



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

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## Committee against Torture

### Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 683/2015\*, \*\*

<i>Communication submitted by:</i>	I.E. (represented by counsel, Tarig Hassan)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	26 May 2015 (initial submission)
<i>Date of present decision:</i>	14 November 2017
<i>Subject matter:</i>	Deportation to the Sudan
<i>Procedural issue:</i>	Non-substantiation of claims
<i>Substantive issue:</i>	Risk of torture if deported to country of origin (non-refoulement)
<i>Article of the Convention:</i>	3

1. The complainant is I.E., a national of the Sudan born in Ashaba, Darfur, on 12 March 1983. He filed an application for asylum in Switzerland, but it was rejected. He is the subject of a deportation order to the Sudan.<sup>1</sup> The complainant claims that his forcible removal would constitute a violation by Switzerland of article 3 of the Convention. Switzerland made the declaration under article 22 of the Convention on 2 December 1986. The complainant is represented by counsel, Tarig Hassan.

1.2 On 29 May 2015, the Committee, acting through its Rapporteur on new complaints and interim measures, asked the State party not to expel the author while the complaint was being considered. On 2 June 2015, the State party informed the Committee that the complainant's removal had been suspended pending consideration of his complaint.

#### The facts as presented by the complainant

2.1 The complainant states that, in 2002, the Janjaweed militia attacked and burned down his village, forcing its residents, including the complainant, to flee. He went first of all to Khartoum.<sup>2</sup> One year later, he went to the village of Tawilah, Darfur, where he

\* Adopted by the Committee at its sixty-second session (6 November–6 December 2017).

\*\* The following members of the Committee participated in the examination of the communication: Essadia Belmir, Alessio Bruni, Felice Gaer, Abdelwahab Hani, Claude Heller-Rouassant, Jens Modvig, Ana Racu, Sébastien Touzé and Kening Zhang.

<sup>1</sup> On 1 April 2015, the State Secretariat for Migration of Switzerland ordered the complainant to leave Switzerland no later than 29 April 2015.

<sup>2</sup> The complainant does not provide any further details regarding this event, including whether he, a child at the time, fled alone or with his family.



worked as a vendor and in agriculture. In 2004, Janjaweed and other Arab militias attacked Tawilah, killing some of its inhabitants and their livestock. The complainant managed to flee, along with his brother, who had been wounded in the attack. They walked for about 90 minutes until State officers, passing by in an official car, arrested them and took them to prison.<sup>3</sup>

2.2 The complainant claims that, while in custody, he was interrogated several times and accused of supplying weapons to the Fur ethnic group, to which he belongs. He suffered a broken hand and a broken leg while in detention.<sup>4</sup> The complainant was released after six months of detention. Sometime afterwards, he left the Sudan and travelled through Libya and Italy, arriving in Switzerland on 11 July 2005. On 12 July 2005, the complainant submitted his first asylum application.

2.3 On 25 September 2006, the complainant's asylum application was rejected by the former Federal Office for Migration (now the State Secretariat for Migration), which considered that his assertions were implausible. On 24 October 2006, the complainant contested the Federal Office for Migration's decision; his appeal was rejected by the Federal Administrative Court on 16 December 2009.

2.4 On 31 January 2014, the complainant submitted a second asylum application, alleging that he had built up a political profile while in Switzerland as he had become both a member and the secretary for social and media affairs of the Swiss branch of the Justice and Equality Movement, a Sudanese opposition group. On 5 February 2015, the State Secretariat for Migration rejected the complainant's second asylum application. It considered that his activities as the secretary for social and media affairs of the Justice and Equality Movement were not sufficient to attract the interest of the Sudanese authorities. According to the State Secretariat for Migration, the complainant does not have a distinguishable political profile, as he is merely one of many supporters of the Justice and Equality Movement. Even if the Sudanese authorities were to note his presence, they would not be interested in him. Instead, his activities gave the impression that his aim was to remain in Switzerland, rather than to oppose the Government of the Sudan. On 13 February 2014, the complainant was arrested by the cantonal police and brought to the Federal Office for Migration in order to acquire official documents. In this context, he claims that his identity was revealed to the Sudanese embassy.

