



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

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 1012/2020* **

<i>Communication submitted by:</i>	S.R. (represented by counsel, John Sweeney)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Australia
<i>Date of complaint:</i>	14 November 2019 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 115 of the Committee's rules of procedure, transmitted to the State party on 30 June 2020 (not issued in document form)
<i>Date of adoption of decision:</i>	3 November 2023
<i>Subject matter:</i>	Deportation of the complainant to the Islamic Republic of Iran
<i>Procedural issue:</i>	Level of substantiation of claims
<i>Substantive issue:</i>	Risk of torture upon return to country of origin (non-refoulement)
<i>Article of the Convention:</i>	3

1.1 The complainant is S.R., a national of the Islamic Republic of Iran born in 1986. At the time of submission, his request for asylum in Australia had been rejected and he was facing deportation to the Islamic Republic of Iran. The complainant claims that, if Australia were to proceed with his deportation, it would violate its obligations under article 3 of the Convention. The State party has made the declaration pursuant to article 22 (1) of the Convention, effective from 28 January 1993. The complainant is represented by counsel.

1.2 On 30 June 2020, the Committee, acting through its Rapporteur on new complaints and interim measures, decided not to issue a request for interim measures under rule 114 of the Committee's rules of procedure.

Factual background

2.1 The complainant was born in the Ahwaz region of the Islamic Republic of Iran. He speaks Arabic as his native language rather than Persian. His father attempted to recover the family's land from the Government of the Islamic Republic of Iran, but he was abducted and killed by the security forces. The complainant, together with his friend A, made and

* Adopted by the Committee at its seventy-eighth session (30 October–24 November 2023).

** The following members of the Committee participated in the examination of the communication: Todd Buchwald, Claude Heller, Erdoğan Iışcan, Liu Huawen, Maeda Naoko, Ilvija Püce, Ana Racu, Abdulrazak Rouwane, Sébastien Touzé and Bakhtiyar Tuzmukhamedov.



distributed pamphlets expressing their opinions about the denial of rights to the Arab people in the Islamic Republic of Iran. They attempted to discourage people from participating in the elections in March 2012. On election day, A was arrested by the police, and his brother informed the complainant that A had revealed the names of those who had helped him with the pamphlets. The complainant thus went to hide with relatives for about six weeks. After he was informed that the intelligence service had searched his house, he made arrangements to flee the Islamic Republic of Iran. He left with his own passport, but he was accompanied in the airport by an agent who allowed him to avoid being stopped.

2.2 The complainant arrived in Australia on 10 May 2012 as an irregular maritime arrival. He applied for a protection visa on 24 August 2012. In his application, he claimed that, upon return to the Islamic Republic of Iran, he would be imprisoned and killed by the Iranian authorities because of his ethnicity and imputed political opinion.

2.3 On 30 November 2012, the Delegate of the Minister for Immigration and Border Protection rejected his application finding that the complainant was not credible. The Delegate noted that the complainant was evasive and unable to provide a convincing answer to the question of how A's brother had known that A had provided the names, including that of the complainant, to the intelligence service. The Delegate found it implausible that A's brother had known or received information from intelligence officers about what had happened inside the prison. While accepting that the complainant might have distributed pamphlets, the Delegate did not accept the claim that the authorities had pursued the complainant. Referring to various reports on the situations of Arabs in Ahwaz, the Delegate found that serious harm amounting to the persecution of Arabs had occurred on the basis of political activities, but not on the basis of race. In addition, the complainant did not have a noticeable political profile. While accepting that the complainant had endured discrimination in Ahwaz, the Delegate found that the level of harm from discrimination did not amount to persecution. The Delegate also pointed out that the complainant had stayed in the same area in the Islamic Republic of Iran for more than a month after A's arrest, had not faced any problem with the authorities, had had no arrest warrant or court summons issued against him and had left with his own passport without any issue. In that regard, the Delegate noted that all Iranians were required to have an "exit permit" in their passports to be allowed to leave the Islamic Republic of Iran, and the authorities could revoke the permit if deemed necessary, which had not been the case for the complainant.

