



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

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Committee Against Torture
Thirty-third session
(15 – 26 November 2004)

DECISION

Communication No. 218/2002

Submitted by: Mr. L. J. R. C. . (not represented by
counsel)

Alleged victim: The complainant

State party: Sweden

Date of the complaint: 16 September 2002

Date of present decision: 22 November 2004

[ANNEX]

* Made public by decision of the Committee against Torture.

** Re-issued for technical reasons.

ANNEX

**DECISION OF THE COMMITTEE AGAINST TORTURE UNDER ARTICLE
22 OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL,
INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

Thirty-third session

Concerning

Communication No. 218/2002

Submitted by: Mr. L. J. R. C.
(not represented by counsel)

Alleged victim: The complainant

State party: Sweden

Date of the complaint: 16 September 2002

The Committee against Torture, established under Article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 22 November 2004,

Having concluded its consideration of complaint No. 218/2002, submitted to the Committee against Torture by Mr. L. J. R. C. 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 of the Committee against Torture under article 22 of the Convention

1. The complainant is L. J. R. C. , an Ecuadorian citizen, born in 1977, currently facing deportation from Sweden to Ecuador. He claims that he would be at risk of being subjected to torture if returned to Ecuador in violation of article 3 of the Convention. He is not represented by counsel.

The facts as submitted by the complainant:

2.1. The complainant performed his military service in 1997 and was a military trainee from January until the end of May 2000. On 13 May 2000, while he was at the military base of Cononaco, he allegedly witnessed the torture and summary execution

of two members of the guerilla group *Fuerzas Armadas Revolucionarias del Ecuador-Defensores del Pueblo* (FARE-DP) by members of the intelligence service of the Ecuadorian army. After this incident, he began to receive threats from members of the FARE-DP and members of the military. He told his brother, who was also a member of the military, about the incident. On 8 November 2000, his brother was tortured to death in a military camp. Before his death, his brother received threats from his supervisors. After his brother's death, he continued to be threatened, and he was forced to move several times within Ecuador. As the threats increased he decided to leave Ecuador. He arrived in Sweden on 23 March 2001, and applied for asylum on 27 April 2001.

2.2 On 19 June 2001, the Swedish Migration Board dismissed the complainant's asylum application. On 2 September 2002, the Appeal Aliens Board upheld the Migration Board's decision.

The complaint:

3.1 The complainant alleges that he is at risk of being subjected to torture, ill-treatment, forced disappearance or summary execution if returned to Ecuador; his deportation in such circumstances would amount to a violation to article 3 of the Convention.

State party's observations on the admissibility and the merits of the complaint

4.1 By submission of 11 December 2002, the State party acknowledged that all domestic remedies are exhausted. Nevertheless, it argues that the complaint is inadmissible because the complainant failed to substantiate his claim that he would be at risk of being tortured if returned to Ecuador.

4.2 The State party recalls that the complainant had two interviews with immigration authorities. In his first interview with the Migration Board, he stated that on 13 May 2000, when he was at Cononaco camp as a military trainee, he witnessed how the military tortured and murdered two members of the FARE-DP, who had been taken prisoners together with five other members. Two of the prisoners managed to escape and thereafter persecuted him because they wanted him to identify who was responsible for the torture and murder of their comrades. They also identified his brother, a soldier, telephoned him on 8 November 2000 and then tortured and maltreated him so badly that he died. Before passing away the complainant's brother told a colleague that it was the complainant himself who was wanted.

4.3 In a second interview with the Migration Board, the complainant provided a more detailed account of the above incident. He said that FARE-DP was very active in the jungle in border areas and it tried to initiate continuous guerilla warfare. He visited his brother on 25 May 2000 and told him of the incident. Towards the end of June 2000, his brother began to receive threatening phone calls. He had found out that high-ranking officers had been involved in the incident. On 8 November 2000 his brother left his house and was assaulted and maltreated by two strangers. He was taken to the military hospital, where he died. His brother's wife reported the death to the police, which was unsuccessful in investigating the incident. Members of FARE-DP continued to phone his brother's house after his death, and the family had to move

away. The complainant added that he never informed the police about the incident in the jungle, for fear of being killed by members of FARE-DP. He had never been personally contacted by FARE-DP members or received threats from them. The Board was informed by the complainant's counsel that FARE-DP members had illegally entered the complainants' brother house in Quito and had destroyed part of the furniture.

4.4 On 19 July 2001, the Migration Board rejected the complainant's application for asylum and ordered that he be deported to Ecuador. It took into account that Ecuador had been a working democracy for several years, that the complainant remained in Ecuador almost a year after he had witnessed the torture and homicide, that he had never personally been persecuted or threatened by members of FARE-DP, and that he did not seek protection from the authorities in spite of the fact that government forces had done what they could to eliminate FARE-DP. The Board concluded that the complainant had not substantiated his claim that he risked persecution. The complainant appealed against the Board's decision, maintaining that he risked being tortured and that government forces were unable to control FARE-DP activities. He added that should the circumstances that prompted FARE-DP's threats against him become known, his life would be at risk, but this time through violence from government forces or the police. On 2 September 2002, the Aliens Appeals Board dismissed the appeal, endorsing the assessment made by the Migration Board. In addition, the Board noted that the complainant had applied for asylum more than a month after his arrival in Sweden. Regarding his statement that he risked persecution by government forces or the police, the Board noted that the complainant was on guard when he witnessed the incident at Cononaco camp, and thus it could not have been unknown to the military that he knew about the incident. For as long as the complainant remained in Ecuador after the incident, it appeared that he had not been of any interest to the military or the police.

