



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

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Decision

Communication No. 355/2008

<i>Submitted by:</i>	C.M.
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	28 July 2008
<i>Date of present decision:</i>	14 May 2010
<i>Subject matter:</i>	Risk of deportation to the Republic of the Congo
<i>Procedural issue:</i>	None
<i>Substantive issue:</i>	Risk of torture upon return to country of origin
<i>Article of the Convention:</i>	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 (forty-third session)

concerning

Communication No. 355/2008

Submitted by: C.M.
Alleged victim: The complainant
State party: Switzerland
Date of complaint: 28 July 2008 (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 May 2010,

Having concluded its consideration of communication No. 355/2008, submitted by C.M. 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, his counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant, C.M., born on 12 October 1968 in the Republic of the Congo, submitted his complaint on 28 July 2008. He is a Congolese national residing in Switzerland and is subject to an order of deportation to his country of origin. He alleges that his enforced return to the Congo 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 not represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee brought the complaint to the State party's attention in a note verbale dated 25 September 2008, which also included a request for interim measures.

The facts as submitted by the complainant

2.1 The complainant was recruited by the Congolese army in 1989 and became a sergeant in the armed airborne unit of the regular Congolese army. After having fought for former President Pascal Lissouba in 1997, he resumed service in the army in October of that same year under Denis Sassou Nguessou's new Administration. Coming from the north of the Congo, he was suspected by his fellow unit members of supporting the rebels who were backing former President Lissouba. At the end of 1999, the rebels attacked

Brazzaville, and the military from the north of the country were suspected of having instigated the assault. Some were arrested. The complainant found out that he had been on a wanted notice issued by the authorities since 1 April 2000. On 6 April 2000, Cobra militias close to the Government searched the complainant's family home and killed his mother. The complainant was on duty at army headquarters on that day. Having been told of the events by a neighbour, the complainant hid at a friend's house in Ouenze. Afraid of being killed by the Cobras, he left the Congo for Kinshasa on 9 April 2000. From there, he went on to Brussels, then Milan and finally Switzerland, where he requested asylum on 17 April 2000.

2.2 The government police allegedly took the complainant's two brothers hostage and, on 3 March 2002, killed them. After that event, the complainant was actively sought by the country's security services. The complainant did not mention these facts during the initial asylum application procedure, as he was not certain of them. He later sent the Committee the death certificates of his brothers, as well as the wanted notice, dated 10 May 2002, in which he is named.

2.3 The Swiss Federal Office for Refugees, which is now known as the Federal Office for Migration, turned down the complainant's asylum application on 25 October 2002, on the grounds that his allegations regarding certain crucial points were ill-reasoned and were without sufficient foundation. The Office noted, in particular, that the complainant had served in the army for two and one half years without the slightest problem. On 16 February 2004, the Swiss Asylum Review Board, now the Federal Administrative Tribunal, rejected the complainant's appeal. The application for review of that decision was turned down by the Board on 23 August 2004 because the necessary advance payment had not been made. A new application for review was submitted on 1 June 2008, but was rejected on 11 July 2008 on the same grounds as before, i.e., failure to pay the necessary fees in advance. The Federal Administrative Tribunal also noted that the application for review appeared in any case bound to fail, so that it had no reason to waive the required advance payment, equivalent to the estimated cost of the procedure. As the complainant was unable to make the advance payment, he was denied the opportunity to have his application reviewed by the Tribunal.

The complaint

3.1 The complainant alleges that his deportation to the Congo would place him at serious risk of torture, in violation of article 3 of the Convention. He bases this claim on the fact that his mother was killed in his stead in 2000, that he deserted from the army by leaving the country — which is punishable by death — and that his two brothers were subsequently killed in 2003. The complainant maintains that the amnesty signed in 2003¹ is purely notional and does not protect him from persecution by the pro-government Cobra militias. In addition, he has been a wanted man since his two brothers were killed in 2003.

3.2 The complainant maintains that the State party simply rejected the evidence he submitted in support of his application without checking the authenticity of the documents concerned. None of the documents that he provided was submitted for expert authentication.

