

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. 38/1995

Submitted by: X (represented by counsel)  
Alleged victim: The author  
State party: Switzerland  
Date of communication: 16 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 9 May 1997,

Having concluded its consideration of communication No. 38/1995, 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.

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

1. The author of the communication is a Sudanese citizen, born on 6 January 1951, at present residing in Switzerland. He claims that his deportation from Switzerland would constitute a violation by Switzerland of article 3 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

Facts as presented by the author

2.1 The author states that he has been working at the 'Arabsat Company' in Sudan from 1983 to 1987 as a manager of administration and public relations. He was one of the four partners of this company. He was responsible for the distribution of 'Ad Dastour', a weekly political magazine and 'Al Hadaf', a newspaper. Both were (partly) owned by the Al Ba'ath al Arabi Istiraki party, a political left-wing group which stood very close to the Iraqi Ba'ath-party.

2.2 The author states that in May 1987 he changed jobs and started working for the company 'Ad Dastour' as a director of administration and public relations.<sup>1</sup> He organised trips for journalists, visas and supplies of petrol.

2.3 After the coup d'etat in 1989, the Sudanese Government prohibited the activities of the 'Arabsat Company' and of 'Ad Dastour', because of their connections with the Ba'ath Party, which was banned by the Government. They also arrested the manager of 'Ad Dastour'.<sup>2</sup> After these events, the author realised that the security service was watching his house<sup>3</sup> and that they were making investigations. The author submits that he was never involved in political activities.

2.4 The author went to Kuwait and London to try to find work abroad but returned to Sudan in 1991. Then, he started working with 'Anniline', a printing company. The company was first closed and then taken over in March 1992 by the Government, according to the author because it had printed Ba'ath party leaflets from 1985-1989. In March 1992, the author was arrested and held for questioning until the next day; his car was confiscated. He had to report to the police every day for the next one-and-a-half months, but was never questioned.<sup>4</sup>

2.5 The author then tried to find a job in Sudan with the civil service or State-owned companies but did not succeed, allegedly because on each occasion the Security Police refused to give permission. He states that he did not try to find work in the private sector. He decided to work as a farmer but was allegedly disadvantaged in the distribution of material towards members of the Government.

2.6 The author was again questioned in May 1994 about his connections with the

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<sup>1</sup> There appear to be some contradictions between the author's communication to the Committee against Torture and his statements at the Office Fédéral des Réfugiés. During the ODR interview the author stated that he worked at both companies during 1985-1987.

<sup>2</sup> The author stated during the interview with the ODR that the managers of the 'Arabsat Company' were not arrested or questioned.

<sup>3</sup> During the interview with the ODR, the author stated that there were men in the neighbourhood who did not belong there, and that he concluded that they were from the security service.

<sup>4</sup> But in the ODR-interview, the author stated that he was questioned every day from 9.00 hours until 15.00 hours for one month.

Ba'ath Party. In September he was informed by his wife and by friends that the police was looking for him. He decided to leave Sudan<sup>5</sup> and in February 1995, he left Khartoum by plane with a legal passport, and with a visa for Switzerland.

2.7 The author arrived in Switzerland on 7 February 1995. He filed a request to be recognized as a refugee on 13 February 1995. On 24 May 1995, the Office Fédéral des Réfugiés (ODR) (Federal Refugee Office) rejected his request, because of inconsistencies, the unlikeliness of some of the facts and of not fulfilling the requirements of 'persecution'. His appeal was rejected for the same reasons by the Commission Suisse de recours en matière d'asile (CCRA) (Commission of Appeal in Refugee Matters) on 10 October 1995.

#### The complaint

3. The author argues that if forced to return to Sudan he would face an investigation whereby torture is commonly used. His wife states in a letter to the author, dated 1 November 1995, that the security police officers regularly come to the house to ask after him. The author states that it is, therefore, clear that the Sudanese Government considers him to be an informer for the Ba'ath-party and that it is known worldwide that collaborators of the oppositional press in Sudan are under permanent danger of reprisals.

