

ANNEX*

VIEWS OF THE COMMITTEE AGAINST TORTURE UNDER ARTICLE 22, PARAGRAPH 7,
OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL,
INHUMAN OR DEGRADING TREATMENT
- EIGHTEENTH SESSION -

concerning

Communication No. 27/1995

Submitted by: X (represented by counsel)
Alleged victim: The author
State party: Switzerland
Date of communication: 18 April 1995
Date of decision of admissibility: 22 November 1995

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

Meeting on 28 April 1997,

Having concluded its consideration of communication No. 27/1995, submitted to the Committee against Torture 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, his counsel and the State party,

Adopts its Views under article 22, paragraph 7, of the Convention.

1. The author of the communication is a Sudanese citizen. He claims that his expulsion from Switzerland would make him a victim of a violation by that State party of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

The facts as submitted by the author:

2.1 The author states that he is a member of the Sudanese Youth Union (since 1978) and of the Sudanese Unity Students (since 1983). Reportedly he participated in activities for these organizations, such as handing out leaflets, putting up posters and writing essays. From 1983 he studied political science in Beirut (Lebanon) where he claims to have continued his political activities. In 1987 he returned to Sudan where he and his brother, who was a member of the Communist party, published several articles against the politics of the Islamic Front of Salvation.

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

2.2 During the coup d'état in Sudan in 1989, the author was on honeymoon in Egypt. It is said that his brother advised him not to return to Sudan because the Islamic Front of Salvation was aware of his articles and had questioned his brother about the author's whereabouts. The author then decided not to return and took up postgraduate studies in Beirut. Through the Sudanese cultural attaché in Damascus, his family in Sudan sent him money for his livelihood.

2.3 It is further stated that in December 1991, in a Sudanese club in Beirut, the author met members of a Sudanese militia, whose political views are said to be similar to those of the Sudanese Government. Reportedly the author had a political discussion with the leader of the group, Mr. Sedki Ali Nagdi, which turned into a violent clash. The author claims that the leader of the militia threatened to kill him and warned him against returning to Sudan. Some days after this incident his apartment was allegedly ransacked by members of the Hezbollah, which is said to have had contacts with the Sudanese militia.

2.4 After this incident, the author's wife returned to Sudan and the author moved to another district of Beirut. The author first reduced and then ended all political activities in January 1992. In November 1992, he learned that his brother had been arrested by the Sudanese authorities in order to perform his military service; it is said that he has since disappeared. The author's wife and parents have not been harassed by the Sudanese authorities.

2.5 The author states that in November 1993, he was informed that the newly established Sudanese embassy in Lebanon was planning to take certain dissidents back to Sudan by force. He claims that, while he was visiting a friend, members of the Hezbollah came to look for him. He hid in the bathroom and they left. The author claims that they came to kidnap him.

2.6 The author arrived in Switzerland on 5 May 1994 via the Italian border. The same day he filed a request to be recognized as a refugee. On 20 September 1994, the Bundesamt für Flüchtlinge (Federal Refugee Office) rejected his request. His appeal was rejected by the Asylrekurskommission (Commission of Appeal in Refugee Matters) on 25 November 1994.

The complaint:

3. The author argues that if forced to return to Sudan he would face an investigation whereby torture is commonly used. Also, deportation to Lebanon is said to cause danger for the author's life and limb because he would be kidnapped and taken back to Sudan.

Committee's decision under rule 108:

4. During its 14th session, the Committee decided to transmit the communication to the State party for observations on admissibility and on the merits, and to request the State party not to expel the author to Sudan or Lebanon, while the communication was under examination by the Committee.

State party's submission on admissibility:

5.1 By submission of 27 June 1995, the State party informs the Committee that it has deferred the author's expulsion, as requested by the Committee. The State party notes, however, that the Committee has asked for interim measures in the majority of all cases transmitted to it and expresses its concern that the

authors are using the Committee as a further appeal instance, allowing a suspension of the expulsion for at least six months.

5.2 The State party acknowledges that the author has exhausted all domestic remedies available to him.

5.3 However, the State party argues that the communication is inadmissible because it lacks the minimum substantiation that would render the communication compatible with article 22. The State party points out that the author has substantially modified his version of the facts in his communication to the Committee compared to his presentation to the national authorities. Also, in the course of the domestic procedures, the author's versions of the facts varied.

5.4 With regard to the incident in December 1991 (see paragraph 2.3), the State party points out that at the hearing before the cantonal authorities, the author had reported the incident as a clash between two groups, the representatives of the Islamic Front and a group of students; at the hearing before the federal authorities, the author said that the conflict was only between Mr. Sedki Ali Nagdi and him, and that the students kept out of it, while the members of the Islamic Front were waiting outside. Moreover, at the cantonal hearing the author said that Mr. Sedki Ali Nagdi had threatened to take him him back to Sudan, whereas the author denied this at the federal hearing. The State party notes that the author maintains the second version in his communication to the Committee, without indicating that this contradicts the earlier statement made before the cantonal authorities. The State party emphasizes that the author confirmed in writing that his declarations before the cantonal authorities had been truthful, including his statement that the leader of the militia threatened to take him back to Sudan by force. In this connection, the State party indicates that the minutes of the hearing were read back to the author in Arabic.

