



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

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Committee against Torture

Forty-fourth session

26 April–14 May 2010

Decision

Communication No. 302/2006

<i>Submitted by:</i>	A.M. (not represented by counsel)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	France
<i>Date of the complaint:</i>	25 September 2006 (initial submission)
<i>Date of present decision:</i>	5 May 2010
<i>Subject matter:</i>	Deportation of the complainant to the Democratic Republic of the Congo
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Deportation of a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture
<i>Articles of the Covenant:</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-fourth session)

concerning

Communication No. 302/2006

Submitted by: A.M. (not represented by counsel)
Alleged victim: The complainant
State party: France
Date of the complaint: 25 September 2006 (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 5 May 2010,

Having concluded its consideration of complaint No. 302/2006, submitted to the Committee against Torture by A.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 and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

1.1 The complainant, A.M., is a national of the Democratic Republic of the Congo, born in 1960, residing in France and awaiting deportation to his country of origin. He maintains that such a measure would constitute a violation by France of article 3 of the Convention. 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 on 29 September 2006, without attaching a request for interim measures of protection.

Factual background

2.1 The complainant claims that he left the Democratic Republic of the Congo after being beaten, tortured and ill-treated by men in uniform,

allegedly supporters of President Kabila. He also claims that his wife was raped in front of her children because of his role in, and support for, the Mobutu regime and that he has now been accused of working with the Mouvement de Libération du Congo of Jean-Pierre Bemba and Honoré Ngbanda. He claims that the authorities of the Democratic Republic of the Congo have launched an intensive search for him.

2.2 It appears from the copies of decisions attached to the complaint that the complainant applied for asylum in France on 17 September 2002. On 12 September 2003, the French Office for the Protection of Refugees and Stateless Persons (OFPRA) rejected his application, a decision confirmed on 14 May 2004 by the Refugee Appeals Board (CRR). On 16 September 2004, the complainant submitted his first request for a review of his application for asylum. OFPRA rejected this request on 17 September 2004 and the Board confirmed this decision on 18 April 2005. On 3 September 2005, the complainant was given notice to leave the territory. On 25 March 2006, he was given a residence permit denying him the right to work and was again given notice to leave the territory. The complainant submitted a second request to OFPRA for a review of his asylum application, but this request was rejected as groundless on 10 July 2006, after consideration under a fast-track procedure. He received a deportation order dated 8 August 2006 and lodged an appeal against this decision on 21 August 2006 before the administrative court of Orléans. The latter dismissed his appeal on 25 August 2006 and the complainant appealed this ruling to the administrative court of appeal of Nantes. As the appeal did not stay the judgement, the complainant argues that a negative decision could be handed down at any time.

2.3 The complainant attaches a copy of two medical certificates to his complaint. He also attaches two “wanted notices”, indicating that he is wanted for “subversion and rebellious organization” and for “endangering internal security”, and other supposedly official documents showing that the authorities have been informed of his imminent deportation and have orders to arrest him. The complaint is also accompanied by a handwritten document purporting to be a deposition by someone in the Democratic Republic of the Congo who knows the complainant; this person claims not to know what has happened to him since the authorities began looking for him. The complainant also attaches a copy of a letter dated 22 May 2006 from his uncle to the United Nations Human Rights Office in the Democratic Republic of the Congo, asking for information on the whereabouts of his nephew, who according to him disappeared after being beaten by armed men. His uncle died in July 2006; the complainant claims he was killed by armed men.

The complaint

3. The complainant says he fears for his life if he is returned to the Democratic Republic of the Congo. He claims that his removal would constitute a violation of article 3 of the Convention by the State party.

State party’s observations on admissibility

4.1 In a note verbale of 3 August 2007, the State party challenges the admissibility of the complaint. It sets out to demonstrate that the communication is inadmissible under article 22, paragraph 2, of the

Convention for abuse of rights, as the documents produced by the complainant have all the characteristics of forgeries.