#### Procedure before the Committee

4.1 On 14 February 1996, the Committee, acting through its Rapporteur for New Communications, requested the State party not to expel or deport the author to Sudan while his communication was under consideration by the Committee. In its request, the Committee took into account that the Secretariat of the UN High Commissioner for Refugees had requested the Swiss Government not to return the author to Sudan, since it was considered credible that he would be subject to persecution.

4.2 On 26 February 1996, the State party informs the Committee that it has suspended the deportation of the author and that the author has introduced both an application for review and an application for reexamination. At its 16th session, the Committee therefore decided to suspend the examination of the communication.

4.3 On 29 March 1996, the CRA rejected the author's application for review, because he had failed to pay the required fee. On 25 April 1996, the ODR rejected the author's application for a reexamination of his case. The author did not appeal the decision, since he considered that an appeal would be ineffective.

#### Observations by the State party

5.1 By submission of 19 June 1996, the State party does not raise any objections to the admissibility of the communication.

5.2 The State party recalls that the author has had three occasions to explain his grounds for asylum in oral hearings, on 17 February 1995 at the Registration Centre, on 20 March 1995 at the cantonal hearing and on 18 May 1995 before the ODR.

5.3 The State party recalls that according to the Swiss legislation, a refugee claimant has to make probable that he would suffer serious prejudices because of his race, his religion, his nationality, his membership of a social group or his

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<sup>5</sup> The author states that he had bribed the chief of the Security Forces, through a friend of the author's brother.

political opinions. In interpreting these requirements, the authorities apply the test as laid down in article 3 of the Convention against Torture. Article 12LA of the Asylum Law states that declarations which are not sufficiently substantiated on essential points, contradictory, or not corresponding with reality are not to be considered as probable.

5.4 In the instant case, the State party argues that the author's statements show numerous contradictions and incoherences on essential points.

5.5 The State party notes that the author bases his claim under article 3 of the Convention on his professional activities from 1985 to 1992, during which period he worked for companies which were affiliated with the Ba'ath party. The State party points out, however, that at the three hearings the author made contradictory statements concerning his professional activities. The State party recalls that the minutes of the hearing were read back to the author in Arabic and that he confirmed them by signature. The State party points out that the author has affirmed that he worked as a farmer as of March 1992, whereas he also states that as of March 1992 he had to present himself every day, for the whole day, to the Security Police during one month and a half.

5.6 Moreover, the State party points out that the author stated at the first hearing that he had to report to the Security Police during one month, whereas later he stated that it was for the period of one month and a half. The author also has stated on the one hand that he was interrogated every day, on the other, that he was never interrogated. In view of the contradictions concerning the date of the obligation to report to the Security Police, the length of time, and the purpose of the reporting, the State party argues that the author has not made probable his claim that he had to present himself to the Security Police during one and a half month as of March 1992.

5.7 The State party points out that the author has made contradicting statements concerning the years when he was working for the companies Arabsat, Ad Dastour and Anniline, and that the certificates he provided are also contradictory. The State party further points out that, in his communication to the Committee, the author affirms that he worked for Ad Dastour until May 1990, and at the same time that the Government closed the company in March 1990, which seems to be contradictory as well.

5.8 The State party also points out contradictions as regards the author's claim that the security police was watching his house and was making investigations about him in March 1990, and with regard to his claim that they were looking for him in 1994. For instance, with regard to 1990, he states at one point that he knew they were watching him because he saw unknown men in the neighbourhood, at another point that they were asking after him in the shops. With regard to 1994, the author gave different accounts as to how he learned that the police had come to his house, once saying that his wife told him, another time that friends had told him.

5.9 The State party contends that, in the light of all these contradictions and inconsistencies, the author's account of the facts is not credible.

5.10 The State party notes that the author has claimed that the contradictions are due to a faulty interpretation at the hearings. In this context, the State party recalls that whenever the author misunderstood a question, the question was repeated, and that moreover, the minutes of the hearings were read out and translated sentence by sentence, and that the author confirmed them with his signature as being true to his statements. The author never raised the issue of the quality of the interpretation during the hearings. Even though the author invoked the quality of the interpretation before the CRA to explain the

contradictions, he did not claim that the mistakes in interpretation amounted to a denial of the right to fair hearing, nor did he indicate which statements had been wrongly interpreted. The State party recalls that, moreover, the author has not been able to clarify the inconsistencies before the CRA either.

