



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

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VIEWS

Communication No. 41/1996

Submitted by: Mrs. Pauline Muzonzo Paku Kisoki
[represented by counsel]

Alleged victim: The author

State party: Sweden

Date of communication: 12 February 1996

Documentation references: None

Date of adoption of Views: 8 May 1996

[ANNEX]

*/ Made public by decision of the Committee against Torture.

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ANNEX

Views of the Committee against Torture under article 22, paragraph 7,
of the Convention against Torture and Other Cruel,
Inhuman or Degrading Treatment
- Sixteenth session -

concerning

Communication No. 41/1996

Submitted by: Mrs. Pauline Muzonzo Paku Kisoki
[represented by counsel]

Alleged victim: The author

State party: Sweden

Date of communication: 12 February 1996

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

Meeting on 8 May 1996,

Having concluded its consideration of communication No. 41/1996, submitted to the Committee against Torture on behalf of Mrs. Pauline Muzonzo Paku Kisoki 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 author of the communication, her counsel and the State party,

Adopts the following:

Views under article 22, paragraph 7, of the Convention

1. The author of the communication is Pauline Muzonzo Paku Kisoki, a Zairian citizen currently residing in Sweden, where she is seeking refugee status. She claims that her forced return to Zaire would constitute a violation by Sweden of article 3 of the Convention against Torture. She is represented by counsel.¹

¹ A previous communication on behalf of the same author, communication No. 30/1995, was declared inadmissible by the Committee on 20 November 1995, for non-exhaustion of domestic remedies.

The facts as submitted

2.1 The author states that on 18 October 1990, members of the Government party MPR visited her restaurant in Kisanto, not far from Kinshasa, indicating that they wished to hold a party rally there the following day. The author refused this, since she was an activist of the opposition party UDPS and her husband worked as personal secretary to Mr. Bosasi Bolia, one of the leaders of UDPS.

2.2 On 20 October 1990, the author and her husband were arrested by security forces. The author was raped in her home in front of her children. She was then taken to a small detention centre on the way to Kinshasa where she was brutally beaten. The following day she was taken to Makal prison in Kinshasa. The author describes the inhuman and degrading circumstances of detention in prison. She was not allowed to receive any visits and shared a cell of 3 by 6 meters with seven other inmates. There were no proper sanitary provisions and they had to urinate on the floor. Every morning guards came into the cell and forced the women to dance, beat them and sometimes raped them. The author states that she was raped more than ten times during her time in prison. She further submits that she was regularly beaten, sometimes with whips made of tires on which metal thread was stuck, she was burnt with cigarettes on the inside of her thighs and struck with batons.

2.3 The author was detained for one year without trial. On 20 October 1991, with the assistance of one of the supervisors of the prison whom had been bribed by the author's sister, the author was able to escape. She then travelled to Sweden, via Belgium, on a passport of a woman who resembled her. Later, she sent the passport back to the woman.

2.4 The author arrived in Sweden on 14 November 1991 and immediately requested asylum. On 31 January 1994, the Swedish Board of Immigration refused her request, noting that the political situation in Zaire had improved and considering that it was not likely that Ms. Muzonzo would be subjected to persecution or severe harassment because of her past activities for the UDPS. The Board further questioned the circumstances surrounding her release from prison and her leaving Zaire.

2.5 On 13 February 1995, The Aliens Appeal Board confirmed the decision of the Swedish Board of Immigration and concluded that in the present circumstances in Zaire, Ms. Muzonzo did not risk persecution by the authorities. The author then submitted a "new application" to the Appeal Board, referring to the United Nations Commission on Human Rights' Special Rapporteur's report on Zaire of 23 December 1994. On 16 March 1995 the Board rejected her application, considering that the circumstances invoked by the author could not be seen as new evidence.

2.6 On 12 December 1995, the author submitted yet another new application to the Swedish Aliens Appeal Board, on the basis of new forensic medical evidence, prepared by the Center for Torture- and Trauma Survivors in Stockholm. On 7 February 1996, the Aliens Appeal Board rejected the author's application, judging that the information now submitted could easily have been submitted earlier, thereby decreasing the trustworthiness of her claim.

The complaint

3.1 The author claims that the decisions taken by the Swedish authorities are founded on a false image of the situation in Zaire. She refers to the UN Commission on Human Rights' Special Rapporteur's report on Zaire², where it is reported that the practice of torture is common in Zaire and that female prisoners are often raped. She also refers to the UNHCR's "Background paper on Zairian refugees and asylum seekers" of March 1995, where it is mentioned that the Security Police has shown a particular interest in returned asylum seekers, who are being subjected to long sessions of interrogation.

