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CE/DA/ak 566/2013

The Secretary-General of the United Nations (High Commissioner for Human Rights) presents his compliments to the Permanent Representative of Sweden to the United Nations Office at Geneva and has the honour to transmit herewith the decision (Advance unedited version), adopted by the Committee against Torture on 30 July 2015, concerning complaint No. 566/2013, which was presented to the Committee for consideration under article 22 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, on behalf of Mr. M.A. and Ms. M.N.

In accordance with the Committee's established practice, this decision will be made public, without disclosing the complainant's identity.



3 September 2015



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

Advance unedited version

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Committee against Torture

Communication No. 566/2013

Decision adopted by the Committee at its fifty-fifth session (27 July-14 August 2015)

<i>Submitted by:</i>	Mr. M.A. and Ms. M.N. ¹ (represented counsel, Johan Lagerfeld)
<i>Alleged victim:</i>	The complainants
<i>State party:</i>	Sweden
<i>Date of complaint:</i>	12 November 2013 (initial submission)
<i>Date of present decision:</i>	30 July 2015
<i>Subject matter:</i>	Deportation to the Russian Federation
<i>Procedural issues:</i>	None.
<i>Substantive issue:</i>	Risk of torture upon return to the country of origin
<i>Article of the Convention:</i>	3

[Annex]

¹ The complainants have requested anonymity in the Committee's final decision.



Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty- fifth session)

concerning

Communication No. 566/2013

Submitted by: Mr. M.A. and Ms. M.N. (represented by counsel, Johan Lagerfeld)
Alleged victim: the complainants
State party: Sweden
Date of complaint: 12 November 2013 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 30 July 2015,

Having concluded its consideration of complaint No. 566/2013, submitted to the Committee against Torture by Mr. M.A. and Ms. M.N., under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainants, their counsel and the State party,

Adopts the following: ...

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainants are Mr. M.A and Ms. M.N., both Russian citizens of Chechen origin born in 1975 and 1976 respectively. They submit their complaint on behalf of themselves and their four children, born between 2006 and 2013. Their request for asylum in Sweden was rejected and, at the time of submission of the complaint, they were awaiting a forcible removal to the Russian Federation. They claim that their deportation would violate their rights under article 3 of the Convention against Torture. The complainants are represented by counsel, Johan Lagerfeld.

1.2 On 14 November 2013, acting under rule 114, paragraph 1, of its rules of procedure, the Committee requested the State party to refrain from expelling the complainants to the Russian Federation while their complaint is under consideration by the Committee.

The facts as presented by the complainants

2.1 The complainants submit that in 1997, Ms. M.N and her former husband lived in the Chechen Republic. She submits that her then husband was employed as a bodyguard for the former Chechen President Aslan Maskhadov. The Russian military came twice in one week

to her house looking for the documents that they said would prove that she had a secret archive at home.

2.2 The complainants submit that on an unknown date in 1999, Mr. M.A. was arrested by the Russian security forces and accused of collaborating with the rebel movement. He was beaten during four or five days before he was released. During his detention, his house was searched by the Russian military authorities. In 2003, he was arrested again and beaten during the interrogation. After his release, his aunt informed him that his parents had been killed during his detention by members of the Russian army. Afterwards he joined the rebel movement.

2.3 The complainants further submit that Ms. M.N.'s former husband was killed in 2004. After his death, she supported herself by selling medicines. It was in this context that she was accused of supplying medicines to rebels. On two occasions, in 2007 and in September 2008, she was brutalized by the Russian military authorities. She was pregnant, and as a result of torture, she suffered miscarriages both times. In May 2005, during a "firefight" Mr. M.A. was wounded and two of his friends killed. Thereafter, he lived for a period of time in Dagestan and with relatives in the Chechen Republic, before escaping to Sweden. On 20 January 2009, the complainants arrived in Sweden and requested asylum.

