



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Ninety-fourth session
13 to 31 October 2008

DECISION

Communication No. 1540/2007

<u>Submitted by:</u>	Mr. Mahmoud Walid Nakrash and Ms. Liu Qifen (not represented by counsel)
<u>Alleged victim:</u>	The authors
<u>State party:</u>	Sweden
<u>Date of communication:</u>	3 January 2007 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 9 January 2007 (not issued in document form)
<u>Date of adoption of Decision:</u>	30 October 2008

* Made public by decision of the Human Rights Committee.

Subject matter: Expulsion of the authors to their countries of origin.

Substantive issue: Risk of torture or cruel, inhuman or degrading treatment or punishment; no respect of family life.

Procedural issues: Lack of substantiation.

Articles of the Covenant: 7, 17.

Article of the Optional Protocol: 2

[ANNEX]

ANNEX

**DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER THE OPTIONAL
PROTOCOL TO THE INTERNATIONAL COVENANT ON
CIVIL AND POLITICAL RIGHTS**

Ninety-fourth session

concerning

Communication No. 1540/2007*

<u>Submitted by:</u>	Mr. Mahmoud Walid Nakrash and Ms. Liu Qifen (not represented by counsel)
<u>Alleged victim:</u>	The authors
<u>State Party:</u>	Sweden
<u>Date of communication:</u>	3 January 2007 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 30 October 2008,

Adopts the following:

DECISION ON ADMISSIBILITY

1.1 The authors of the communication are Mr. Mahmoud Walid Nakrash, a Sunni Muslim citizen of Syria, born in Saudi Arabia in 1979, and Ms. Liu Qifen, a citizen of China, born in 1977. They also submit the communication on behalf of their son, Nor-Edin, born in 2004 in Sweden. They do not invoke any particular article of the Covenant and are not represented by counsel.

1.2 When registering the communication on 9 January 2007, and pursuant to rule 92 of its rules of procedure, the Committee, acting through its Special Rapporteur on New Communications and Interim Measures, requested the State party not to deport the authors to

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Ms. Helen Keller, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Ms. Ruth Wedgwood.

Pursuant to rule 90 of the Committee's rules of procedure, Committee member Ms. Elisabeth Palm did not participate in adoption of the Committee's decision.

Syria and China respectively while their case was under examination. As a result, the State party decided to grant a stay-of-enforcement of its decision to expel the authors.

The facts as submitted by the authors

2.1 Mr. Nakrash states that his father was a member of the Muslim Brotherhood, a political party prohibited in Syria, and that in 1979 his father and cousin were arrested by the Syrian Police. His father escaped from detention and fled with his family to Saudi Arabia. Later on, he learnt that he had been sentenced to death in absentia in Syria and that his cousin had been hanged in 1980 by decision of the Syrian Government.

2.2 In 1986, the author visited Syria with his mother and brother. When they decided to return to Saudi Arabia, the Syrian authorities did not allow him and his brother to leave the country. As a result, their mother returned to Saudi Arabia alone and they stayed with their grandfather (from their mother's side). In 1990, their mother returned to Syria and their father decided to go to Sweden, where he asked for asylum and obtained a residence permit.

2.3 The author states that, while in Syria security men came on one occasion to their house and took him and his brother for questioning. For years they were subjected to constant harassment by the intelligence services. He also states that he had to leave school because of measures taken against him for his lack of affiliation to the Baath party.

2.4 Between 1998 and 2000, the author assisted at meetings organized by the Muslim Brotherhood party, which had political and religious contents. After one of the meetings the author and other participants were arrested by the police. He remained in detention without any charges for two weeks, during which he was beaten and insulted repeatedly. He was released after his uncle pay bribes, but was forbidden from travelling inside the country. Some months later, while he was at work, the police searched his house and confiscated tapes and books among other things. He was also requested to contact the Political Security Branch as soon as possible. The author did not return home and went into hiding for about five months. In the meantime, he learnt that some of his friends and the leader of the group had been arrested and that the police were looking for him. He managed to obtain a false passport and a Turkish visa and fled to Turkey. He arrived in Ankara in February 2000, where he contacted the Swedish Embassy and asked for a visa on the basis of his father's ties with Sweden. However, his application was refused.

2.5 The author arrived in Sweden in June 2003 and submitted an asylum request on 4 July 2003. He was interviewed on 9 January 2004 and got the first negative response from the Immigration Service on 9 November 2004. He made an appeal with the Aliens Appeals Board on 29 March 2005. On 21 April 2005 the Board issued a negative decision. A further negative decision was issued on 11 May 2006.