2.5 The complainant appealed against the State Secretariat for Migration's decision before the Federal Administrative Court. The Court upheld the State Secretariat for Migration's decision, rejecting the complainant's appeal on 26 March 2015. The Court considered that the Sudanese authorities would be interested in Sudanese nationals whose political activities distinguished them from the rather anonymous circle of mere participants in political events. In the Court's view, the complainant failed to demonstrate that he had a distinguishable profile of an exiled activist who would be perceived by the Sudanese authorities as a danger, as he only joined the Swiss branch of the Justice and Equality Movement in July 2012 (a fact confirmed in January 2013).<sup>5</sup> The Court considered that the Justice and Equality Movement provided two letters attesting to his membership as a matter of courtesy, given that they were issued only two months after the complainant became a member. The Court also considered that the photographs provided by the complainant portraying him in the company of high-profile members of the Justice and Equality Movement at an international conference appeared to have been taken before the conference started, as the cadre activists and audience members are not in any of the photographs with the complainant. Therefore, he was not exposed to the attention of the Sudanese authorities. The Court further considered that the complainant was not politically active while in the Sudan and that he had become a member of the Swiss branch of the Justice and Equality Movement with a view to obtaining residence in Switzerland.

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<sup>3</sup> The communication does not include any details regarding the arresting officers.

<sup>4</sup> The communication does not indicate how these injuries were sustained, but it suggests that they resulted from the treatment the complainant suffered in prison.

<sup>5</sup> The complainant has allegedly held the position of secretary for social and media affairs of the Swiss branch of the Justice and Equality Movement since January 2013.

2.6 The complainant asserts that he has been a very active and prominent member of the Swiss branch of the Justice and Equality Movement for nearly three years. Contrary to the opinion of the Court, he cannot be qualified as a mere participant in the various activities of the Justice and Equality Movement. Having attended and been photographed at several conferences, the complainant has most certainly come to the attention of the Government of the Sudan. He claims that his political involvement is genuine. After the rejection of his first asylum request, he had gone into hiding out of fear of being removed to the Sudan. Despite his illegal residence, he nevertheless decided to join the Swiss branch of the Justice and Equality Movement, demonstrating his commitment to its cause.

2.7 The complainant fears that, as a non-Arab from Darfur belonging to a subsection of the Fur ethnic group, whose members are represented in the Justice and Equality Movement, he faces particular danger of persecution by the Sudanese authorities. He submits that, in its judgment No. E-1979/2008,<sup>6</sup> the Federal Administrative Court recognized that those Sudanese nationals returned to the Sudan after a long stay abroad generally faced interrogations and questioning by the Sudanese intelligence service about possible contacts with opposition groups in exile.

### **The complaint**

3.1 The complainant submits that, if returned to the Sudan, he would face a real risk of torture by the Sudanese authorities, based on his membership and political function as secretary for social and media affairs of the Swiss branch of the Justice and Equality Movement. He claims that the State party would be acting in violation of article 3 of the Convention should he be removed to the Sudan.

3.2 The complainant contends that the Federal Administrative Court failed to take into account most of the evidence he submitted to establish that he had a high political profile that would put him at risk of torture if returned to the Sudan.<sup>7</sup> He claims to have informed the Swiss authorities about the multiple tasks he undertakes as secretary for social and media affairs, including informing newly arrived Sudanese nationals about the Justice and Equality Movement and participating in and organizing its meetings and international conferences.

3.3 To support his claims of political activism in Switzerland, he submitted two letters from the Justice and Equality Movement attesting to his status as a member,<sup>8</sup> a copy of his Justice and Equality Movement membership card, the report on the hearing of 18 November 2014 and photographs of him accompanied by several leading members of the Movement, taken at a meeting of the Movement at the Volkshaus in Zurich and at the headquarters of Geneva Call. There are substantial grounds to believe that he would be at real risk if he were to be returned to the Sudan, in particular given that the State Secretariat for Migration revealed his identity and political activities to the Sudanese authorities.

3.4 He claims that, if his interest in politics were not genuine, he would have avoided activities that enabled the Swiss authorities to ascertain his whereabouts. Moreover, the Justice and Equality Movement's letters were not issued out of courtesy, since the organization does not accept individuals who they do not consider to be genuinely politically engaged. In this regard, he submits that the Movement is very concerned about being infiltrated by informants working for the Sudanese authorities.

3.5 The complainant submits that the Sudanese authorities have intensified their crackdown on political activists, in particular those from Darfur.<sup>9</sup> He asserts that prison

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<sup>6</sup> See Switzerland, Federal Administrative Court, judgment No. E-1979/2008 of 31 May 2013, para. 10.5.

<sup>7</sup> According to the letter issued by the London branch of the Justice and Equality Movement, the complainant became a member in July 2012.

<sup>8</sup> The complainant provided copies of two letters issued by the London and Swiss branches of the Justice and Equality Movement.

