



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. 701/2015*, **

<i>Communication submitted by:</i>	H.K. (represented by counsel, Rishi Gulati)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Australia
<i>Date of complaint:</i>	16 September 2015
<i>Date of decision:</i>	10 May 2017
<i>Subject matter:</i>	Deportation from Australia to Pakistan
<i>Procedural issue:</i>	Substantiation of the complaint
<i>Substantive issue:</i>	Risk of torture and ill-treatment
<i>Article of the Convention:</i>	3

1.1 The complainant is H.K., a Pakistani national of Pashtu ethnicity and Sunni Muslim faith, born in 1980. He claims that his deportation to Pakistan would constitute a violation by Australia of article 3 of the Convention. The complainant is represented by counsel, Rishi Gulati.

1.2 On 25 September 2015, the Committee, acting through its Rapporteur on new complaints and interim measures, decided to issue a request for interim measures under rule 114 (1) of its rules of procedure, and requested the State party not to return the complainant to Pakistan while the complaint was being considered by the Committee. On 15 April 2015, the State party requested the Committee to lift its request for interim measures. On 15 June 2015, the Committee, acting through the Rapporteur, denied the State party's request to lift the interim measures.

The facts as presented by the complainant

2.1 The complainant was born in Quetta, Pakistan, and resided there until 2001. From 2001 to 2009, he worked and resided in the United Arab Emirates and Japan. He returned to Quetta in 2009 and opened a workshop, repairing cars and selling spare parts. He is married and has two children, born in 2008 and 2011, whom he has not seen since arriving in Australia in 2012, which has caused him distress. His extended family lives in Pakistan.

2.2 The complainant has connections with the Balochi community in Pakistan as his grandmother was of Balochi ethnicity and so is his aunt's husband. At the time of his return

* Adopted by the Committee at its sixtieth session (18 April-12 May 2017).

** The following members of the Committee participated in the examination of the communication: Essadia Belmir, Alessio Bruni, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Sébastien Touzé and Kening Zhang.

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to Quetta, there was ongoing fighting between Pakistani authorities and the Balochi nationalist movement.¹ In February 2012, the complainant visited a friend's workshop, which was located close to his own, where there were other men of Balochi ethnicity present. The complainant was the only person in the workshop who was not of Balochi ethnicity. A short time after the complainant arrived at the shop, armed men entered and arrested him and his friends. Some of the men were dressed in uniform, while others wore civilian clothing.

2.3 After the complainant was arrested, the armed men put a bag over his head and tied his hands behind his back. He was taken to an unknown place and held in detention for about 10 days, during which time he was beaten and not allowed to sleep. He was asked what he knew of the Balochi nationalist movement. He claims that he was beaten severely for three nights in a row and that he was punched, slapped and hit with the butt of a gun. He was asked about a friend, S.A., who worked at the workshop he had visited and who the authorities believed to be part of a movement striving to form an independent State. The complainant answered that he did not know anything about S.A. At the end of the 10 days in detention, the authorities told him that they were going to kill him. He begged them to let him go. They told him that they would spare his life if he became an informant for them and reported on the activities of the Balochi nationalist movement. He agreed in order not to be killed and was released.

2.4 A few days after his release, the authorities called the complainant again. They took him to an unknown location and asked questions about S.A. They threatened the complainant and told him that they were observing him. About a month later, the complainant left Pakistan, transiting through Indonesia, where he registered with the Office of the United Nations High Commissioner for Refugees. On 1 May 2012, he arrived on Christmas Island, Australia, by boat. On 20 August 2012, he applied for a protection visa.

2.5 The complainant submits a history sheet and discharge notes, dated 18 February 2012, from a hospital in Quetta. It is noted on the history sheet that, when visiting the hospital, the complainant had multiple bruises on his back and upper arms from an assault by unknown persons and that he was severely depressed and agitated. The complainant was discharged from the hospital on the same day. He notes that, during the hospital visit, he told the doctor that he had been beaten by unknown persons as he was afraid to tell the doctor that he had been detained and beaten by the authorities. He also submits a medical note dated 24 June 2015 from a psychiatrist at a medical centre in Australia, in which it is noted that he has been diagnosed with depression and suffers from anxiety and post-traumatic stress disorder symptoms. He further submits a letter from a mental health professional, dated 8 March 2013, according to which he has been diagnosed with depression.