2.4 On 22 February 2013, the Refugee Review Tribunal confirmed the decision of the Delegate of the Minister for Immigration and Border Protection. It found his claims to be inconsistent and non-credible. The Tribunal did not accept that the complainant had distributed pamphlets prior to the 2012 election, considering that he had never been a member of a political party and had always been careful when talking about politics, even in private with his friends. It was therefore implausible that someone who had avoided the public expression of Ahwaz political opinions because of his fear would spend two to three hours a day handing out pamphlets criticizing the Government in broad daylight in the middle of Ahwaz. The Tribunal took note of the complainant's statement that there were heightened security concerns in the period surrounding the election and therefore found it unlikely that he and A had been able to move to different places by motorbike and distribute pamphlets for several hours without being noticed. The Tribunal did not accept the complainant's accounts as to the manner of distributing the pamphlets. It found non-credible his claim that he had intentionally chosen a time around midday, when there was no one outside except for children, to whom he had handed out pamphlets. With regard to A's arrest and provision of the complainant's name to the authorities, the complainant initially said that A had given his name, but later stated that he had never been informed as such, but only learned that A had given the names of a "few people". The Tribunal concluded that the complainant had never been actively opposed to the regime and therefore did not have a political profile that would attract persecution on such grounds.

2.5 The complainant appealed to the Federal Circuit Court on 25 August 2014, which dismissed his appeal on 24 March 2017. He filed a notice of appeal on 11 April 2017 with the Federal Court of Australia, which was dismissed on 30 May 2018. He then applied for special leave to appeal before the High Court, but his request was dismissed on 17 October 2018. On 24 October 2019, his request for ministerial intervention was rejected.

2.6 Since his arrival in Australia, the complainant has continued to be actively involved with the Al-Ahwaz group, which the Government of the Islamic Republic of Iran considers to be a terrorist organization. He has participated in several demonstrations.

Complaint

3.1 The complainant submits that, if he is returned to the Islamic Republic of Iran, he faces a real risk of being tortured and suffering cruel, inhuman, degrading treatment and punishment, because of his ethnicity and imputed political opinion, and the State party would therefore violate article 3 of the Convention.

3.2 The complaint fears that the Iranian authorities will seek him out not only for his past activities in Ahwaz, but also for his current activities in Australia in relation to the Al-Ahwaz nationalist movement. In this regard, he asserts that he will be arrested and tortured, given that reports about political prisoners in the Islamic Republic of Iran indicate a real risk of torture and other ill-treatment. He claims that Arab-speaking people are persecuted in the Islamic Republic of Iran, because they cannot speak Arabic in public, cannot work in government jobs, cannot congregate, are not permitted to wear traditional clothing and are generally discriminated against in education and employment.

3.3 The complainant contests the findings of the Australian migration authorities. In particular, he insists that the authorities repeatedly invited him to speculate as to how A's brother had obtained information. In addition, the Australian authorities erred in finding implausible his speculation about why the intelligence service had not come to arrest him while he had been hiding in the same region for a month. It is impossible for him to know the "collective mind of the security forces". Furthermore, regarding the children on the streets at midday, the complainant declares that Australian authorities assumed incorrectly that children would have been at school and that his accounts would therefore not be credible, while ignoring that, in some parts of the world, children have two sessions of school due to the unbearably hot weather.

State party's observations on admissibility and the merits

4.1 On 25 February 2021, the State party challenged the admissibility of the complaint, arguing that the claims made by the complainant were inadmissible *ratione materiae*, because a number of his claims regarding the type of harm that he would be subjected to on his return to the Islamic Republic of Iran did not amount to torture within the meaning of article 3 of the Convention. It also submits that complainant's claims are manifestly unfounded because they have already been considered through comprehensive domestic administrative and judicial processes, where most of the evidence provided in his communication has already been examined, with the exception of additional documents alleging involvement in political activism in Australia and references to some updated country information, which is addressed below.

4.2 On the merits, the State party recalls in detail the decisions issued at the domestic level. In particular, in respect of the complainant's claim regarding his continued involvement in political activism in Australia, it notes that, in the country information referred to in the complainant's communication, in particular material from the Home Office of the United Kingdom of Great Britain and Northern Ireland, it is indicated that, although *sur place* political activities of Ahwazi Arabs might increase the risk of persecution on return, it did not follow that the author of such activities would necessarily be persecuted.¹ The State party refers to the latest country information report of the Department of Foreign Affairs and Trade of Australia, in which the Department notes that persons of Arab ethnicity in the Islamic Republic of Iran did not necessarily harbour separatist, terrorist sentiments, such that they

¹ United Kingdom, Home Office, "Iran: Ahwazis and Ahwazi political groups", country policy and information note, June 2018, available at <https://www.refworld.org/docid/5b9ba544b.html>.

