



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

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Committee against Torture
Forty-third session
2–20 November 2009

Decision

Communication No. 348/2008

<i>Submitted by:</i>	Franklin Aboua Brou (not represented by counsel)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	20 July 2008 (initial submission)
<i>Date of decision:</i>	17 November 2009
<i>Subject matter:</i>	Risk of complainant's deportation to Côte d'Ivoire
<i>Substantive issues:</i>	Risk of torture following removal
<i>Procedural issues:</i>	None
<i>Articles of the Convention:</i>	3, 22

[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. 348/2008

Submitted by: Franklin Aboua Brou (not represented by counsel)

Alleged victim: The complainant

State party: Switzerland

Date of complaint: 20 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 17 November 2009,

Having concluded its consideration of complaint No. 348/2008, submitted to the Committee against Torture by Franklin Aboua Brou 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 complainant, Mr. Franklin Aboua Brou, an Ivorian national born on 27 December 1988, is currently awaiting deportation from Switzerland. He claims that his forced return to Côte d'Ivoire would be 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 On 31 July 2008 the Committee requested the State party not to expel the complainant to Côte d'Ivoire while his complaint was under consideration. On 4 August 2008 the State party acceded to this request.

The facts as submitted by the complainant

2.1 The complainant was born in Agou, in the department of Adzope, and lived there until he was 2 years of age. After the death of his mother, his father moved to Para, in the department of Tabou, on the Liberian border.

2.2 On 1 January 2003 Liberian rebels attacked Para and took the village's young men captive. The complainant was taken prisoner and was made to carry the property stolen by

the rebels. His father was killed while attempting to defend him. During his captivity the complainant was forced to take part in plundering and to work in the fields for the rebels.

2.3 One day, he was able to steal some money and escape. He crossed the border and returned to Para. The village's inhabitants reportedly attacked him, reproaching him for helping the rebels by taking part in the pillaging and destruction of their property and accusing him of being a rebel himself. They wanted to kill him, and reported him to the loyalist soldiers stationed in the village. On 24 December 2004 the village chief issued an order requesting the complainant to leave the village, barring which he would be prosecuted. The complainant therefore fled, walking 100 kilometres before being picked up by a vehicle and continuing on to San Pedro. There, a person helped him find a boat to leave the country. He arrived in Switzerland, where he applied for asylum on 31 March 2005.

2.4 On 6 May 2005 the Federal Office for Migration (ODM) rejected his asylum request, as the persecution to which the complainant had allegedly been subjected by Liberian rebels came at the hands of third parties who moreover were foreigners, and the Ivorian authorities could not be held responsible. Furthermore, ODM challenged the complainant's allegations. Specifically, it considered it unlikely that villagers who were present when the complainant was abducted in January 2003 would accuse him of working for the rebels and chase him out of the village while reporting him to the armed forces stationed there. As for the risk of persecution by the army, ODM considered the risk low, considering that the complainant was young, was not politically active and was unknown to the authorities. ODM concluded that, although a minor, the complainant could be sent back to Côte d'Ivoire, considering the fact that since his father's death he had been able to take care of himself, had arranged for travel to Switzerland, spoke several languages and was apparently independent and mature for his age.

2.5 On 16 June 2008 the complainant's appeal was rejected by the Federal Administrative Tribunal, which agreed with the assessment made by ODM. Furthermore, the Tribunal noted that the complainant could name administrative units only around Agou, a town that he claimed to have left at the age of 2, but was unable to name any near Para, where he had supposedly spent most of his life. It thus concluded that the complainant had apparently not lived in the south-west of the country. It added that Côte d'Ivoire was not generally in a situation of war, civil war or generalized violence throughout its territory, and consequently observed that the complainant could be sent back to Abidjan.

The complaint

3. The complainant believes that he will be tortured or subjected to inhuman or degrading treatment by Ivorian soldiers, Liberian rebels or the inhabitants of Para, in violation of article 3 of the Convention.

State party's observations on admissibility and on the merits

4.1 On 29 January 2009, the State party submitted its observations on the merits. It maintains that the complainant does not provide any new evidence calling into question the decisions made by the domestic bodies.

4.2 The State party maintains that Côte d'Ivoire is not in a situation of generalized violence throughout its territory and that the crisis that separated the country into two regions between 2002 and 2007 was resolved by means of a peace agreement signed in March 2007. The State party refers to the observations made by the Federal Administrative Tribunal on 16 June 2008, in which it concludes that, taking into account the positive changes that have taken place in Côte d'Ivoire, and in spite of the fact that the complainant reportedly claims that he has not lived in Abidjan, the file does not contain any elements

indicating that the complainant's return would actually put him in danger or that he has no family members in Abidjan who can help him upon his return.

4.3 The State party also maintains that the complainant did not at any point during the proceedings claim to have been tortured or maltreated in the past.¹ It adds that any persecution to which the complainant may have been subjected was the work of foreign third parties, and the Ivorian authorities could not be held responsible for the acts of such parties. As the Liberian rebels have not been active in Côte d'Ivoire since 2003, the State party asserts that future persecution of the complainant is unlikely.