2.6 On 9 October 2012, the Department of Immigration and Citizenship rejected the author's application for a protection visa. Relying on country information,² the Department accepted the complainant's claim that he had been abducted from his friend's workshop by

¹ In a decision dated 29 January 2013, the Refugee Review Tribunal stated that the Baloch nationalist movement had culminated in two widespread insurgencies (1973-1977 and from 2003 onwards) and three localized uprisings. It further stated that most recently tribal militants had been engaged in a long-running low-intensity armed conflict against the Pakistan army. Some insurgents advocated for a complete secession from Pakistan, while others demanded greater control of the region's natural resources and political power.

² In the decision of the Department of Immigration and Citizenship, reference is made to country information in Minority Rights Group International, *State of the World's Minorities and Indigenous Peoples 2012* (June 2012) (available from www.unesco.org/library/PDF/MRG.pdf) and United Kingdom of Great Britain and Northern Ireland Home Office, "Pakistan: Country of Origin Information Report" (7 June 2012) (available from www.ecoi.net/file_upload/90_1339140574_ukba-2012-06-07-pakistan.pdf). It is noted that a conflict exists between persons of Balochi ethnicity and the Government of Pakistan. It is also noted that State actors reportedly play a central role in the violence, targeting ethnic Balochis suspected or engaging in nationalist activities, including the abduction of ethnic Balochis in broad daylight and in public areas. It is further noted in the decision that the victims are often men in their mid-20s to mid-40s, suspected of alleged participation in Baloch nationalist parties and movements, who are often taken away from shops and places of work.

government authorities, as it was found to be plausible that the authorities would have been suspicious of S.A., given the latter's alleged involvement in activities advocating for a free Balochistan. Referring to country reports,³ the Department further accepted that the complainant had been detained arbitrarily and had been beaten by the authorities during that detention. The Department however did not accept that the complainant would have been detained for 10 days, given that his personal profile would not have been of interest to the authorities and that he was unable to provide the authorities with any information about S.A. The Department found that the complainant's association with persons of Baloch ethnicity would not have given him a profile that would have warranted attention from the authorities, given that Balochistan is ethnically diverse. The Department found that the fact that the complainant and two of the other persons detained at the same time as him were released, while S.A. was not, demonstrates that the authorities had no interest in the complainant and his other friends but were targeting S.A. For the same reasons, the Department did not accept the complainant's claim that he had been asked to become an informant for the authorities or that he had been contacted by them again after his release. The Department took note of the complainant's statement that he had spent a further 35 days in Pakistan before leaving the country without being contacted by the authorities, which the Department found to be further evidence that he was of little interest to the authorities. The Department therefore found that there were no substantial grounds for believing that there was a real and foreseeable risk that the complainant would suffer significant harm if deported to Pakistan.

2.7 The author appealed the decision to the Refugee Review Tribunal, which affirmed the decision of the Department of Immigration and Citizenship on 29 January 2013. The complainant's request for ministerial intervention was denied on 5 September 2014 and his subsequent application for judicial review to the Federal Circuit Court of Australia was dismissed on 29 June 2015.

The complaint

3.1 The complainant alleges that if he is deported to Pakistan there is a real, foreseeable and personal risk that he would risk being detained, tortured and killed by the Pakistani authorities, such as the army or the Inter-Services Intelligence, as they believe that he has information on the members of the Balochi nationalist movement in Pakistan or has cooperated with them. He claims that he has previously been detained arbitrarily and tortured by the Pakistani authorities and that this is likely to be repeated if he is deported to Pakistan. He further submits that there is a consistent pattern of gross and flagrant violations of human rights in Pakistan of people who are suspected of being associated with the Balochi movement. He also refers to the Committee's views in *Khan v. Canada*,⁴ in which the Committee found that the deportation of a local leader of the Balistan Student Federation to Pakistan would have resulted in a violation of article 3 of the Convention.

3.2 The complainant claims that there is no safe place for him to relocate in Pakistan, since if he is deported there he would arrive at an airport where Pakistani authorities would readily detain him. He also claims that, if not detained upon his arrival, the army and Inter-Services Intelligence would easily be able to trace his whereabouts.

State party's observations on admissibility and the merits

4.1 On 15 April 2016, the State party submitted its observations on the admissibility and merits of the communication. It considers that the complainant's allegations are inadmissible as manifestly unfounded under rule 113 (b) of the Committee's rules of procedure. Should the Committee take the view that the allegations are admissible, the State party submits that the claims are without merit as there are no substantial grounds for believing that the complainant would be in danger of being tortured if deported to Pakistan.

³ United States Department of State, "Country Reports on Human Rights Practices – Pakistan", 24 May 2012. Available from www.state.gov/documents/organization/204621.pdf.