2.4 On 21 November 2009, the Migration Board denied the complainants' request for asylum and ordered their expulsion to the Russian Federation. The Board accepted that they were of Chechen origin but considered that the situation in Chechnya had been improving continuously and thus not all Chechen asylum-seekers are to be granted international protection. Further, the Board stated that there were important discrepancies in the complainants' accounts that made their request ill-founded. The complainants appealed against this decision to the Migration Court.

2.5 According to the complainants, Ms. M.N. was in contact with her brother who helped her obtain an affidavit concerning her situation in Chechnya. Nevertheless, he was arrested and killed by the Russian police shortly after he sent her the document. Only the clothes he was wearing and his belongings were returned to the family, but not the body. She also contacted her cousin for the same purpose; he was killed at home by unknown assailants. Thereafter, Ms. M.N.'s sister asked her not to contact her or any other relatives. She also informed Ms. M.N. that their parents had been denied their pension and that the authorities requested them to provide information on the whereabouts of the complainants. At the same time, Mr. M.A. was informed by his aunt that the prosecutor's office issued an arrest warrant against him. His aunt died in January 2011, and thus he has no living relatives in Chechnya anymore.

2.6 On 11 April 2011, the Migration Court rejected the complainants' appeal. The court, in line with the Migration Board's decision, stated that the evidence produced by them was not sufficient to substantiate their claim regarding the personal risk they would be exposed to if returned to their country of origin. Therefore, it concluded that their fear of persecution was not well-founded and that there were no grounds for granting them residence either as refugees or as persons in need of international protection.² The complainants filed an application for appeal to the Migration Court of Appeal. On 8 May 2012, the Migration Court of Appeals denied the appeal and the Migration Court's decision became final.

2.7 According to the complainants, at the time of submission of the complaint, there is no information as to when their expulsion can take place. However, since Mr. M.A. had

² The English summary of the Migration Court's decision, provided by the complainants, does not contain any further detail.

been taken into custody shortly before presenting the present complaint to the Committee, they fear that the removal can be imminent.

The complaint

3.1 The complainants submit that if they are to be expelled to the Russian Federation, the State party would violate its obligations under article 3 of the Convention, “since there are substantial grounds for believing that there is a danger for them to be subjected to torture and cruel, inhuman or degrading treatment.”³

3.2 The complainants also contend that they have clearly demonstrated that they were victims of a pattern of harassment and persecution which has already led to murder of several family members in the hands of Russian law enforcement officials. Since there still are arrest orders against them, they believe that there exists a clear and present danger to their lives and well-being. Their fear of persecution and ill-treatment, if returned to the Russian Federation, is well-founded. The contradicting statements made during the interviews with the Swedish authorities can be explained partly by the fact that they have been severely traumatized⁴ by their experience, which makes it difficult to remember in detail certain events, and by the fact that they were denied an interpreter in their mother tongue and were obliged to conduct the interviews in Russian.

State party’s observations on admissibility and merits

4.1 By Note Verbale of 13 May 2014, the State party submitted its observations on the admissibility and the merits. It recalls the facts of the case and also provides excerpts from relevant domestic legislation. The State party submits that the complainants’ case was assessed under the 2005 Aliens Act, which entered into force on 31 March 2006. The State party’s authorities, upon examination of the facts of the case, concluded that the complainants “have not shown that they are in need of protection”.

4.2 The State party submits that on 21 November 2009, the Migration Board rejected the complainants’ asylum applications and decided to expel them to the Russian Federation. That decision was appealed to the Migration Court, which, on 11 March 2011, rejected the appeal. On 30 May 2011, the Migration Court of Appeal refused to grant a leave to appeal and the decision to expel the complainants became final.⁵ On 14 February 2012, the complainants claimed before the Migration Board that there “were impediments to enforcement of the decision to expel them”, and requested the re-examination of their case. This request was rejected on 22 February 2012. This decision was then appealed to the

³ The complainants provide the UNHCR’s Interim guidance for assessing the international protection needs of asylum-seekers from the Chechen Republic of the Russian Federation dated 4 February 2011. This document reminds that in February 2003, UNHCR assessed that all Chechen asylum-seekers from the Chechen Republic were in need of international protection. Since then, this situation has positively evolved, after the decrease in the level and scope of military activity, an overall improvement in the security situation, and a gradual withdrawal of federal troops from Chechnya. Nevertheless, there are still continuing reports of human rights concerns which may place personal safety or rights at risk, in particular, for members of illegal armed formations and their relatives, political opponents of the federal or Chechen authorities, human rights activists, and persons that have held official positions in the previous administration of the former President, Aslan Maskhadov.

