UNITED NATIONS

CAT

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

Distr.
RESTRICTED*

CAT/C/37/D/279/2005**
7 December 2006

Original: ENGLISH

COMMITTEE AGAINST TORTURE
Thirty-seventh session
(6 – 24 November 2006)

DECISION

Communication No. 279/2005

Submitted by:	C. T. and K. M. (represented by counsel)
Alleged victim:	The complainants
State party:	Sweden
Date of the complaint:	7 September 2005 (initial submission)
Date of present decision:	17 November 2006

Subject matter: Deportation with alleged risk of torture and cruel, inhuman or degrading treatment or punishment

Procedural issue: none

Substantive issue: risk of torture, cruel, inhuman or degrading treatment or punishment upon return

Article of the Convention: 3

[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-seventh session

Concerning

Communication No. 279/2005

Submitted by:	C. T. and K. M. (represented by counsel)
Alleged victim:	The complainants
State party:	Sweden
Date of the complaint:	7 September 2005 (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 2006,

Having concluded its consideration of complaint No. 279/2005, submitted to the Committee against Torture by C. T. and K. M. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1.1. The complainants are C. T., a citizen of Rwanda, of Hutu ethnicity, and her son, K. M., born in Sweden in 2003, both awaiting deportation from Sweden to Rwanda. Although the complainants do not invoke specific articles of the Convention, their claims appear to raise issues under article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. They are represented by counsel[1].

1.2 On 9 September 2005, the Committee requested the State party not to deport the complainants to Rwanda while their case is pending before the Committee, in accordance with rule 108, paragraph 1, of the Committee's rules of procedures. On 7 November 2005, the State party acceded to the Committee's request.

[1] The complainants have been represented by counsel since 22 March 2006, after the initial submission.

Factual background[2]

2.1 Before the first named complainant's arrival in Sweden on 17 October 2002, she lived in Kigali. She and her brother had become members of the PDR-Ubuyanja party sometime between February and May 2002. In April 2002, they attended a meeting of the party. Following this meeting, the leaders of this party, Mr. Bizimungu and Mr. Ntakirutinka, were arrested. In May 2002, the first named complainant and her brother were arrested and she was imprisoned in a container in Remera in Kigali, with six other women. She has not seen her brother since. She was interrogated about her own involvement and that of her brother's in the PDR-Ubuyanja party. She was repeatedly raped, under the threat of execution, and became pregnant with her son K. M., the second named complainant, who was born in Sweden.

2.2 In October 2002, a soldier helped her escape and took her to a religious order, which helped her organise her flight to Sweden. On 17 October 2002, she arrived in Sweden and requested asylum. On 23 March 2004, her request was denied by the Migration Board on grounds of lack of credibility and developments in Rwanda following the elections of 2003.In 2003, her son was born. On 29 June 2005, the Migration Board's decision was confirmed on appeal to the Aliens Appeals Board. On 7 September 2005, the Aliens Appeals Board denied a new application.

The complaint

3.1 The first named complainant claims that if returned to Rwanda, she will be immediately detained and tortured by the Rwandan Directory of Military Intelligence (DMI), on account of her membership of the PDR-Ubuyanja party. She would be raped again and interrogated in order to make her reveal how she escaped. She fears that she and her son could even be killed.

3.2 She further claims that she will be tried by the Gacaca courts, which were set up by the Government to avenge the genocide of 1994. She claims to be one of the 760,000 Hutus who are due to be tried by these courts, in particular for her alleged involvement in a massacre at Kigali Hospital.

State party's observations on admissibility and the merits

4.1 On 19 June 2006, the State party provided its submission on the admissibility and the merits. It submits that the complaint is inadmissible as manifestly ill-founded, and sets out the relevant provisions of the Aliens Act, pointing out that several provisions reflect the same principle as that laid down in article 3, paragraph 1, of the Convention. The national authority conducting the asylum interview is naturally in a good position to assess the information submitted by asylum seekers. On 9 November 2005, temporary amendments were enacted to the 1989 Aliens Act. On 15 November 2005, these amendments entered into force and were to remain in force until the entry into force of a new Aliens Act on 31 March 2006. The temporary amendments introduced additional legal grounds for granting a residence permit with respect to aliens against whom a final refusal-of-entry or expulsion order has been issued. According to the new Chapter 2, section 5 b of the Aliens Act, if new circumstances come to light concerning enforcement of a refusal-of-entry or expulsion order that has

[2] The complainants do not describe the facts in detail themselves: the following account is a summary of the facts as described by the first named complainant to the Swedish immigration authorities and set out in the immigration authorities' decisions.

entered into force, the Swedish Migration Board, acting upon an application from an alien or of its own initiative, may grant a residence permit, *inter alia,* if there is reason to believe that the intended country of return will not be willing to accept the alien or if there are medical obstacles to enforcing the order.