¹ The Congolese National Assembly passed an amnesty law on 28 August 2003 benefiting the Ninja militias that had clashed with the government troops of the Sassou Nguessou Administration. The law supplements a previous general amnesty law adopted in December 1999, which applied to former militia fighters who had demobilized and surrendered their weapons; cf. *infra* the State party's observations, para. 4.5.

State party's observations on admissibility and on the merits

4.1 On 21 November 2008, the State party challenged the admissibility of the complaint on the grounds that domestic remedies had not been exhausted. On 1 June 2008, the complainant submitted an application for reconsideration to the Federal Office for Migration, which passed it on to the Federal Administrative Tribunal, the competent body in the matter. In its interlocutory decision of 19 June 2008, the Tribunal found that there were no grounds for waiving the fees to be paid in advance in order to cover the estimated cost of the procedure. As the complainant did not pay the fees required in order for the procedure to go ahead, the Tribunal declared the appeal inadmissible in its judgement of 11 July 2008. According to the State party, the investigating judge (a single judge) takes the interlocutory decision regarding the chances of success of the reconsideration and the payment of fees in advance, and these decisions do not predetermine the judgement on the merits. Once the fees are paid, the judgement on the merits can be handed down by the single judge provided that a second judge concurs.² Failing agreement, the judgement on the merits is handed down by a panel of three judges.³ The State party believes that nothing in the case file indicates that the requirement that the fee be paid in advance prevented the complainant from exhausting this remedy. The State party therefore argues that domestic remedies have not been exhausted.

4.2 On 25 March 2009, the State party submitted its observations on the merits. It notes that, on 21 November 2008, the Swiss Government challenged the admissibility of the complaint. Consequently, its observations on the merits have been formulated for consideration solely in the event that the Committee does not come to the same conclusion as the Swiss Government on the complaint's admissibility.

4.3 After reviewing the facts of the case, the State party asserts that the complainant, in the complaint he submitted to the Committee, did not produce any new evidence or put forward any facts. The complainant is essentially reiterating on the same arguments that he brought before the Tribunal at the time of his second application for review in 2008 and on the documents that he appended to his application, namely two death certificates, two photos of deceased persons and a wanted notice in his name. The State party points out that this evidence was examined by the Swiss asylum authorities. The only new documents accompanying the complainant's letter to the Committee, dated 16 March 2009, are copies of a notice of court proceedings and a wanted notice dating from 2007, neither of which affects the issue in any way.

4.4 In the light of article 3 of the Convention, the State party notes the Committee's jurisprudence and its general comment No. 1, paragraphs 6 ff., which require the complainant to prove that he is in personal, present and substantial danger of being subjected to torture if deported to his country of origin. The State party argues that it follows from this provision that the alleged facts must go beyond mere suspicion and that they should demonstrate a serious risk. The State party observes that the Congo is not in a situation of war or civil war and is not experiencing widespread violence of a sort that would, in itself, constitute sufficient grounds to conclude that the complainant would be in danger of torture if returned.

4.5 With regard to the concern raised by the complainant that he risks persecution if deported to the Congo, the State party recalls that peace agreements were signed in December 1999 between Sassou Nguessou's new Administration and the opposition militias. A general amnesty law was also promulgated that same month. This law applied to

² Article 111 (E) of the Asylum Act of 26 June 1998.

³ Article 21, paragraph 1, of the Federal Administrative Tribunal Act of 17 June 2005, in conjunction with article 105 of the Asylum Act.

demobilized militiamen who had surrendered their weapons as of the date of its promulgation, i.e., 20 December 1999, as well as to career soldiers. Additionally, on 28 August 2003, another amnesty law covering the period from 15 January 2000 until the law's promulgation was adopted for Ninja militia⁴ who had clashed with government troops. According to the complainant, the amnesty for Ninja militia was not applied in practice. In that respect, the State party refers to several independent sources, such as reports from Amnesty International, Freedom House, Human Rights Watch and the United States Department of State, which it says make no mention of any prosecution brought against former members of these militias. The State party also mentions members of the regime of former President Lissouba, who had apparently returned to the Congo without any trouble. It points out that the complainant was a simple sergeant in the regular army and that he served for two years without the slightest problem. These elements suggest that the complainant was not demonstrably at risk of persecution.