<sup>9</sup> The complainant quotes from Amnesty International, "Darfur crisis reaches Sudanese capital"; and the United States of America, Department of State, 2008 Country Reports on Human Rights Practices: Sudan.

conditions in the Sudan are very bad and that prisoners are frequently mistreated.<sup>10</sup> He also points to the jurisprudence of the European Court of Human Rights, according to which anyone who opposes or is suspected of opposing the current Sudanese regime is at risk of being detained, ill-treated and tortured in the Sudan, even if they are not leaders of or high-profile figures within political movements.<sup>11</sup> This risk may increase if the person has spent a significant period of time abroad.<sup>12</sup> As a supporter of the Justice and Equality Movement and an active member of its Swiss branch who remained abroad for over 10 years, the complainant claims to have a well-founded fear of being apprehended upon his return to the Sudan and subjected to torture or other inhuman or degrading treatment.

3.6 The complainant submits that he has exhausted all available domestic remedies, given that the Federal Administrative Court, as a specialized court, is the final national authority in asylum matters. Moreover, the present communication has not been and is not being examined under any other procedure of international investigation or settlement.

#### **State party's observations on the merits**

4.1 On 27 November 2015, the State party submitted observations on the merits of the communication. It draws the Committee's attention to the fact that, on 4 March 2010, the complainant lodged an application with the European Court of Human Rights relating to the Federal Administrative Court judgment of 16 December 2009. The European Court did not grant the application suspensive effect and declared it inadmissible as it was manifestly ill-founded.

4.2 With regard to the decisions on the first and second asylum applications, the State party submits that the claims of a risk of persecution upon removal of the complainant to the Sudan have been carefully considered by both the State Secretariat for Migration and the Federal Administrative Court. It holds that the present complaint to the Committee does not contain any new claims or evidence.

4.3 The State party indicates that its authorities duly considered whether the complainant would face a foreseeable, real and personal risk of torture if he were to be removed to his country of origin and concluded that his removal to the Sudan would not constitute a violation of article 3 of the Convention.

4.4 The State party recalls the Committee's jurisprudence to the effect that occurrence of flagrant and systematic violations of human rights in the country of origin cannot, of itself, constitute a sufficient reason to conclude that the complainant would be at risk of being subjected to torture upon return to his country of origin. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his specific particular circumstances.<sup>13</sup> According to the State party, the Sudan does not currently face a situation of generalized violence. As stated in the Federal Administrative Court judgment of 26 March 2015, the situation of civil war and of generalized violence does, however, apply in Darfur. In addition, there are armed conflicts in Southern Kordofan and Blue Nile State. The State party refers to the Federal Administrative Court jurisprudence, in which it accepts internal relocation within the Sudan, in particular as protection can be obtained from the authorities in the Khartoum region.

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<sup>10</sup> See Amnesty International, "Darfur crisis reaches Sudanese capital".

<sup>11</sup> See, for example, European Court of Human Rights, *A.A. v. Switzerland* (application No. 58802/12), judgment of 7 January 2014, para. 40. In addition, the United Kingdom Border Agency found that "all non-Arab Darfuris, regardless of their political or other affiliations, are at risk of persecution in Darfur and cannot reasonably be expected to relocate elsewhere in the Sudan. Therefore, claimants who do not fall within the exclusion clauses are likely to qualify for asylum".

<sup>12</sup> The European Court of Human Rights quoted a judgment handed down by the Federal Administrative Court of Switzerland that cited country reports establishing that "Sudanese nationals who were returning to their home country after having stayed abroad for some time were likely to be interrogated by the Sudanese authorities, who would specifically question them about their contacts with opposition movements abroad". See *A.A. v. Switzerland*, para. 30.

<sup>13</sup> See, for example, *N.S. v. Switzerland* (CAT/C/44/D/356/2008), para. 7.2.

4.5 The State party submits that, in its judgment in *A.A. v. Switzerland*,<sup>14</sup> the European Court stated that the security and human rights situation in the Sudan was alarming and that it had further deteriorated. However, the European Court considered that, even in such circumstances, the complainant had to substantiate to the national asylum authorities that his or her treatment following removal to the Sudan would be incompatible with article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The European Court conceded that members of the political opposition, individuals suspected of contacts with rebel groups in Darfur, students, journalists and defenders of human rights were particularly vulnerable, while all persons opposing or suspected of opposing the current regime were generally at risk.<sup>15</sup> In the European Court's view, the Government of the Sudan also monitored the activities of the opposition abroad.

4.6 The State party refers to various background reports on the situation of human rights in the Sudan that indicate, among other things, that the Government of the Sudan does not investigate cases of torture or excessive use of force by security agents,<sup>16</sup> that the Sudanese authorities are generally concerned only about activities considered to be significantly harmful to their interests and that they will not be concerned about a person who has merely claimed asylum abroad.<sup>17</sup> The reports also indicate that the National Intelligence and Security Service has continued to arbitrarily arrest and detain perceived opponents of the ruling National Congress Party.<sup>18</sup> Nonetheless, in reference to the current situation in the country, the State party argues that the complainant has not demonstrated that he would face a personal risk of being subjected to torture if returned to the Sudan.<sup>19</sup>

4.7 Concerning the complainant's claims that he was subjected to torture and ill-treatment, and that his hand and leg were broken while in detention in the Sudan, the State party submits that he did not describe the circumstances surrounding that incident and did not submit any supportive evidence in that regard. During the first asylum procedure, the Federal Office for Migration and the Federal Administrative Court carefully examined the complainant's allegations, which they did not find credible. During the second asylum procedure, the complainant simply reiterated previous claims, without producing any new evidence.