2.6 The author attaches to his communication an extract of a police record in which it is indicated that on 21 March 2000 he was sentenced in absentia by the State Security Court to "nine years with labor" for membership in an illegal opposition group. He was also sentenced in absentia to three years of imprisonment by a military court, on 11 May 2000, for failure to perform the mandatory military service.

2.7 Mr. Nakrash further states that he suffers from a severe disease, similar to cancer, called “langerhans histiocytes” and has undergone chemotherapy treatment. As a result, he has *inter alia* difficulties to digest food and has to take pain-relieving medicines.

2.8 While in Sweden Mr. Nakrash met Ms. Liu Qifen, a citizen of China who arrived in Sweden in July 2003 and whose request for asylum was also rejected. They have a son born on 20 November 2004. She applied for asylum on his behalf on the same day he was born.

2.9 While in China Ms. Liu Qifen lived with her brother, a Falun Gong teacher. In 1998, she started practicing Falun Gong herself and in early 2002, she and her brother were arrested. She was released a few days later after paying a fine. She was thereafter summoned to the police a few times, interrogated in relation to her practice of Falun Gong and asked to provide names of other Falun Gong followers. She was beaten on several occasions and finally accepted to sign a document indicating that she would stop practicing. Her brother was sentenced to 10 years of imprisonment. When she visited him in prison she saw that he had been beaten. She decided to leave the country in March 2003.

2.10 Ms. Liu Qifen’s request for asylum was rejected by the Migration Board on 21 December 2004 and by the Migration Appeals Board on 21 April 2004.

The complaint

3.1 Mr. Nakrash claims that if he is deported to Syria he will be arrested and will face torture and ill-treatment. He will be under the jurisdiction of the military courts, which do not apply the minimum standards of justice. He might stay in detention without trial for longtime and will not be able to see his girlfriend and son again.

3.2 Ms. Liu Qifen also claims that if she is deported to China she will be at risk of being arrested and separated from her son because of her brother’s involvement with Falun Gong. She also fears discrimination because of the fact that she is a single mother. Finally, she claims that the permanent separation of her son with his father would amount to cruel treatment. She has no relatives in China other than her brother.

3.3 The authors claim that, if deported, the family will be divided and they won’t be able to visit each other, as their respective countries will not allow them to travel even if they are not in detention.

3.4 The authors do not invoke specific articles of the Covenant. However, their claims might raise issues under articles 7 and 17.

State party’s observations on admissibility and merits

4.1 On 22 August 2007, the State party submitted that in the course of his interviews with the Migration Board Mr. Nakrash reported that his problems with the Syrian authorities begun in 1998, when he was enlisted for military service. It had then been revealed that he was not a member of the Baath Party and that his father had links with the Muslim Brotherhood. He was interrogated by officials from different departments of the security services and the security police.

4.2 On 9 November 2004, the Migration Board rejected Mr. Nakrash's application for asylum and a residence permit. It noted that the author had not been able to substantiate the alleged harassment, interrogations and abuse from the Syrian authorities, nor had he been able to substantiate that he lived for three years in Turkey. The Board found it very unlikely that he would attract any interest from the Syrian authorities if returned, in view of the fact that his father had left Syria as long ago as 1979. Furthermore, his mother and brother had not experienced any problems with the Syrian authorities. The author had left Syria with a valid passport and necessary travel documents. This would not have been possible if he had been of any interest to the Syrian authorities. According to information available to the Board, the sentence for refusing to do military service in Syria varies between two and six months of imprisonment. This in itself does not constitute a sufficient ground for being granted asylum in Sweden. Moreover, it is very common for the Syrian president to grant amnesty and is unusual for such sentences to be served.

4.3 Before the Aliens Appeals Board the author added that he had been sentenced to nine years imprisonment for belonging to illegal opposition organizations and claimed that a friend of his had obtained a document showing that he had actually been sentenced for the two crimes. He also added that he was co-habiting with Ms. Liu Qifen and had a son together. Despite his disease, he was working part time at a restaurant in Lulea. He submitted a birth certificate concerning the son. However, the document contained no indication regarding the identity of the father. The Board rejected the application essentially on the same grounds as the Migration Board.

