



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

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Committee against Torture

Communication No. 750/2016*

**Decision adopted by the Committee at its sixty-third session (23 April
– 18 May 2018)**

<i>Communication submitted by:</i>	R.H. (represented by counsel, Mr. Mathias Blomberg and Ms. Beatrice Rohdin)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Sweden
<i>Date of complaint:</i>	19 May 2016 (initial submission)
<i>Date of adoption of decision:</i>	10 May 2018
<i>Subject matter:</i>	Deportation to Iran
<i>Substantive issues:</i>	Non-refoulement; prevention of torture
<i>Procedural issue:</i>	-
<i>Articles of the Convention:</i>	3

* The following members of the Committee participated in the examination of the communication: Essadia Belmir, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Honghong Zhang.

1.1 The complainant is Mr. R.H., who is an ethnic Kurd and a national of Iran residing in Sweden. He was born on 25 April 1972 in Iran, and is represented by counsel, Mathias Blomberg. He asserts that Sweden would violate his rights under article 3 the Convention against Torture by removing him to Iran, where he would face persecution due to his political activities against the Iranian regime. Sweden made the declaration under article 22 of the Convention in 1986.

1.2 On 20 May 2015, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party not to deport the complainant while the complaint was being considered.

The facts as presented by the complainant

2.1 The complainant asserts that he and his family were engaged in anti-regime activities in Iran. Members of his family were imprisoned and persecuted because of their political views.¹ The complainant's father owned two shops in his home city of Kermanshah, where he and his family conducted their political activities. The complainant rented another shop in Tehran, where he was also active politically. The activities included meetings with other Kurds to discuss potential reforms in Iran, spreading propaganda during the 2009 elections, selling merchandise to support the "Green Movement", and advertising for an opposition party in his shop. The complainant's and his family's long lasting political involvement led him to become a well-known local regime-critic in his home city and in Tehran.

2.2 In December 2011, the complainant was arrested and held in custody in Elvin prison for 25 days. He was questioned about his political activities and connection to the Green Movement during that time. After his release on bail, he realized that he could no longer continue his political activities and closed down his shop in Tehran. On 17 March and 8 May 2012, he received two summonses to appear before the Department for Enforcement of the Judgment and later a default judgement from the Revolutionary Court in which he was convicted in absentia to 8 years in prison for insulting the Islamic Republic and the regime's holiness as well as acted as instigator and disrupted the public's mindset.² These offenses are punished by imprisonment or even death.

2.3 Since he received the summons, the complainant and his daughter went into hiding.³ After the judgement from the Revolutionary Court came in, he was sought by the police. His father was taken to the police station several times for questioning.⁴ On 22 November 2012 the complainant and his daughter left Iran. They travelled with the assistance of smugglers and applied for asylum immediately after arriving in Sweden on 3 December 2012.

2.4 On 5 December 2013, the Migration Agency rejected the complainant's application for asylum because he, inter alia, "hasn't made it probable that he is wanted or is at risk of being exposed by the Iranian authorities in case he has to return to the country of origin... or risking a persecution or other such treatment".

2.5 On 7 January 2014, the complainant appealed the decision of the Migration Agency to the Migration Court. During his asylum process, the complainant continued to engage in political, regime and Islam-critiquing activities against Iran. Among other things, in February 2014 he published a book in Sweden, which was completed after he left Iran. The book, titled "Crime and Punishments in Iran", contained his critical views of Islam, violence, harassments and censure operations by the Iranian regime. The content of the book was so controversial that the book's publisher did not want to put its name on the book fearing consequences from The following members of the Committee participated in the examination of the communication: Essadia Belmir, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Honghong Zhang.

¹ The complainant claims that his mother's brother was arrested and executed for anti-regime activities (date unknown).

² The Migration Agency and the Migration Court did not question the authenticity of the documents, but found the summonses and judgement to be of a simple nature, and that "they alone could not substantiate the complainant's asylum account, however they supplemented his account".

³ The complainant is divorced and has custody of his daughter (born in 2002).

⁴ There are no details of the dates or reasons for questioning.

the Iranian regime. Furthermore, the complainant was active on internet. On the website of *Khabar 1*, an Iranian news channel, there are several articles about religion in Iran, where both, the complainant and his daughter, mentioned with their names and photo.⁵ Also, *Balatarin*, a popular website of the resistance movement against the Iranian regime, contains the complainant's name and photo and a presentation for his book. Because of the complainant's activities on internet, his father and other members of the family have been called in for questioning by the local authorities and threatened that if the complainant doesn't end his anti-regime activities, there would be consequences.⁶ The complainant also provided the Court with the certificate attesting to his membership in the Swedish branch of the Worker-Communist Party of Iran, which is banned in Iran because it seeks to overthrow the current regime and to establish a socialist republic in its place.