4.8 As asserted by the complainant, he only established contact with the Justice and Equality Movement in Switzerland and became engaged in politics following the conclusion of the first asylum procedure. He did not claim that he had been politically active prior to leaving the Sudan,<sup>20</sup> nor did he attract any adverse attention from the Sudanese authorities when in the Sudan. Following the first asylum procedure, the Swiss asylum authorities concluded that the allegations relating to his detention in the Sudan did not seem to be credible.<sup>21</sup> It would appear that the European Court of Human Rights shared that view.

4.9 The national asylum authorities found that the complainant's membership of, alleged activities relating to and purported service as secretary for social relations and media affairs of the Swiss branch of the Justice and Equality Movement did not result in his building up a profile that would entail a risk of persecution. The complainant himself has admitted that he

<sup>14</sup> See *A.A. v. Switzerland*, para. 40.

<sup>15</sup> See also European Court of Human Rights, *A.F. v. France* (application No. 80086/13), judgment of 15 January 2015, para. 49; and European Court of Human Rights, *A.A. v. France* (application No. 18039/11), judgment of 15 January 2015, paras. 55 and 56.

<sup>16</sup> See the United States of America, Department of State, 2014 Country Reports on Human Rights Practices: Sudan, available at <https://www.state.gov/j/drl/rls/hrrpt/2014/af/236410.htm>.

<sup>17</sup> See the United Kingdom, Home Office, *Country information and guidance — Sudan: Treatment of persons involved in "sur place" activity in the UK*, August 2015, p. 8.

<sup>18</sup> See Amnesty International, *Amnesty International Report 2014/15: The State of the World's Human Rights*, p. 346, available at <https://www.amnesty.org/en/documents/pol10/0001/2015/en/>.

<sup>19</sup> See *Switzerland*, Federal Administrative Court, judgment of 26 March 2015, p. 9; and *Switzerland*, State Secretariat for Migration, decision of 5 February 2015, pp. 3 and 4.

<sup>20</sup> Neither before the national asylum authorities, nor before the Committee.

<sup>21</sup> See *Switzerland*, Federal Office for Migration, ruling of 25 September 2006, para. I.1; and *Switzerland*, Federal Administrative Court, judgment of 16 December 2009, para. 4.3,

did not hold a high-ranking management post within the Movement<sup>22</sup> and that he was not the only person in charge of media affairs. The use of the title of “secretary” suggests a general role, not requiring specific qualifications or a high level of engagement. According to the State party, the author described his role in vague terms, claiming that he took part in numerous meetings and conferences, of which only two were documented by photographs. He only had contact with the secretary-general of the Justice and Equality Movement in London on one occasion, despite claiming that he was frequently in contact with senior members of the Justice and Equality Movement and that he regularly disseminated information to new arrivals from the Sudan. The State party claims that, unlike the author of the European Court of Human Rights application *A.A. v. Switzerland*, the complainant did not have a particularly extensive or long-established political profile, neither was he directly exposed to or in contact with the Sudanese authorities. The European Court judgment in question is based on specific circumstances and cannot be used as a basis for concluding that all Sudanese nationals engaged in political activity in Switzerland would face a personal risk of being tortured if returned to the Sudan, whatever the nature, extent and duration of their alleged political engagement.

4.10 The State party maintains that the specific circumstances of the complainant’s case have been duly considered by the State Secretariat for Migration.<sup>23</sup> It appears that, following the rejection of his first asylum application, the complainant tried to build up a political profile in order to obtain residency. The aim of his alleged political activities was to influence the Swiss authorities rather than to have an impact on the situation in the Sudan. That is why the complainant indicated in his second asylum application that he gained a political profile following the rejection of his first asylum application. The State party therefore considers that the description of his activities is exaggerated and unsubstantiated.

4.11 The complainant does not justify his claim that his political profile is such that it would make him a target of persecution. The State party asserts that the Sudanese authorities are able to distinguish between the many Sudanese nationals who participate in protests around Europe in order to obtain residence permits and true political activists opposing and possibly representing a danger to the regime and who attracted the attention of the Sudanese authorities prior to their departure from the Sudan. The State party contends that the identity of the complainant was not disclosed to the Sudanese authorities when he requested his documents, since he did not speak Arabic or English in the presence of the delegation of the Sudan. Therefore, the State party does not consider it to be probable that the complainant would be identified upon his return to the Sudan.