4.2 Furthermore, a residence permit may be granted if it is of urgent humanitarian interest for some other reason. When assessing the humanitarian aspects, particular account shall be taken of whether the alien has been in Sweden for a long time and if, on account of the situation in the receiving country, the use of coercive measures would not be considered possible when enforcing the refusal-of-entry or expulsion order. Further special considerations shall be given to a child's social situation, his or her period of residence in and ties to the State party, and the risk of causing harm to the child's health and development. It must also be considered whether the alien committed crimes and a residence permit may be refused for security reasons. Decisions made by the Migration Board under Chapter 2, Section 5 b, as amended, are not subject to appeal.

4.3 On the facts, the State party provides the reasoning behind the Migration Board's decision to reject the application for refugee status under chapter 3, section 2 of the Aliens Act, for residence permits as aliens otherwise in need of protection under chapter 3, section 3 and for residence permits on humanitarian grounds under chapter 2, section 4, paragraph 1, sub-paragraph 5. It considered that: the general political situation in Rwanda did not *per se* constitute a ground to grant the complainants asylum; according to the EU special representative in the region there had been positive developments in Rwanda following the general elections in 2003; the PDR-Ubuyanja party was banned before the elections in 2003 and unknown persons previously suspected of involvement in the party or persons who have been active in the party at a low level cannot be considered to run any risk of persecution or harassment; and the credibility of certain of the first-named complainant's statements was doubtful. The State party submits that, while both the Migration Board and Aliens Appeals Board found reason to question the credibility of certain statements made by the first named complainant, this was not the decisive factor for their decisions. Indeed, the Migration Board found that irrespective of the factors which detracted from the complainant's credibility, the developments in Rwanda after the 2003 elections had been such as to render it unlikely that she would be at risk of persecution due to her membership of the PDR-Ubuyanja party.

4.4 Since the new application to the Aliens Appeal Board was denied on 7 September 2005, another new application was lodged on 23 September 2005. On 21 November 2005, it was transferred from the Aliens Appeals Board to the Migration Board for determination, in accordance with the temporary legislation contained in chapter 2, section 5 b of the 1989 Aliens Act. On 3 March 2006, the Migration Board denied the application, as the medical certificates furnished by the complainants (including a psychologist's certificate of 31 July 2005) did not show that the first named complainant suffered from such a serious mental illness or comparable condition that she could be granted a residence permit on medical grounds. As regards the second named complainant, who was then nearly three years, the Board was of the view that he had not developed such close ties with Sweden that he could be granted a residence permit on that ground. On 16 March 2006, the complainants lodged an additional application with the Migration Board for a residence permit under the temporary legislation contained in chapter 2, section 5 b of the 1989 Aliens Act. On 15 August 2006, the State party subsequently informed the Committee that by a decision of 5 July 2006, the Board found that the complainants were not entitled to residence permits. While it considered medical and psychological opinions not previously presented to the Swedish authorities, it

found that no new circumstances had emerged and that there was no medical obstacle to enforcing the expulsion order. In addition, concerning the second named complainant, it found that he had not developed such ties to Sweden that he should be granted a residence permit.

4.5 On the merits, the State party endorses the finding of both the Migration Board and the Aliens Appeal Board that the first named complainant was vague in her statement regarding her involvement in the PDR-Ubuyanja party. She did not provide details about the party, with the exception of the name of the party leader, former President Pasteur Bizimungu, and that of the secretary general, former Minister Charles Ntakirutina. She did not give a detailed account of the activities and programme of the party but merely stated that the party wished to "rebuild the country and give everyone their rights". In addition, she amended the information she gave with respect to when she became a member of the party during the proceedings. Initially, she claimed to have become a member in May 2002, after attending a meeting. However, after her first application was turned down by the Migration Board, she amended the statement and claimed to have become a member at an earlier stage, in February or March 2002. The State party notes would like to point to the fact that the amended statement is inconsistent with the statement before the Migration Board that she attended a party meeting in April 2002 to become a member.