4.2 First, the State party wonders why the complainant should suddenly be actively sought in 2006 when he had been in French territory since 2002. Moreover, the documents produced, supposedly issued by departments of the administration of the Democratic Republic of the Congo, are all handwritten, which supports the forgery hypothesis. The complainant does not explain how internal administration documents from “the National Intelligence Agency” came into his hands. Even assuming that “wanted notices” are completed by hand, the State party has strong doubts as to the authenticity of the alleged “deposition” of the individual called G.E., as this is an entirely handwritten document on plain paper and the only “stamp” on it is the same as the one found on the other documents produced. Moreover, the State party believes that this document contains expressions that would be out of place in police documents. It draws the Committee’s attention to the fact that domestic courts have expressed similar doubts about documents of the same type giving different dates from those mentioned above. It cites the Refugee Appeals Board, which, in its decision of 18 April 2005, found that “the authenticity of the two documents produced and presented as wanted notices, one of which is dated 2 January 2005, is not sufficiently substantiated”. These doubts were confirmed by the administrative court of Orléans on 25 August 2006, which noted that “spelling mistakes in the head and body of the documents raise doubts about their authenticity”.

Complainant’s comments on the State party’s observations on admissibility

5.1 In comments dated 18 September 2007, the complainant rejects the State party’s argument that the documents he has produced have “all the characteristics of forgeries” in that they are either entirely handwritten or filled in by hand and contain expressions that would be out of place in police documents, as well as spelling mistakes. Besides the fact that these claims do not prove the documents are forgeries, the complainant explains that the presentation of these documents is not surprising given the problems encountered in the local administration.

5.2 The complainant believes that the reason why he was being actively sought in 2006 when he had been in French territory since 2002 was that there had been an upsurge in the activities of the Congolese police, which shows that he would still be at risk if returned to his country.

State party’s observations on the merits

6.1 On 30 January 2008, the State party submitted its observations on the merits of the complaint. First, it recalls its observations on admissibility and reiterates its request that the Committee declare the communication primarily inadmissible for abuse of the right of submission, in accordance with article 22, paragraph 2, of the Convention. In addition to its observations on admissibility, the State party elaborates on the physical verification of the authenticity of the documents produced by the complainant. In the State party’s view, the only way to obtain such verification would be to make a request through diplomatic channels to the Democratic Republic of the Congo. However, although such an approach would theoretically be possible, the State party believes that it might be counterproductive if the request did

not come from the Committee itself. It refers to a decision of the Refugee Appeals Board which concluded that the confidentiality of information on the asylum-seeker is an essential guarantee of the right to asylum, and that the country considering an asylum request is under an obligation to ensure that confidentiality is observed. Disregard for this obligation may aggravate the applicant's fears, or may in itself create the conditions for exposure to persecution within the meaning of the Convention relating to the Status of Refugees, or for exposure to one of the serious threats covered by law.

6.2 The State party notes that the communication contains no specific grievance and does not refer, even in substance, to any article of the Convention. It believes the communication concerns article 3 of the Convention and proposes to outline, first, the legal framework for asylum requests and, second, the actual remedies applicable, and, finally, to demonstrate that the complainant's request was considered in accordance with article 3 of the Convention.

6.3 The State party describes the initial procedure followed by OFPRA in its consideration of asylum requests and stresses the independence of this office and its cooperation with the Office of the United Nations High Commissioner for Refugees. Its staff have access to a variety of sources and are in constant contact with its major European counterparts, which increases the amount of documentation available and enhances its ability to carry out checks. The State party emphasizes that it knows how difficult it can be, in certain circumstances, to produce physical evidence, that it strives to assess the person's overall credibility and that, if there is any uncertainty, the applicant is given the benefit of the doubt.

6.4 The State party describes the procedure for appealing to the Refugee Appeals Board and stresses that a representative of the United Nations High Commissioner for Refugees is present on account of the need to verify the alleged persecution. It describes the review of an application for asylum by OFPRA when new evidence is submitted by the applicant. In this case, the applicant is subject to a fast-track review procedure and his or her application is processed by a different protection officer from the one who processed the initial application. If OFPRA deems the application for review admissible, it considers whether the facts are established or not and whether they justify the applicant's fears of persecution.