4.12 The evidence submitted by the complainant could not lead to a different assessment. He presented two letters from Abdulrahman Sharafedin, dated 25 March 2013, according to which he was an “active member”, “strong supporter” and “highly qualified member” of the Justice and Equality Movement. The Federal Administrative Court observed that those letters had been produced immediately after the complainant joined the Movement at the end of January 2013 and considered that they had been issued as a matter of courtesy.<sup>24</sup> Neither the letter from Ahmed Atim, of 13 March 2013, attesting to the complainant’s membership of the Justice and Equality Movement, nor the complainant’s Justice and Equality Movement membership card, if genuine, could be considered as evidence that he would be at particular risk of ill-treatment if returned to the Sudan. Moreover, the Federal Administrative Court considered that the two photographs of the complainant participating in Justice and Equality Movement meetings at the Volkshaus in Zurich, on 26 November 2013, and at the headquarters of Geneva Call, on 25 February 2014, were taken privately and did not confirm that the complainant was a particularly high-profile member of the Movement. The complainant himself has confirmed that the photograph of him with the media secretaries, Tom Hajo and Jibril Ibrahim, had been taken prior to the arrival of the public. The other photograph of him taken from the audience shows that the seat next to the secretary for social and media affairs was not reserved for the complainant. The State party submits that none of the photographs portrays the complainant with the public and that the

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<sup>22</sup> See Switzerland, Federal Administrative Court, judgment of 9 March 2015, p. 5.

<sup>23</sup> See Switzerland, State Secretariat for Migration, decision of 5 February 2015, p. 3.

<sup>24</sup> See Switzerland, Federal Administrative Court, judgment of 26 March 2015, p. 7.

images of him were taken during the meetings of a small committee and only in the presence of a few individuals. Moreover, the complainant himself stated that he did not take the floor at the meeting held at the Volkshaus. Instead, he claimed to have helped to organize the meeting and to contact the leaders of the Sudanese Revolutionary Front.

4.13 The State party recalls that the Federal Office for Migration and the Federal Administrative Court concluded during the first asylum procedure that the complainant's allegations of his detention in the Sudan were not credible. According to the Federal Administrative Court, the information provided by the complainant on his Justice and Equality Movement role and activities was unconvincing. As part of the second asylum application, the complainant indicated that he had been a member of the Movement since late January 2013. However, Mr. Sharafedin's letter of 25 March 2013 stated that the complainant had been a member of the Movement since 15 July 2012. The State party holds that the complainant has never provided clarification in that regard.

4.14 The State party maintains that the national authorities have carefully assessed the alleged risk of persecution in case of the complainant's return to the Sudan and that no new allegations or evidence were submitted which could put the conclusion drawn into question. Referring to the conclusions of the two asylum procedures, the State party claims that considerable weight should be given to the findings of fact that were made by the organs of the State party concerned, unless the appreciation of facts or evidence were manifestly arbitrary or amounted to a denial of justice.<sup>25</sup> In this case, the complainant did not submit that the national asylum proceedings suffered from any such irregularities. Moreover, the decision on the forcible removal of the complainant to the Sudan is in line with the general practice of the Swiss authorities with regard to persons who claim to have carried out political activities in Switzerland prior to their removal.

4.15 In conclusion, the State party reiterates that there are no substantial grounds for believing that the complainant would face a foreseeable, real and personal risk of being subjected to torture or ill-treatment if returned to the Sudan. Consequently, the State party requests the Committee to find that the complainant's removal to the Sudan would not amount to a violation of article 3 of the Convention by Switzerland.

#### **Complainant's comments on the State party's observations**

5.1 On 31 March 2016, the complainant submitted his comments in response to the State party's observations, in which he describes a confrontation between himself and a guard while in detention. The guard insulted the complainant, who retaliated by trying to attack the guard. Subsequently, the guard left the scene to search for a rifle and, when he came back, hit the complainant over the legs. The complainant suffered from severe pain thereafter. In addition, the complainant was taken to a nearby office, where he was repeatedly beaten. As to his allegations in that regard, the complainant refers to the report of an oral hearing of 28 March 2006 held during the first asylum procedure.