4.6 The State party highlights the fact that, although there are several international reports, regarding the arrest of PDR-Ubuyanja members, there are no such reports to support the claim that the first named complainant and her brother were arrested and detained. The State party also notes that, according to international reports, many of the individuals who were arrested due to their alleged involvement in the party have been released. Only a small number of people have been sentenced to imprisonment by criminal courts because of their involvement in the party.

4.7 As to the document invoked as evidence by the complainant drawn up by Pelicicn Dufitumukiza, a former representative of LIPRODHOR[3], the State party notes that there is a factual inconsistency in this document if compared to what the complainants have stated both in the national proceedings and before the Committee. Mr Dufitumukiza refers to a LIPRODHOR journal from July 2001, according to which from that day there is no member of the C. T. family still alive. However, the complainants claim that the first named complainant and her brother were arrested in the spring of 2002, i.e. almost a year after the date of the journal in which LIPRODHOR claims to have found information regarding her case. It is not clear from the document who informed LIPRODHOR about the abduction of the first complainant and her brother.

4.8 As to the claim relating to the Gacaca tribunals, the State party submits that, while the system has been the subject of criticism from a human rights perspective, the international community at large, including the European Union, has given it its support. Regarding the allegation that the first named complainant is in fear of facing trial before the Gacaca tribunals for participation in the genocide in 1994, the State party draws the Committee's attention to the fact that this allegation was made for the first time in the so called new application filed before the Aliens Appeals Board on 23 September 2005, and then only by reference to an attached letter from a M. U. to the first complainant. The complainants have not provided any details regarding this allegation either before the national authorities or

[3] The State party acknowledges that this is Rwanda's largest human rights organization.

before the Committee, and there is no conclusive evidence, substantiating the alleged fear. The submitted documents drawn up by Mr. Joseph Matata, a representative of Centre du lutte contre "impunite et l'injustice au Rwanda", only refer to the Gacaca tribunals in general and do no support the allegation that the first complainant personally would be at risk. The only evidence in support of this claim is the letter from M. U., referred to above. The letter, which is undated and unsigned, does not give any specific details of the alleged criminal investigation or of any pending criminal charges in Rwanda that concern the first named complainant. In addition, it does not appear from the letter who the author is or how he or she received the information. In the State party's view, the letter cannot therefore be regarded as reliable evidence that, in case of expulsion, the first named complainant would risk indictment for genocidal acts before the Gacaca tribunals, let alone that she would be at risk of torture.

4.9 The State party recalls the Committee's jurisprudence that while past torture is one of the elements to be taken into account when examining a claim under article 3 of the Convention, the aim of the examination is to determine whether the complainants would risk being subjected to torture if returned to their country at the present time[4]. Thus, even if it were to be established that the first named complainant had been subjected to ill-treatment in 2002, it does not prove her claim that their removal to Rwanda would expose them to a foreseeable, real and personal risk of being tortured thereby constituting a violation of article 3. The State party acknowledges that reports had been made that military troops, until their withdrawal in October 2002, abducted women and children from villages they raided to perform labour, military services and sexual services.

4.10 The State party submits that even if the first named complainant had proved that she was a member of the PDR-Ubuyanja party, and that she was arrested and detained and managed to escape, the political situation in Rwanda has undergone significant changes since the complainants' arrival in Sweden, especially since the 2003 elections. The party is a proscribed political party and its activities are subject to monitoring by the authorities. However, there is no objective evidence to show that ordinary members or relatives of members of the party are at risk from the authorities According to her own statement, she only attended one party meeting. If the first named complainant had became a member of the party, it must have been at a very low level and thus she would not be at risk from the authorities. For these reasons, the State party concludes that the complainants have not shown that there is a foreseeable real and personal risk of torture if returned to Rwanda.

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

5.1 On 28 September 2006, the complainants refer to the Migration Board decision of 5 July 2006, and highlight its finding that there was no medical obstacle to returning the complainants to Rwanda. However, it did not consider what the effects of being expelled would have on their health in Rwanda. The Board made this decision despite a medical report, of 2 June 2006, which confirmed the first complainant's claims of rape and diagnosed her as suffering from PTSD.