4.6 With regard to subparagraphs 8 (b) and (c) of general comment No. 1, the State party notes that, firstly, the complainant has not alleged that he was tortured in his country of origin prior to his departure and that, secondly, he has never engaged in political activity in the Congo. These two risk factors that might arise in the event of return cannot therefore be taken into account.

4.7 In relation to factual inconsistencies in the complainant's claims, the State party refers the Committee to the rulings issued by the domestic courts, which gave ample reasons for their decisions as part of a detailed examination of the case. With regard to the problems that the complainant allegedly experienced after joining the regular army, namely tension with other military personnel, the State party considers his account to be incoherent and without foundation. Moreover, the complainant does not pursue that argument in his complaint to the Committee. The complainant also alleges that two of his brothers were taken hostage and killed by the police because of his non-appearance before the authorities. The Federal Administrative Tribunal maintains that the two death certificates appear to have been issued on request and might even be forgeries. Indeed, the preprinted sheet appears to contain errors of form, and the State party is doubtful that the information given on it is true. Furthermore, the occupation of the author's brothers as it appears on the death certificates, namely "pupil", appear inconsistent with their ages. The State party notes that the death certificates do not give the cause of death or explain how the alleged brothers of the complainant died. It therefore considers that these certificates have no evidential value. The same applies to the wanted notice dated 10 May 2002. The State party believes the notice to be a crude forgery, as the stamp and signature have been copied using a colour photocopier, while the personal details of the party concerned have been added using a typewriter.

4.8 The copies of a notice of court proceedings dated 1 February 2007 and a wanted notice dated 16 March 2007, which were submitted to the Committee on 16 March 2009, were not submitted to the Swiss authorities. The State party believes that, at first sight, these documents exhibit similar flaws to those of the wanted notice of 10 May 2002. The State party adds that they do not state, or at least not explicitly, the reasons why the complainant might be wanted. The State emphasizes that, as a general rule, wanted notices are not shown to the persons concerned. This is all the more so in the case of notices of court proceedings, which are documents circulated between authorities only. The complainant does not explain how he was able to obtain these documents. The State party points out how easy it is to obtain forgeries in the Congo, so that their evidential value is

⁴ The Ninja militia, from the north of the Congo, fought against Sassou Nguessou's Administration.

therefore very limited. It also contends that it is impossible to identify the bodies shown in the photos as those of the complainant's two brothers.

4.9 In his application for review of 1 June 2008, the complainant alleges for the first time that he had taken part in secret operations for the current regime. He was therefore allegedly party to State secrets, which would mean that his illegal exit from the country could place him in danger. The State party believes these allegations to be unsupported by evidence. The complainant's alleged involvement in such secret operations would seem to contradict the allegation that he had been suspected of supporting the rebels.

4.10 The State party points out that the 2003 Amnesty Act invalidates the complainant's fear argument. The complainant has not shown that his situation would be any different from that of other persons covered by the amnesty. The State party adds that, even if the complainant's account was credible, he has not established that he could still encounter problems today. With regard to the complainant's alleged fear of being prosecuted because he had left the Congo illegally, the State party recalls that the Committee's jurisprudence is clear on this point: the fear of prosecution and imprisonment is not sufficient grounds for concluding that a person would be subjected to torture. The State party adds that military service is voluntary in the Congo and that it has not even been shown that the complainant would risk imprisonment on his return to the Congo. For all the above-mentioned reasons, the State party considers that nothing in the case file establishes that the complainant would be placed in real and personal danger upon his return to his country of origin.