5.2 The complainant confirms the State party's claim that he was not politically active prior to his departure from the Sudan. However, he disputes the assertion that he was never in conflict with the authorities, as he was detained for six months and described the circumstances of that incident in detail; testimony that he considers attests to the credibility of his allegations. He submits that the differences between first and second asylum hearings should be considered carefully, in order not to be interpreted to the detriment of the asylum seeker concerned.<sup>26</sup> The complainant asserts that he described in detail the prison cell where he was interrogated. The more detailed descriptions furnished during the second asylum hearing should be considered as additional precisions rather than discrepancies. The complainant submits that the purpose of the first asylum interview is rather general, as it is meant to be an opportunity to provide information on identity, journey of arrival, etc. The complainant explains that he was not able to describe the medical treatment received by his injured brother while in prison since it was provided away from the complainant's cell. He

<sup>25</sup> See, for example, *J.A.M.O. v. Canada* (CAT/C/40/D/293/2006), para. 10.5; and *Kititi v. Morocco*, (CAT/C/46/D/419/2010), para. 8.7.

<sup>26</sup> See European Court of Human Rights, *M.A. v. Switzerland* (application No. 52589/13), judgment of 18 November 2014, para. 60.

refuted the State party's claims that his allegations were not credible as they lacked detail and objected to the lack of sensitivity towards cultural differences relating to communication in the Sudan and in Switzerland.

5.3 As regards the national asylum authorities' considerations that it was improbable that the complainant would have been released in the given circumstances, in particular as he threatened to kill the guard during their fight, the complainant accepts that the State party is probably correct in assuming that the circumstances of his release were atypical. He admitted that the reasons for his release from detention were unclear. Since he was not politically active, there was no real reason to keep him in detention. However, it cannot be concluded from the unclear circumstances surrounding his release that his detention in the Sudan lacks credibility. On the contrary, the complainant maintains that the circumstances of his detention in the Sudan have been described in a credible and coherent way, that his account of events did not contain any discrepancies and that the Sudanese authorities definitely know his identity.

5.4 Regarding his political activities in Switzerland, the complainant refers to the jurisprudence of the European Court of Human Rights in *A.A. v. Switzerland*, according to which the situation of political opponents to the Government of Sudan remains precarious. He claims that it is not only individuals with a particular profile who are at risk, but all persons who oppose or who are perceived as opposing the current regime.<sup>27</sup> The Federal Administrative Court of Switzerland confirmed such an interpretation in its judgment of 27 January 2016 relating to another case involving similar circumstances.<sup>28</sup> The complainant claims that the facts in his case are similar and that his political activities have been even more visible. More specifically, he is not only the vice-secretary but the main secretary for social and media affairs and the secretary of the Swiss branch of the Justice and Equality Movement. In this regard, the complainant refers to his oral hearing of 19 November 2014, during which he described his role, contacts and supporting evidence, including the letters of support and photographs of him participating in meetings of the Justice and Equality Movement. However, he submits that the regularity and frequency of his political activities cannot be effectively supported by evidence.

5.5 The complainant also objects to the State party's claim that he engaged in politics in order to obtain a Swiss residence permit, arguing that the types of activities he carried out were regularly monitored by the Sudanese National Intelligence and Security Service.<sup>29</sup> Therefore, he fears that he faces a risk of being followed and monitored. In the light of his participation in Justice and Equality Movement conferences and his media role within the Movement, the arguments of the State party should be viewed as being erroneous. He claims that the Federal Administrative Court had stated in the above-mentioned decision relating to a case involving similar circumstances that nationals of the Sudan returned to their country of origin after several years (the complainant had lived abroad for almost 11 years at the time of submission of his comments) were generally interrogated by the security authorities of the Sudan. It had also stated that persons who had been in contact with one of the opposition groups in Geneva and who had been politically engaged against the Government of the Sudan were most probably monitored by the Sudanese security authorities. Accordingly, the complainant claims that individuals who are in a similar situation will be arrested and detained by the authorities upon return to the Sudan. He concludes that the fact that he was not in direct contact with the Sudanese authorities is irrelevant.

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<sup>27</sup> See *A.A. v. Switzerland*, para. 40. This jurisprudence was confirmed in *A.F. v. France*, para. 49.

<sup>28</sup> In its judgment No. E-678-2012 of 27 January 2016, the Federal Administrative Court of Switzerland stated that, even though the complainant concerned did not have a high political profile, he was the vice-secretary for media of the Justice and Equality Movement. The Court concluded that, given that fact, it was likely that he had come to the attention of the Sudanese authorities (p. 13). The Federal Administrative Court further held that the Justice and Equality Movement was one of the major rebel organizations operating in the Sudan and that the Sudanese authorities used every means to combat it (p. 14).

<sup>29</sup> See, for example, Switzerland, Federal Administrative Court, judgment No. E-1979/2008 of 31 May 2013, para. 10.5.