5.2 As to the State party's claim that the first named complainant's lack of detail regarding the PDR-Ubuyanja party demonstrates her lack of credibility, the complainants argue that a

[4] X, Y and Z v. Sweden, Complaint No. 61/1996, Views adopted on 6 May 1998, para. 11.2

document in Danish entitled "PDK……Parti Democratique pour Ie Renouveau-Ubuyanja (PDR-Ubuyanja) Udlaendingestyrelsen", dated 19 June 2003, which provided background information on this party, was available to the Migration Board. According to this document, the PDR-Ubuyanja party never developed into a fully fledged party: No party programme was ever published, no membership cards issued and no formal membership list established. Interest in supporting the party was shown by attending the few private meetings that were organised. In April 2002, the first named complainant attended a meeting in Kigali with her brother, where they met and were recruited by Mr. Ntakirutinka. The DMI would have known that the first named complainant's brother was Mr. Ntakirutinka's employee, and would, on that basis alone, have singled out both brother and sister for arrest. The same document also stated that persons who were related to members or were suspected to be members themselves would have difficulties in Rwanda, as they might be aware of PDR-Ubuyanja documents of interest to the authorities.

5.3 According to the complainants, the Swedish authorities paid little attention to the position of the UNHCR outlined in its paper of January 2004, published after the elections of 2003. It stated that early in 2004, almost two years after the arrest of Pastor Bizimungu and Mr. Ntakirutinka, those associated with the PDR-Ubuyanja party were at greatest risk inside the country . On the issue of victims of rape, the complainants quote from the paper arguing that, "The crime of rape itself and the manner in which it was committed qualify as a serious form of torture and may warrant continued international protection…….The victims should favourably be considered for the granting of refugee status on the ground that their refusal to return to Rwanda is due to compelling reasons arising from previous persecution……"

5.4 The first named complainant provides an account of what happened to her while in detention and a letter from a woman, who allegedly was detained at the same time, and corroborates her claim that she was tortured during her detention. Since then, this woman has received refugee status in France. According to the complainants, this evidence was not presented during the domestic proceedings, as upon receipt the first named complainant's "case had been finally rejected and there was talk of an amnesty for families with children so she set her hopes on that".

5.5 As to the State party's argument that the statement from M. U. was undated and unsigned, the complainants explain that only the English translation was handed in to the Swedish authorities and attach for the Committee's attention the original handwritten letter signed by M. U. and M. U. was the first named complainant's neighbour in Kigali. When the complainant feared that she would be sent back to Rwanda, she contacted M. U. and M. U. expressed concern about her safety should she be expelled to Rwanda because M. U. had heard that her name had been mentioned in the Gacaca procedure as one of the suspects involved in the massacre of Tutsis at the CHK hospital in Kigali in April 1994. Afterwards, M. U. wrote his letter, which is signed in the original. On 13 August 2006, C.T. telephoned M. U., as a result of which M. U. sent an e-mail to explain why it was not possible to obtain a document with the first named complainant's name on it as one of the suspects. M. U. wrote that the list is confidential and has not been published for fear that suspects will abscond. M. U. has not responded to a further request for information, to provide the name of the person that heard that the complainant was a suspect, the date this occurred etc.

5.6 As to the State party's argument that the first named complainant only raised the fact that she was accused before the Gacaca court at a late stage, the complainants argue that this

can be explained by the fact that the Gacaca process has been going through various developments and that in 2005, more extensive witness material was gathered. It was only upon contact with M. U. that she was informed of this information. Regarding the procedure before the Gacaca courts, the complainants refer to a report by Penal Reform International of June 2006, which states *inter alia* that the Gacaca "raises serious misgivings regarding the situation of accused persons".

5.7 As to the argument that no evidence exists that PDR-Ubuyanja party members were arrested or detained since 2003, counsel states that he represented a Rwandan asylum seeker before the Swedish authorities who had been subjected to torture while being interrogated on his involvement in the PDR-Ubuyanja party in 2004. This individual was considered credible and was granted refugee status by the Swedish authorities in 2005. As to the fact that neither the first named complainant nor her brother were cited as detainees on any of the Amnesty lists, the complainants submit that these lists were incomplete and that, according to the Danish document referred to, "some of the detainees on the Amnesty list had in reality no connection with RDR-Ubuyanja".