4.4 As for Ms. Liu Qifen, the Migration Board rejected her application on 21 December 2004. According to the Board, the Chinese regime had pursued a wide-ranging campaign against followers of the Falun Gong movement since 1999. However, ordinary practitioners had not attracted any special interest from the authorities. The Aliens Appeal Board case-law indicated that mere membership of Falun Gong could not be a sufficiently strong reason for being granted a residence permit. Ms. Liu Qifen had been active at a low level and the relatively short prison sentence she had served indicated that the authorities had no particular interest in her. After having signed a document in 2001 stipulating that she would no longer practice Falun Gong she was able to live a relatively normal life in China until she left the country on 11 March 2003. She submitted a fax copy of a summons to the police which the Board considered had a low level of value as evidence. The Board concluded that she had not been able to substantiate her claim that she was at risk of being persecuted by the Chinese authorities.

4.5 In her appeal before the Aliens Appeals Board she added that even practitioners at her level were persecuted and that her escape from China had most likely strengthened the suspicions against her. According to her friends in China the police were still looking for her. Moreover, she had been removed from the national registration of citizens and would therefore be regarded as a stateless person in China. She also stated that Mr. Nakrash would not be allowed to enter China since he was not known to the authorities and he could also be suspected of being a practitioner of Falun Gong. The family would therefore be divided if they were to be sent to different destinations.

4.6 On 21 April 2005, the Aliens Appeals Board upheld the decision of the Migration Board basically on the same grounds. It was known to the Board that a person could be struck from the

Chinese national registration of citizenship and that she would have to re-register if returned to China. However, the author had not substantiated her assertion that she had been struck from the national registration of citizens and lost her Chinese citizenship. It had not been substantiated either that the family would not be able to reunite in either Syria, China or a third country.

4.7 The Migration Board examined the cases again under the temporary wording of Chapter 2, Section 5 b of the 1989 Aliens Act. In a decision of 11 May 2006 it concluded that the authors could not be granted a residence permit and that the circumstances could not be considered to be of such nature as to involve an urgent humanitarian interest. Moreover, the authors had not developed such ties to Sweden that they qualified for a residence permit on these grounds. It followed from the temporary legislation that special consideration *inter alia* was to be given to a child's social situation, its period of residence in and ties to Sweden.

4.8 The State party acknowledges the fact that all domestic remedies have been exhausted. It argues, however, that the communication should be considered inadmissible under articles 2 and 3 of the Optional Protocol. First of all, a right of asylum as such is not protected by the Covenant. Neither does the Covenant guarantee socio-economic rights, such as the rights to housing free of charge, work, free medical assistance or the right to claim financial assistance from the State to maintain a certain standard of living. Should the case be considered to be based on a claim of entitlement under the Covenant to any of those rights, it would relate to a matter that is outside the Covenant and should thus be declared inadmissible *ratione materiae*.

4.9 Secondly, it may be questioned whether the "treatment" that the authors allegedly risk being subjected to upon return to Syria and China would be on a sufficient level for article 7 of the Covenant to be applicable. The Covenant does not contain any definition of the concepts covered by article 7. The definition contained in article 1 of the Convention against Torture should be of relevance in the present context. However, it seems very unlikely that the alleged "treatment" could amount to torture. The concept of torture requires the infliction of severe pain or suffering intentionally and for a specific purpose. No support can be found for a proposition that Syria or China would intentionally inflict such grave treatment on the authors. As for the concept of inhuman or degrading treatment, the Committee has held that the assessment of what constitutes such treatment within the meaning of article 7 depends on all the circumstances of the case, such as the duration and manner of the treatment, its physical or mental effects as well as the sex, age and state of health of the victim. The treatment and living conditions that the authors would allegedly face upon return to their respective countries of origin, even taking into account their personal circumstances, may not be sufficiently difficult to meet the level of severity required for the purposes of article 7. Consequently, their claim would fall outside the scope of the Covenant and should be declared inadmissible *ratione materiae*. The "non-refoulement principle" established under article 7 of the Covenant cannot be considered to impose an obligation to refrain from expelling the authors in this particular case, even if the State party recognizes that the general human rights situation in both Syria and China is in many ways problematic. Accordingly, also for this reason the communication should be declared inadmissible *ratione materiae* pursuant to article 3 of the Optional Protocol.

4.10 Finally, the State party submits that the communication fails to rise the basic level of substantiation required for the purposes of admissibility. This is also the case with regard to the claim under article 17 of the Covenant.

