the articles that she invoked can be asserted in an individual communication under the Optional Protocol.

5.3 She rejects the State party's contention that she did not sufficiently substantiate her claim of a violation under article 3 of the Convention. She notes that, in paragraph 24 of its general recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, the Committee states that articles 1–3, 5 (a) and 15 of the Convention establish an obligation on State parties to ensure that women are not discriminated against during the entire asylum process,

⁷ See *N. v. Netherlands* (CEDAW/C/57/D/39/2012), para. 6.6.

⁸ The State party refers to the information provided by Mongolia in follow-up to the Committee's concluding observations on the combined eighth and ninth periodic reports of Mongolia (CEDAW/C/MNG/CO/8-9/Add.1), para. 28 ff.

⁹ See, for example, *A. v. Denmark* (CEDAW/C/62/D/53/2013); *Trujillo Reyes and Arguello Morales v. Mexico* (CEDAW/C/67/D/75/2014); and *O.G. v. Russian Federation* (CEDAW/C/68/D/91/2015).

and that they must be treated in a non-discriminatory manner during the asylum procedure. She explains that she referred to article 3 in conjunction with articles 1 and 2 of the Convention.

5.4 Regarding the State party's argument that she did not explain how the scope of article 3 exceeds the more specific scope of article 2, and that her claim of a violation of article 3 had not been sufficiently substantiated, she submits that she described in great detail the abuse suffered over the years and that throughout her asylum procedure her story never changed. She adds that, in most cases, domestic violence takes place behind closed doors and there is no proof other than the statement of the victim, unless there are witnesses. Even if the police intervenes, the fact can only be corroborated by the victim, and the police generally accepts those statements. However, in her case, her statements were disregarded. The authorities of the State party only requested more evidence from the author, failing to prove her wrong in her statements despite their attempts to do so, thus ignoring the cultural and discriminatory customs in Mongolia and indeed acting in a discriminatory way against her. The authorities failed to produce any concrete evidence proving that her statements were not true. This demonstrates that the authorities in the State party discriminated against the author, in violation of article 3 of the Convention.

5.5 The author submits that the information she provided regarding the general situation with regard to domestic violence against women in Mongolia was not taken into consideration by the Swiss authorities, in particular the Federal Administrative Court.

5.6 The author refers to paragraph 25 of general recommendation No. 32, according to which: "article 2 (c) of the Convention requires that State asylum procedures allow women's claims to asylum to be presented and assessed on the basis of equality in a fair, impartial and timely manner. A gender-sensitive approach should be applied at every stage of the asylum process". The author submits that the fact that her asylum interview was conducted by a woman and that the interpreter was a woman is not enough to constitute a gender-sensitive approach and does not signify that the obligation arising from the Convention has been respected. There is no indication that the women were trained in dealing with abuse victims or had any understanding of how abuse victims typically behave, particularly in situations in which the authorities are involved. She points out that the effects of consistent and serious abuse, such as domestic violence, do not disappear overnight once a victim is removed from a situation. The damage inflicted persists and, to a great extent, dominates and controls the behaviours of the victim for years. The author made an extremely difficult and courageous decision to break away from the abuse to which she and her children had been subjected. She was questioned by the State party's authorities about the worst experiences of her life just a few days after her arrival.

5.7 The author submits that the State party has violated her procedural rights, in particular her right to be heard pursuant to article 29 of the Federal Constitution. Under article 26 (1) (b) of the Federal Act on Administrative Procedure, a party is entitled to inspect all documents serving as evidence. The author notes that, in her appeal to the Federal Administrative Court, she pointed out that she had to respond to the findings of the State Secretariat without having access to the report of the office of the Swiss embassy in Ulaanbaatar. The State Secretariat claimed that the report contained information that the Government needed to keep confidential to protect itself and the parties who conducted the investigation. The Court held that "the complaint was likely to prove ineligible ... and the alleged complaint of infringement of the right to be heard should not be considered valid".

5.8 The author maintains that, while the right of access to files may be restricted, in particular if significant public interests of the Confederation so require, such refusal

must be proportionate and the inspection must be granted as far as possible without revealing the interests to be protected. This could have been achieved by redacting the passages related to those interests, such as the identity of the author and the person distributing the copies, or the methodology used by the Embassy. She argues that, in the present case, “it is hard to believe” that there was a significant public interest that needed to be protected.

5.9 She submits that it is not clear how the lawyer in charge of drafting that report came to the conclusion that the family had never lived at the address indicated and that no police reports could be located, or whether the lawyer considered why her children and ex-partner could not be found in the registers of the General Authority for State Registration. She explains that no one can obtain information regarding a third party from the General Authority unless they have the consent of that third party. Because the State Secretariat failed to explain how the information was obtained, it was not possible for her to respond in an appropriate manner. She maintains that the on-site verification carried out appears to have been very faulty and inaccurate. The State party’s authorities based their assessment only on the missing documents and the clarifications supplied by the embassy, and thus did not sufficiently examine the case.

