

25 May 2022

To: Mr. Eran Davidi
Director General of Ministry of Justice

Subject: Support for Israel's Accession to Istanbul Convention

This position paper is submitted ahead of a government debate on Israel's accession to the Istanbul Convention, following the welcome decision to promote the issue and place it on the government's agenda. Zulat thus seeks to support Israel's accession to the treaty, to register its deepest reservations about the arguments against such a move raised by Interior Minister Ayelet Shaked in a letter published in the media, and to elaborate on the reasons for these reservations.

The war on gender-based violence is of the essence. Recently published data show that 122 women were murdered in Israel between 2016 and 2020, 40% of them by a partner or ex-partner; in 2020, women constituted 87% of the victims in the 20,326 cases of spousal violence lodged with the Israel Police; only one in five men with a pending police case was treated at a dedicated center, while 60% went untreated. The correct context for reading these data is the close connection between sexual and domestic violence and the inequality between men and women in terms of access to resources in the public sphere, in the labor market, and at home. At present, Israel is unable to advance a uniform policy to reduce gender-based violence or to coordinate among all the entities required to that end. Hence, the Istanbul Convention provides a framework, tools, and a basis for comparison for the effective promotion, implementation, and monitoring of such a policy.

We would like to offer counter-arguments to those presented by Minister Shaked, and show that the concerns raised in her letter are not only legally unfounded, but convey positions that are totally unsuitable to the formulation of a long-term policy for combating violence against women.

At the heart of Minister Shaked's letter is the fear that joining the Istanbul Convention would force Israel to grant refugee status (along with the economic and security implications derived from this status) to an "unprecedentedly high number of persons" without sufficient evidence. The fear about a complete breach of all restrictions and the collapse of Israel's immigration policy rests on a chain of logical analogies of the "slippery slope" type, each of which is baseless and easily refutable. Below we point out the logical failures underlying the minister's arguments.

Expanding the definition of "gender-based violence" is appropriate and does not create the alleged evidentiary difficulty

Indeed, the Istanbul Convention expanded the term "gender-based violence" to include domestic economic and psychological violence. According to Minister Shaked's letter, "recognizing domestic and psychological violence alone might... do away with the

requirement for objective evidence, as well as render the option of refuting such an allegation difficult to impossible”.

Initiatives to expand the definition of “gender-based violence” in Israeli law to include domestic economic and psychological violence come up frequently in Israel, based on the growing understanding that power relations may be abused with non-physical force. On its own merit, such an expansion is not foreign to Israeli law or to the Israeli public, nor can it constitute a counter-argument to joining the treaty. The fear about this elaboration (primarily reflected in the wording of Paragraph 10 of Minister Shaked’s letter) is that masses of women might vaguely, or perhaps even falsely, claim to harm inflicted by some kind of amorphous violence that is hard to disprove. Needless to say, many studies have consistently shown that sexual and domestic violence offenses are actually under-reported, hence the fear about a “flood of false complaints” is not based on facts but on misogyny.

We should also note the obvious, that Israeli law has been dealing with claims of psychological harm for decades, and that psychological damage resulting from abuse (domestic or otherwise) is discussed daily in Israel’s courts and state institutions (e.g., the National Insurance Institute). The Israeli public can rest assured that Israeli law is well equipped with objective tools for assessing a claim of psychological harm.

Expanding the term “persecution” as defined in the UN Refugee Convention to include violence against women is right and proper

Women are more exposed than men to sexual and domestic violence throughout their lives, which is why their discrimination or persecution may also be manifested in sexual or domestic violence. The inclusion of violence that disproportionately harms women in the definition of “persecution” in the UN Refugee Convention is the right and proper expression of the perception that women are human beings, and that they are persecuted in unique ways. Minister Shaked’s objection to expanding the definition of “refugee” to include women who have been persecuted in the typical ways is essentially an objection to the idea that a woman can be a refugee or that women and men around the world have different experiences.¹

The fear that Israel will be forced to throw open its gates and grant refugee status to any woman who has suffered discrimination in her country is totally unfounded

Minister Shaked’s letter expresses the fear that the Israeli asylum system will be overwhelmed by both a high volume of applications citing gender-based violence and by the high number of applications it will be forced to approve. These concerns are ostensibly

¹ It should be noted that gender-based persecution is defined as grounds for “refugee status” in the Refugee Convention, and that what is new here is persecution manifested in sexual or domestic violence.

based on Articles 60-61 of the Istanbul Convention, which relate to the manner in which accession to the treaty affects the interpretation of the UN Refugee Convention.