4.4 With regard to the new evidence submitted to the Committee by the complainant, the State party asserts that these documents were not submitted during the proceedings before the domestic bodies, even though they are dated 2003 and 2004. Moreover, it adds that they contain clear contradictions of the facts as submitted by the complainant, as well as spelling errors. The certificate of displacement issued by the Red Cross is dated 11 October 2003 and the order to leave the village of Para, issued by the village chief, is dated 24 December 2004; however, the complainant reportedly maintained that he was held by Liberian rebels for about a year and a half following his abduction at the beginning of 2003, which is to say until February or March 2005. The State party recalls that, according to its general comment No. 1, considerable weight is to be given by the Committee to the conclusions of the organs of the State party.² It emphasizes that the domestic bodies concluded that there were no substantial grounds for believing the complainant would be at risk of torture, and that the complainant did not address the reasons that led the authorities of the State party to deny the existence of a genuine and serious risk of torture.

4.5 Furthermore, the State party asserts that the complainant has never claimed to have been politically active.³ It also asserts that the complainant was unable to provide precise and detailed information proving his allegations.⁴ The domestic bodies held that it was incomprehensible that villagers who were present when the complainant was abducted should, upon his return, have rejected him as a traitor and reported him to the soldiers. The State party adds that the army had no reason to persecute the complainant, an unassuming young man who is not politically active. The State party emphasizes, moreover, that the complainant has not managed to present a plausible case that he has lived in the region and, instead, has mentioned the names of villages located on the border with Ghana. Lastly, the State party maintains that, even if the allegations of the complainant were credible, according to the Committee's consistent jurisprudence, article 3 of the Convention offers no protection to a complainant who alleges a fear of being arrested on his or her return.

Comments by the complainant on the State party's observations

5. On 5 April 2009, the complainant reiterated his account of the facts as submitted, adding that the western region of Côte d'Ivoire is still unstable owing to frequent incidents involving Liberian rebels who cross the border illegally to commit abuses. He emphasizes that he has been seriously traumatized by the killing of his father, which he says explains the discrepancies and contradictions in his account. He adds that the villagers consider him to be a foreign rebel and that he would be persecuted not only by third parties, but also by Ivorian government officials. He maintains that he has substantiated his claims with

¹ A/53/44, annex IX (21 November 1997), paras. 8 (a) and (b).

² A/53/44, annex IX (21 November 1997), para. 9 (a).

³ A/53/44, annex IX (21 November 1997), para. 8 (e); see communication No. 34/1995, *Seid Mortesa Aemei v. Switzerland*, Views adopted on 9 May 1997.

⁴ A/53/44, annex IX (21 November 1997), para. 8 (g).

documents from his country and that the State party has assessed them in a subjective manner.

Issues and proceedings before the Committee

Consideration of admissibility

6. Before considering any claim contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement. The Committee notes furthermore that domestic remedies have been exhausted and that the State party does not contest the admissibility. Accordingly, the Committee considers the complaint admissible and proceeds to its consideration of the merits.

Consideration of the merits

7.1 The issue before the Committee is whether the removal of the complainant to Côte d'Ivoire 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 or she would be in danger of being subjected to torture.

7.2 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 this assessment, however, is to determine whether the individuals concerned would personally risk torture in the country to which they 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 as such 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 complainant would be personally at risk. Similarly, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person may not be subjected to torture in his or her specific situation.

7.3 The Committee recalls its general comment on article 3, as well as its jurisprudence, according to which it 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 or she to be expelled, returned or extradited, and the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. The risk does not have to meet the test of being highly probable, but the complainant must establish that the grounds for believing there is such a danger are substantial and that such danger is personal and present.⁵

7.4 In the present case, the complainant asserts that he runs the risk of being tortured by Liberian rebels in Côte d'Ivoire, by villagers in Para and by the authorities who may be informed of his case. The Committee notes that, according to the State party, the complainant's account is improbable, that he has not claimed to have been politically active, nor to have been subjected to torture, and that it is unlikely that he will be persecuted by the authorities. The Committee observes that, since the peace agreement in Côte d'Ivoire, there has been no generalized violence in the country, nor are there consistent, gross, flagrant or mass violations of human rights. It observes moreover that the complainant's allegations are merely theories and that the risk posed by Liberian rebels and

⁵ A/53/44, annex IX (21 November 1997), paras. 6–7.

by the villagers, apart from being unlikely, cannot be attributed to the Ivorian authorities. With regard to the risk of torture by the authorities, the Committee notes the absence of objective evidence pointing to the existence of such risk other than the complainant's own account. It also notes that the complainant has at no time sought the protection of the Ivorian authorities.

7.5 The Committee considers that, based on all the information submitted, the complainant has not provided sufficient evidence to allow it to consider that his return to Côte d'Ivoire would put him at a real, present and personal risk of being subjected to torture.

8. 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 Côte d'Ivoire 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.]
