



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

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COMMITTEE AGAINST TORTURE

Thirty-sixth session
1-19 May 2006

DECISION

Communication No. 278/2005

<u>Submitted by:</u>	Asim Elmansoub (represented by counsel)
<u>Alleged victim:</u>	The complainant
<u>State party:</u>	Switzerland
<u>Date of complaint:</u>	1 September 2005 (initial submission)
<u>Date of present decision:</u>	8 May 2006

Subject matter: Deportation to Sudan

Procedural issues: N/A

Substantive issues: Non-refoulement

Articles of the Convention: 3

[ANNEX]

* Made public by decision of the Committee against Torture.

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-sixth session

concerning

Communication No. 278/2005

Submitted by: Asim Elmansoub (represented by counsel)
Alleged victim: The complainant
State party: Switzerland
Date of complaint: 1 September 2005 (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 8 May 2006,

Having concluded its consideration of complaint No. 278/2005, submitted to the Committee against Torture on behalf of Mr. Asim Elmansoub 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 complaint, his counsel and the State party,

Adopts the following:

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

1.1 The complainant is Asim Elmansoub, a Sudanese national born in 1964, currently detained in Switzerland and awaiting deportation to Sudan. He claims that his deportation would constitute a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel. The Convention entered into force for Switzerland on 2 March 1987.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the communication to the State party on 9 November 2005. Pursuant to rule 108, paragraph 1, of the Committee's rules of procedure, the State party was requested not to expel the complainant to Sudan while his case was pending before the Committee. The State party acceded to such request.

The facts as submitted by the complainant

2.1 The complainant is a Sudanese citizen from Darfur belonging to the Borno tribe. From 1986 to 2004, he studied and worked in the former Yugoslavia, his most recent occupation consisting in providing humanitarian relief and medical assistance to injured persons through the “Kuwait Joint Relief Committee in Kosovo”, where he was employed until 1 August 2004. The complainant contends that, from March 2002 to August 2004, he secretly provided distance assistance to refugees from Darfur, through a family aid committee. Since 2003, he was an active member of the JEM (Sudanese Movement for Justice and Equality), a non-Arab rebel group contrary to the government and the *Janjaweed* militias.

2.2 On 20 August 2004, the complainant returned to Sudan. One month later, he was arrested in Khartoum, together with four other persons, by members of the Sudanese security agency, and accused of having supplied weapons to Darfur citizens. He contends that the real reason behind his arrest was his JEM membership. On the third day of his arrest, the author bribed the person that was guarding him and gained his freedom. Neither the complaint submitted to the Committee nor any further comments by the complainant contain any reference to any acts of torture having occurred during his arrest. However, in the hearings and complaints filed before the Swiss Federal Office for Refugees, the complainant stated that, during his three-day arrest, he was left without water for hours and kept in an unlit room, which allegedly amounted to acts of torture.

2.3 The complainant left Sudan for Switzerland through Egypt with a tourist visa. In Switzerland, he applied for asylum on 1 October 2004. By decision of 1 November 2004, the Swiss Federal Office for Refugees rejected the application, considering that the complainant’s allegations concerning the provision of humanitarian assistance to Darfur refugees and his detention were not credible and full of inconsistencies. In particular, it considered that the complainant was not able to explain the manner in which this assistance was provided and his particular role therein, as well as the exact period of his engagement. It further noted that it was unlikely that the complainant could have bribed the guard on the third day of his detention and free himself when he had declared that his money and passport had been seized by the security agents upon his detention.

2.4 The Appeal Commission rejected the complainant’s appeal on 15 April 2005, on grounds of lack of substantiation and credibility. On 30 June 2005, the complainant filed a request for reconsideration based on the fact that his brother had been arrested in Sudan. This request was also dismissed by the Appeal Commission on 8 July 2005, which considered that this new element of proof did not alter the object of the complaint. A request for suspension of the deportation was declined on 3 August 2005, also based on lack of substantiation of the complainant’s arguments.

2.5 By letter of 18 August 2005 sent to the Swiss Migration Office, the complainant requested to be deported to a third country, Syria, in order to better organise his return to Sudan without catching the attention of the Sudanese authorities. On 26 August 2005, the Swiss Migration Office acceded to the complainant’s request and notified him that, after having consulted the Swiss embassy in Damascus, a flight had been booked to Damascus departing on 9 September 2005. However, the complainant refused to take that flight.