5.10 The State Secretariat did not contact her former landlord at any stage, stating that it was for the author to provide the evidence. She submits that the Federal Administrative Court did not conduct a comprehensive review of all the elements in the case, as it did not address the information submitted by the author regarding domestic violence in Mongolia or the fact that her third child was the result of her having been raped by her partner, and disregarded the letter of the landlord, relying solely on the embassy report. She argues that the authorities engaged in an act of discrimination against her by labelling the statements made by her, a victim of serious abuse in the form of domestic violence, as untrustworthy and inconsistent with the authorities’ findings, which were based on deficient on-site investigations and faulty assumptions. The State party’s authorities therefore violated their obligation to take a gender-sensitive approach pursuant to article 2 (c) of the Convention, without thoroughly evaluating the risk of the author becoming a victim of domestic violence again because she would not receive the necessary protection from the State if she returned to Mongolia. In her opinion, the assessment of her case was arbitrary and biased.

5.11 She submits that her case differs from *N. v. Netherlands* because, in the latter case, the alleged perpetrator was the author’s employer and not her partner. B.Y. was her partner and is the father of her three children. If she was sent back, he would look for her again, since he views her as his property, and, since he is an alcoholic, he would expect her to supply him with money again. The fact that he searched for her when she fled to Darhan is a clear indication that he will look for her again. She recalls that she submitted to the Committee a police report demonstrating that the police had been contacted on two occasions and that, in both cases, her ex-partner had only been detained overnight and no further action had been taken.

5.12 She considers that the discrepancies were created by faulty assumptions of the State Secretariat, specifically regarding the comments on how the children must have acquired their passports. The discrepancy concerning the date of her mother’s death is most likely attributable to either a typographical error or a mistranslation.

5.13 Concerning the State party’s argument that the author has not exhausted domestic remedies in relation to the new documents submitted, the author explains that she set up an anonymous social media page to obtain documents from Mongolia and that she only obtained the medical and police reports six months after the examination of her appeal by the Federal Administrative Court. She refers to paragraph 43 of general recommendation No. 32, in which the Committee states that “States parties should not deem that a woman asylum seeker lacks credibility for the mere reason of lack of

documents to support her asylum claim”. She notes the State party’s argument that, even if the authorities had had access to those documents, they would not have changed their assessment of her claim. She considers that this argument demonstrates that she would not have had access to an effective remedy on the basis of the new documents and that she has therefore exhausted domestic remedies.

5.14 In her opinion, it would have been helpful if the State Secretariat had provided her with competent legal representation, pursuant to paragraph 50 (c) of general recommendation No. 32, in accordance with which States parties should ensure that “women asylum seekers have access to competent legal representation in advance of the initial asylum interview”. She claims that legal representation could have helped, for example, in the task of obtaining documents corroborating her statements in a timely fashion.

5.15 She notes that, in paragraph 50 (g) of general recommendation No. 32, the Committee states that “the threshold for accepting asylum applicants should be measured not against the probability but against the reasonable likelihood that the claimant has a well-founded fear of persecution or that she would be exposed to persecution on return”. She argues that she has a well-founded fear of persecution, as in Mongolia her ex-partner would be able to find her.

5.16 She submits that the State party is mistaken with regard to the number of shelters for victims of violence in Mongolia. She refers to a news article dated 25 November 2017, in which it is stated that five of the nine shelters have closed because of a lack of funding.¹⁰ Only 1 of the 10 planned one-stop service centres had been opened as at November 2018 and, because of the current financial crisis in Mongolia, there are probably no funds to open more at the time of writing. She submits that the information according to which domestic violence has decreased is deceptive as, according to a survey of gender-based violence in the country, conducted by the United Nations Population Fund and the National Statistics Office of Mongolia, domestic violence cases are severely underreported.¹¹

Issues and proceedings before the Committee

6.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol. In accordance with article 4 (2) (a) of the Optional Protocol, the Committee is satisfied that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 Preliminarily, the Committee notes that, subsequent to the registration of the present communication, the author submitted copies of police and medical reports regarding incidents of abuse perpetrated her ex-partner. These documents were not submitted to the Swiss authorities as they were obtained from Mongolia only after the examination by the Federal Administrative Court of the author’s appeal against the State Secretariat’s negative decision in her asylum case. The Committee observes that the author has not explained why she did not submit those documents to the Swiss authorities, even at a later stage, or request that her case be reassessed on the basis of newly discovered evidence.

6.3 The Committee recalls that, under article 4 (1) of the Optional Protocol, it shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted, unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief. The purpose of this

¹⁰ See BBC, “Mongolia domestic violence: ‘I screamed for help, but nobody came’”, 25 November 2017.

¹¹ United Nations Population Fund and Mongolia, National Statistics Office, *Breaking the Silence for Equality: 2017 National Study on Gender-based Violence in Mongolia*, June 2018.

requirement is to give State party authorities the opportunity to assess an author's allegations and, as appropriate, to remedy the situation. In the light of this requirement, the Committee is of the view that it cannot retain and consider those documents as part of the author's communication, as the competent authorities of the State party were not given an opportunity to study and assess them in the framework of the domestic proceedings.