2.6 On 4 June 2014, the Migration Court rejected the complainant's appeal and found unreliable his story about his activities in Iran. As for the complainant's reasons for asylum *sur place*, the Court found that there was no reason to assume that the Iranian authorities would have special interest in the complainant, because he did not have a well-known political profile in Iran, and he could not show that his anti-regime activities in Sweden became known to the Iranian authorities.

2.7 On 24 June 2014, the complainant appealed the decision of the Migration Court to the Migration Court of Appeals. On 3 October 2014, the Migration Court of Appeals refused leave to appeal.

2.8 On 16 December 2014, the complainant requested the Migration Agency to stay the enforcement of the expulsion and to re-examine its previous decision due to impediments to the enforcement of the expulsion. The complainant claimed new circumstances which required even greater protection for him and his daughter, namely that the circulation of his book was widespread, being sold in Sweden, Germany, US and Canada, and it was also available for a free download by anyone in and outside of Iran. The President of the Iranian PEN in exile confirmed in a letter the book's distribution on internet. Also, the complainant's Facebook page, which had over 1199 friends, contained several texts and photos critical of the Iranian regime and Islam, and about French magazine Charlie Hebdo.

2.9 On 29 December 2014, the Migration Agency rejected the complainant's request because it considered that it was improbable that the complainant's activities have become known to the Iranian authorities.

2.10 On 22 January 2015, the complainant appealed the Agency's decision to the Migration Court. By this time he has written another book titled "Terror in the Islamic Republic of Iran", which was critical of Islam, the Islamic history and the power used by the Iranian authorities in the name of Islam. The book was published in Sweden by a local publisher in Persian language and was made available for a free download on internet.

2.11 On 26 January 2015, the Migration Court rejected the complainant's appeal finding that the pleaded circumstances could not be considered as new and there were no impediments to the enforcement of the expulsion.

2.12 On 13 February 2015, the Migration Court of Appeals denied the complainant's leave to appeal.

The complaint

3. The complainant claims that he qualifies as a refugee *sur place* and in case he and his daughter are removed to Iran, they will be arrested by the authorities and subjected to torture and other cruel, inhuman and degrading treatment due to his anti-regime activities. The complainant argues that the Swedish authorities have used old case law and outdated country information as a criteria for refugee *sur place* operations, thus wrongly denying him and his daughter asylum.

⁵ There is no information on the content of the articles.

⁶ No further details provided.

State party's observations on admissibility and the merits

4.1 By Note Verbale of 21 November 2016, the State party submitted its observations on admissibility and merits. After explaining the applicable legislation and facts of the case, the State party submits that the complainant has failed to raise the minimum level of substantiation required for the purposes of admissibility. Thus, the State party argues that the communication is manifestly unfounded and thus inadmissible pursuant to article 22, paragraph 2 of the Convention and rule 113 (b) of the Committee's rules of procedure.

4.2 As for the merits of the case, the State party submits that to constitute a breach of article 3 of the Convention, the following considerations are relevant: (i) the general human rights situation in Iran and, in particular, (ii) the personal, foreseeable and real risk of the complainant being subjected to torture, following his return there.

4.3 With relation to the general human rights situation in Iran, the State party refers to the recent reports by the US Department of State,⁷ Freedom House,⁸ Amnesty International,⁹ Human Rights Watch¹⁰ and others, and while not underestimating the legitimate concern that can be expressed regarding the human rights situation in the country, it concludes that the current situation in Iran is such that there is no general need to protect asylum seekers from that country.

4.4 As to the complainant's claim that the Migration Court's judgement was based on old case law¹¹ and outdated country information, the State party submits that the Migration Court did take the latest available country of origin information into consideration while at the same time comparing it to the circumstances in the cited case-law. In its judgement, the Court said that the activities in the cited case had taken place in Iran during a period after the 2009 elections and that "no information has emerged to suggest that the circumstances are different today".

4.5 The State party draws the Committee's attention to the fact that several provisions in Swedish Aliens Act reflect the same principles as those laid down in article 3 of the Convention. Thus, the Swedish migration authorities apply the same kind of test when considering an application for asylum under the Aliens Act as the Committee applies when examining a subsequent complaint under the Convention. With respect to this case, the State party underlines that both, the Migration Agency and the Migration Court have conducted thorough examinations of the complainant's case.

