



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

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Committee Against Torture
Thirty-fifth session
7 – 25 November 2005

DECISION

Communication No. 237/2003

Submitted by: Ms. M. C. M. V. F.

Alleged victims: Ms. M. C. M. V. F., her husband V. M. F. Z., and their children P. C. F. M. and V. M. F. M.

State party: Sweden

Date of the complaint: 7 August 2003 (initial submission)

Date of present decision: 14 November 2005

[ANNEX]

*Made public for decision of the Committee against Torture.

Subject matter: Expulsion to country where complainant would be at risk of torture

Procedural issues: -----

Substantive issue: Right not to be returned to a country where alleged victim is at risk of torture.

Articles of the Convention: Article 3

ANNEX

Decision of the Committee against Torture under article 22 of the
Convention against Torture and Other Cruel, Inhuman or
Degrading Treatment or Punishment

Thirty-fifth session

Concerning

Communication No. 237/2003

Submitted by: Ms. M. C. M. V. F.

Alleged victims: Ms. M. C. M. V. F., her husband V. M. F. Z., and their
children P. C. F. M. and V. M. F. M.

State party: Sweden

Date of the complaint: 7 August 2003 (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 14 November 2005,

Having concluded its consideration of complaint No. 237/2003, submitted to the
Committee against Torture by Ms. M. C. M. V. F. 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 complainant and
the State party,

Adopts the following:

Decision of the Committee against Torture under article 22 of the Convention

1.1 The complainant (submissions of 7 August 2003 and 10 September 2003) is Ms. M. C. M. V. F., a Salvadorian citizen, acting on behalf of herself, her husband V. M. F. Z. and their children P. C. F. M. and V. M. F. M. The family is facing expulsion from Sweden to El Salvador. The complainant claims that the expulsion of the family would constitute a violation by Sweden of article 3 of the Convention against Torture. She is not represented by counsel.

1.2 On 4 April 2005, the complainant requested the Committee to adopt interim measures of protection. She informed the Committee that in November 2004 the Swedish authorities were searching for her in order to enforce the deportation order and that she managed to escape from being arrested. On 12 April 2005, the Special Rapporteur on New Communications and Interim Measures, acting on behalf of the Committee, declined the complainant's request.

Factual background

2.1 In 1987, the complainant joined a committee for the unemployed (Codydes) and the Salvadorian Women's Movement (MSM) in El Salvador, which protested against certain government policies. As a result of the political repression against social activists, the complainant joined the guerrilla movement Frente Farabundo Martí para la Liberación Nacional (FMLN), and became an active comrade leading the women's division of eastern San Salvador.

2.2. On 11 November 1989, the complainant was apprehended by police agents and violently pushed into a pick-up. She was taken to a police facility where she was allegedly beaten and forced to take off her clothes before being subjected to an interrogation about the activities of FMLN's members. When she refused to answer the questions, the officers put a plastic bag containing lime over her head. She was subjected to this type of interrogation several times. She was allegedly abused, repeatedly beaten and given electric shocks. She remained in detention for 40 days, during which she was not taken before a judge or visited by a doctor. She was released on 19 December 1989, thanks to ICRC intervention.

2.3 After her release, the complainant and her two children went into hiding. In 1990, in the midst of an FMLN campaign for municipal elections, a vehicle with tinted windows attempted to run her over. She did not file a complaint with the police, but the FMLN publicly denounced the event. Her husband was threatened, apparently in connection with his activities as a journalist. The complainant also received death threats over the telephone. Her husband applied for asylum for the whole family at the Swedish embassy. While their application was still pending, on 22 June 1991, the complainant was again intercepted by a vehicle of the security forces, forced to board the car and taken to the police headquarters where she was interrogated, beaten, almost asphyxiated with a plastic bag containing lime, and administered electric shocks to her body, including her vagina. She was released on 31 July 1991. She did not have access to a lawyer nor was she brought before a judge. For fear of reprisal, the complainant did not report the latter incident to the police, to any human rights organization or to the courts. She and her family went into hiding and attempted to contact the Swedish embassy. Meanwhile, their application for asylum had been discontinued.