4.5 As to the general human rights situation in Ecuador, the State party notes that while according to some reports¹ it remains poor in many areas, and that the police continues to torture and abuse suspects and prisoners with impunity, there have nevertheless been other positive improvements. Domestic and international human rights groups operate without restriction in the country, and the government has contracted some of these organizations to provide human rights training to the military and the police. Ecuador ratified the Convention against Torture on 30 March 1988, recognizing the competence of the Committee to receive and consider individual complaints.

4.6 As to the complainant's risk of torture at the hands of members of FARE-DP, the State party recalls the Committee's jurisprudence that the issue of whether a State party has an obligation to refrain from expelling a person who might risk torture by a non-governmental entity, without the consent or acquiescence of the Government, falls outside of the scope of article 3 of the Convention. It adds that it is clear that the Ecuadorian authorities do not tolerate the activities of FARE-DP, which they regard as criminal and link to a series of kidnapping and murder cases², and that there is

¹ 2001 U.S Department of State Country Reports on Human Rights Practices and 2002 Amnesty International Report.

² According to the 2001 U.S Department of State Country Reports on Human Rights Practices.

nothing to show that the Ecuadorian authorities could not afford the complainant adequate protection from FARE-DP.

4.7 As to the complainant's allegation that he is at risk of being tortured by members of government forces, the State party notes that before Swedish immigration authorities, the complainant only mentioned in passing that he would risk being killed by government forces should they learn about what he had experienced at Cononaco. However, he said nothing about having been persecuted by Ecuadorian authorities but, on the contrary, he clearly stated that he had never had any problems with the Ecuadorian police or other authorities. He also stated that since he had never been accused of anything, he had been able to receive permission to leave the country. Furthermore, the complainant gave inconsistent information as to who threatened and killed his brother. Before Swedish immigration authorities, he stated that it was members of FARE-DP who threatened his brother, while in his complaint before the Committee, he maintains that his brother's superiors first threatened him. The State party adds that the fact that the complainant was given permission to leave Ecuador by both the military and the police strongly suggests that he is not wanted by the Ecuadorian authorities. The military must also have learned that the complainant had witnessed the incident at Cononaco; yet, he did not seem to have attracted particular interest from the military or the police.

4.8 The State party concludes that the complainant has not substantiated his claim that he would risk a foreseeable, real and personal risk of torture if returned to Ecuador.

Issues and proceedings before the Committee

5.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. In this respect 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 also notes that the exhaustion of domestic remedies is not contested by the State party.

5.2 As to the complainant's allegation that he would be in risk of being tortured by members of FARE-DP, the Committee recalls its jurisprudence according to which the issue of whether a State party has an obligation to refrain from expelling a person who might risk pain or suffering inflicted by a non-governmental entity, without the consent or acquiescence of the Government, falls outside the scope of article 3 of the Convention, unless the non-governmental entity occupies and exercised quasi-governmental authority over the territory to which the complainant would be returned.³ The Committee notes that the complainant has not disputed the State's party allegation that the Ecuadorian authorities do not tolerate FARE-DP activities carried out in border areas of the country, which they regard as criminal and link to a series of kidnapping and murder cases. Accordingly, the Committee decides that this part of the communication is inadmissible under article 22, paragraph 2, of the Convention.

³ See complaint No. 191/2001, S.S v. The Netherlands, Decision of 5 May 2003, para. 6.4

5.3 As to the complainant's allegation that he would risk torture at the hands of government forces if returned, the Committee notes that the information submitted by the complainant in substantiation of this claim remains general and vague, and does not in any way reveal the existence of a personal and foreseeable risk of torture to which he might be subjected in the event of his return to Ecuador. The information provided to the Committee by the complainant is at odds with his own account of the facts to the Swedish immigration authorities. He has not provided reliable information that he was tortured in the past nor that he had had any problem with the police or had attracted any interest from the military or the police while he continued to live in Ecuador, even after the events at Cononaco camp. The Committee accordingly considers that the threshold of admissibility has not been met in the complainant's case, and concludes that the complaint, as formulated, does not give rise to any arguable claim under the Convention.

5.4 The Committee finds, in accordance with article 22 of the Convention and rule 107(b) of its revised Rules of Procedure, that the complaint is manifestly unfounded. Accordingly, the Committee decides that the complaint is inadmissible.

6. The Committee decides:

- a) that the complaint is inadmissible; and
- b) that this decision will be transmitted to the author and, for information, to the State party.

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