4.6 The State party recalls the Committee's General Comment No. 1 on article 3 of the Convention, para. 9, as well as its views whereby it has been affirmed that the Committee is not an appellate quasi-judicial or administrative body and that considerable weight will be given to findings of facts made by organs of the State party concerned.

4.7 In the complaint, the complainant cites that he risks treatment in violation of the Convention due to his political activities in opposition to the regime in Iran. During the national asylum investigation the complainant stated to the Migration Agency that he was politically active before the elections in 2009. He stated that his activity was limited to selling goods such as scarves for the Green Movement and discussing social issues with other Kurds, which he also confirmed was not illegal. He also expressly stated that he was not a member of any political party or organization. According to his own statement, the Iranian authorities did not show any interest in him until 2011, when he allegedly was arrested and detained for 25 days. Subsequently he and his family stopped their political activities. The complainant's cited reasons for asylum before the Migration Agency escalated before the Migration Court and the complainant presented new information in relevant aspects. Before the Migration Court, the complainant stated inter alia that his shop in Tehran had been a center for the

⁷ 2015 Country Reports on Human Rights Practices – Iran, 13 April 2016.

⁸ Freedom in the World 2016 – Iran, 7 March 2016.

⁹ Amnesty International Report 2015/16 – Iran, 24 February 2016.

¹⁰ World Report 2016 – Iran, 27 January 2016.

¹¹ In its 4 June 2014 judgement, the Migration Court used its own case law from 2011 of another Iranian asylum-seeker sur place, where it found that if regime critics who apply for asylum lack political profile, it is improbable that they would catch the attention of the Iranian authorities upon their return to Iran.

election campaign in the area and that he had been politically active until his arrest. He further submitted documents to prove that he was a member of the Worker-Communist Party of Iran, despite the fact that previously he had stated that he did not belong to any party. Furthermore, the complainant presented new information that he had been contacted by unknown persons by telephone in his shop and threatened to stop his political activities. This information, however, contradicted his submissions from the migration investigation, where he stated that he did not have any problems with the authorities until he was arrested. The Migration Court therefore concluded that the complainant's reasons for asylum had escalated during the process, that his statements had been contradictory and partly vague and lacking detail, and thus were not reliable and could not constitute grounds to grant him and his daughter residence permits.

4.8 The State party further refutes the complainant's claim that he qualifies as a refugee sur place. According to the UNHCR Handbook (para. 96) "a person may become a refugee sur place as a result of his own actions, such as associating with refugees already recognized, or expressing his political views in his country of residence. Whether such actions are sufficient to justify a well-founded fear of persecution must be determined by a careful examination of the circumstances. Regard should be had in particular to whether such actions may have come to the notice of the authorities of the person's country of origin and how they are likely to be viewed by those authorities". By complainant's own estimation as testified during the proceedings in the Migration Court, his book titled "Crime and Punishments in Iran" had been published in 300 copies in Sweden and was available for purchase in a bookshop in Stockholm. Based on the complainant's submission, the Migration Court concluded that it was unlikely that the material in the book had reached a large number of people, and that the complainant had not plausibly demonstrated that the book had come to the attention of the Iranian authorities. The Migration Court further concluded that even if the book and the online articles had come to the attention of the Iranian authorities, the scale of the sur place activities was relatively limited and there was no reason to assume that the Iranian authorities would show any particular interest in them, particularly as nothing had emerged to suggest that the complainant was a well-known political figure in Iran. The State party emphasizes that in cases like this, it is of utmost importance to first consider the scale of the asylum seeker's political engagement before assessing the plausibility or risk that his or her actions sur place would attract the attention of the national authorities upon the asylum seeker's return. Only after these initial factors have been assessed, can the question of whether there is a real risk of persecution upon return to the country of origin be determined.

4.9 The State party refers to the report from the UK Home Office,¹² which states that: "decision makers must be satisfied that persons claiming to be journalists or bloggers are able to demonstrate that their activities have brought, or will bring them to the adverse attention of the Iranian authorities. Decision makers should give consideration to all relevant factors, including in particular: the subject matter of the material in question, the language and tone used, the method of communication, the reach of the publication (i.e. how many people are they communicating with), the publicity attracted, the frequency of such publications and any past adverse interest by the authorities". Due to the vast number of Iranians in exile who take part in protests and online activities, Iranian authorities cannot monitor all of their online activities. They are therefore compelled to focus on those whose activities are extensive and go beyond expressing regular criticism, and those who are in organized opposition to the regime and present a real and serious threat to the regime.¹³

4.10 With regards to the letter from the Iranian Pen in Exile, which was submitted to the Migration Agency, the State party submits that it contained only general information and seemed to be based on information provided by the complainant himself. It alone cannot establish the extent to which the complainant has expressed himself critically against the Iranian regime on the internet or the extent to which his book has been spread.

