



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

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Committee against Torture

Communication No. 385/2009

**Decision adopted by the Committee at its forty-ninth session,
29 October to 23 November 2012**

<i>Submitted by:</i>	M.A.F. et al. (not represented by counsel)
<i>Alleged victims:</i>	The complainants
<i>State party:</i>	Sweden
<i>Date of complaint:</i>	13 May 2009 (initial submission)
<i>Date of decision:</i>	23 November 2012
<i>Subject matter:</i>	Risk of deportation of complainant to Libya
<i>Procedural issue:</i>	Inadmissibility <i>ratione materiae</i>
<i>Substantive issue:</i>	Deportation of a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture
<i>Articles of the Convention:</i>	3 and 22

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-ninth session)

concerning

Communication No. 385/2009

<i>Submitted by:</i>	M.A.F. et al. (not represented by counsel)
<i>Alleged victims:</i>	The complainants
<i>State party:</i>	Sweden
<i>Date of complaint:</i>	13 May 2009 (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 23 November 2012,

Having concluded its consideration of complaint No. 385/2009, submitted to the Committee against Torture by M.A.F. 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

1.1 The main complainant, M.A.F., was born in 1971 and is a Libyan national. The other complainants are his wife, Z.A., a Libyan national born in 1970, and their five children. The complainants claim that their deportation to Libya would constitute a violation by the State party of article 3 of the Convention. The complainants are not represented by counsel.

1.2 On 26 June 2009, in application of rule 108, paragraph 1, of its rules of procedure,¹ the Committee asked the State party not to expel the complainants to Libya² while their complaint was being considered.

¹ This rule now appears as rule 114, paragraph 1, of the Committee's revised rules of procedure (CAT/C/3/Rev.5).

² Pursuant to a request of 16 September 2011 by the National Transitional Council, the official name was changed from Libyan Arab Jamahiriya to Libya. References to Libya in the current document should be read accordingly.

The facts as submitted by the complainants

2.1 M.A.F.'s brother was a political activist against the Qaddafi Government who was arrested and sentenced to prison in 2001. After his brother's arrest, the Libyan authorities confiscated the complainant's house and ordered M.A.F.'s employer to dismiss him, accusing him and his family of supporting the opposition to the Qaddafi Government. M.A.F. was subjected to violence and torture during interrogations by the Libyan security forces in January 2001 and again in November 2002, when police broke his nose. Also in November 2002, Z.A. was shoved by police, causing her to fall and lose the foetus she was carrying. In 2003, another of M.A.F.'s brothers was arrested and imprisoned by the Libyan authorities. Both brothers remained in prison at the time of the submission of the complaint. On 4 May 2006, M.A.F. was arrested and imprisoned for two months, during which time he was subjected to torture. Z.A. suffered a nervous breakdown following his detention, and his children were no longer able to attend school, as the family frequently changed their place of residence due to persecution by the Libyan authorities. In March 2007, the Libyan authorities issued a warrant for the arrest of M.A.F., to be enforced prior to 1 September 2007. The complainants decided to seek asylum in a European country. They paid US\$ 15,000 and 30,000 Libyan dinars to a high-ranking Libyan official working in the passport services, who provided the family with false passports under different names. This official travelled with the family to Stockholm, where he took back the false passports before returning to Tripoli.

2.2 Upon the complainants' arrival in Sweden on 28 May 2007, they applied for asylum. Their application was rejected by the Swedish Migration Board on 10 December 2007. The Board noted that neither M.A.F. nor Z.A. had been politically active or convicted of any crime, and they were not able to describe the political activities of M.A.F.'s brother. The Board doubted the accuracy of the family's travel route as stated, in particular their claim to have passed strict airport controls in Tripoli with a smuggler. Overall, the Board found that the means by which the family left the country showed that they were of no interest to the Libyan authorities, and concluded that their return to Libya would not expose them to a real risk of persecution, corporal punishment, torture or any inhuman or degrading treatment by the State authorities.