⁴ Communication No. 15/1994, *Khan v. Canada*, Views adopted on 15 November 1994.

4.2 The State party notes that, under rule 113 (b) of the Committee's rules of procedure, it is the responsibility of the complainant to establish a prima facie case for the purpose of admissibility of his complaint. The State party submits that the complainant has failed to do so. The State party further submits that the complainant's claims have been thoroughly considered by domestic authorities during the determination of the complainant's protection visa application and subsequent judicial review. It requests the Committee to accept that the State party's authorities have thoroughly assessed the author's claims through its domestic processes and found that it does not owe the author protection obligations under the Convention.

4.3 The State party notes that, in addition to his complaint before the Committee, the complainant has provided the Committee with a statutory declaration in which he alleges that he was tortured by members of the Pakistan army. The State party notes that the events described in the statutory declaration are substantially similar to the events described in the complainant's protection visa application, in which he alleged that he had been abducted and beaten by armed gunmen who "were police as he recognized the uniform they were wearing". The State party also notes that, in a written statement dated 20 August 2012 that was presented to the decision maker who assessed the complainant's protection visa application, the complainant described the same events referred to in his statutory declaration and protection visa interview, and alleged that the offences had been carried out by "the authorities" or "government authorities". The State party further notes that, in the Refugee Review Tribunal hearing of 6 December 2012, the complainant gave evidence that the same offences had been carried out by the Pakistani authorities, and that, in his request for ministerial intervention, he claimed that he feared harm from the Taliban and Pakistani intelligence authorities. The State party notes that, in his complaint before the Committee, the complainant also claims to fear mistreatment by the Inter-Services Intelligence. The State party observes that the complainant has not previously raised his alleged torture by or fear of harm from the Pakistan army or Inter-Services Intelligence at any point during the various domestic processes and submits that it appears that the author is raising new claims of torture by the Pakistan army or the Inter-Services Intelligence on the basis of the same evidence he previously provided to domestic decision makers. The State party contends that this factor raises doubts about his credibility. It submits that this new claim does not add any weight to the complainant's complaint given that the Refugee Review Tribunal determined that there was not a real risk that he would suffer significant harm as a consequence of being returned to Pakistan, even though it accepted his claims of having been abducted and beaten by Pakistani authorities.

4.4 The State party notes that the complainant has also alleged that there is no safe place to which he could relocate if returned to Pakistan. It argues that the Department of Immigration and Citizenship and the Refugee Review Tribunal closely considered the complainant's profile during the domestic processes and determined that he would not be of interest to the Pakistani authorities and would not suffer harm if returned to Pakistan.

4.5 The State party notes that the complainant has also provided new evidence regarding his mental health in his complaint before the Committee, but it considers that this does not raise any new and credible claims and is not relevant to an assessment of the State party's non-refoulement obligations under article 3 of the Convention.

4.6 The State party notes the complainant's allegations that there is a consistent pattern of gross, flagrant or mass violations of human rights against people suspected of being associated with the Balochi nationalist movement in Pakistan. It argues that extensive country information on Pakistan and the return of failed asylum seekers were carefully considered during the domestic proceedings. The State party refers to the Committee's views in *G.R.B. v. Sweden*⁵ and notes that the existence of a general risk of violence does not constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon return to that country as additional grounds must exist to show the individual concerned would be personally at risk. The State party submits that, according to recent country information, there has been no relevant adverse change to

⁵ Communication No. 83/1997, *G.R.B. v. Sweden*, Views adopted on 15 May 1998, para. 6.3.

the country situation since the complainant's claims were last assessed to indicate that the State party's non-refoulement obligations would be engaged in the complainant's case.

4.7 The State party notes that the complainant has also referred to the Committee's views in *Khan v. Canada*. In this connection, it submits that the complainant in *Khan v. Canada* had been an active member of an anti-Government, pro-independence organization who had continued his involvement in that organization after leaving Pakistan, unlike the complainant in the present complaint, who has been comprehensively assessed as being of no interest to the Pakistani authorities and who does not have a profile that would warrant attention if returned to Pakistan.

Complainant's comments on the State party's observations

5.1 On 8 July 2016, the complainant submitted his comments on the State party's observations. He argues that his complaint is well-founded, that it advances a prima facie case and sufficiently elaborates the facts and the basis of his claim, and also argues that he has accordingly substantiated his claim for the purpose of admissibility.