3.2 The author recalls that she is a member of the UDPS since 1987 and that her restaurant was frequently used by the local branch of the party for political meetings. Moreover, the author headed the local women's group and participated in several large UDPS demonstrations against the Mobutu regime. In the summer of 1990 she organized a women's protest in Kinshasa in which thousands of women participated. Moreover, the author states that she has continued her political activities in Sweden and that she regularly attends UDPS meetings and demonstrations. A letter of support from the UDPS Sweden is enclosed with the communication. In this context, the author also states that between 1985 and 1990 her husband was the personal secretary of Bosasi Bolia, a co-founder and leader of the UDPS. At present, he is seeking asylum in Congo.

3.3 Medical certificates prepared by the Center for Torture- and Trauma Survivors in Stockholm show scar tissue consistent with the author's claims of torture and ill-treatment, as well as signs of a distinct Post Traumatic Stress Disorder.

3.4 The author asks the Committee to request Sweden, pursuant to rule 108, paragraph 9, of the rules of procedure, not to return her to Zaire while her communication is under consideration by the Committee.

State party's observations

4. On 28 February 1996, the Committee, through its Special Rapporteur, transmitted the communication to the State party for comments and requested the State party not to expel the author while her communication was under consideration by the Committee.

5.1 By submission of 18 April 1996, the State party challenges the admissibility of the communication, but also addresses the merits of the case. It requests the Committee, should it not find the communication inadmissible, to examine the communication on its merits as soon as possible.

² E/CN.4/1995/67.

5.2 The State party recalls that it was one of the co-sponsors of resolution 1995/69 adopted by the UN Commission on Human Rights on 8 March 1995 concerning the human rights situation in Zaire and that it is aware of the deplorable situation with regard to human rights in Zaire. However, the State party, while referring to the Special Rapporteur's report on Zaire, submits that there seems to have been a change for the better since the appointment of Mr. Kengo Wa Dondo as Prime Minister on 14 June 1994. Political prisoners were released and politically motivated detentions declined drastically. In this context, the State party also refers to a report prepared by the Voice of the Voiceless for Human Rights concerning problems of Zairian refugee claimants, where it was concluded that it could not be confirmed a priori that expelled Zairian asylum seekers are in danger in Zaire. It was said that each case deserved to be examined on its own merits.

5.3 As regards the domestic procedure, the State party explains that the basic provisions concerning the right of aliens to enter and to remain in Sweden are found in the 1989 Aliens Act. For the determination of refugee status there are normally two instances, the Swedish Immigration Board and the Aliens Appeals Board. In exceptional cases, an application is referred to the Government. Chapter 8, section 1, of the Act corresponds with article 3 of the Convention against Torture and states that an alien, who has been refused entry or who shall be expelled, may never be sent to a country where there is firm reason to believe that he or she would be in danger of suffering capital or corporal punishment or of being subjected to torture, nor to a country where he is not protected from being sent on to a country where he would be in such danger. Further, under chapter 2, section 5, subsection 3, of the Act, an alien, who is to be refused entry or expelled, can apply for a residence permit if the application is based on circumstances which have not previously been examined in the case and if either the alien is entitled to asylum in Sweden or if it will otherwise be in conflict with humanitarian requirements to enforce the decision on refusal of entry or expulsion.

5.4 As regards the admissibility of the communication, the State party argues that the communication is inadmissible as being incompatible with the provisions of the Convention, for lacking the necessary substantiation.

6.1 As to the merits of the communication, the State party refers to the Committee's jurisprudence in the case of Mutombo v. Switzerland³, and the criteria established by the Committee, first, that a person must personally be at risk of being subjected to torture, and, second, that such torture must be a necessary and foreseeable consequence of the return of the person to his or her country.

6.2 As regards the general situation of human rights in Zaire, the State party acknowledges that the situation is grave and unacceptable, despite some improvements since 1994. The State party submits, however, that in general returning asylum seekers are not faced with political persecution.

³

Communication No. 13/1993, Views adopted on 27 April 1994.

6.3 The State party refers to its own legislation and states that its principles reflect the same principle as that of article 3 of the Convention. The State party's authorities thus apply the same test as the Committee in deciding on the return of a person to his or her country. The State party recalls that the mere possibility that a person be subjected to ill-treatment in his or her country of origin does not suffice to require that a person be given asylum in a third country or to prohibit his or her return as being incompatible with article 3 of the Convention.

6.4 In the instant case, the State party relies on the opinions of the Immigration Board and the Appeal Board, which after a careful examination of the facts of the author's case concluded that she would not be personally at risk of being subjected to torture when returned to Zaire.

6.5 The State party further points to inconsistencies in the author's story, in relation to the rape of which she was allegedly a victim. The author, according to the medical statement of May 1995, had said that she was raped more than ten times during the time she spent in detention, whereas in her interview with the Swedish police in February 1992, she mentioned being beaten, but not raped, and in her account of 21 January 1993, she mentions having been raped twice. According to the State party, these inconsistencies impact significantly on the veracity of the author's story. Further, the State party recalls that the medical evidence was only submitted in 1995, that is, after the procedure for the establishment of the refugee claim was terminated, thus weakening further the author's credibility.