6.5 In the case in point, the State party points out that the risks referred to by the complainant to justify his stay in the country as a refugee were thoroughly examined on five occasions, that is, three times by OFPRA and twice by the Refugee Appeals Board. It notes that none of the reviews found evidence of a real risk to the complainant if he was returned to his country, despite his claims to the contrary. It refers to the Refugee Appeals Board's decision of 18 April 2005, which held that "the authenticity of the two documents produced and presented as wanted notices, one of which is dated 2 January 2005, is not sufficiently substantiated". It further stresses that the administrative court of Orléans, in its decision of 25 August 2006, also carried out a thorough review with regard to article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the European Convention on Human Rights"), which covers the same area of protection as article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

6.6 The State party invites the Committee primarily to declare the communication inadmissible and, secondarily, to reject it on the merits as groundless.

Complainant's comments on the State party's observations on the merits

7.1 In a letter dated 20 March 2008, the complainant again asserts that his communication is admissible.

7.2 The complainant notes that the observations of the French Government do not mention that he appealed against the latest decision of OFPRA on 3 August 2006 before the National Asylum Court (the new name of the Refugee Appeals Board) and that a decision on this appeal is imminent. He adds that on 25 January 2008 he filed a statement of supplementary grounds of appeal before the National Asylum Court. This statement presents new documents which only came to the complainant's attention in November 2007 and confirm the fears he had already voiced to OFPRA and the old Refugee Appeals Board regarding a return to his country. The first document is a summons to appear before the directorate-general of the prosecution service police for a hearing on 21 July 2007, which he takes as proof that he continues to be regarded as a threat by the powers-that-be. The second document is a communiqué dated 8 September 2007 from a Congolese non-governmental organization which shows that he is still actively sought by the Congolese security services and which carries alarming news about the situation of several people close to him. According to this document, a cousin of the complainant, who is accused of being his accomplice and therefore of carrying out subversive activities, has been missing since his arrest on 1 September 2007; the family of a friend of the complainant has been threatened in an effort to make it reveal the address of the complainant's wife, who also fled the country in 2004; his mother was strangled to death by unknown assailants in August 2005; and one of his cousins was sexually assaulted by unknown assailants in July 2007.

7.3 The complainant claims that attempts are being made to affect him through the people close to him. The third document is a communiqué dated 6 October 2007 from another Congolese non-governmental organization, which reports, naming the complainant, on "inadequate security for politicians, political activists, economic actors and others", as well as on the persecution suffered by his relatives, corroborating the information in the second document. Finally, the fourth document, a newspaper article dated 22 October 2007, repeats the facts set out above. The complainant concludes from the foregoing that the reality and seriousness of the risks he would run if returned to his country of origin have been duly established.

7.4 In a further letter dated 9 April 2008, the complainant notes that the National Asylum Court rejected his appeal of 21 March 2008. The Court held that neither the evidence nor the statements made before it allowed the new allegations to be taken as facts or the fears expressed to be considered as justified. The complainant also attaches a letter from an association that helped him draft his comments both to the national authorities and to the Committee, which states that the fears expressed by the claimant appear to be justified.

Additional comments by the State party

8.1 In comments dated 13 May 2008, the State party begins by reaffirming its observations on admissibility and the merits and reiterates its request that the Committee should primarily declare the communication inadmissible and, secondarily, reject it on the merits. The State party supplements its previous observations by explaining the basis for the dismissal by the domestic court of the complainant's appeal, namely that the circumstances that led to his departure from his country of origin and to the flight of his wife and children to Angola have already been the subject of a ruling by the Refugee Appeals Board and that the new evidence provided by the complainant has been found wanting and does not invalidate the Board's analysis.

8.2 The State party reaffirms the doubts expressed in its previous observations about the authenticity of the documents added to the file by the applicant.