¹² Country Information and Guidance – Iran: Journalists and Bloggers, 9 October 2014, para. 16, available at: www.refworld.org/docid/54365e5e4.html.

¹³ *Id.*

4.11 The State party emphasizes that the complainant has not held any leading position within the political opposition or in any anti-regime organization in Iran. Nor has he held any other kind of high-profile political position that, in conjunction with political activities in Iran or abroad, could constitute a risk of persecution upon return. He has not been well-known in Iran and did not suffer any interference or persecution from the authorities after his alleged detention in 2011. His activities in Sweden can furthermore not be regarded as extensive or as constituting a threat to the Iranian regime. Thus, the State party holds that there is nothing to support the complainant's claim that the Iranian regime will take action against him upon return due to his past activities in Iran or his cited sur place activities in Sweden.

Complainant's comments on the State party's observations

5.1 In his submission dated 1 April 2017, the complainant disputed the State party's assertion that his communication is manifestly unfounded.

5.2 The complaint argues that in its submission on the merits of the case, the State party has used outdated reports regarding the general human rights situation in Iran today. Referencing the US State Department's 2016 Country report on Human Rights Practices in Iran, dated 3 March 2017, the complainant submits that prosecutors in Iran frequently use *moharebeh* (enmity towards or waging war against God) as a criminal charge against political dissidents and journalists, accusing them of struggling against the precepts of Islam and against the state, which upholds those precepts. The government often charged political dissidents with vague crimes, such as "antirevolutionary behavior", "corruption on earth", "siding with global arrogance", "moharabeh", and "crimes against Islam". Plainclothes officials often seized journalists and activists without warning, and government officials refused to acknowledge custody or provide information on them. There were credible reports that security forces and prison personnel tortured and abused detainees and prisoners. Judicially sanctioned corporal punishment included flogging, blinding, and amputation, which the government defended as "punishment," not torture. The complainant argues that even though the information above does not itself suffice to establish that the general human rights situation in Iran is such that his expulsion would be in breach of article 3 of the Convention, it has great importance in assessing his personal risk of being subjected to treatment contrary to the article.

5.3 As for the personal risk of being subjected to treatment in breach of article 3 of the Convention, the complainant submits that it is primarily his sur place activity in Sweden, and not the events that occurred in Iran, that constitutes the clearest and most prominent danger for the complainant. However, those events are also of a value, because they show the complainant's former political activity and harassment which has impact on the assessment of the risk if he is returned to Iran. The complainant submitted documents, which included the written summonses and default judgement of the Revolutionary Court, however the Swedish Migration Agency and Migration Court decided that these documents were of a low value and of a simple nature,¹⁴ which implicitly means that they were not taken into consideration at all.

5.4 The complainant refers to the Swedish Migration Agency's own policy document for determining sur place activities, which states that the circumstances that show that an applicant can be noticed by the Iranian authorities are the following: (i) if he has pronounced opinions criticizing the Iranian regime in his own name through media or Internet, which can be spread in Sweden and/or Iran; (ii) there is concrete information, like a judgement or a summons, which incline that the applicant would be of a particular interest to the Iranian authorities, or (iii) the person has a prominent political position designed to criticize the regime. If an applicant can make it plausible that the regime criticizing views have been noticed by the Iranian authorities, or can be noticed by them, he/she shall be granted a residence permit.¹⁵ The complainant submits that he has never claimed to hold a leading political position or any other similar profile in Iran, which made the State party to conclude

¹⁴ See footnote 2.

¹⁵ See Swedish Migration Agency (*Rättsligt ställningstagande angående den individuella prövningen av individer tillhörande minoriteter och andra grupper i Iran samt flyktingskap sur place för individer ur denna grupp. RCI 16/2012, 27/06/2012*).

that the complainant's activities could not be regarded as extensive or as constituting a threat to the Iranian regime. However, the above-stated criteria for sur place activities does not require a leading political position or similar as long as the other two criteria are fulfilled.