4.11 As for the merits, the State party asserts that Swedish immigration authorities have gained considerable experience in assessing claims from asylum seekers from Syria. Great weight must therefore be attached to the opinions of the Swedish immigration authorities.

4.12 The first time Mr. Nakrash claimed that he had been sentenced to prison for being a member of prohibited opposing groups was during his appeal to the Aliens Appeals Board. In support of this claim he submitted the excerpt of the police record which he also submitted to the Committee. The excerpt was submitted only in photocopy, although the author stated that his friend and his brother had obtained the original from the Criminal Department at the Security Service. The Swedish Embassy in Damascus engaged an attorney-at-law to look into the authenticity of the document. He concluded that the excerpt was not authentic on the basis of the following findings. Neither the State Security Court's decision number, nor the Military Court's decision number were indicated, although they were supposed to be. There was no indication either of the Military Court which sentenced the author. It was indicated that the execution of the nine-year sentence for membership in prohibited opposing groups had been stayed. However, a "stay of execution" is not used in the criminal courts and the State Security Court, since there is no legal basis in the Syrian legal system for such a decision at these courts. The attorney searched for the author's name at the archives of the State Security Court and the centre for all the Military Courts in Damascus but found no case-file regarding the author. At the archives of the Syrian Ministry of Interior he found out that a warrant had actually been issued for the author in Aleppo in 2003 regarding his failure to join the military service. However, this warrant had been revoked and nullified following an amnesty in 2003. At the Syrian Migration authority the attorney found no information that the author was wanted for any crime. The attorney explained that if someone is wanted by the Syrian authorities information on that person is entered into the migration authorities' records, so that he/she may be arrested when leaving or entering the country.

4.13 According to the State party, the obvious conclusion to be drawn from the result of the investigation is that Mr. Nakrash had not been sentenced for the alleged crimes. Thus, he is not at risk of being arrested and subjected to ill-treatment on those accounts if he has to return to Syria. Furthermore, the fact that he has provided false information and documentation to the Swedish authorities and to the Committee should be regarded with great seriousness and gives reason to call into question his general credibility and the veracity of his claims.

4.14 The State party further argues that Mr. Nakrash provided contradictory statements. For instance, during the second interview before the Migration Board he stated that he had participated in only one political meeting, whereas before the Committee he claims that he had participated in several. Before the Swedish authorities he stated that several other persons that had participated in the meeting had been arrested by the police and that he had been arrested in the summer or autumn of 1999. Before the Committee however he claims that they had been arrested directly after a meeting. Before the Migration Board he stated that it had taken him 10 months to get three months respite for doing military service; however, during a visit to the Swedish Embassy in 1998, he instead stated that he had received a respite until 2000. During the Migration Board's examination of his case under the temporary legislation, he made no mention of the alleged outstanding nine-year prison sentence.

4.15 The State party concludes that Mr. Nakrash has not been able to substantiate his claim that, upon return to Syria, he would be at risk of being tortured or subjected to cruel, inhuman or degrading treatment or punishment. It is very unlikely that he would attract any interest from the authorities due to his father's political activities, bearing in mind that his father left Syria in 1979 and his alleged political activities have been very limited and at a low level. As for Mr. Nakrash's statement regarding his state of health, he has not claimed that his disease is life-threatening or that necessary medical treatment is not available in Syria. In view of this, the Aliens Appeals Board concluded that he could not be granted asylum and a residence permit on humanitarian grounds.

4.16 As for Ms. Liu Qifen and her son the State party considers it unlikely that she would attract any interest from the Chinese authorities. She has not been able to demonstrate that she would be persecuted upon her return to China. Hence, the complaint does not amount to a violation of article 7. The documentation and circumstances invoked by the complainants do not suffice to show that the alleged risk of ill-treatment fulfils the requirement of being real and personal. The authors have therefore failed to substantiate their claim that an expulsion to Syria and China would entail inhuman or degrading treatment within the meaning of article 7.