5.11 As regards the author's departure from Sudan in 1991 and again in 1995, the State party submits that, according to the information available, a Sudanese citizen has to comply with certain formalities before he can leave the country. The State party submits that a passport is only issued upon presentation of a certificat d'origine, which in its turn is only issued upon presentation of a certificate of good character by the local authorities. The author is in possession of a passport issued on 6 January 1992, containing two exit visas, one of which the author used to reach Switzerland. According to the State party this indicates clearly that the author is not being sought by the Sudanese authorities, especially because the airport security control is known for its thoroughness. Moreover, exit visas are issued by the Department of Immigration and Nationality of the Ministry of Internal Affairs, which in practice operates under directions of the Security Service of the State.

5.12 The State party refers to article 3 of the Convention and recalls that 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, but that additional grounds must exist to show that the person would personally be in danger.

5.13 The State party admits that it is sometimes difficult for an asylum seeker to present all the exact facts supporting his claim, but with reference to its observations above, the State party argues that in the instant case the author's statements are incoherent and contradictory in relation to essential points on which his claim is based. The State party thus contends that the author has not demonstrated that he risks to be subjected to torture upon his return to Sudan.

5.14 If, however, the Committee were to consider that the contradictions and inconsistencies in the author's statements are not serious enough and do not raise doubts about the general veracity of his claims, the State party argues that the facts presented by the author do not justify the conclusion that article 3 of the Convention would be violated by his return to Sudan. In this connection, the State party recalls that article 3 is only applicable in case of risk of torture. The State party notes that the author has not submitted that he has been tortured during his interrogations by the Security Police. According to the State party no indication exists to believe that he risks to be tortured if he were to be arrested in the future.

5.15 The State party refers to the Committee's jurisprudence and notes that, when finding that the return of a person would violate article 3, the Committee has taken into account ethnic origin, political affiliation, political activities, prior detention, allegations of torture, judicial proceedings, and internal exile. None of these elements have been invoked by the author of the instant communication. The State party argues therefore that no risk exists that the author will be subjected to torture.

#### Author's comments

6. Counsel submits a medical certificate, dated 15 June 1996, showing that the author is in treatment since February 1996 for psychical and physical problems, and that the treatment will have to be continued for some weeks.

State party's further comments

7. With regard to the medical certificate, the State party recalls that the author has never claimed to have been ill-treated by the Sudanese authorities. Before the national authorities, the author has never claimed that he is undergoing medical treatment. Furthermore, the State party notes that the certificate is short and does not give any details, and argues that the Committee should not take it into account when examining the communication.

8. In a letter of 13 March 1997, counsel for the author states that she has nothing to add to her prior submissions.

Issues and proceedings before the Committee

9. 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 or is not being examined under another procedure of international investigation or settlement. The Committee notes that the State party has not raised any objections to the admissibility of the communication and that it has requested the Committee to proceed to an examination of the merits. The Committee finds therefore that no obstacles to the admissibility of the communication exist and proceeds with the consideration of the merits of the communication.

10.1 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.

10.2 The issue before the Committee is whether or not the forced return of the author to Sudan would violate the obligation of Switzerland 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 would be in danger of being subjected to torture.

10.3 In reaching its 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.

10.4 The Committee notes that the author does not claim that he has been tortured by the police or security forces in Sudan, and that no medical evidence exists that he suffers from the consequences of torture, either physically or mentally. The Committee concludes therefore that the inconsistencies in the author's story cannot be explained by the effects of a Post Traumatic Stress Disorder, as in the case of many torture victims.

10.5 The Committee further considers that, even if it were to ignore these inconsistencies, the facts as presented show that the author has not participated

in political activities, nor worked as a journalist, nor was he a member of the Ba'ath party. The Committee further notes that the author has been kept in detention only once, for 24 hours, in March 1992. On the basis of the information before it, the Committee finds that the author does not belong to a political, professional or social group targeted by the authorities for repression and torture.

10.6 The Committee is aware of the serious human rights situation in Sudan, but, on the basis of the above, considers that the author has not substantiated his claim that he will be personally at risk of being subject to torture if he is returned to Sudan.

11. 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]