5.5 Further, the State party notes that the author, before the cantonal authorities, said that after the incident, he did not return to his apartment for a week or ten days, whereas before the federal authorities he said he had gone back to his apartment already after two or three days. In his communication to the Committee, the author speaks of "some days", thereby avoiding his contradictory accounts. Also, in his communication as well as before the federal authorities, the author says that the "Hizbullah" made a plan in November 1993 to take certain persons back to Sudan by force, whereas before the cantonal authorities he maintained that this happened in October 1993.

5.6 As regards the alleged disappearance of the author's brother, the State party notes that the author had informed the cantonal authorities that his brother had disappeared in January 1992, but that he had learned of his disappearance only in November 1992. Later, he said that his brother disappeared in November 1992, but that he learned of it only later. When asked by the Federal authorities which version was true, he merely answered that his brother disappeared during 1992, but that he did not know exactly when.

5.7 On the basis of the above, the State party contends that important contradictions in the author's own account of the facts affect the credibility of his claims. The State party suggests that, if the Committee had been aware of the inconsistencies, it would not have issued a request for suspension of the author's expulsion. The State party invites the Committee, on the basis of the above, to examine whether the communication is admissible under article 22, paragraph 2, of the Convention, or alternatively, whether the communication contains the minimum substantiation necessary to render it compatible with article 22.

Author's comments:

6.1 By letter of 15 November 1995, a new counsel for the author informs the Committee that there has been a change of representative and that for this reason she is not in a position to make her comments on the State party's submission on time.

6.2 By letter of 21 November 1995, the author attempts to clarify some of the points raised by the State party. He states that after the incident in the Sudanese club where he was threatened, he was so upset that he doesn't exactly remember what happened and how many days he was absent from his home. He confirms that he is on the black list at the airport of Khartoum and that in Lebanon he is being threatened by islamic activists supported by the Sudanese embassy. He states that he does not know the exact date of his brother's arrest, since he learned about it through friends who themselves were not very precise.

6.3 The Committee further received a letter, dated 19 November 1995, from the Sudanese National Democratic Alliance, certifying that the author was a member of their organization and generally supporting his claims.

The Committee's admissibility decision:

7. During its 15th session, the Committee considered the admissibility of the communication. The Committee noted that the State party admitted that all domestic remedies had been exhausted, but that it challenged the admissibility of the communication on the basis that it lacked the minimum substantiation that would render it compatible with article 22. The Committee, however, considered that the author had sufficiently substantiated, for purposes of admissibility, that his return to Sudan or Lebanon might raise an issue under article 3 of the Convention. The Committee found that the question whether or not the author's expulsion would constitute a violation of article 3 should be examined on the merits.

8. Accordingly, on 22 November 1995, the Committee declared the communication admissible.

State party's observations on the merits:

9.1 By submission of 15 July 1996, the State party recalls that under article 3 of the Convention, it has to be determined whether an individual is personally at risk of being subjected to torture in the country to which he is to be returned. The State party emphasizes that, in line with the Committee's jurisprudence, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights is not a sufficient reason to conclude that a person would risk being subjected to torture upon his return to that country.

9.2 The State party recalls that the facts on which the author of the communication bases his claim, are essentially: that, during a meeting in a Sudanese club in December 1991 in Beirut, the leader of a Sudanese militia threatened to kill him and warned him against ever returning to Sudan; that some days later his house was ransacked; that in November 1993, the author was informed that the new Embassy of Sudan in Lebanon envisaged to return forcibly to Sudan opponents of the regime; that in November 1993, the Hezbollah attempted to kidnap him.

9.3 The State party refers to its observations on the admissibility of the

communication, and reiterates that the author's account lacks credibility. It recalls that the author has presented two radically different versions of the dispute in the Sudanese club: before the cantonal authorities, he affirmed that the dispute was between representatives of the Sudanese Islamic Front and a group of students, in the course of which Nagdi would have told him that he intended to kidnap him in order to bring him back to Sudan. According to this version the ransacking of his apartment by Hezbollah was a consequence of the threats made by Nagdi.

9.4 At the hearing before the federal authorities, the author stated that the dispute was between him and Nagdi, and that the group of students was not involved. Nagdi did not threaten to kidnap him, but to kill him, and warned the author against returning to Sudan. When it was pointed out to the author at the hearing that this version differed from the version given at the hearing at first instance, the author failed to explain the discrepancies, but declared that Nagdi had never said that he intended to kidnap him in order to bring him back to Sudan. He then explained that he supposed that the ransacking of his apartment was the work of Hezbollah because they wanted to kidnap him.