⁴ Mr. M.A. provides a written statement claiming that Russian forces tortured him and burned his back and arms. However, it is unclear whether the information contained in it or the written statement itself was brought to the attention of the Swedish authorities.

⁵ This decision is related only to Mr. M.A., Ms. M.Z and two of their four children. The decision regarding the third child became final on 29 March 2012, and regarding the fourth child on 8 July 2013.

Migration Court, which rejected the appeal on 23 March 2012. On 8 May 2012, the Migration Court of Appeal refused to grant a leave to appeal.

4.3 Regarding admissibility, the State party submits that the claim is based on alleged arrest and assault in 1999 of Mr. M.A., by the Chechen authorities, and on allegations of Ms. M.N, who also claimed to be assaulted, but that these claims are “manifestly unfounded”, and therefore, inadmissible, under article 22, paragraph 2, of the Covenant, and rule 113 (b) of the Committee’s rules of procedure.

4.4 Regarding the merits of the communication, the State party submits that the Committee must decide whether the complainants are “personally at risk” of being subjected to torture in the country of return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not, as such, constitute sufficient grounds for determining that a particular person would be in danger of being subjected to torture upon return to his or her country. The State party, referring to the Committee jurisprudence,⁶ submits that additional grounds must exist to show personal risk.

4.5 In considering the present case, the State party therefore examined the general human rights situation in the Russian Federation, and, in particular, the personal risk of the complainants to be subjected to torture, if returned there. The State party further notes that it’s up to the complainants, who must present an arguable case, to establish that they run a “foreseeable, real and personal risk” of being subjected to torture.⁷ In addition, the risk of torture must be assessed on the grounds that go beyond mere theory, but doesn’t have to meet the test of being “highly probable”.

4.6 Regarding the current situation with the human rights in the Russian Federation, and specifically, in the northern Caucasus, the State party notes that recent reports⁸ show that the general levels of violence have gone down in last several years. At the same time, the State party doesn’t underestimate the concerns regarding the human rights situation, since recent reports still contain information of human rights violations against civilian population in the form of arbitrary detentions, abductions, torture and extrajudicial killings.

4.7 The State party submits that several provisions of the Swedish Aliens Act reflect the same principle as those indicated in article 3 of the Convention, and therefore, the State party authorities apply the same kind of test when considering asylum applications. According to the Chapter 12, Sections 1-3 of the Aliens Act, an asylum seeker cannot be returned to a country where there are reasonable grounds to assume that that person would be in danger of being subjected to death penalty, corporal punishment, torture, or other degrading treatment or punishment.

4.8 The State party further submits that the national authorities are in a “very good position to assess the information submitted by an asylum seeker” and to access the credibility of claims. In the present case, the Migration Board and the Migration Court have made a thorough examination of the material before them. Upon the initial asylum claim, the Migration Board conducted an interview that lasted approximately two hours and

⁶ The State party refers to Communication No. 150/1999, *S.L. v. Sweden*, decision adopted on 11 May 2001, para 6.3, and Communication No. 213/2002, *E.J.V.M. v Sweden*, decision adopted on 14 November 2003, para 8.3.