5.5 The complainant submits that a single search on Google of his and his daughters name brings up several pictures of him and his daughter and websites offering download of the complainant's book, as well as his interviews and articles. The complainant claims that his book has been downloaded several times and handed out by the public in Iran. His Facebook page has over 1199 friends and contains several texts and photos critical of the Iranian regime and Islam. Iranian government organizations, including the Basij "Cyber Council", the Cyber Police and the Cyber Army, which are presumed to be controlled by the Islamic Revolutionary Guard Corps, monitor, identify and counter alleged cyber threats to the national security of Iran. These organizations especially target citizens' activities on social networking websites officially banned by the Committee in Charge of Determining Offensive Content, such Facebook, Twitter, YouTube and Flickr, and reportedly harass those who criticize the government or raise sensitive social problems.

5.6 The complainant refers to the 2016 Freedom House Report: Freedom on the Net, which states that the Iranian authorities have upped their monitoring of social media and technical attacks against opposition voices. Further, the UK Home Office, in its Country Information and Guidance – Iran: Illegal exit (version 4.1) 2016 report, notes that passengers entering the country are checked against two watch lists issued by the Ministry of Intelligence and Security (MOIS) and the Revolutionary Guard. Those flagged are either arrested on the spot, allowed to pass through and surveilled while in the country, or have their passports confiscated and enter Iran on the condition that they attend interrogation sessions at MOIS offices. The complainant makes reference to another report by the Canadian Immigration and Refugee Board,¹⁶ which states that rejected asylum-seekers returning to Iran are questioned, regardless of whether they were politically active in Iran or abroad, and that they are placed in detention for several days until the police have verified that they had not engaged in any political activities, after which they are released. The complainant concludes that it is evident from these reports that the Iranian regime has massive and effective surveillance mechanisms to identify individuals criticizing the regime and its values. Since the complainant has been involved in criticizing that normally arouses the regime's interest and will have a rejected asylum application when he arrives in Iran, he will be checked and questioned by the authorities. The summonses and the default judgement will most likely show up by a search of his identity, and by a single Google search the authorities will be able to find his Facebook page with his critical views of the regime and Islam, as well as his books and his interviews.

State party's additional observations

6. By Note Verbale of 15 August 2017, the State party noted that the complainant's comments did not include any new submissions in substance which had not already been covered by the State party's observations of 21 November 2016, and emphasized that it maintains its position regarding the admissibility and merits of the complaint.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any complaint submitted in a communication, the Committee must decide whether it 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.

7.2 The Committee recalls that, in accordance with article 22, paragraph 5 (b), of the Convention, it shall not consider any communications from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee

¹⁶ Iran: Treatment by Iranian authorities of failed refugee claimants and family members of persons who have left Iran and claimed refugee status, (2011 – February 2015), 10 March 2015.

notes that in the instant case the State party concedes that the complainants have exhausted all available domestic remedies and does not contest the admissibility of the complaint.

7.3 The Committee considers that the complaint raises substantive issues under article 3 of the Convention, and that these issues should be examined on the merits. As the Committee finds no obstacles to admissibility, it declares the communication admissible.

Consideration of the merits

8.1 In accordance with article 22 (4) of the Convention, the Committee has considered the communication in the light of all the information made available to it by the parties.

8.2 The issue before the Committee is whether the removal of the complainant to the Islamic Republic of Iran would violate the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

8.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to the Islamic Republic of Iran. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of the determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

8.4 The Committee recalls its general comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, according to which the Committee will assess "substantial grounds" and consider the risk of torture as foreseeable, personal, present and real when the existence of credible facts relating to the risk by itself, at the time of its decision, would affect the rights of the complainant under the Convention in case of his/her deportation. Indications of personal risk may include, but they are not limited to: (a) the complainant's ethnic background; (b) political affiliation or political activities of the complainant and/or his family members; (c) arrest warrant without guarantee of a fair treatment and trial; (d) sentence in absentia. With respect to the merits of a communication submitted under Article 22 of the Convention, the burden of proof is upon the author of the communication who has to present an arguable case – i.e. to submit circumstantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real.¹⁷ The Committee also recalls that it gives considerable weight to findings of fact made by organs of the State party concerned; however, it is not bound by such findings, as it can make a free assessment of the information available to it in accordance with Article 22, paragraph 4, of the Convention, taking into account all the circumstances relevant to each case.¹⁸

8.5 The Committee notes that the State party itself recognizes the legitimate concern that can be expressed regarding the human rights situation in the Islamic Republic of Iran. The Committee recalls that the most recent available report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran dated 17 March 2017 shows that the legislation of the Islamic Republic of Iran continues to authorize punishments such as

¹⁷ *T.Z. v. Switzerland* (CAT/C/62/D/688/2015), para. 8.4.