5.8 According to the complainants, the discrepancy in the dates in the letter from the representative of the LIPRODHOR was a typographical error and a new certificate is submitted to the Committee with the correct date. Finally, the complainants submit that a return to Rwanda in light of the heinous circumstances of the first complainant's pregnancy, where they have no immediate family, may have serious consequences for C. T.'s son as his mother may not be able to give him the help and support that he needs. He is currently attending a pre-school and is being investigated to ascertain whether he suffers from a form of autism.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 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. 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. It notes the State party's confirmation, in the submission of 15 August 2006, that domestic remedies have been exhausted.

6.2 The Committee finds that no further obstacles to the admissibility of the complaint exist, declares it admissible and thus proceeds to its consideration on the merits.

Consideration of the merits

7.1 The issue before the Committee is whether the removal of the complainants to Rwanda would violate 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.

7.2 In assessing the risk of torture, the Committee takes into account all relevant considerations, including the existence in the relevant State of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such determination is to establish whether the individuals concerned would be personally at risk in the country to

which he or she would return. 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 a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

7.3 The Committee recalls its General Comment No.1 on article 3, which states that the Committee is obliged to assess whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable. The risk need not be highly probable, but it must be personal and present. In this regard, in its jurisprudence the Committee has determined that the risk of torture must be foreseeable, real and personal.

7.4 The Committee notes the claim that if the complainants are returned to Rwanda they will be detained and tortured, on the basis of the first named complainant's involvement in the PDR-Ubuyanja party, for which reason she was detained and subjected to torture. She also fears that she may be tried before the Gacaca courts. On this latter issue, without wishing to consider whether the Gacaca courts meet international standards of due process, the Committee considers that fear of a future trial before them is in itself insufficient to amount to a reasonable fear of torture.

7.5 As to the first named complainant's claim of past torture due to her political activism, the Committee notes that the State party questions her credibility due to her vagueness, inconsistency and lack of evidence in her account of and involvement in the PDR- Ubuyanja party and the argument that she would not suffer torture given the developments after the elections in 2003. The Committee notes that the State party did not contest, during the domestic proceedings, nor in its submission to the Committee, the first named complainant's claim (supported by two medical reports) that she was repeatedly raped in detention, as a result of which she became pregnant, and gave birth to her son in Sweden. In fact, on a review of the decisions of the domestic authorities, it would appear that these medical reports were not taken into account at all and that the issue of whether or not the complainant had been raped and the consequences thereof for her and her son were not considered. Thus, on the basis of the medical evidence provided, and the State party's failure to dispute the claim, the Committee considers that the first named complainant was repeatedly raped in detention and as such was subjected to torture in the past. On examining the dates of her detention and the date of birth of her son, the Committee considers it without doubt that he was the product of rape by public officials, and is thus a constant reminder to the first named complainant of her rape.

7.6 On the State party's general argument that the first named complainant is not credible, the Committee recalls its jurisprudence that complete accuracy is seldom to be expected by victims of torture and that such inconsistencies as may exist in the complainant's presentation of the facts are not material and do not raise doubts about the general veracity of her claims, especially since it has been demonstrated that she was repeatedly subjected to rape in

detention.[5] The Committee also takes into account the revised letter from LIPRODHOR (para. 5.8), the authenticity of which has not been contested by the State party, which attests to the first named complainant's arrest along with her brother by the Directory of Military Intelligence.

7.7 As to the general situation in Rwanda, the Committee considers that information provided by the complainants demonstrates that ethnic tensions continue to exist, thus increasing the likelihood that the first named complainant may be subjected to torture on return to Rwanda. For the above reasons, the Committee considers that substantial grounds exist for believing that the complainants would be in danger of being subjected to torture if returned to Rwanda.

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 removal of the complainants to Rwanda would amount to a breach of article 3 of the Convention.

9. The Committee urges the State party, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to the decision expressed above.

[Adopted in English, French, Russian and Spanish, the English 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.]

---

[5] Alan v. Switzerland, Case no. 21/1995, Decision adopted on 8 May 1996, Tala v. Sweden, Case no. 43/1996, Decision adopted 15 November 1996, Kisoki v. Sweden, Case no. 41/1996, Decision adopted on 8 May 1996.