⁷ The State party refers to, *inter alia*, Communication No. 178/2001, *H.O. v Sweden*, decision adopted on 12 November 2001, para 13

⁸ References are made to the following reports: US Department of State, Human Rights report on Russia 2013; Amnesty International – Annual Report 2013 – Russian Federation; Human Rights Watch, World Report 2014: Russia; the Swedish Migration Board, Country Profile Russia of 25 February 2011; Ministry for Foreign Affairs, Sweden, 2011; Norwegian Country of Origin Information Centre, 2013; and Danish Refugee Council.

fifteen minutes. This was conducted in the presence of a counsel and an interpreter. On one occasion, the Migration Board was able to re-examine "new circumstances" invoked by one of the complainants (see para. 4.2).

4.9 The State party refers to the Committee's General Comment No. 1, as well as its jurisprudence, stating that the considerable weight will be given to findings of facts made by organs of the State party concerned⁹ The Swedish Migration Board and the Migration Court are specialized bodies "with particular expertise in the field of asylum law and practice. There is no reason therefore to conclude that the examination by the national authorities was inadequate, or the outcome was "arbitrary or amounted to denial of justice".

4.10 The State party submits that it was able to identify several inconsistencies in the facts presented by the complainants. During the interview with the Migration Board, Mr. M.A. stated that he and Ms. M.N. stayed with his aunt until December 2005 or January 2006. However, Ms. M.N. stated that they stayed only until October 2005. The complainants claimed that this inconsistency was the result of misinterpretation. Furthermore, Mr. M.A. stated that during their visit on one occasion, the military officers never entered the house, while Ms. M.N. stated that they entered the house, and searched it.

4.11 Mr. M.A. also claimed that he was arrested on two occasions, in 1999, and 2003. In 1999, an armoured vehicle exploded in the vicinity of his village, and the residents of the village were blamed for this incident. In 2003, Mr. M.A. was arrested and was asked to sign a statement, accepting responsibility for the 1999 attack. The State party finds this explanation implausible. Mr. M.A. submitted to the Migration Board that he escaped from detention in 2003, whereas in his present complaint to the Committee, reported that he was released.

4.12 Regarding the summonses from the Chechen authorities, the State party submits that Mr. M.A. was called to serve as a witness. The Migration Board considered the document to be "very simple and therefore of low probative value". In addition, Mr. M.A. claimed that he had no contact with the Chechen authorities from 2005 to 2009. According to the State party, it is implausible that the authorities had no interest in Mr. M.A. for four years, if he has been suspected to be a member of rebel movement.

4.13 The State party further finds Ms. M.N.'s allegations regarding her alleged assaults by the Russian military on two occasions, in 2007 and in 2008, implausible as well. Ms. M.N. was accused of having a "secret archive" of documents related to her former husband, who served as a bodyguard to Mr. Aslan Maskhadov. The Russian military raided her home searching for these documents in 1997, and the State party contends that it is unlikely that the Russian authorities would still be interested in the documents in 2008. Ms. M.N. also reported to have sold medicine to rebels in 2004 and 2005. The State party submits that it is strange that she was only confronted with this fact in 2008.

4.14 After the decision to expel the complainants became final, the complainants claimed before the Migration Board that they have new evidence relevant to their asylum case. They submitted a certificate issued by "Memorial", a human rights non-governmental organization, allegedly sent by Ms. M.N.'s brother in the Chechen Republic. Ms. M.N. further alleged that after her brother contacted Memorial to obtain the certificate, he was arrested and murdered by the police. Shortly after that, Ms. M.N.'s cousin, whom she contacted as well, was also murdered. The State party submits that the complainants have not provided identities of these relatives and no evidence have been submitted to prove these claims.

⁹ The State party refers to Communication No. 277/2005, *N.Z.S. v Sweden*, decision adopted 22 November 2006, para. 8.6.

4.15 The State party therefore contends that the complainants have failed to satisfy the requirements that the risk of torture in this case is foreseeable, real, and personal.