2.3 The complainants subsequently appealed to the Swedish Migration Court, which rejected the appeal on 16 May 2008. The Court found that the new elements of the complainants' case which had not been raised before the Migration Board lowered their credibility and in some cases conflicted with oral information. These elements included a beating of M.A.F. by the police in November 2002, Z.A. losing a foetus, and a requirement that M.A.F. report regularly to the Libyan authorities following his release from prison. The Court questioned the authenticity of new documents presented to establish the family's identity, which were based on copies. Information provided by the complainants on the situation in Libya was found to be general, and did not show that the family was at particular risk.

2.4 Leave to appeal to the Migration Court of Appeal was denied to the complainants on 30 June 2008. No further appeal is possible.

The complaint

3.1 The complainants claimed that their forcible deportation to Libya by Sweden would amount to a violation of article 3 of the Convention. They invoked the pattern of gross, flagrant and mass human rights violations in Libya under the Qaddafi Government, including the systematic practice of torture by security forces. The complainants further claimed that they were at personal risk, as M.A.F. was previously tortured due to his family's political activism.

3.2 Following the removal of the Qaddafi Government and the establishment of the National Transitional Council, the complainants claim that their forcible deportation would still violate article 3 of the Convention. They invoke instability in the Abu Salim area of Tripoli, and the fact that Z.A.'s cousins fought on the side of Qaddafi during the revolt.

State party's observations on admissibility and the merits

4.1 On 26 February 2010, the State party submitted its observations on the admissibility and the merits. The State party acknowledges that all available domestic remedies have been exhausted. The State party considers that the complainants' assertion that they are at risk of being treated in a manner that would amount to a breach of the Convention fails to rise to the basic level of substantiation required for the purposes of admissibility and is thus inadmissible pursuant to article 22, paragraph 2, of the Convention. The State party refers, for this conclusion, to the Committee's jurisprudence³ and its arguments on the merits, set out below.

4.2 The State party notes that the allegations made by the complainants in their complaint to the Committee were thoroughly examined by the Swedish Migration Board and Migration Court, applying the same kinds of test as those applied by the Committee in its jurisprudence. The State party considers that the credibility that may be attached to an asylum seeker's statements is often of great significance to the assessment of the application, and that national authorities are in a very good position to estimate the credibility of a claim that a person would be at risk of treatment that would violate article 3 of the Convention, especially since they have personal contact with the asylum seeker. Before deciding on this case, the Migration Board conducted two interviews each with the main complainant and his wife, and the Migration Court held an oral hearing, which enhanced their ability to adequately assess the complainants' submissions.

4.3 Regarding the written evidence presented by the complainants to substantiate their claims, the State party notes that the complainants' identity documents were issued on the basis of photocopies of a "family book", with one of the documents dated 2004, despite the fact that it was issued in 2007. The State party considers that the documents are therefore inconclusive in determining the identity of the complainants. The State party further considers that the complainants' failure to provide a satisfactory explanation for not providing adequate identification documents weakens the general credibility of their submissions. In support of the claim that M.A.F. suffered a broken nasal bone as a result of having been subjected to violence by the Libyan police, the complainants submitted, in the national proceedings, a medical journal and a medical certificate from a Swedish doctor, both drawn up in January 2008. These documents do not indicate any connection between the alleged incident and the injury invoked and so do not, in the State party's view, substantiate the complainants' claim. In support of the claim that Z.A. lost a foetus as a result of being pushed by police, the complainants submitted a discharge sheet from a Libyan hospital, dated 3 December 2002. As far as the State party understands, this document does not establish any connection between the alleged incident and the loss of the foetus. In the State party's view, the written evidence adduced by the complainants is not such as to substantiate that they would risk being subjected to treatment contrary to article 3 of the Convention if returned to Libya.

4.4 The complainants have not presented any documents in support of their claim that the family was persecuted and harassed by the Libyan authorities for many years. Since the alleged persecution is said to have gone on for a long time, and involved the arrest,

³ See, for example, communication No. 216/2002, *H.I.A. v. Sweden*, decision adopted on 2 May 2003, para. 6.2.

supervision and interrogation on a regular basis of M.A.F., the State party considers that it could have been expected that some form of written evidence would have been presented in support of the claimants' account of events.