6.4 The Committee further notes that the State party does not object that the author has exhausted the available domestic remedies with regard to her remaining claims under the Convention. Accordingly, the Committee considers that it is not precluded by the requirements of article 4 (1) of the Optional Protocol from considering the matter.

6.5 The Committee notes the author's claims that, if the State party deports her to Mongolia, she will be personally exposed to serious forms of gender-based violence, in violation of her rights under articles 1, 2 (c)–(f) and 3 of the Convention. In particular, the Committee notes the author's statement that she was a victim of domestic violence in Mongolia at the hands of her ex-partner, who was abusive towards her and her children; that, when she sought protection from the police, they would only detain her ex-partner overnight and subsequently release him; that her application for asylum in Switzerland was rejected mainly on the basis of an investigation conducted through the office of the Swiss embassy in Mongolia, without taking into consideration her detailed statements; and that the State party's authorities did not ensure a gender-sensitive approach in dealing with her asylum claim as a woman asylum seeker and victim of domestic violence.

6.6 The Committee notes that the State party has observed that the communication should be declared inadmissible on the grounds that it is insufficiently substantiated and that the State party's competent authorities have conducted a thorough examination of the author's asylum application. It also notes that, in order to verify the author's allegations, particularly in view of the lack of documentation provided by her, the State Secretariat contacted the coordination office at the Swiss embassy in Ulaanbaatar and that, as a consequence, an investigation was conducted with the participation of a locally recruited lawyer. As a result of the investigation and in the light of a number of inconsistencies detected in the author's statements, the State party's authorities decided to reject the author's asylum request. The Committee further notes that the author had the opportunity to appeal against the decision before the Federal Administrative Court, which upheld the State Secretariat's decision.

6.7 The Committee further notes the author's argument that the State party neglected to take duly into consideration, when examining her case, the gravity of the human rights situation in Mongolia regarding domestic violence. However, the Committee considers that the State party's authorities took sufficiently into consideration in their assessment the extent of domestic violence in Mongolia, the existing legal framework and the availability of protection from the authorities, mainly the police and the judiciary, as well as the existence of a number of shelters for victims of domestic violence there. In that regard, the Committee takes note of the fact that the author has not explained why she did not submit her complaints against her ex-partner to the Mongolian prosecuting authorities or courts (see *N. v. Netherlands*, para. 6.9). In this context, the Committee also observes that Mongolia is a State party to the Convention and to the Optional Protocol thereto and, as such, is bound by their provisions.

6.8 The Committee recalls that it is generally for the authorities of States parties to the Convention to evaluate the facts and evidence or the application of national law in a given case, unless it can be established, in particular, that the evaluation was biased or based on gender stereotypes that constitute discrimination against women, was

clearly arbitrary or amounted to a denial of justice.¹² The Committee notes that nothing on file demonstrates that any such deficiencies characterized the examination by the authorities of the author's claims regarding her fears as to the risks that she would face if she were to return to Mongolia. In that regard, the Committee notes the author's claim that the State party's authorities violated her right to be heard, as they did not share with her the full report of the office of the Swiss embassy in Ulaanbaatar, which was deemed confidential. However, the Committee also notes that the main parts of the information were shared with the author to allow her to exercise the right to respond and comment thereon, and that, in the view of the State party, the author has not submitted solid evidence to demonstrate that the content of the report was inaccurate. It further notes that the decision to keep the report confidential was upheld by the Federal Administrative Court, which considered that the State Secretariat had respected the author's right to a hearing. The Committee considers that nothing in the elements contained on file supports the conclusion that the alleged inefficiencies in the asylum procedures of the State party have amounted to, or provoked, discrimination, or have rendered decisions made by the authorities arbitrary in the author's case. Moreover, and provided that they respect the procedural guarantees as set out under international law, sovereign States are in principle free to determine the nature, structure and procedures of their domestic systems for the determination of refugee status.

6.9 Accordingly, the Committee considers that nothing on file demonstrates that there were, in the examination by the State party's authorities of the author's claims, irregularities that could lead to the conclusion that the authorities failed in their duty to properly assess the risks that the author and her children would face if removed to Mongolia, or that the decisions of the authorities were arbitrary or amounted to a denial of justice, contrary to the provisions of the Convention.

7. The Committee therefore decides:

- (a) That the communication is inadmissible under article 4 (2) (c) of the Optional Protocol;
- (b) That this decision shall be communicated to the State party and to the author.

¹² See, for example, *R.P.B. v. Philippines* (CEDAW/C/57/D/34/2011), para. 7.5; *N.M. v. Denmark* (CEDAW/C/67/D/78/2014), para. 8.6; *H.D. v. Denmark* (CEDAW/C/70/D/76/2014), para. 7.7; and *M.K.M. v. Denmark* (CEDAW/C/71/D/81/2015), para. 10.10.