The complainants' comments on the State party's observations on admissibility and merits

5.1 In reply to the State party's observations, on 18 August 2014, the complainants submit that the situation with human rights in the Chechen Republic is much different from the State party's description. They refer to the same report published by the Swedish Foreign Office, available only in Swedish language. According to this report "...the Russian administration is characterized by wide-spread corruption, human rights activists, journalist and whistle-blowers are harassed, subjected to at times fatal violence". According to the report, "the most serious violations still occur in the northern Caucasus, where, in the name of fighting terrorism, the civilian population is subjected to torture, arbitrary arrests and kidnappings".

5.2 The complainants also refers to "unconfirmed reports about political murders and disappearances" sanctioned by the authorities. This clearly demonstrates a "consistent pattern of gross, flagrant or mass violations of human rights". Various organizations described the situation in the Chechen Republic as "an atmosphere of terror", a "climate of pervading fear". The UN High Commissioner for Human Rights, Navi Pillay, has called for accountability for murders, intimidation and harassment.

5.3 The complainants submits that while the Migration Board and the Migration Court are in good position to the information submitted by asylum applicants, they do not have first-hand knowledge of the situation in the country of origin, which is especially evident in the present case. While Mr. M.A. was interviewed in Chechen language via interpreter, Ms. M.N. was interviewed in Russian, which in and of itself could be considered "denial of justice"

5.4 Regarding the inconsistencies, the complainants submit that these are not signs of "diminished credibility". On the contrary, the flawless story is a sign that it was memorized. Furthermore, the inconsistencies can be explained by post-traumatic stress disorder, which can result in "memory dysfunction". The complainants further submit that the State party should have referred him to an expert in forensic medicine to verify injuries which were inflicted when the complainants were tortured. It is the State party's obligation to follow up on testimonies where claims of torture are made.¹⁰

State party's further submission

6.1 On 18 June 2015, the State party, responding to counsel's comments of 18 August 2014, reiterates its position that while it "does not wish to underestimate the concerns" regarding the current human rights situation in the Russian Federation and especially in the region of North Caucasus, the situation in and of itself does not establish a violation of article 3 of the Convention. The complainants' return to the Russian Federation would entail a breach if they could show that they are personally at risk of being subjected to the treatment contrary to article 3.

6.2 The State party further submits that throughout the domestic proceedings, the complainants were represented by counsel. The Migration Court has taken all relevant circumstances into account during the asylum proceedings. Although initial burden rests

¹⁰ The complainants refer to *R.C. v Sweden*, ECHR decision No. 41827/07.

upon the applicant, the Court must attempt to clarify ambiguities by posing additional questions.

6.3 Regarding the complainants' contention that the migration authorities of the State party were obliged to further examine whether the complainants had been tortured, the State party submits that it is up to the complainants themselves to invoke evidence in order to substantiate the risk of being exposed to treatment contrary to article 3 of the Convention. Where such evidence is cited, it is up to the State party "to dispel any doubts" about such evidence. The State party reiterates that there is a reason to question the veracity of the complainants' claims. The State party therefore submits that the migration authorities were not obliged to further examine whether the complainants had been tortured in the past.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering a claim contained 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, paragraph 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 communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. It notes that in the present case, the State party has recognized that the complainants have exhausted all available domestic remedies. Accordingly, the Committee finds no further obstacles to admissibility; it declares the communication admissible and proceeds with its examination on the merits, as far as the complainants' claim under article 3 of the Convention is concerned.

Consideration of the merits

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

8.2 The Committee must determine whether the deportation of the complainants to the Russian Federation would violate the State party's obligations under article 3, paragraph 1, of the Convention not to expel or return (*refouler*) a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture there. The Committee recalls that the existence in a country of gross, flagrant or mass violations of human rights is not in itself a sufficient ground for believing that an individual would be subjected to torture.¹¹ Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that an individual might not be subjected to torture.

8.3 Recalling its general comment No. 1, the Committee reaffirms that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being "highly probable", but it must be personal, present, foreseeable and real.¹²

¹¹ See communication No. 428/2010, *Kalinichenko v. Morocco*, decision adopted on 25 November 2011, para. 15.3.