2.4 In 1992, after the Government and the FMLN had signed the Peace Accords, the complainant was actively involved in the constitution of the new political party FMLN. She gave testimony of the torture she had experienced to the UN-led Truth Commission which investigated human rights violations that had occurred during the internal armed conflict in El Salvador. She was disappointed with the amnesty law passed by the right-wing government of Mr. Alfredo Cristiani immediately after the release of the Commission's report, granting a general pardon to members of the military and the security forces that had allegedly been involved in human rights violations. In 1994, she learned that all the files concerning the activities of FMLN members had been transferred to the Military. One of her torturers was admitted to the new police force created in accordance with the Peace Accords. She was unable to get a job because official records commonly required in employment applications portrayed her as having a "subversive background". In 1996, she participated as a candidate in the municipal elections of San Salvador. She submits that, by that year, almost 30 FMLN members had been killed by death squads. The death squads are said to be supported by right-wing persons with close ties to the government.

2.5 By the end of 1999, after her husband published an article unmasking a gang of organized crime which included former members of the military and the police, the complainant received more death threats. Her husband was told that he would be killed unless he went into hiding. They received another telephone call threatening that their daughter would be raped if she came back from Sweden where she was visiting her grandmother. In 2000, when the complainant was returning home from a political meeting, she was attacked by people who were driving a vehicle with tinted windows, and tried to run her over. As the family feared for their lives, they moved to another house which was later on destroyed in an earthquake in January 2001. On 16 March 2001, they fled to Sweden where they applied for asylum on the basis of political persecution, as well as having become victims of torture and natural disaster. The family received judicial assistance and attended an asylum hearing. The complainant was provided with psychological treatment and diagnosed with post-traumatic stress disorder caused by the experience of torture. The Swedish immigration authorities reopened the family's case and, on 15 March 2002, rejected their asylum claim, stating that the human rights situation in El Salvador had improved, that the threats had ceased after 2000 and that the complainant's health had improved. After unsuccessful appeals, the family was deported to El Salvador on 21 March 2003.

2.6 Upon arriving to San Salvador, the family settled in Soyapango, the same place where the complainant had been tortured at first. This situation allegedly had an enormous psychological impact on the complainant. On 31 March 2003, while the complainant and her daughter were driving in a taxi, they were abducted by gunmen who ordered them to get off the taxi and forced them into another vehicle, where they hit them with the guns, ordered them to stay with their faces towards the floor of the car and pretended to shoot them. The kidnappers behaved in the same manner and followed patterns identical to those that the police had used when they had previously captured the complainant. They searched the complainant's bag and passports. The complainant and her daughter were released after 30 minutes and left in a solitary wasteland close to a highway. The men warned them not to denounce the incident to the police. In the days following the incident, the complainant's neighbours were visited by individuals who inquired about her and told them that she was a "communist". Her husband denounced the event to the police, which registered the case as a robbery.

2.7 On 15 April 2003, after contacting the Salvadorian Lutheran Church, the family moved to a shelter in San Salvador. They fled to Sweden on 27 May 2003 and applied for asylum on 5 June 2003. On 11 June 2003, the Swedish immigration authorities rejected their application and ordered their immediate expulsion from Sweden. On 31 July 2003, the appeal was rejected. The complainant alleges that there is no other remedy available to her or her family to challenge the expulsion order, and that she has exhausted domestic remedies.

The complaint

3.1 The complainant submits that she fears being subjected to torture and being killed if deported to El Salvador. Although state agents are not directly involved in the threats against her life and personal integrity as well as the life and personal integrity of her family, the State's responsibility is said to be engaged because of the impunity with which death squads operate, and because the death squads are financed both by right-wing personalities and the ruling party, and their members have infiltrated the New National Civil Police which conducts a policy of terror against FMLN's members.

State party's observations on the admissibility and the merits of the complaint

4.1 The State party states that, following the complainant's and her family's arrival in Sweden on 22 March 2001, an initial interview was conducted. In that interview the family stated that they were in need of humanitarian help due to the earthquake in El Salvador. According to the complainant's husband, they had also experienced political problems in the past but had managed to overcome them. A second interview of the family took place on 26 April 2001. On that occasion, they stated that due to the complainant's political activities in the FMLN, she had been imprisoned and tortured in 1989 and had been threatened by death squads until 1993. Since the Peace Accords in 1992, she had not been politically active. The complainant's husband worked as a journalist and had been harassed and threatened by criminal elements until 2000. On 15 March 2002, the Migration Board rejected the complainants' asylum application. It considered that no reasons for asylum had been given and that the threats from criminal elements were insufficient grounds for granting asylum. On 7 November 2002, the Aliens Appeal Board upheld the decision of the Migration Board.