5.6 Lastly, the complainant reiterates that his account of the circumstances of his detention was accurate and that his Justice and Equality Movement role and activities should be considered as being credible. As regards the date of his admission to the Movement, during the oral hearing of 18 November 2014, he stated that he became a member around 2013. Subsequently, he has continuously stated that he became a member in July 2012. He implies that no contradiction exists in that regard. As to the photographs attesting to his presence at the Movement's meetings, the complainant admits that the images portray him at the meetings of small committees with limited participation. However, his high profile enables him to participate in meetings open only to high-level members of the Movement. This fact actually exposes him to the risk of surveillance by the Sudanese authorities. He also objects to the State party's assessment that his allegations were exaggerated. Evidence to the contrary includes the letters confirming his membership of the Movement and the above-mentioned photographs, as well as exact and detailed statements of fact attesting to his role as secretary for social and media affairs.

5.7 In conclusion, the complainant submits that, if returned to the Sudan, he would be arrested and detained and hence exposed to treatment that would constitute a violation of article 3 of the Convention. The complainant requests the Committee to conclude that his removal to the Sudan would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return ("refouler") 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.

5.8 On 4 October 2017, the complainant's counsel referred to the Committee's jurisprudence in *N.A.A. v. Switzerland*<sup>30</sup> and requested that the Committee expedite its decision in the present case.

## **Issues and proceedings before the Committee**

### *Consideration of admissibility*

6.1 Before considering any claim contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee notes the State party's assertion that the complainant submitted an application to the European Court of Human Rights, in which he objected to the Federal Administrative Court judgment relating to his first asylum application, and that the European Court considered that application inadmissible as it was manifestly ill-founded. Noting that no further complaint was submitted to the European Court relating to the final judgment regarding the complainant's second asylum application and giving due weight to the absence of any objections by the State party with regard to admissibility, the Committee has ascertained, as it is required to do under article 22 (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.

6.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the present case, the State party has not contested that the complainant has exhausted all available domestic remedies. The Committee therefore finds that it is not precluded from considering the communication under article 22 (5) (b) of the Convention.

### *Consideration of the merits*

7.1 In accordance with article 22 (4) of the Convention, the Committee has considered the communication in the light of all the information made available to it by the parties.

7.2 In the present case, the issue before the Committee is whether the return of the complainant to the Sudan would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return ("refouler") a person to another State

<sup>30</sup> See *N.A.A. v. Switzerland* (CAT/C/60/D/639/2014), para. 7.12.

where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

7.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to the Sudan. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.<sup>31</sup>

7.4 The Committee recalls its general comment No. 1 (1997) on the implementation of article 3 of the Convention, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being highly probable (para. 6), the Committee recalls that the burden of proof generally falls on the complainant, who must present an arguable case that he or she faces a foreseeable, real and personal risk.<sup>32</sup> The Committee further recalls that, in accordance with its general comment No. 1, it gives considerable weight to findings of fact that are made by the organs of the State party concerned, while at the same time it is not bound by such findings and instead has the power, under article 22 (4) of the Convention, of free assessment of the facts based upon the full set of circumstances in each case.<sup>33</sup>

7.5 In assessing the risk of torture in the present case, the Committee notes the complainant's claims that he was detained in the Sudan, that he was interrogated several times and that his hand and leg were broken while in detention. It also notes his claim that, if removed to the Sudan, he would face a real risk of torture from the Sudanese authorities, due to his political profile resulting from his membership of the Swiss branch of the Justice and Equality Movement, his participation at meetings of its high-level members and his role as the Movement's secretary for social and media affairs. The Committee further notes that, to support his allegations, the complainant referred to reports of an intensified crackdown on political activists, in particular individuals from Darfur. He also argued that not only leaders or high-profile figures of political movements are at risk of being detained, ill-treated and tortured in the Sudan, but anyone who opposes or is suspected of opposing the current regime, and that this risk may increase if the person concerned has spent a long time abroad.

7.6 The Committee notes the State party's argument that the occurrence of flagrant and systematic violations of human rights in the country of origin cannot, of itself, constitute a sufficient reason to conclude that the complainant would be at risk of being subjected to torture if removed to the Sudan. It also notes the State party's claim that, regardless of the generally volatile security and human rights situation in his country of origin, and in Darfur in particular, the complainant has not demonstrated to the Swiss asylum authorities that he would face a personal risk of being subjected to torture if removed to the Sudan due to his alleged profile as an opposition member of the Swiss branch of the Justice and Equality Movement. The Committee further notes the State party's argument that the complainant's claims of his past exposure to torture and ill-treatment and in particular the circumstances in which he allegedly sustained injuries while in detention in the Sudan were not considered

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<sup>31</sup> See, for example, *E.K.W. v. Finland* (CAT/C/54/D/490/2012), para. 9.3.

<sup>32</sup> See *A.R. v. the Netherlands* (CAT/C/31/D/203/2002), para. 7.3; *Kalonzo v. Canada* (CAT/C/48/D/343/2008), para. 9.3; *X v. Denmark* (CAT/C/53/D/458/2011), para. 9.3; and *W.G.D. v. Canada* (CAT/C/53/D/520/2012), para. 8.4.