Complainant's comments on the State party's submission

5.1 On 26 January 2009, the complainant cited article 65, paragraph 1, of the Swiss Administrative Procedure Act, according to which the appeal authority may, once an appeal has been lodged, waive the required fees for any indigent party on request, provided that his or her case does not seem bound to fail. The complainant stresses that his financial hardship was known to the authorities, since he was permitted neither to work nor to receive social assistance. In his application to the Federal Administrative Tribunal, the complainant implicitly requested that the advance fees be waived or that he be granted partial legal aid. In its interlocutory decision of 19 June 2008, the Tribunal judged that all the evidence that the complainant submitted to it in support of his application for reconsideration was bound to fail. The complainant adds that, under the established case law of the Asylum Review Board and the Tribunal, the payment in advance of the cost of the review procedure is a precondition for the consideration of applications.⁵ Neither payment in instalments, nor partial payment, nor reduced fees are acceptable. Thus, according to the complainant, failing any major new evidence, he was unable to proceed with his application for reconsideration of the relevant interlocutory decision. As the complainant was unable to produce the sum of 1,200 Swiss francs in time, the Tribunal declared his application inadmissible. The decision to deport him has been final with the effect of *res judicata* since 11 July 2008, so that the complainant has no further access to domestic remedies. The fact that the final decision was handed down by a single judge has no bearing on the question as to whether domestic remedies have been exhausted.

5.2 On 26 March 2009, the complainant replied to the State party's comments on the merits. He recalls that his fear of returning to the Congo is based partly on the risk of persecution that he runs following the deaths of his mother and his brothers. Another of his fears is related to his illegal exit from the territory while serving in the army, after

⁵ Article 63, paragraph 4, of the Swiss Administrative Procedure Act.

performing unofficial duties under Sassou Nguessou's regime. The complainant explains that he acquired a copy of the wanted notice and of the notice of court proceedings through persons close to him, who are currently working in the General Staff Headquarters and the Office of the Public Prosecutor. The complainant considers that in any case the documents are official since they were issued by the authorities.

5.3 Regarding the authenticity of the documents that he has submitted, the complainant counters that such details as the form, the colour of the lettering and the quality of the paper should not cast doubts on the validity of the documents insofar as they were issued by a country in different circumstances and with different resources from those of the State party. With regard to the death certificates for his brothers, the complainant explains that they are authentic, as each carries a registration number which allows authentication. The complainant invites the State party, if it is unsure of the authenticity of the evidence provided, to obtain a copy of the official documents issued generally by the Congolese authorities. This would enable the State party to authenticate the evidence provided with the application.

5.4 In relation to the systematic violation of human rights in the Republic of the Congo, the complainant mentions a press article which reports that, in 1999, despite the peace agreements, several persons from the Democratic Republic of the Congo were reported missing upon their return to the Congo. The complainant also mentions a journalist who was burnt alive when he returned to the country. Consequently, he believes that the peace agreements signed in 2003 are not sufficient grounds to justify the argument that there is no risk of torture in the case of deportation. The complainant adds that there are still isolated cases of individuals being tortured unofficially. He maintains that his involvement in secret missions can of itself lead to prosecution in his country of origin. As he has divulged information on his secret missions to the Swiss Government in the course of his asylum application, the complainant could be regarded as having betrayed the Congolese nation.

5.5 Lastly, the complainant runs the additional risk of being persecuted if he returns to his country because of the activities of his brother, B.M., who is currently living in exile. All the members of the M. family who have remained in the Congo risk persecution by State agents seeking information on the complainant's older brother.

Additional comments by the complainant

6.1 On 31 August 2009, the complainant sent the Committee a letter written by the Cantonal Migrations Office of Zurich, notifying him of the possibility that he might be eligible for a humanitarian permit in Switzerland. For the purposes of the procedure, the Office needed details of the procedure currently being conducted before the Committee. The letter added that the application for a humanitarian permit in Switzerland had to be suspended until the international procedure before the Committee had been completed.

6.2 On 1 November 2009, the Advisory Bureau for French-speaking Africans in Switzerland submitted a request in the complainant's name to suspend the procedure before the Committee until such time as the Swiss cantonal and federal authorities issued a ruling regarding the grant of a humanitarian permit.

Additional comments by the State party

7.1 On 3 December 2009, the State party stated that the competent authorities of the Canton of Zurich could not decide on applications for permits in hardship cases (humanitarian permits) while another procedure was under way, including one before the Committee. Thus the suspension of the procedure is still not sufficient for the cantonal and federal authorities to take a decision since the international procedure has not been halted or has not led to a decision on admissibility or on the merits. The State party points out that

the grant of a hardship permit is subject to the approval of the federal authorities, that it is an extraordinary, non-mandatory and humanitarian remedy, and is subject to criteria which are entirely dissociated from the conditions stipulated in article 3 of the Convention. So long as there is a procedure still open whereby the complainant could obtain a more favourable status, the cantonal authorities of the State party cannot take a decision on the grant of the humanitarian permit.