4.2 On 28 May 2003, the complainant and her family returned to Sweden and re-applied for asylum on 5 June 2003. A third interview was conducted in which the complainant stated that, a few days after their arrival in El Salvador, she and her daughter were attacked while riding in a taxi. Three men in a pick-up stopped the taxi and forced them into the pick-up. Two men were masked and armed with guns. The men mistreated them and took a bag with their passports and money, before leaving them in a motorway. The complainant was uncertain whether the perpetrators were criminals or if they were attacked for political reasons. On 11 July 2003, the Migration Board rejected the complainant's application for asylum. It stated that Salvadorian society was polarized and violence was frequent. Since the Peace Accords in 1992, respect for human rights had improved significantly. The Board found it unlikely that they had been attacked on account of the complainant's political activities or her husband's background as a journalist, but rather as a result of rampant crime. On 14 August 2003, the Aliens Appeal Board upheld the decision of the Migration Board.

4.3 The State party contends that the complaint is inadmissible as manifestly unfounded, pursuant to article 22, paragraph 2, of the Convention and rule 107 (b) of the Committee's rules of procedure, and argues that the complainant's claim that they are at risk of torture if returned to El Salvador fails to reach the threshold of substantiation required for admissibility.

4.4 On the merits, the State party states that according to recent reports, El Salvador is a constitutional and multi-party democracy. Since the Peace Accords in 1992, which brought an end to the armed conflict in El Salvador, respect for human rights improved significantly. In 2002, there were no reports of politically motivated killings or disappearances, and according to several non-governmental sources, there was no increase in political violence. According to the same sources, there were few complaints about torture by police in 2002 and some police officers used excessive force and mistreated detainees. In the general elections of March 2003, the FMLN won, for the second time, a majority of seats in the Legislative Assembly. The Constitution provides for freedom of speech and the press and the Government generally respected these rights in practice. Journalists regularly and freely criticised the Government and reported the views of the opposition. Crime remained a serious problem in the country; organized crime was widespread and violent crimes were common. Kidnapping for ransom was frequent, even if the number of kidnappings had declined. Due to the 2001 earthquake, economic conditions deteriorated. This had caused a large number of

people to leave El Salvador, including more than 600 persons whom travel agencies lured into going to Sweden by false advertisements, claiming that Sweden had a special programme for accommodating Salvadorians.

4.5 The State party contends that great weight must be attached to the opinions of the Swedish immigration authorities and their conclusions about the complainant's credibility and need for protection. Although it may be considered established that the complainant had been subjected to torture in the past, this does not mean that she has substantiated her claim that she would be at risk of being tortured if returned. The torture took place more than ten years ago, and the requirement that the ill-treatment occurred in the recent past to make evident the risk of being subjected to torture if returned is not met. As far as the complainant's husband and their children are concerned, they have neither claimed to have been subjected to torture in the past, nor that would they risk torture if returned to El Salvador. Great weight must be attached to the fact that the situation in El Salvador has changed completely since the time of the complainant's arrest. In those years, there was a civil war and massive human rights violations were committed.

4.6 The State party notes that although the complainant was subjected to torture in 1989 and 1991, she and the rest of the family did not leave El Salvador until March 2001, just after the earthquake. The complainant and her family left the country legally and without any difficulty on two occasions, in 2001 and 2003. They received new passports in April 2003. These factors indicate that the complainants were not even in 1991 in any urgent need of protection and that there was no evidence that they were at risk of any kind of persecution from the authorities of El Salvador today. Neither before the Migration Board nor in their appeal to the Aliens Appeals Board did she argue that they would be at risk of torture if returned. Instead, the complainant's husband stated that they had managed to overcome the political problems they faced in the past. It was not until their new application in December 2002 that the risk of torture in the event of return was raised.