¹⁸ See General Comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, para. 50.

flogging, blinding, amputation and stoning of individuals convicted of certain offences.¹⁹ The report stresses that the Iranian government rejects the notion that amputations and floggings amount to torture and maintains that they are effective deterrents to criminal activity.²⁰

8.6 The Committee takes note of the State party's submission that the complainant has not held any leading position within the political opposition or in any anti-regime organization in Iran. It also notes the State party's argument that due to the vast number of Iranians in exile who take part in protests and online activities, Iranian authorities cannot monitor all of their online activities. However, the Committee observes that recent reports and the Committee's own jurisprudence show that low-level opposition is also closely monitored in the Islamic Republic of Iran.²¹ These reports also indicate that the Iranian Government continues to sentence individuals for the legitimate exercise of their rights to free expression and opinion.²² The Committee notes that the authenticity of the court judgement or the summons, that had been received by the complainant, were never questioned by the State party. Since the complainant has already been convicted in Iran in absentia and sentenced to 8 years in prison for insulting the Islamic Republic and the regime's holiness as well as acted as instigator and disrupted the public's mindset, the Committee assumes that the complainant is currently wanted by the Iranian authorities for his 2012 conviction and will be detained upon arrival to Iran.

8.7 In assessing the risk of torture in the present case, the Committee notes the complainant's claim that he (a) is of Kurdish ethnic minority;²³ (b) had taken part in political activities in Iran first as part of the Green Movement, and later as a member of the Worker-Communist Party of Iran, with history of family members being persecuted and executed for their political views; (c) was arrested and later convicted in absentia for his political activities; (d) had illegally left Iran after his conviction; (e) and had openly voiced his views against the current regime and State religion in Iran through his books, which are still freely available for downloading on internet, and social media posts, which is prohibited and punished in law and practice by the Iranian authorities, including by types of punishment that constitutes torture.

8.8 In the light of all those circumstances, including the general human rights situation in the Islamic Republic of Iran, the personal situation of the complainant, who continues his active engagement in political activities against the Iranian regime abroad, his prior conviction, and the Committee's jurisprudence,²⁴ the Committee is of the opinion that the complainant could well have attracted the attention of the Iranian authorities. The Committee considers that the complainant's books critical of the current regime and Islam in general, compound the risk that he will be detained if he is returned to his country of origin. In the light of those considerations, taken as a whole, the Committee is of the view that in the particular circumstances of the present case, there are substantial grounds for believing that the complainant would risk being subjected to torture if he were returned to the Islamic Republic of Iran. Moreover, the Committee notes that, since the Islamic Republic of Iran is not a party to the Convention, in the event of a violation of the complainant's Convention

¹⁹ Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, 17 March 2017, para. 84. The author claims that the Iranian authorities charge political dissidents and journalists with moharebeh (drawing a weapon on the life, property or chastity of people or to cause terror as it creates the atmosphere of insecurity), which can be punished with death, crucifixion, amputation or banishment.

²⁰ *Id.*, para. 29.

²¹ *Id.*, para. 51-52. Also, *Abed Azizi v. Switzerland* (CAT/C/53/D/492/2012), para. 8.6; *K.N., F.W. et al v. Switzerland* (CAT/C/52/D/481/2011), para. 7.7.

²² *Id.*, para 51.

²³ According to the Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, 17 March 2017, violations of the rights of ethnic minorities continue to be reported in the country. Kurdish political prisoners are said to represent almost half of the total number of political prisoners in the country. Almost one fifth of the executions carried out in Iran in 2016 concerned Kurdish prisoners.

²⁴ See, inter alia, *Azizi v. Switzerland* (CAT/C/53/D/492/2012), para. 8.8; *Tahmuresi v. Switzerland* (CAT/C/53/D/489/2012), para. 7.7; *Amini v. Denmark* (CAT/C45/D/339/2008), para. 9.8.

rights in that State, he would be deprived of the legal option of recourse to the Committee for protection of any kind.

9. The Committee against Torture, acting under article 22, paragraph 7, of the Convention, concludes that the deportation of the complainant to the Islamic Republic of Iran would constitute a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

10. The Committee is of the view that the State party has an obligation to refrain from forcibly returning the complainant to the Islamic Republic of Iran or to any other country where he runs a real risk of being expelled or returned to the Islamic Republic of Iran. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee invites the State party to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to the present decision.