4.5 The State party considers that the complainants' oral and written submissions contain elements of vagueness and inconsistency. In particular, the complainants have failed to provide any explanation as to the nature of the activities of M.A.F.'s brother other than the assertion, which was not submitted until the oral hearing at the Migration Court, that he was contacted on a number of occasions by army officers who provided him with documents. The State party considers it highly improbable that the complainants would have no information about the political activities of M.A.F.'s brother if they had in fact led to the severe consequences described by the complainants.

4.6 The State party considers the complainants' submission as to how they were able to leave Libya in spite of the alleged persecution by the authorities to be vague and inconsistent. Before leaving Libya, the complainants claim to have received help from a man who informed them that M.A.F. was to be arrested before 1 September 2007. The complainants did not initially provide any information about this man, and claimed only at the oral hearing before the Migration Court that he was a friend of M.A.F.'s father, who is a retired colonel, without providing an explanation as to why the man had information about the alleged arrest warrant. The complainants submitted divergent information regarding a second man who helped them escape, claiming in a written submission by their counsel to the Migration Board of 19 September 2007 that he was an acquaintance of Z.A.'s parents, and in the interview by the Migration Board on 10 December 2007 that he was a relative of Z.A. In the written submission by the complainants' counsel to the Migration Board, it is claimed that the police, in connection with M.A.F.'s release from detention in 2006, told him to disappear from the country. The State party would therefore have expected the complainants to have been able to obtain authentic passports. The State party considers that the complainants have submitted vague and inconsistent information in important respects, without providing a satisfactory explanation, which weakens the credibility of their submissions.

4.7 The State party notes that the complainants, during the course of the procedure before the Swedish authorities, added allegations of significance to their application for asylum. It was not until the oral hearing at the Migration Court that the complainants claimed that M.A.F. was regularly subjected to interrogations during the period 2003-2006, that he was subjected to supervision and forced to sign documents on a regular basis for about four months in connection with his release from prison in 2006, and that a warrant for his arrest had been issued in March 2007 following his refusal to comply with the demands of the authorities from late 2006. The State party considers it improbable that the Libyan authorities would take so long to act on his refusal to obey them. Furthermore, in the written submission by the complainants' counsel to the Migration Board of 19 September 2007, it was stated that the Libyan police had not caused M.A.F.'s wife or children any physical harm, but in the appeal to the Migration Court of 9 January 2008, it was claimed that on 23 November 2002 Z.A. was pushed by police in a manner that caused her to lose the foetus she was carrying. The appeal also stated, in addition to what was submitted to the Migration Board, that the police beat M.A.F. on one occasion, causing him a broken nasal bone. The State party considers that the addition of allegations of importance subsequent to the Migration Board's decision to reject the complainants' applications, without a satisfactory explanation as to why this information was initially omitted, weakens the credibility of the complainants' submissions.

4.8 The State party further notes that the complainants' allegations before the Committee are not completely consistent with their statements to the Swedish migration authorities. Before the Committee, the complainants submit that M.A.F. was interrogated

by Libyan security services between January 2001 and November 2002, while they stated to the Swedish migration authorities that this took place for about three years until 2003.

4.9 The complainants allegedly left Libya in May 2007. The State party submits that if the Committee, contrary to the position of the State party, should find that the complainants have substantiated the reasons stated for leaving their home country, there is little to suggest that they would be of interest to the Libyan authorities if deported there now.

4.10 The State party takes the view that the evidence and circumstances invoked by the complainants do not suffice to show that the alleged risk of torture fulfils the requirements of being foreseeable, real and personal. Since the complainants' claim under article 3 fails to rise to the basic level of substantiation, the communication should be declared inadmissible as being manifestly unfounded.

Complainant's comments on the State party's observations

5.1 Prior to submitting his comments, the main complainant provided copies of records of medical visits and additional documents on 22 July 2010 and 2 November 2010.