were at risk of heightened attention from Iranian authorities, but that Iranian Arabs generally favoured greater political and cultural rights over autonomy or a separate State.²

4.3 With regard to the court order and summons included in the complainant's submissions, the State party notes that no explanation has been provided as to why those documents were not provided to decision makers during the judicial review process. The documents are dated from 2014, and the Federal Circuit Court and Federal Court of Australia hearings were in 2017. There was ample time for him to provide those documents during the domestic process. Furthermore, the State party submits that, if the complainant was in fact being investigated prior to the issuance of the summons and court order, Iranian authorities could have easily prevented him from exiting the country. Noting the credibility concerns of decision makers throughout the domestic process, the State party concludes that the provision of the documents does not alter its assessment of whether the complainant would face a risk of torture if he is to return to the Islamic Republic of Iran.

4.4 With regard to the updated or new sources of country information mentioned in the complainant's communication, in particular the treatment political prisoners, the State party notes that the complainant's risk pursuant to his claimed political activism has been assessed by domestic processes as low. Although he provides more recent country information, noting that the Delegate of the Minister for Immigration and Border Protection and the Refugee Review Tribunal considered the merits of the claim in 2012 and 2013, respectively, the new information does not suggest that the complainant is at any greater risk. The complainant provides generalized information regarding an increased risk of persecution for those providing low-level support to the Arab separatist cause in the United Kingdom, given that the cause is well-organized in London. He then claims that the movement is similarly strong in Sydney, Australia, but does not, however, provide any country information regarding this statement.

4.5 The complainant also provides generalized information regarding treatment of political prisoners in the Islamic Republic of Iran. However, the State party notes that the Delegate referred to comparable information regarding political prisoners when considering the claim. The updated country information in the complainant's communication is therefore not considered new information such that his claim must be reconsidered. The State party submits that the complainant has not provided sufficient evidence indicating that there are substantial grounds for believing that he would be personally at risk of treatment amounting to torture under article 1 of the Convention.

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

5.1 On 4 November 2021, the complainant submitted his comments on the State party's observations on the admissibility and the merits of the communication. He explains that, once the two processes of consideration of the merits of a claim have been finalized, namely, consideration by the Delegate of the Minister for Immigration and Border Protection, followed by the Refugee Review Tribunal, there is no further consideration of the non-refoulement obligation owed to any applicant. After that point, any change in the circumstances of the applicant, for example, activity undertaken within Australia that may give rise to a *sur place* claim or change in the circumstance of the country from which the applicant has fled, which would trigger a State's non-refoulement obligation, as would be the case of Afghanistan coming almost completely under Taliban rule in 2021, will not be considered. The only way to attempt to have the non-refoulement obligation considered is by lodging a complaint with a human rights treaty body, such as the Committee. This is hardly a robust process, but rather a process designed to make it as difficult as possible for an applicant to obtain protection.

5.2 The complainant considers that the decision-making process that he was subjected to was neither robust nor fair. One clear example of the faulty process of the Refugee Review

² Australia, Department of Foreign Affairs and Trade, "DFAT Country Information Report: Iran", 14 April 2020, para. 3.12. Available at <https://www.ecoi.net/en/file/local/2029778/country-information-report-iran.pdf>.

Tribunal is its assessment that the fact that he was able to leave the Islamic Republic of Iran on his own passport without being stopped by the Iranian security services therefore proves, in the State party's opinion, that the security forces had no interest in him at the time. However, he had said that his sister had organized an "agent" or "people smuggler" to assist him in leaving the country, which is referred to a number of times in the Tribunal's decision. The Tribunal argues that, given that it had already decided that the Iranian authorities had no interest in the complainant, he had no need of a people smuggler and therefore did not employ one; on that basis, it argues that he had no help navigating the exit process through Tehran airport and that that, according to the State party, confirms that the Iranian authorities had no interest in him. For the complainant, this is a stunning example of circular logic; no other reason is given and no other doubt is adduced regarding the use of a people smuggler. There were no questions posed to the complainant about the process of engaging the people smuggler.

5.3 In addition, nothing is said about which Iranian authorities would be involved; there are many, and there is little evidence of internal coordination. There is simply a supposition that it would be impossible for the complainant to have left the Islamic Republic of Iran if he had been involved in distributing leaflets, as he submitted.

5.4 The complainant considers that the process before the Refugee Review Tribunal in particular was not robust, because it was deeply flawed and the Tribunal made an unreasonable, wide-ranging negative credibility finding against the complainant. For him, there are good reasons to believe that the Tribunal made extensive attempts to justify a prejudiced finding that he was a liar.