5.2 The complainant argues that his claims are credible and have been consistent. He considers the variation in his statements regarding the identification of the persons who detained and beat him, particularly as regards the authority they are from, to be a minor and immaterial difference in terminology. He submits that he has always referred to the same perpetrators and events and has thus been consistent. He notes that he has been relying on interpreters during the asylum proceedings and that absolute consistency can seldom be expected of victims of torture. He argues that he has been consistent in stating that the persons who detained him arbitrarily, tortured and beat him had been armed, uniformed and from the Pakistani authorities. He notes that the State party does not contest that he was arbitrarily detained and beaten by Pakistani authorities. He submits that, given that he has previously been tortured by the Pakistani authorities, the conclusion of the State party immigration authorities that he would not face a risk of torture if deported to Pakistan is arbitrary and unreasonable. He further considers that the conclusion of the State party immigration authorities that he would not have been asked to spy for the authorities is irrational and arbitrary.

5.3 The complainant also argues that the medical notes submitted by him, which confirm that he has been diagnosed with depression and post-traumatic stress disorder symptoms, is evidence of the impact the torture he was subjected to had on him, and of his fear of being returned to Pakistan.

5.4 The complainant submits that, in addition to the personal circumstances of a complainant, evidence of mass human rights violations must also be considered in assessing a State party's obligations under article 3 of the Convention. The complainant recalls that he is of part-Balochi ethnicity. Considering the situation in the region of Pakistan that he comes from, together with the fact that he has previously been subjected to torture, he considers that it is unreasonable and arbitrary to conclude that he would not face a real, personal and foreseeable risk of torture if deported to Pakistan. The complainant also refers to the State party's travel advice on Pakistan according to which there is a high threat of kidnapping across Pakistan, but particularly in Karachi, Balochistan, Khyber-Pakhtunkhwa and the Federally Administered Tribal Areas, and that travellers are accordingly strongly advised not to travel to these areas due to the "extremely dangerous security environment and the ongoing counter-insurgency operation".

Issues and proceedings before the Committee

Consideration of admissibility

6.1 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.

6.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not 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 contested that the complainant has exhausted all available domestic remedies. The Committee therefore finds that it is not precluded from considering the communication under article 22 (5) (b) of the Convention.

6.3 The Committee notes that the State party has contested the admissibility of the complaint on the grounds that the complainant's claims are manifestly unfounded. In the light of the information on file and the arguments presented by the parties, the Committee considers that, for purpose of admissibility, the complainant has sufficiently substantiated his claims, which raise serious issues under the Convention. Accordingly, the Committee finds that the communication is admissible.

6.4 As the Committee finds no further obstacles to admissibility, it declares the communication submitted under article 3 of the Convention admissible and proceeds with its consideration of the merits.

Consideration of the merits

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

7.2 In the present case, the issue before the Committee is whether the return of the complainant to Pakistan would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return ("refouler") 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.

7.3 In the present case, the Committee must assess whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Pakistan. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the country of return. The Committee recalls that the aim of the evaluation 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. The existence of a pattern of gross, flagrant or mass violations of human rights in a country therefore 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, and 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.⁶

7.4 The Committee recalls its general comment No. 1 (1997) on the implementation of article 3 of the Convention, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being highly probable, the Committee recalls that the burden of proof generally falls on the complainant, who must present an arguable case that he or she faces a foreseeable, real and personal risk.⁷ The Committee recalls that, under the terms of general comment No. 1, it gives considerable weight to findings of fact that are made by organs of the State party concerned, while at the same time it is not bound by such findings and has the power, provided by article 22 (4), of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.

⁶ See, for example, communication No. 550/2013, *S.K. and others v. Sweden*, Views adopted on 8 May 2015, para. 7.3.

⁷ See, for example, communication No. 203/2002, *A.R. v. the Netherlands*, Views adopted on 14 November 2003, para. 7.3.

7.5 In the present case, the complainant claims that, in case of return, there is a real, foreseeable and personal risk that he would be detained, tortured and killed by the Pakistani authorities as he is believed to have information on the Balochi nationalist movement in Pakistan or to have cooperated with them. He claims that he has previously been detained arbitrarily and tortured by the Pakistani authorities and that this is likely to be repeated if he is removed to Pakistan. He also claims that there is no safe place for him to relocate in Pakistan. The Committee takes note of the State party's submission that the complainant has failed to substantiate that there is a foreseeable, real and personal risk that he would be subjected to torture by the authorities if he is returned to Pakistan; that his claims have been reviewed by the competent domestic authorities, in accordance with domestic legislation and taking into account the current human rights situation in Pakistan; and that the domestic authorities determined that he would not be of interest to the Pakistani authorities and would not suffer harm if returned to Pakistan.