Additional information provided by the complainant

9. By letter of 3 October 2008, the complainant informs the Committee of the murder in late March 2008 of his cousin, Mr. G., who was accused of being his accomplice and who had been missing since his arrest by the security services on 1 September 2007. The complainant attaches to his claim a clipping from a Congolese newspaper dated 24 April 2008, with a copy of the envelope showing it had been posted in Kinshasa. According to the clipping, Mr. G., a cousin of the complainant, was kidnapped by men in uniform claiming to be from the Republican Guard after they mistook him for the complainant, and the complainant's life would therefore really be in danger if he was returned to his country. The complainant also attaches a copy of his cousin's death certificate, issued by Kinshasa general hospital, which gives "murder" as the cause of death; a copy of the burial permit issued by the funeral service of the city of Kinshasa; a copy of the envelope used; and a new wanted notice in the name of the complainant dated 29 March 2008.

Additional information provided by the State party

10. In comments dated 20 November 2008, the State party supplemented its observations with the information that, under article R.723-3 of the Code governing the Entry and Stay of Aliens and the Right to Asylum, any alien whose asylum application has been definitively rejected once by OFPRA and the Refugee Appeals Board is entitled to submit new evidence to OFPRA in order to have the application reviewed. It is therefore up to the complainant to submit a new request for a review of his asylum application if he feels he is now in a position to provide the Committee with new evidence proving he is at risk.

11.1 In comments dated 19 November 2009, pursuant to the Committee's decision, taken at its forty-second session, to ask the State party to provide details of the material verification of the authenticity of the documents produced by the complainant, the State party first recalls that the documents produced by the complainant on 3 October 2008 were produced after his application was submitted to the Committee. The State party points out that it was unaware of the documents until that date and contends that they should not be deemed admissible since, when the complaint was submitted, the State party could not be accused of having failed to take them into account in considering the complainant's asylum application. The State party repeats that it is up to the complainant to submit a new request for a review of his asylum application if he feels he is in a position to provide the Committee with new evidence proving he is at risk. In that light, the State party argues that the Committee cannot admit the documents, which have never been produced to the French authorities, without flouting the subsidiarity principle that is the basis of the efficiency of the international system of protection against torture.

11.2 Secondly, the State party provides the following details regarding the material verification of the documents produced by the complainant. With regard to the death certificate and burial permit in respect of Mr. G., the State party notes that the handwriting on both documents is the same, yet they were issued by different authorities, namely the Kinshasa general hospital and the city of Kinshasa respectively. In addition, the burial permit was issued on 5 April 2008 against a fee paid on 10 July 2007, i.e., before the date of death, which allegedly occurred on 28 March 2008. The State party explains that discrepancies of this kind are common in forged documents, with the first part being altered but not the last part, which includes the signature. It also points out that the death certificate is signed by a doctor who, it has been established by France's diplomatic representation in the Democratic Republic of the Congo, is a general practitioner in Kinshasa and does not work at the hospital. Moreover, the term "murder" as the cause of death given on the certificate is never used: the description given by the hospital is usually more objective (death by gunshot, stabbing or assault, for example). With regard to the newspaper clipping, the State party notes that, while such a paper certainly exists, it is well known to be of poor journalistic quality and has little credibility, and the only way to contact it is through an electronic address. The State party also notes that the date of issue on the clipping is printed in a different typeface, which could indicate a montage. Lastly, according to the State party's diplomatic representatives, it is possible to pay to have an article printed in a newspaper of this kind.

11.3 The State party considers, therefore, that, if the Committee admits these documents, they should be treated with caution in terms of evidentiary value, for the reasons given. In any case, there is nothing in the documents to substantiate either the family ties between Mr. G. and the complainant or Mr. G's murder, let alone the mistaken identity allegedly leading to the murder.

Issues and proceedings before the Committee

Consideration of admissibility

12.1 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. In the case in question, 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.

12.2 The Committee has taken note of the State party's argument that the submission of the request by the complainant to the Committee is an abuse of the right of submission. It considers, in any event, that since the submission of the present communication to the Committee, on 25 September 2006, it is for the latter to evaluate the good faith of the complainant in his presentation of facts and evidence, and their relevance, for the Committee, in addressing the arguments of the State party on the inadmissibility of the communication. However, in the present case, the Committee considers that the communication as a whole is sufficiently substantiated, for purposes of admissibility.