5.5 The complainant therefore urges the Committee to find that his complaint is admissible, given that so much of the evidence that must be relied upon depends on his credibility, and the process employed to find him not credible was itself unduly flawed. In addition, the process which the State party argues is robust was not, at the very least because there was no non-refoulement obligation assessment since February 2013. The complainant has argued that his arrest is likely on his arrival in the Islamic Republic of Iran and that torture is likely during detention.

Issues and proceedings before the Committee

Consideration of admissibility

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

6.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it is not to consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the present case, the State party has not challenged the admissibility of the complaint on these grounds. Accordingly, the Committee considers that it is not precluded by article 22 (5) (b) from examining the communication.

6.3 The Committee takes note of the State party's submission that the complaint is inadmissible *ratione materiae* insofar as the complainant claims that he would face a real risk of being subjected to cruel, inhuman or degrading treatment or punishment upon return to the Islamic Republic of Iran. The Committee also takes note of the complainant's claim that he would be at risk of being subjected to torture.

6.4 The Committee takes note of the State party's argument that the complaint is inadmissible as manifestly unfounded because the evidence produced has already been examined by the domestic authorities and the new evidence adduced in the complainant's communication to the Committee would not change the decisions rendered by those authorities. The Committee recalls that it is for the courts of the States parties to the Convention, and not for the Committee, to evaluate the facts and evidence in a particular case, unless it can be ascertained that the manner in which such facts and evidence were

evaluated was clearly arbitrary or amounted to a denial of justice.³ The Committee gives considerable weight to findings of fact made by organs of the State party concerned,⁴ however, it is not bound by such findings. It follows that the Committee will make a free assessment of the information available to it in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to the case.⁵

6.5 In the present case, the Committee observes that the State party's immigration and judicial authorities thoroughly examined the facts and evidence presented by the complainant and considered that his story was not credible, that he did not have a political profile of interest to Iranian authorities and that the level of harm resulting from discrimination against Arabs in the Ahwaz region did not amount to persecution. On that basis, the authorities concluded that the complainant had not established the existence of substantial grounds to show that he would face a foreseeable, real and personal risk of being tortured if returned to the Islamic Republic of Iran. The Committee notes that the complainant does not provide evidence of his alleged political activities in Australia or indicate whether the Iranian authorities have become aware of his political involvement. It also notes that the complainant contests the assessment made by the State party's authorities of his credibility and the finding that he left the country with his own passport and without any issue, indicating that he actually used a smuggler. However, the Committee observes that the complainant provides no documentation or other evidence to substantiate his assertions and that the authorities of the State party found, after a thorough assessment of all the facts and evidence presented, that the complainant had not provided sufficient evidence that he faced a foreseeable, real and personal risk of being tortured if returned to the Islamic Republic of Iran. The Committee therefore finds that the complainant has not established that the domestic evaluation of the facts and evidence concerning his alleged risk of treatment contrary to the Convention upon return to the Islamic Republic of Iran suffered from any defects.⁶

6.6 The Committee recalls its jurisprudence in which it found claims to be manifestly unfounded where the author of a communication had failed to submit substantiated arguments showing that the danger of being subjected to torture was foreseeable, present, personal and real. The Committee also recalls that, for a claim to be admissible under article 22 of the Convention and rule 113 (b) of the Committee's rules of procedure, it must not be manifestly unfounded.⁷ In the light of the above, and in the absence of any further relevant information, the Committee concludes that the complainant has failed to substantiate his claims sufficiently for the purposes of admissibility.

7. The Committee therefore decides:

- (a) That the communication is inadmissible under article 22 (2) of the Convention;
- (b) That the present decision shall be communicated to the complainant and to the State party.

³ *S.K. v. Australia* (CAT/C/73/D/968/2019), para. 12.5; and *Z.S. v. Georgia* (CAT/C/70/D/915/2019), para. 7.4.

⁴ For example, *T.D. v. Switzerland* (CAT/C/46/D/375/2009), para. 7.7; and *Alp v. Denmark* (CAT/C/52/D/466/2011), para. 8.3.

⁵ For example, *I.E. v. Switzerland* (CAT/C/62/D/683/2015), para. 7.4. See also general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, para. 50.

⁶ *S.K. v. Australia*, para. 12.5.

⁷ *Ibid.*, para. 12.6.