5.2 On 10 January 2011, M.A.F. submitted his comments on the State party's observations. The complainant attached copies of some of the supporting documentation submitted to the Swedish Migration Board and Migration Court. Regarding the alleged inconsistencies and vagueness in the evidence provided to the Swedish authorities, M.A.F. states that he left Libya under very stressful circumstances where he was very afraid, and in such situations it is not uncommon for a person not to remember everything in detail. He further states that persons participating in political activities with the Libyan opposition have to be very careful, and under these circumstances it is quite natural that his brother did not tell even close relatives about his activities, particularly as he had contacts with and cooperated with army officers.

5.3 M.A.F. further referred to his family's two attempts to obtain residence in Norway and his efforts in travelling to Geneva as indicating that the complainants' fear of violence from the Libyan authorities was real and well grounded.

Additional comments by the parties

6.1 On 25 March 2011, the State party informed the Committee that, due to the security situation in Libya, Swedish authorities were not enforcing removals to the country, and requested that the communication be adjourned until further notice.

6.2 On 20 April 2012, M.A.F. provided additional information. He states that, while his initial claim concerned protection from the former Qaddafi Government, the complainants would still be at risk from the current Government. He notes that in March 2012, an armed clash occurred in the Abu Slem area in Tripoli, and an armed group kidnapped one of his brothers from his sister's house. The kidnappers informed M.A.F.'s family that they belonged to the military council, but the military council claimed not to have any knowledge of the event when contacted by the family. M.A.F. states that he and his family would be at risk of kidnap if deported to Libya. He further states that his house was destroyed in the civil war, that residents of the Abu Slem area of Tripoli, where he lived, are at particular risk of being killed or kidnapped, and referred to reports on the health situation in Libya, as well as the risk of rape. M.A.F. further states that his wife's cousins fought on the side of Qaddafi during the revolt, making her a target for revenge or torture.

6.3 On 10 May 2012, the State party provided additional information. The State party noted that, on 25 February 2010, M.A.F. submitted a new application to the Migration Board for re-examination of his case. M.A.F. claimed that the Libyan authorities subjected him to rape during his imprisonment in 2006, and submitted a copy of a medical journal

dated 23 February 2010 in support of his claim. On 9 July 2010, the Migration Board decided not to grant the complainant a new examination, holding that both the Migration Board and the Migration Court had found reason to question the credibility of his earlier submissions, and that this new claim was merely an addition to those submissions. M.A.F. did not appeal this decision, but subsequently submitted another new application to the Migration Board for re-examination of his case, which was rejected on 26 October 2010. The Migration Board held that, as there had been doubts regarding M.A.F.'s identity, the letter he had submitted from the General People's Committee for General Security summoning the complainant to the Department of Internal Security on 8 April 2008 could not be linked to him. Furthermore, the document was of a simple character and had been submitted only in copy, and so had limited value as evidence. The complainant appealed the Migration Board's decision to the Migration Court. He submitted a letter that he claimed was the original summons from the General People's Committee for General Security, but this letter differed in form and content from that submitted to the Migration Board. On 17 January 2011, the Migration Court rejected the complainant's appeal, holding that neither the Board nor the Court had found that the complainant had made his identity probable and that the document, given its simple character and the lack of details as to how the complainant had obtained it, lacked real value as evidence. On 24 February 2011, the Migration Court of Appeal decided not to grant leave to appeal.

6.4 On 16 September 2011, the complainants were registered by the Migration Board as having absconded.

6.5 The State party notes that the Director for Legal Affairs at the Migration Board issued "legal standpoints" concerning Libya on 21 February 2011, 17 June 2011 and 25 October 2011. The legal standpoint of 25 October 2011 states that there is no functioning system for taking reasonable and necessary measures to prevent people being persecuted or suffering serious harm in Libya. However, given the substantially improved security situation, it may be possible, relevant and reasonable for a person to seek refuge elsewhere in the country, depending on their individual situation. The standpoint identifies particularly vulnerable groups, including those who risk being accused of loyalty to the previous Qaddafi Government, and internally displaced persons belonging to particular minorities. The standpoint notes reports of tensions in Tripoli, notably in and around districts in Abu Slem traditionally loyal to Qaddafi. The State party considers that it is not likely that the alleged risk of torture and the alleged threat of reprisals against the complainants still exist. There is no information to suggest that the complainants belong to a group that is particularly vulnerable, and the level and intensity of violence in Libya are not such that the general security situation itself suffices to establish that removal of the complainants would breach the State party's obligations under article 3 of the Convention.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any complaint submitted 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 and is not being examined under another procedure of international investigation or settlement.