12.3 As to the State party's objection that the complainant has submitted to the Committee new elements, that were never drawn to the authorities' attention, the Committee notes that the information in question was received to no fault of himself by the complainant after the exhaustion of domestic remedies in the State party. Accordingly, the Committee concludes that it is not prevented by article 22, paragraph 4, of the Convention and rule 107 of the Committee's rules of procedure, to examine the communication on the merits..

Consideration of the merits

13.1 The Committee must decide whether removal of the complainant to the Democratic Republic of the Congo would violate the State party's obligation under article 3 of the Convention not to expel or return a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

13.2 To assess the risk of torture, the Committee must take into account all relevant considerations, including the existence in the State to which the complainant would be returned of a consistent pattern of gross, flagrant or mass violations of human rights. The aim, however, is to determine whether the individual concerned would personally be in danger of being subjected to torture in the country to which he would be returned. 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 sufficient grounds for determining whether the particular person would be in danger of being subjected to torture upon his 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 gross violations of human rights does not imply that a person cannot be considered to be in danger of being subjected to torture in his particular circumstances.

13.3 The Committee recalls its General Comment No.1 on article 3¹, which states that the Committee is obliged to assess whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the

¹ A/53/44, Annex XI CAT General Comment No 1.

risk of torture must be assessed on grounds that go beyond mere theory or suspicion². However, the risk does not have to meet the test of being highly probable, but it 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 personal³.

13.4 With regard to the burden of proof, the Committee also recalls its General Comment No.1 on article 3, and its jurisprudence to the effect that it is normally for the complainant to present an arguable case and that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion.⁴

13.5 The Committee recalls that the State party questions the complainant's credibility and the authenticity of the documents he has produced. It also reiterates its doctrine according to which it has the competence to fully examine the facts and evidence before it in adopting its decisions, even if, by making so, a considerable weight has to be attributed to the consideration made on them by the State party's authorities. While the complainant has provided the State party and the Committee with copies of various documents as evidence, the Committee considers that the complainant has failed to rebut, with convincing arguments, the State party's conclusions on his credibility and has not been able to validate the authenticity of the documents in question. Nor has the complainant explained how he came to have various internal administrative documents in his possession. The Committee notes that the two medical certificates produced by the complainant refer to a number of scars on various parts of the body and fractures to the tibia and fibula, but do not contain any evidence confirming or refuting that they are the result of torture inflicted in the past. In the Committee's view, the credibility of the complainant's claims has been irreparably damaged by the information provided by the State party regarding the material verification of the documents he produced on 3 October 2008, namely the death certificate and burial permit in respect of Mr. Gata, his supposed cousin, and the press clipping purporting to show that Mr. Gata was murdered because he had been mistaken for the complainant.

13.6 The Committee reiterates that, for the purposes of article 3 of the Convention, the individual concerned must face a foreseeable, real and personal risk of being tortured. In this case, the Committee believes that the complainant has not produced sufficient satisfactory evidence or details to corroborate his story that the risk to him of being tortured is real and personal if he were to be returned to the Democratic Republic of the Congo. The Committee considers therefore that the complainant has not substantiated his claim that he would personally face a foreseeable, real and personal risk of being subjected to torture upon his return to the Democratic Republic of the Congo.

² A/53/44, annex IX, CAT General Comment No 1, paragraph 6.

³ See, inter alia, Communication No. 258/2004, *Moistafa Dadar v. Canada*, Decision adopted on 23 November 2005, and Communication No. 226/2003, *T.A. v. Sweden*, Decision adopted on 6 May 2005.

⁴ Communication No. 256/2004, *Mehdi Zare v. Sweden*, Views adopted on 12 May 2006, para. 9.3; communication No. 214/2002, *M.A.K. v. Germany*, Views adopted on 12 May 2004, para. 13.5.

13.7 The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, considers that the complainant has not substantiated his claim that he would be subjected to torture upon his return to the Democratic Republic of the Congo, and therefore concludes that the complainant's removal to that country would not constitute a violation 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.]