Further additional comments by the author

8.1 By letter of 9 January 2010, after being notified of the State party's position, the complainant asked the Committee to cancel the suspension and to take a decision on the complaint.

Issues and proceedings before the Committee

Consideration of admissibility

9.1 Before considering any claim contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. As required under article 22, paragraph 5 (a), of the Convention, the Committee has ascertained that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

9.2 The Committee takes note that the State party challenges the admissibility of the complaint for failure to exhaust domestic remedies. The State party asserts that if the complainant had paid the fee for the procedure, the judge could have ruled on his application for review but that, in the absence of such a payment, the application must be considered inadmissible. The Committee notes the complainant's argument that he is experiencing financial hardship because he is not permitted to work or receive social assistance and that he was consequently unable to pay the fee for the review procedure. The Committee takes note of the fact that the complainant was not even permitted to make a partial payment in advance. The Committee considers that, given the complainant's personal circumstances, it was unfair to oblige him to pay the sum of 1,200 Swiss francs in order for his last application for review to be admissible. This view is based on the fact that the complainant was not authorized to work within the State party's territory and that he appears to have been denied social assistance. It therefore seems unreasonable to deny the complainant the possibility of applying for a review of his case on financial grounds considering his difficult financial circumstances. The Committee therefore considers that the argument that the complaint is inadmissible for failure to exhaust domestic remedies does not stand in the present case. The complaint is therefore admissible under article 22, paragraph 5 (b), of the Convention.

Consideration of the merits

10.1 The Committee must determine whether the deportation of the complainant to the Republic of the Congo would violate the State party's obligation under article 3 of the Convention not to expel or return ("refouler") an individual to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

10.2 In assessing the risk of torture, the Committee takes into account all relevant considerations, in accordance with article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of such an assessment, however, is to determine whether the individual concerned would personally be at risk of torture in the country to which he or she would be returned. It follows that the existence in a country of a consistent pattern of gross, flagrant or mass

violations of human rights does not in itself constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture on his or her return to that country. Additional grounds must be adduced to show that the individual concerned would be personally at risk. By the same token, the absence of a consistent pattern of flagrant violations of human rights does not mean that a particular person might not be subjected to torture.

10.3 The Committee recalls its general comment No. 1 on the implementation of article 3 in the context of article 22, in which it states that it is obliged to assess whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if he or she were returned to the country concerned. While the risk does not have to meet the test of being highly probable, the danger must be personal and present. In this regard, in previous decisions the Committee has determined that the risk of torture must be “foreseeable, real and personal”.⁶

10.4 As to the burden of proof, the Committee also recalls its general comment and its jurisprudence, which establishes that the burden is generally upon the complainant to present an arguable case and that the risk of torture must be assessed on grounds that go beyond mere presumption or suspicion.

10.5 In assessing the risk of torture in the present case, the Committee takes note of the complainant’s statement that he resumed service in the army in October 1997 under the new Administration after having supported former President Lissouba. It also notes that the complainant was allegedly suspected by his colleagues of supporting the rebels and that, subsequent to an attack by the Ninja militia on Brazzaville at the end of 1999, he found out that he had been wanted by the authorities since 1 April 2000. The Committee notes the complainant’s claim that his mother was murdered and that he consequently decided to leave the country. Lastly, it notes that the complainant’s two brothers were supposedly killed on 3 March 2002 and that, since 2007, the complainant has reportedly been the subject of an arrest warrant and a notice of court proceedings in the Congo.