6.6 The State party argues that the evidence presented by the author is insufficient to demonstrate that the risk of her being tortured is a foreseeable and necessary consequence of her return to Zaire. In this context, the State party submits that the present day situation in Zaire is different than that when the author was being detained for her political activities and that there is no reason to believe that the author now would be arrested by the authorities upon her return to her country.

Counsel's comments

7.1 In her comments on the State party's submission, counsel confirms that the Swedish Immigration Board, on 8 March 1996, decided to stay the author's expulsion until 25 May 1996.

7.2 She refers to the US Department of State report on Zaire Human Rights Practices of 1995, where it was stated that the Government continued to tolerate and commit serious human rights abuses, especially through its security forces.

7.3 As regards the alleged inconsistencies in the author's story, counsel maintains that the author already at first instance invoked serious ill-treatment and rapes, and refers to articles in medical journals explaining the psychological blockage in torture victims preventing them from telling the

full story upon arrival in a safe country. In this context, counsel points out that the author's statements about her sufferings are initially sparse and casual, and are only elaborated later, with the passage of time. Counsel emphasizes that the author's story has remained unchanged, coherent and plausible throughout. Counsel further states that the failure to present medical evidence before July 1995 was caused by the author's conviction of the righteousness of her claims and further by a lack of financial means.

7.4 As regards the State party's statement that the human rights situation in Zaire has improved and that therefore there is no danger for the author in returning to her country, counsel refers to an opinion of a UNHCR senior legal adviser, on 9 May 1995, to the effect that, although the UNHCR no longer opposed the return of rejected asylum seekers to Zaire, an exception existed for groups particularly at risk, such as active members of Zairian political opposition parties and in particular of the UDPS. Counsel argues that despite certain improvements, there still does exist a consistent pattern of gross, flagrant or mass violations of human rights in Zaire.

7.5 Counsel concludes that the author has presented sufficient evidence that she was a political activist for the UDPS and well known to the Zairian authorities, that she has been imprisoned, tortured and ill treated due to her political activities, that the human rights situation in Zaire is deplorable and that especially UDPS activists are in danger of persecution. She therefore claims that the author's return to Zaire would have the foreseeable and necessary consequence of exposing her to a real risk of being detained and tortured.

Issues and proceedings before the Committee

8. Before considering any claims contained in a communication, the Committee against Torture must decide whether or not 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. The Committee also notes that all available domestic remedies have been exhausted and finds that no further obstacles to the admissibility of the communication exist. Since both the State party and the author's counsel have provided observations on the merits of the communication, the Committee proceeds immediately with the consideration of the merits of the communication.

9.1 The issue before the Committee is whether the forced return of the author to Zaire would violate the obligation of Sweden under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

9.2 Pursuant to paragraph 1 of article 3, the Committee must decide whether there are substantial grounds for believing that Ms. Kisoki would be in danger of being subject to torture upon return to Zaire. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to paragraph 2 of article 3, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would 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 a sufficient ground for determining that a person would be in danger of being subjected to torture upon his return to that country; specific grounds must exist that indicate that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

9.3 In the instant case, the Committee considers that the author's political affiliation and activities, her history of detention and torture, should be taken into account when determining whether she would be in danger of being subjected to torture upon her return. The State party has pointed to contradictions and inconsistencies in the author's story, but the Committee considers that complete accuracy is seldom to be expected by victims of torture and that such inconsistencies as may exist in the author's presentation of the facts are not material and do not raise doubts about the general veracity of the author's claims.

9.4 The Committee has noted the State party's assertion that in general returned asylum seekers do not face political persecution upon return, due to the fact that the Zairian Government is aware that many leave because of economic, not political reasons. Be this as it may, in the instant case the author has claimed, and the State party has not contested, that she was an active member of the UDPS, chairperson of the women's group in her home town, that her husband was the personal secretary of one of the UDPS leaders, that she was detained because of her political activities, and that she has continued her political activities in support of the UDPS in Sweden. In the circumstances, the Committee need not take into consideration the general situation of returned refugee claimants, but rather the situation of returned refugee claimants who are active members of the opposition to the Government of President Mobutu.

9.5 In this context, the Committee has noted the position of the UN High Commissioner for Refugees, according to whom deportees who are discovered to have sought asylum abroad undergo interrogation upon arrival at Kinshasa airport, following which those who are believed to have a political profile are at risk of detention and consequently ill-treatment. The Committee also notes that, according to the information available, members of the UDPS continue to be targeted for political persecution in Zaire.

9.6 In the circumstances, the Committee considers that substantial grounds exist for believing that the author would be in danger of being subjected to torture if returned to Zaire.

9.7 The Committee concludes that the expulsion or return of the author to Zaire in the prevailing circumstances would constitute a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

10. In the light of the above, the Committee is of the view that, in the prevailing circumstances, the State party has an obligation to refrain from forcibly returning Pauline Muzonzo Paku Kisoki to Zaire.

[Done in English, French, Russian and Spanish, the English text being the original version.]