¹² See, inter alia, communications No. 203/2002, *A.R. v. Netherlands*, decision adopted on 14 November

8.4 The Committee takes note of the claim that the complainants were arrested and tortured on number of occasions, starting from 1999 and until 2008. The Committee also notes that, according to the complainants, the Migration Board, and subsequently, the Migration Court, both failed to take into consideration this information.

8.5 The Committee further notes that, even if it were to accept the claim that the complainants were subjected to torture and/or ill-treatment in the past, the question is whether they remain, at present, at risk of torture in the Russian Federation. The Committee notes that the current human rights situation in the Russian Federation remains as a matter of concern in several aspects, in particular in the northern Caucasus. The Committee recalls that it expressed its concerns in its concluding observations concerning the fifth periodic report of the Russian Federation in 2012, quoting “numerous, ongoing and consistent reports of serious human rights abuses inflicted by or at the instigation or with the consent or acquiescence of public officials or other persons acting in official capacities in the northern Caucasus, including the Chechen Republic, including torture and ill-treatment, abductions, enforced disappearances and extrajudicial killings”.¹³

8.6 The Committee notes that the State party has drawn attention to inconsistencies and contradictions in the complainants’ accounts and submissions which cast doubts regarding their general credibility and the veracity of their claims. In particular, the complainants claimed that their relatives have been arrested and murdered in the hands of the authorities, but failed to provide any names or other evidence or details pertaining to these allegations. The Committee further notes that the complainants claim to have been arrested and assaulted on several occasions. Despite this, they provide little to no description regarding the alleged torture they suffered in the hands of the law enforcement officials. In general, the complainants have not provided exact dates of these events, nor referred to exact locations.

8.7 The Committee further observes that the complainants merely stated before the Migration Board and the Migration Court that they feared being subjected to torture, if returned to the Russian Federation, claiming that they have been tortured in the past, and that that they would be targeted again. The Committee, however, notes that the complainants do not put forward any evidence that the Russian authorities would target them if they are returned. The Committee recalls that in its general comment No. 1 (1997) on the implementation of article 3 of the Convention¹⁴ it stated that it should give considerable weight to findings of fact made by the State party concerned. The Committee considers that in the specific circumstances of this case, it is not necessary to challenge the State party’s evaluation of all the evidence presented by the complainants.

8.8 The Committee recalls its jurisprudence whereby the risk of torture must be assessed on grounds that go beyond mere theory, and indicates that it is generally for the complainant to present an arguable case.¹⁵ In this regard, the Committee, in addition to lack of information about the alleged instances of torture, also notes the discrepancies as described in paras. 4.10 and 4.11 *supra*. In light of the considerations above, and on the

2003; and No. 258/2004, *Dadar v. Canada*, decision adopted on 23 November 2005.

¹³ See Concluding observations on the fifth periodic report of the Russian Federation, adopted by the Committee at its forty-ninth session (29 October-23 November 2012), para. 13.

¹⁴ *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr.1)*, annex IX.

¹⁵ See communication No. 298/2006, *C.A.R.M. et al. v. Canada*, para. 8.10, decision adopted on 18 May 2007; No. 256/2004, *M.Z. v. Sweden*, para. 9.3, decision adopted on 12 May 2006; No. 214/2002, *M.A.K. v. Germany*, para. 13.5, decision adopted on 12 May 2004; No. 150/1999, *S.L. v. Sweden*, para. 6.3, decision adopted on 11 May 2001; and No. 347/2008, *N.B.-M. v. Switzerland*, para. 9.9, decision adopted on 14 November 2011.

basis of all the information submitted by the complainants, including on the general situation of human rights in the Russian Federation, the Committee considers that the complainants have not provided sufficient evidence to enable it to conclude that their forcible removal to their country of origin would expose them to a foreseeable, real and personal risk of torture within the meaning of article 3 of the Convention.

9. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, therefore concludes that the complainants' extradition to the Russian Federation would not constitute a breach of article 3 of the Convention.