However, a careful reading of Article 60 (dealing with gender-based asylum applications) reveals that it does not compel the acceding state to approve these applications, but rather obliges it to create a mechanism enabling recognition of such grounds. There is an abysmal difference between the obligation to grant status (which is what opponents warn against) and the obligation to establish a mechanism that allows the submission of an asylum application for an additional, gender-based, justification.

Similarly, a careful reading of Article 61 (dealing with non-refoulement), whose language would seem more binding, ought to allay these concerns. Although the article obliges acceding states to ensure protection against refoulement regardless of status or residency, contrary to the scaremongering in Minister Shaked's letter, non-refoulement is required not for countless asylum-seeking women for vague and irrefutable reasons, but for "victims of gender-based violence in need of protection". The article goes on to elaborate that the non-refoulement applies to countries where their life "would be at risk or where they might be subjected to torture or inhuman or degrading treatment or punishment". Therefore, the limits of the implementation of this article are contained in its wording: it is up to the state to determine in each and every case whether the applicant was a victim of gender-based violence, is in need of protection, her life might be in danger, or she may be subjected to torture, inhuman treatment, or humiliation. It is amply obvious that the article gives wide discretion to member states on how to implement this article, which is clearly intended for difficult and clear-cut cases.

Finally, reiterating fears about "countless" women from "less developed countries" who "will overwhelm the Israeli asylum system" with applications "citing reasons that are hard to disprove" can be no substitute for an objective examination of the reality. Nearly 40 countries have acceded to the Istanbul Convention since 2014, and they have not reported any change in the number of submitted asylum applications citing gender-based violence, and more importantly, nor in the number of applications of this type that were approved.

Therefore, the menacing "slippery slope" - from the expanded definition of "gender-based violence" to "the countless asylum applications citing hard-to-disprove reasons that will overwhelm the Israeli asylum system" - turns out to be nothing more than a series of unfounded and immaterial claims.

The fear of oversight mechanisms is unfounded

Minister Shaked raises the concern that the monitoring mechanisms set forth in the Istanbul Convention are "strict, invasive, and rigid". As an example of the Supervisory Committee's exercise of power, her letter notes the demand for a series of reforms imposed

on Poland.² That a demand for reforms is mentioned as the most extreme example of the Supervisory Committee's powers to counter the fact that dozens of countries have joined the treaty since 2014 is very reassuring. The Israeli Ministry of Justice has an illustrious record of dealing with international demands, including on issues related to Israel's sovereignty, its borders, and actions pertaining to state security. It would not be unreasonable to assume that dealing with demands concerning the war on gender-based violence would be entirely within its abilities.

There is no fear for Israel's sovereignty

Minister Shaked raises the concern that accession to the Istanbul Convention would subject Israel to the oversight and regulations of a body where it has no official representation or status. On this point, too, a careful reading of the relevant clauses of the treaty ought to allay concerns: the chapter dealing with monitoring mechanisms (the Committee of the Parties and the Group of Experts) does not limit membership in these bodies to the member states of the Council of Europe but allows all signatories to be represented. In addition, the treaty specifies that the monitoring mechanisms will adopt their own work practices and will be independent. Therefore, Israel would not be subordinate to a body where it is not represented, but to a body where it may be represented and would be able to take part in setting its work procedures.

In addition, we would like to mention that gender-based violence adversely affects the options available to women and prevents the realization of their potential in all areas, which is harmful to society and to the country at large. Reducing the phenomenon of gender-based violence is not just a moral obligation stemming from our shared values but is a long-term investment, whose gains for Israeli society and its labor market are invaluable.

Therefore, in light of the arguments presented in this position paper, Zulat calls on the Ministry of Justice and on you to promote Israel's accession to the Istanbul Convention and to join ranks with the signatory states that stand at the forefront of protecting women from violence. This would be a significant step toward regulating Israel's handling of violence against women and would add it to the growing effort to eradicate this heinous phenomenon and promote equality for all.

Legal advice: Attorney Reut Gelblum

Copy: Minister of Justice, Mr. Gideon Saar

² The interpretation whereby Poland withdrew from the Istanbul Convention due to the demand for reforms is possible, but is not the only one. Other interpretations may accord greater weight to the changes in the status of women and the attitude toward liberal values and the international community that have taken place in Poland in recent years.