7.6 The Committee notes that, in its decisions, the Department of Immigration and Citizenship and the Refugee Review Tribunal accepted the complainant's claim that, in 2012, he had been arbitrarily detained and subjected to ill-treatment by Pakistani authorities. The Committee also notes the State party's argument that the fact that the complainant has in various interviews and submissions referred to the perpetrators of the ill-treatment as being members of different Pakistani authorities raises doubts as to his credibility. The Committee further notes the author's argument that he had been communicating via interpreters during the asylum proceedings and that he has always been consistent in describing the perpetrators as armed, in uniform and representing Pakistani authorities. The Committee finds the explanation provided by the complainant to be reasonable and does not consider that the variation of terminology in his declarations raises doubts about his credibility.

7.7 The Committee notes that, as per country information publicly available,⁸ Pakistani authorities, particularly its intelligence agencies, have been reported to target ethnic Balochs suspected of involvement in the Balochi nationalist movement for enforced disappearance. Furthermore, it is noted in country reports that most of the victims appeared to have been targeted because of alleged participation in Baloch nationalist parties and movements, as well as Baloch student organizations. It is also noted that, in several cases, people appeared to have been targeted because of their tribal affiliation, especially when a particular tribe, such as the Bugti or Mengal, had been involved in fighting with Pakistan's armed forces. It is further noted that the exact number of disappearances perpetrated by Pakistan's security forces in the province remains unknown but that Baloch nationalists claim thousands of cases, while Balochistan provincial authorities on several occasions have cited the figure of about 1,000 enforced disappearances. As per country information, many cases remain unreported as families and witnesses often prefer not to report cases to the authorities or human rights organizations because of fear of retaliation by the authorities.⁹ As regards the arguments presented by the complainant and the State party regarding a safe place to which the complainant could potentially relocate within Pakistan, the Committee recalls that, in accordance with its jurisprudence, the notion of "local danger" does not provide for measurable criteria and is not sufficient to entirely dispel the personal danger of being tortured.¹⁰

7.8 In this connection, the Committee takes note of the complainant's claim that he is at risk of being subjected to ill-treatment contrary to article 3 of the Convention by Pakistani authorities if forcibly returned to Pakistan owing to his perceived connection to the Balochi nationalist movement. The Committee notes that the complainant has previously been arbitrarily detained and ill-treated by Pakistani authorities, that he has asserted that he was detained for a period of 10 days and pressured into stating that he would provide any information he could obtain on the Balochi nationalist movement to the authorities and that

⁸ See, for example, Human Rights Watch, "Enforced Disappearances by Pakistan Security Forces in Balochistan" (July 2011). Available from www.hrw.org/report/2011/07/28/we-can-torture-kill-or-keep-you-years/enforced-disappearances-pakistan-security.

⁹ Ibid.

¹⁰ See communications No. 338/2008, *Mondal v. Sweden*, Views adopted on 23 May 2011, para. 7.4; and No. 343/2008, *Kalonzo v. Canada*, Views adopted on 18 May 2012, para. 9.7.

the authorities contacted him after his release in order to question him further. The Committee observes that the State party has accepted as a fact that the complainant was detained arbitrarily and ill-treated. The Committee also observes that the State party has not accepted the complainant's claims regarding the detention period or that he was pressured into stating that he would provide any information obtained on the Balochi nationalist movement to the authorities. The Committee notes that the State party does not provide any concrete arguments to justify its conclusion and that no specific information has been presented that would raise doubts about the complainant's assertion. The Committee is therefore of the view that, when assessing the alleged risk in the particular case of the complainant, the State party failed to take into due consideration the author's allegations regarding the events he had experienced in Pakistan when assessing the alleged risk he would face if returned to his country of origin.

8. On the basis of all the information submitted to it, the Committee is therefore of the view that the complainant has provided sufficient evidence for it to consider that his return to his country of origin would put him at a real, present and personal risk of being subjected to torture.

9. The Committee, acting under article 22 (7) of the Convention, therefore concludes that the return of the complainant to Pakistan would constitute a breach of article 3 of the Convention.

10. In the light of the above, the Committee, acting under article 22 (7) of the Convention, is of the view that the State party has an obligation, in accordance with article 3 of the Convention, to refrain from forcibly returning the complainant to Pakistan or to any other country where he runs a real risk of being expelled or returned to Pakistan.

11. 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 it has taken in accordance with the above observations.