10.6 The Committee further notes the State party’s argument that, with the exception of an arrest warrant and a notice of court proceedings dating from 2007, the complainant has not submitted any new evidence to the Committee and that all the other documents have been assessed in depth by the domestic courts. The Committee notes that the State party believes that the peace agreements and the amnesty laws adopted by the Congo have given rise to a new situation, which nullifies any fears, whether well founded or not, that the complainant might have. The State party maintains that no independent sources have reported the initiation of any court proceedings against former rebels since the laws were adopted. The Committee notes the State party’s argument that the complainant did not apparently experience any problems during the two years following his readmission into army ranks under the Nguessou Administration, nor has he proved that his situation differs from that of other persons covered by the amnesty law. The Committee notes the State party’s argument that all the documents submitted by the complainant could have been drawn up in response to a request and could be forgeries.

10.7 The Committee notes the author’s argument that, despite the peace agreements, several individuals have been reported missing following their return from exile. It also notes the complainant’s belief that the agreements signed in 2003 are not sufficient grounds for maintaining that there is no risk of torture if he is deported, and that isolated cases of torture still occur. Lastly, the Committee notes that the complainant considers that his

⁶ Communication No. 203/2002, *A.R. v. The Netherlands*, Views adopted on 21 November 2003, para. 7.3; communication No. 285/2006, *A.A. et al. v. Switzerland*, Views adopted on 10 November 2008, para. 7.6.

divulgence of State secrets during the asylum application procedure has exposed him to an imminent danger of torture if he returns.

10.8 Having taken into account the arguments put forward by the parties, the Committee finds that the complainant has not shown evidence of a real, present and foreseeable risk. The Committee considers that the State party's opinion that the complainant's account is inconsistent, in particular with regard to the successive versions that he gives of his involvement in secret missions for the Congolese Government, is well founded. It is indeed hard to believe that if the complainant was involved in such operations he would at the same time have been persecuted by pro-government militia. The Committee notes that the burden is on the complainant to prove that his fears are real and personal. The Committee further recalls its general comment and its jurisprudence,⁷ whereby the burden is upon the complainant to present an arguable case. In its general comment, the Committee also emphasized that it would give considerable weight to findings of fact made by organs of the State party, but that it retains the power of free assessment of the facts and evidence of the circumstances of each case.⁸ It appears in the present case that the complainant has been unable to put forward any counter-arguments to the fact that the peace agreements and the amnesty laws adopted in the Congo brought about a new situation, which would nullify any fears, whether well founded or not, that the complainant might have; that no judicial proceedings against former rebels have been reported by independent sources since the laws were adopted; that the complainant apparently met with no difficulties during the two years that followed his readmission in the armed forces of the Nguessou Government; and lastly that he has apparently not shown that his own situation was any different from that of other persons covered by the amnesty law. The Committee notes finally that the documents submitted by the complainant were examined in detail by the domestic courts of the State party,⁹ which, in the light of their examination, established that there was room for serious doubt as to their authenticity.

10.9 The Committee further recalls that the risk of arrest does not in itself constitute a violation of article 3 of the Convention.¹⁰ In this respect, the complainant's allegations that he risks arrest for desertion would not of themselves entail a violation, since he has been unable to show that he is in personal danger of being subjected to torture or persecuted if he is deported to the Congo.

10.10 Given all the information that has been transmitted to it, the Committee finds that the complainant has not given sufficient evidence to demonstrate that he is at personal, real and foreseeable risk of being subjected to torture if he is deported to his country of origin.

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, concludes that the deportation of the complainant to the Congo would not constitute a breach of article 3 of the Convention.

[Adopted in English, French, Russian and Spanish, the French 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.]

⁷ Communication No. 282/2005, *S.P.A. v. Canada*, decision adopted on 23 November 2005, para. 7.5; communication No. 293/2006, *M.J.A.M.O. v. Canada*, decision adopted on 9 May 2008, para. 10.4.

⁸ Communication No. 195/2002, *Brada v. France*, decision adopted on 17 May 2005, para. 13.2.

⁹ See, in this regard, communication No. 293/2006, *M.J.A.M.O. v. Canada*, decision adopted on 9 May 2008, para. 10.5.

¹⁰ Communication No. 57/1996, *P.Q.L. v. Canada*, decision adopted on 17 November 1997, para. 10.5; communication No. 65/1997, *I.A.O. v. Sweden*, decision adopted on 6 May 1998, para. 14.5.