UNITED NATIONS

CAT

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

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CAT/C/14/D/14/1994
9 May 1995

Original: ENGLISH

COMMITTEE AGAINST TORTURE
Fourteenth session

DECISION

Communication No. 14/1994

MADE PUBLIC

[Decision on admissibility]

[See Annex]

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DEC14.14e cb

GE.95-16454

ANNEX */

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

concerning

Communication No. 14/1994

Submitted by: B.M'B. [name deleted]

Alleged victims: Faisal Barakat and family

State party: Tunisia

Date of communication: 29 March 1994

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

Meeting on 5 May 1994,

Adopts the following:

Decision on admissibility

1. The author of the communication is B.M'B., a Tunisian national, currently residing in France with the status of political refugee. He submits the communication on behalf of the late Faisal Barakat and his family. He claims that they are victims of violations by Tunisia of articles 2, paragraph 1, 11, 12, 13 and 14, of the Convention against Torture.

The facts as submitted by the author:

2.1 The author states that the alleged victim, Faisal Barakat, a university student in Tunisia, was arrested in the morning of 8 October 1991 by members of the Intelligence Brigade of the Nabeul National Guard. Upon his arrest, he was reportedly beaten and towards noon he was brought to the quarters of the Brigade where his "hands and feet were bound and he was suspended between two chairs on a big stick, with his head down and the soles of his feet and his buttocks showing, in which is commonly called the 'roast chicken' position. The blows and screams continued from then until nightfall, when officers threw him out into the corridor after bringing another prisoner into the office. Faisal Barakat was in a very bad condition and seemed to be dying. The officers nevertheless prohibited the 30 or so prisoners present, including his own brother, Jamel, from giving him assistance. One half hour later, he seemed to have died."

2.2 On 17 October 1991, the victim's father was taken to Tunis by the Chief of the Traffic Police; he was informed that his son had died in a car accident. At the Charles Nicole Hospital, he was asked to identify his son among the many corpses in the mortuary. He noted that his son's face was

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

disfigured and difficult to recognize. He was not allowed to see the rest of the body. He was made to sign a statement in which he recognized that his son was killed in an accident; at that time, his other son Jamel was still in prison, allegedly as a hostage to prevent his father from denouncing the circumstances of Faisal's death. At the funeral, the police carried the coffin and supervised the ceremony; the coffin remained closed.

2.3 The author submits several medical reports, based on the official autopsy report, concluding that the victim died as a result of the torture described above.

2.4 The author asks the Committee to request Tunisia to take measures to protect the physical, moral and economic security of his family, the victim's family and the witnesses and their families.

2.5 Finally, the author states that the International Secretariat of Amnesty International in London has accepted to provide evidence in support of his communication.

2.6 By letters of 12 September 1994, 8 October 1994 and 26 April 1995, the author expresses concern over the safety of witnesses who reportedly have been detained and questioned by Tunisian authorities in connection with the communication before the Committee. Moreover, members of the author's and the victim's families have been allegedly subjected to intimidation.

The State party's information:

3.1 By submissions of 9 August, 10 November 1994 and 18 April 1995, the State party denies the author's allegations and claims that the communication is inadmissible, invoking rule 107 of the Committee's rules of procedure and arguing that communications must be presented by victims or their representatives, properly designated and authorized. It is contended that Mr. B.M'B. has not been duly authorized by the family to present a claim before the Committee.

3.2 Moreover, the State party argues that it appears that the author is acting as a representative of Amnesty International, and that he therefore has no standing under article 22 of the Convention.

Admissibility considerations:

4.1 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 and its rules of procedure.

4.2 Article 22, paragraph 1, of the Convention stipulates that "a State party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State party of the provisions of the Convention" (emphasis added).

4.3 Rule 107, paragraph 1(b), of the Committee's rules of procedure provides: "... The communication should be submitted by the individual himself or by his relatives or designated representatives or by others on behalf of an alleged victim when it appears that the victim is unable to submit the communication himself, and the author of the communication justifies his acting on the victim's behalf".

4.4 The Committee has examined the author's arguments and the State party's objections concerning the issue of standing for purposes of admissibility. The Committee finds that at this stage, the author has not submitted sufficient proof to establish his authority to act on behalf of the victim.

5. The Committee therefore decides:

(a) that the communication is inadmissible;

(b) that the Committee may receive and consider a new communication on this matter submitted by any author, provided that his standing to act on behalf of the alleged victim is properly established;

(c) that the State party should be again requested, as expressed in the Committee's decision of 21 April 1994, to ensure that no harm is done to the author's family, the alleged victim's family or the witnesses and their families;

(d) that this decision shall be communicated to the author and to the State party.

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

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