4.17 Regarding the claim that the expulsion of the authors from Sweden would split up the family and interfere with their right to family life, the Aliens Appeals Board, in its decision of 21 April 2005, stated that a temporary splitting up of the family would not amount to a violation of their right to respect for family life under article 8 of the European Convention. The family would be able to reunite in either Syria, China or a third country and the authors had not demonstrated that this would be impossible. For the sake of clarifying the matter further, the State party requested the assistance of the Swedish Embassy in Damascus to examine the possibilities under Syrian legislation for the authors to reunite in Syria. The Embassy engaged an attorney-at-law to look into the matter. According to him, it should be possible for the family to be reunited in Syria. If the expulsion order against Mr. Nakrash is enforced, Ms. Liu Qifen and her son should be able to apply for a visa at the Syrian Embassy and after entering Syria apply for residence permits on the basis of their ties to Mr. Nakrash. It has not been possible for the State party to determine the possibilities for the family to reunite in China. The State party concludes that an expulsion to different destinations cannot be considered to constitute arbitrary or unlawful interference with family life within the meaning of article 17.

Authors' comments to the State party's observations

5.1 On 6 February 2008 the authors submitted comments on the State party's observations. Mr. Nakrash stated that, as he had indicated to the Migration Board, he had been under arrest several times between 1997 and 1999, and that even as a child, he had to report to the police periodically. The arrest he referred to in his initial submission took place in March 1999, after one of the meetings he attended. He was also arrested in one occasion in August or September 1999 and remained in custody for four days. The last meeting he attended was in October 1999. After that, he went into hiding and fled to Turkey in February 2000.

5.2 Regarding his military service, Mr. Nakrash states that he asked for a postponement because his mother was sick and he had to take care of her. However, in view of the fact that his

father had been involved with opposition groups, the chairman of the Division Recruitment Centre delayed the approval. As a result, it took him 10 months to get the respite.

5.3 When his case was reviewed under the temporary legislation his lawyer focussed primarily on the family situation. He did not mention the nine-year sentence because this issue had already been raised with the Swedish authorities.

5.4 The author claims that although his father left Syria long time ago, there is still a death sentence against him and that Law 49/1980 sentencing to death anyone who is active with the Muslim Brotherhood is still in force.

5.5 After his brother went to the criminal security department to obtain his criminal record, two police officers came to his brother's house and left a document requesting the author to report to the military police by 1 February 2005. Failure to do so would be punished by doubling the duration of his military service. The author disagrees with the conclusion of the attorney hired by the Swedish Embassy and states that the document concerning his police record is authentic. He says that most probably the attorney did not have the power to obtain the kind of information required. Moreover, he was probably trying to cooperate with both the Syrian government and the Swedish Embassy at the same time, thus making it easy for the State party to deport him to Syria. Under the state of emergency currently in force, Syrian authorities can arrest anybody at any time. They don't need to inform the migration service to arrest somebody when leaving or entering the country. They particularly watch Syrian citizens returning to the country after many years, those who are deported, those who return from "hostile countries" and those suspected to be active in the opposition. When these citizens arrive at the airport or other border points they are transferred to the notorious Intelligence Centre, where they can be subjected to thorough investigation and subjected to torture. He refers to the case of another Syrian citizen who was deported from the United Kingdom in 2005, after the British authorities found out that he had no convictions and there was no detention order against him. Upon his arrival in Syria he was arrested, tried for alleged membership to the Muslim Brotherhood and sentenced to death, reduced later to 12 years of imprisonment. He says that this case is similar to his and that he will face the same fate. He also refers to reports of Amnesty International and the Syrian Human Rights Committee pointing out at human rights violations in the country.

5.6 The author disagrees with the State party's argument that the family could be reunited in Syria. As both of them would be deported to different countries, they would have to initiate a procedure with the Syrian authorities which would take time and might not be successful. Furthermore, Ms. Liu refuses to live in Syria and his family refuses his relationship with a non-Muslim woman. The different culture, traditions and religion are one of the main reasons preventing Ms. Liu from living in Syria. Moreover, because of their unstable situation Ms. Liu refuses to get married, which makes their situation particularly complicated vis-à-vis Civil Syrian law and constitute an obstacle to obtain a residence permit from the Syrian authorities.

5.7 Ms. Liu Qifen adds that her son will not be recognized as Chinese by the Chinese authorities, as he was born outside China and his father is a foreigner. According to the Chinese law, the child is considered to have the nationality of his father and has no right to obtain the nationality of his Chinese mother.

5.8 Mr. Nakrash further states that they have integrated into Swedish society. Their son goes to school and his father and four of his brothers live in Sweden. His family links with Sweden are therefore more important than those with Syria.