The complaint

3. The complainant maintains that the Justice and Equality Movement, to which he belongs, is opposed to the government of Sudan and that its members are systematically arrested by Sudanese security forces and sometimes tortured during their detention. He adds that torture and inhuman and degrading treatments is in the order of the day in Sudan, as denounced in the human rights report annexed to the complaint.¹ The complainant sustains that there are substantial grounds for believing that he would be subjected to torture if returned to Sudan, in violation of article 3 of the Convention.²

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

4.1 By letter of 21 October 2005, the State party does not contest the admissibility of the communication. On the merits, the State party contends that there are no substantial grounds for believing that the author would be in danger of being subjected to torture upon his return to Sudan. The State party notes that it does not suffice that there is a pattern of gross human rights violations in Darfur to conclude that the complainant would risk being subjected to torture were he to be returned to Sudan and that a real and personal risk needs to be proved. The complainant has not, in the State party's view, substantiated that he personally risks being subjected to torture if deported.

4.2 The State party notes that the complainant has spent his last eighteen years of life in the Former Yugoslavia and that his domicile in Sudan is his mother's house in the province of Khartoum. Therefore, the State party considers that the notorious human rights situation in Darfur does not allow in itself to conclude that the complainant would risk being tortured if returned to Khartoum.

4.3 The State party further notes that, contrary to the complainant's allegations before the Swiss authorities, he has not invoked before the Committee having been tortured or maltreated in the past nor has he provided any medical or other evidence in this regard.

4.4 The State party acknowledges that politically active JEM members risk being arrested and even subjected to torture. However, it notes that the complainant has not been able to specify the nature of his political activities in Sudan or abroad when asked by the Swiss authorities, who found the complainant's statements regarding the assistance provided to Darfur refugees full of inconsistencies. These authorities also found that the complainant's allegations regarding his detention and the way he managed to bribe the guard, recover the passport and escape, were not credible. The State party contends that the complaint merely contains general statements on the situation concerning JEM, with no direct link to the complainant's own activities. Additionally, it notes that the complainant only mentioned that he was a member of JEM after his application to the Swiss Federal Office for Refugees had been rejected.

¹ Amnesty International December 2004 Report on the human rights situation in Sudan.

² Attached to the complaint are two letters of members of the JEM German Office declaring that the author would be in danger of being tortured or killed if returned to Sudan.

4.5 The State party observes that the author himself requested to be deported to Damascus by letter of 18 August 2005 sent to the Swiss migration office and later refused to take the flight to Damascus booked by the Swiss authorities.

Complainant's comments on State party's observations

5.1 By letter of 12 January 2006, the author reiterates that JEM is a movement fighting for political change in the country, which has a national agenda directed against the present government of Sudan, and that arbitrary arrests and torture on the mere suspicion of membership or helping the rebels are common and carried out with total impunity.

5.2 The complainant stresses that he is not any member but a founding member of JEM and well-known throughout Sudan due to his activities. Therefore, he contends that it is almost certain that he is well known by Sudanese security forces and that he would be tortured if returned to Sudan. He notes that he was initially instructed by the rebel leadership to refrain from disclosing his close and special relationship with the movement and that, when he was finally told to declare his membership, the Swiss authorities refused to believe him.

5.3 The complainant recalls that Sudan is a country with appalling human rights records, with a pattern of gross, flagrant and massive human rights violations.

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. In the present case the Committee further notes that domestic remedies have been exhausted and that the State party does not contest admissibility. Accordingly, the Committee finds the complaint admissible and proceeds to consideration of the merits.

6.2 The issue before the Committee is whether the complainant's removal to Sudan would constitute a violation of the State party's obligation, under article 3 of the Convention, not to expel or return a person to a State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

6.3 In assessing whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned to Sudan, the Committee must take account of all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such an analysis is to determine whether the complainant runs a personal risk of being subjected to torture in the country to which he would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent

pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

6.4. The Committee recalls its general comment on the implementation of article 3, that “the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable” (A/53/44, annex IX, para. 6).

6.5. In the present case, the Committee observes that the complainant’s allegations that he would risk being tortured if returned to Sudan rely on the fact that members of JEM face a high risk of detention and torture and on the general human rights records of Sudan. The Committee also notes the State party’s allegations that the complainant has failed to specify the nature of his political activities and the nature of the assistance provided to Darfur refugees. In this regard, the complainant has failed to explain his concrete role within JEM that would make him particularly vulnerable to the risk of being placed in danger of torture were he to be expelled. He has only invoked his condition of “founding member” in his last submission to the Committee, without having justified or proved this condition and without having ever invoked it before the national authorities.

6.6 The Committee further notes the State party’s submission that the complainant has not invoked or proved before the Committee that he was tortured or maltreated in the past.

6.7 In view of the foregoing, the Committee considers that the complainant has not demonstrated the existence of substantial grounds for believing that his return to Sudan would expose him to a real, specific and personal risk of torture, as required under article 3 of the Convention.

7. Accordingly, 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 return of the complainant to Sudan does not reveal 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.]