9.5 The State party explains that in the light of these two versions, its authorities considered that the incident could not be seen as credibly established, on which a determination of refugee status could be based. The State party recalls that the Swiss legislation requires that an asylum seeker demonstrate that it is highly probable that he is subjected or rightfully fears to be subjected to serious prejudices because of his race, religion, nationality, his social affiliations or his political opinions. Article 12(a)(3) of the Asylum Law states that declarations not sufficiently substantiated on essential points, contradictory, or not corresponding with reality are not to be considered as probable. Since the author's declarations contradicted itself with regard to the parties involved in the dispute, the nature of the threats made by Nagdi, and the purpose of the visit of Hezbollah to his apartment, the authorities did not consider his account probable.

9.6 The State party notes that the author has tried to harmonize the contradictions in his account to the Committee, but argues that the two versions are irreconcilable.

9.7 The State party emphasizes that the author has signed and confirmed the minutes of the hearing before the federal authorities, which were read back to him, according to which Nagdi never threatened to kidnap him.

9.8 The State party points to other contradictions in the author's story which are said to impair his credibility. The State party mentions the author's return to his apartment (several days, ten days, two or three days after the incident), the arrest and disappearance of his brother (November 1992, January 1992, April 1992, in the course of 1992), the date of the second kidnapping attempt.

9.9 The State party admits that it is sometimes difficult for an asylum seeker to present all the exact facts supporting his claim, but it argues that in the instant case, the author's declarations are too incoherent as to give them any credit of supporting his claim. In this context, the State party observes that there is no supportive evidence, and that the documents the author has joined with his communication, do not coincide with the author's version of the facts.

9.10 The State party acknowledges that the situation of human rights in Sudan is a matter of concern, especially in the South. However, the State party argues that, in the Committee's own interpretation, the existence in a State of a consistent pattern of gross, flagrant or mass violations of human rights is not a sufficient reason to conclude that a person would risk being subjected to

personal risk of torture for the person concerned.

9.11 The State party concludes that the return of the author to Sudan would not constitute a violation of article 3 of the Convention.

Author's comments:

10.1 Counsel for the author forwards to the Committee some newspaper clippings on torture in Sudan, as well as letters from the Sudanese Victims of Torture Group, the Sudan Human Rights Organisation and the Sudanese National Democratic Alliance, in which support is expressed for the author as well as concern for his life were he forced to return to Sudan. She also forwards a copy of a letter of the Sudanese Youth Union, requesting the Swiss Government to protect the author and expressing fear that he will be subject to torture in Sudan and made to disappear.

10.2 The author himself forwards a statement by the Sudanese Youth Union, dated 22 February 1996 and signed by 18 persons, affirming that on 22 December 1991 they participated in a meeting with a delegation of the Sudanese Government in the Sudanese Club in Beirut, that they heard Mr. Nagdi threatening to kidnap the author and to kill him. They also affirm having seen the traces of the ransacking of his apartment on 25 December 1991. They further state that the author left West Beirut in November 1993, after he had learned that Hezbollah members were looking for him. They add that they have later learned that the Sudanese Embassy uses extremist Lebanese groups to arrest Sudanese nationals in Lebanon.

10.3 In a letter from a friend, dated 24 December 1996, transmitted by the author to the Committee, it is stated that the author's family is being harassed by the authorities, as are all families of opposition members. No details are given.

Issues and proceedings before the Committee:

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

11.2 The Committee must decide, pursuant to paragraph 1 of article 3, whether there are substantial grounds for believing that the author would be in danger of being subject to torture upon return to Sudan. 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 particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must exist 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.

11.3 The author bases his claim on incidents which occurred in Lebanon. He has never been subject to detention or ill-treatment in Sudan and there is no indication that his wife, who returned to Sudan after December 1991, has been harassed by the Sudanese authorities. Further, the author stayed in Lebanon for almost two years after threats were made against him by the leader of a Sudanese militia, during which period he was not further harassed. The author has claimed

that his brother was arrested in Sudan in 1992 and has since disappeared, but there is no indication that his arrest had anything to do with the author, and the information provided remains vague. The author left Lebanon in November 1993, allegedly after having heard that the newly opened Sudanese embassy planned to take dissidents back to Sudan by force. In this context he claims that the Hezbollah came to a friend's apartment in order to kidnap him.

11.4 The Committee notes the inconsistencies in the author's story as pointed out by the State party, as well as the general failure by the author to provide detailed reasons for his departure from Lebanon in 1993. The Committee considers that the information before it does not show that substantial grounds exist for believing that the author will be personally at risk of being subject to torture if he is returned to Sudan.

12. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is of the view that the facts as found by the Committee do not reveal a breach of article 3 of the Convention.

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