4.7 The State party challenges the complainant's statements about her political activities after 1992. In her second interview with the Migration Board she was asked if she had been politically active after 1992 and she replied in the negative. During the handling of the complainants' application for asylum in Sweden, no further information was submitted about her activities in the FMLN after 1992. Instead, the complainants argued that, due to the complainant's background, she was still at risk of persecution. Concerning the attacks on the complainant and her daughter in March 2003, the Government contends that there is every indication that this attack was a criminal one. The complainant herself had stated that she was uncertain who the perpetrators were. The attack was reported to the police, who registered it as a robbery. The complainant was robbed of some money and their passports but no threats related to political activities were made. The risk of being subjected to ill-treatment by a non-governmental entity or by private individuals without the consent or acquiescence of the government of the receiving country falls, according to Committee's jurisprudence, outside the scope of article 3 of the Convention. The State party adds that despite the fact that there are problems in El Salvador, it cannot be argued that there exist a consistent pattern of gross, flagrant or mass violations of human rights.

4.8 The State party concludes that the circumstances invoked by the complainant do not suffice to establish that the alleged risk of torture fulfils the requirement of being foreseeable, real and personal. The complainant has not substantiated her claim that there are substantial

grounds for believing that she and her family would be in danger of being tortured if returned to El Salvador, and that the enforcement of the expulsion order would not constitute a violation of article 3 of the Convention.

Complainant's comments on State party's submissions

5.1 The complainant alleges that she has advanced solid grounds to substantiate her claim that she and her family face a personal, real and foreseeable risk of being subjected to torture if returned to El Salvador, and she contends that the March 2003 incident was carried out by armed men who acted in a pattern identical to that used by death squads. The complainant has continued experiencing harsh consequences as a result of the torture she was subjected to.

5.2 The complainant contends that even after the signing of the Peace Accords in 1992, the intelligence state service still operates with total impunity against leftist militants. Even after the Peace Accords, there have been at least 20.000 violent deaths, and several targeted murders and attacks against leftist militants by "unknown persons". According to the United Nations Development Programme, El Salvador is the second most violent country after Colombia. The complainant invokes several press reports about violent incidents to demonstrate the level of political violence in El Salvador. She adds that in the past few months' 17 FMLN members were wounded while participating in political demonstrations.

5.3 The complainant, while conceding that the FMLN is a legal party represented in Parliament, contends that it is not able to secure the life of several persons that, like the complainants, are mentioned in the archives of the death squads or in the archives of the State Intelligence Service, entities which operate with autonomy. The ruling Arena party is a right-wing political party which is said to have backed up the death squads, the murderers of Bishop Oscar Romero, and of six Jesuits priests as well as hundreds of murders and attacks against human rights activists. The complainant invokes information emanating from the Central Intelligence Agency (CIA) to the effect that Roberto D'Aubuisson, the founder of Arena, was in the 80's the leader of one of the death squads and participated in the planning of Bishop Romero's assassination; members of Arena are involved in death squads activities; and death squads recruit former members of the military and the police. According to the same report, ARENA and members of the military support right-wing terrorism. This and other reports confirm that the illegal armed groups and parallel structures of power have not been dismantled, and that ARENA continues to financing and supporting the right-wing extremist terrorism.

5.4 The complainant recalls that the Salvadorian Human Rights Ombudsman had denounced, in 2003, that torture was inflicted by the police on detainees, and that she had received death threats as a result.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a complaint, 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 further notes that domestic remedies have been exhausted, as acknowledged by the State party, and that the complainant has sufficiently substantiated the facts and the basis of the claim, for purposes of

admissibility. Accordingly, the Committee considers the complaint admissible and proceeds to its consideration of the merits.

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

6.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to El Salvador. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination 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 on a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country; there must be additional grounds to show 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.

6.4 The Committee observes that the acts of torture that the complainant allegedly suffered occurred in 1989 and 1991, when El Salvador was mired in internal armed conflict, and when there was a pattern of massive and gross human rights violations in the country. The Committee notes that the general situation of El Salvador has changed since the Peace Accords came into effect in 1992. The FMLN, formerly a guerilla group, is now a political party which won the majority of seats in the 2003 parliamentary elections. The Committee has not been persuaded that the incidents that concerned the complainant in 2000 and 2003 were linked in any way to her previous political activities or those of her husband, and considers that the complainant has failed to prove sufficiently that those incidents be attributable to state agents or to groups acting on behalf of or under the effective control of state agents. Notwithstanding the occurrence of violence and confrontation in El Salvador, the Committee is not persuaded that the complainant or any members of her family would face a real, personal, and foreseeable risk of torture if deported from Sweden.

7. In the light of the above, the Committee against Torture, acting under article 22, paragraph 7 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the decision of the State Party to return the complainant and her family to El Salvador would not constitute a breach of article 3 of the Convention.

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