<sup>33</sup> See *T.D. v. Switzerland* (CAT/C/46/D/375/2009), para. 7.7; and *Alp v. Denmark* (CAT/C/52/D/466/2011), para. 8.3.

credible during the first asylum procedure and no further evidence in that regard was submitted at the second asylum procedure. It notes that, according to the State party, the complainant was not politically active before his departure from the Sudan. The Committee, nonetheless, notes the complainant's objections that he did attract the adverse attention of the authorities while in the Sudan, his description of the circumstances of his detention and release and the fact that his allegations were credible as they did not contain any discrepancies. The Committee observes that the complainant has not submitted any evidence supporting his claims of having been severely ill-treated by the Sudanese authorities prior to his departure, or suggesting that the police or other authorities in the Sudan have been looking for him in the interim. The complainant has not claimed, either before the Swiss asylum authorities or in his complaint to the Committee, that any charges would be brought against him under domestic law in the Sudan.

7.7 As regards the complainant's political activities, the Committee notes the State party's argument that the complainant only established contact with the Justice and Equality Movement in Switzerland and that his membership of, alleged activities relating to and purported function within the Movement in Switzerland do not give rise to a particular profile which would represent a risk of persecution, in particular as the complainant himself has admitted that he was not a high-ranking member of the Movement. The Committee also notes that, according to the State party, the complainant described his role in the Movement in vague terms. In addition, his participation in the Movement's meetings was documented by only two photographs not taken in the presence of an audience and he only had contact with the secretary-general of the Justice and Equality Movement in London on one occasion, despite claiming to be in frequent contact with senior members of the Movement. Moreover, he did not have a particular political profile that would make him a target of persecution, or direct exposure to or contact with the Sudanese authorities. The Committee further notes the complainant's claim that the Sudanese authorities monitor opposition members abroad, but observes that he has not elaborated on this claim or presented any evidence to support it. In the Committee's view, the complainant has failed to adduce sufficient evidence about the conduct of any political activity of such significance that would attract the interest of the Sudanese authorities and he has not submitted any other evidence to demonstrate that the authorities in his home country are looking for him and that he would face a personal risk of being tortured if returned to the Sudan. As to the complainant's allegation that he would be arrested and interrogated upon return to the Sudan due to a long-term stay abroad and his applications for asylum, the Committee recalls that the mere risk of being arrested and interrogated is not sufficient to conclude that there is also a risk of being subjected to torture.<sup>34</sup>

7.8 The Committee recalls that it must ascertain whether the complainant currently runs a risk of being subjected to torture if he were returned to the Sudan.<sup>35</sup> The Committee notes that the complainant has had ample opportunity to provide supporting evidence and additional details concerning his claims to the Federal Office of Migration and the Federal Administrative Court, but that the evidence provided did not allow the national authorities to conclude that his participation in political activities in Switzerland, while proven, would expose him to a risk of being subjected to torture if returned to the Sudan. The Committee also observes that the complainant did not submit that the national asylum proceedings suffered from any irregularities. As regards the State party's practice of accepting internal relocation within the Sudan, the Committee draws attention to its jurisprudence, according to which internal flight or relocation does not represent a reliable and durable alternative, in particular where the lack of protection is generalized and the individual concerned would be exposed to further risk of persecution or serious harm in another part of the State to which he or she is being returned.<sup>36</sup> The Committee, however, recalls that the occurrence of human rights violations in the complainant's country of origin is not, of itself, sufficient for it to conclude that an individual would be at a foreseeable, real and personal risk of being tortured in the country to which he or she is returned. In the light of the foregoing, the

<sup>34</sup> See, for example, *P.Q.L. v. Canada* (CAT/C/19/D/57/1996), para. 10.5.

<sup>35</sup> See, for example, *G.B.M. v. Sweden* (CAT/C/49/D/435/2010), para. 7.7.

<sup>36</sup> See, for example, *Uttam Mondal v. Sweden* (CAT/C/46/D/338/2008), para. 7.4; and *M.K.M. v. Australia* (CAT/C/60/D/681/2015), para. 8.9.

Committee considers that the information submitted by the complainant is insufficient to establish his claim that he would be at a foreseeable, real and personal risk of torture if he were returned to the Sudan.<sup>37</sup>

8. Accordingly, the Committee, acting under article 22 (7) of the Convention, concludes that the decision of the State party to return the complainant to the Sudan would not constitute a violation of article 3 of the Convention.

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<sup>37</sup> See, for example, *S.A. v. Sweden* (CAT/C/32/D/243/2004), para. 4.2; and *W.G.D. v. Canada* (CAT/C/53/D/520/2012), para. 8.7.