7.2 The Committee also notes the State party's confirmation, in its submission of 26 February 2010, that all domestic remedies have been exhausted pursuant to article 22, paragraph 5 (b).

7.3 The State party submits that the complaint is "manifestly ill-founded" and should not be examined on its merits. The Committee is of the opinion that the arguments before it

raise substantive issues which should be dealt with on the merits and not on admissibility considerations alone.

7.4 Accordingly, the Committee finds the communication admissible and proceeds to its consideration on the merits.

Consideration of the merits

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

8.2 The issue before the Committee is whether the expulsion of the complainants to Libya would constitute a violation of the State party's obligation 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 or she would be in danger of being subjected to torture.

8.3 Regarding the complainants' allegations under article 3, the Committee must take into account all relevant considerations, including the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such analysis is to determine whether the complainant runs a personal risk of being subjected to torture in Libya. 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 that a particular person would be in danger of being subjected to torture if expelled to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk.⁴

8.4 The Committee recalls its general comment No. 1 (1997) on the implementation of article 3 of the Convention,⁵ which states that the risk of torture need not be highly probable, but it must be personal and present. In this regard, the Committee has established in previous decisions that the risk of torture must be "foreseeable, real and personal".⁶ As to the burden of proof, the Committee also recalls that it is normally for the complainant to present an arguable case, and the risk of torture must be assessed on grounds that go beyond mere theory or suspicion.

8.5 Additionally, the Committee recalls that, in accordance with its general comment No. 1, considerable weight will be given to the State party's findings of fact, but the Committee is not bound by such findings and instead has the power of free assessment of the facts based upon the full set of circumstances in every case.

8.6 In assessing the risk of torture in the present case, the Committee notes that the complainants have submitted some documents in support of their initial claim that they would risk torture if returned to Libya under the Qaddafi Government. However, the complainants have submitted no evidence to support their claim that they would currently be in danger of being subjected to torture if returned to Libya, following the revolt and change in government. In his submission of 20 April 2012, M.A.F. referred to general instability in parts of Tripoli and the health situation in the country. He further stated that he

⁴ See communications No. 282/2005, *S.P.A. v. Canada*, decision adopted on 7 November 2006; No. 333/2007, *T.I. v. Canada*, decision adopted on 15 November 2010; and No. 344/2008, *A.M.A. v. Switzerland*, decision adopted on 12 November 2010.

⁵ *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr.1)*, annex IX.

⁶ See communications No. 203/2002, *A.R. v. Netherlands*, decision adopted on 14 November 2003, para. 7.3; No. 285/2006, *A.A. et al. v. Switzerland*, decision adopted on 10 November 2008, para. 7.6; and No. 350/2008, *R.T.-N. v. Switzerland*, decision adopted on 3 June 2011, para. 8.4.

and his family would risk kidnapping or torture if returned, in particular due to his wife's cousins having fought on the side of Qaddafi during the civil war, but provided no documentary evidence in support of these claims.

8.7 The Committee is aware of the human rights situation in Libya but considers that, in particular given the shift in political authority and the present circumstances, the complainants have not substantiated their claim that they would personally be at risk of being subjected to torture if returned to Libya.

8.8 The Committee considers, on the basis of all the information before it, that there is no ground to conclude that the complainants would face a foreseeable, real and personal risk of being subjected to torture if returned to Libya. The Committee therefore concludes that their removal to that country would not constitute a breach of article 3 of the Convention.

9. 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 complainant's removal to Libya by the State party would not constitute a breach of article 3 of the Convention.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]