Additional observations from the State party

6.1 On 10 April 2008, the State party noted that some of the additional statements submitted by the authors in their comments entail an escalation in comparison with their earlier statements. Thus, Mr. Nakrash now claims that his problems with the Syrian authorities began already during August-September 1997 and that a number of arrests were made during the following two years. However, during the second interview before the Board, which took place on 9 January 2004, he claimed that his problems with the authorities had begun when he applied for postponement of his military service and that between 1998 and 2000 he had been summoned several times to the security service and questioned about his father. He also claimed that he had participated in a single meeting at the end of 1999.

6.2 Mr. Nakrash refers, for the first time, to a note issued by the police on 15 January 2005 asking him to appear before the authorities on 1 February 2005. It is correct that an uncertified copy of the alleged document was submitted to the Swedish Migration Board together with the application for residence permits under the temporary legislation. However, the alleged document was not submitted in original and it was never invoked as evidence during the asylum proceedings before the Board.

6.3 The State party refers to the fact that the Swedish Embassy in Damascus engaged an attorney-at-law to investigate the authenticity of certain documents. Should Mr. Nakrash be wanted by the authorities for failing to obey the instructions to appear before the authorities on a certain date the State party is confident that the attorney-at-law would have reported to the Embassy that such a document had been issued by the authorities. However, the existence of the document is not accounted for or even mentioned in the report of the attorney-at-law.

6.4 According to information available to the Swedish Migration Board, the sentence for refusing to do military service varies between two and six months imprisonment. However, amnesties are apparently very common and it is unusual for such prison sentences ever to be served. In conclusion, the State party maintains that the alleged document does not in itself constitute sufficient ground for being granted asylum in Sweden.

6.5 Regarding Mr. Nakrash's state of health, the State party refers to the jurisprudence of the European Court of Human Rights. Only if there are very exceptional circumstances and when there are compelling humanitarian considerations at stake, may the enforcement of an expulsion decision entail a violation of the European Convention on Human Rights on grounds related to the state of health of the alien concerned. Moreover, the first author has not claimed that necessary medical treatment is not available in Syria. The State party therefore concludes that Mr. Nakrash's state of health does not constitute either sufficient grounds for being granted asylum in Sweden.

Issues and proceedings before the Committee

7.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

7.2 The Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement for the purposes of article 5, paragraph 2(a), of the Optional Protocol.

7.3 The Committee notes that the authors are not represented by counsel and that they do not specify which articles of the Covenant they consider would be violated by the State party in case they are returned to their respective countries of origin. The Committee considers, however, that some of their claims can be examined under article 7. Thus, Mr. Nakrash states that he will be at risk of being arrested and subjected to torture and ill-treatment upon return to Syria. The Committee recalls that States parties are under an obligation not to expose individuals to a real risk of being subjected to torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement. The Committee must therefore decide whether there are substantial grounds for believing that, as a necessary and foreseeable consequence of his removal to Syria, there is a real risk that the author would be subjected to treatment prohibited by article 7. The Committee notes that both the Immigration Board and the Aliens Appeals Board, after a thorough examination, rejected the asylum application of the author on the basis of lack of credibility and the existence of contradictory statements. The Committee recalls its jurisprudence that it is generally for the courts of States parties to the Covenant to evaluate facts and evidence in a particular case, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice. The material before the Committee does not show that the proceedings before the authorities in the State party suffered from any such defects. The Committee accordingly considers that Mr. Nakrash has failed to substantiate his claims under article 7, for purposes of admissibility, and it concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.¹ As for Ms. Liu Qifen, she claims that she will be at risk of being arrested upon her return to China. However, she does not provide sufficient evidence to the effect that she would be subjected to treatment contrary to article 7 of the Covenant. Accordingly, this part of the communication is also inadmissible, under article 2 of the Optional Protocol, for lack of substantiation.

7.4 Both authors claim that their expulsion from the State party would entail the separation of the family. The Committee has examined this claim as it might raise issues under article 17 of the Covenant. It notes, however, that the Immigration Board and the Aliens Appeals Board also looked into this issue and concluded that the authors had not demonstrated that the family would be unable to reunite in either Syria, China or a third country. The Committee considers that the materials before it do not show that the evaluation of facts and evidence carried out by the State party's authorities in this regard was arbitrary or amounted to a denial of justice and concludes that this part of the communication is also inadmissible under article 2 of the Optional Protocol.

¹ See Communication No. 1234/2003, *P.K. v. Canada*, paragraph 7.3.

8. The Human Rights Committee therefore decides:
- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
 - (b) That this decision shall be communicated to the State party and to the authors.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
