

## COMMITTEE AGAINST TORTURE

### A. A. v. The Netherlands

Communication No. 198/2002

30 April 2003

CAT/C/30/D/198/2002

### VIEWS

*Submitted by: A. A.*

*Alleged victim: A. A.*

*State Party: Netherlands*

*Date of complaint: 10 October 2001 (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 30 April 2003,

Having concluded its consideration of complaint No. 198/2002, submitted to the Committee against Torture by Mr. A A 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 author of the complaint, his counsel and the State party,

Adopts the following:

### **Decision under article 22, paragraph 7, of the Convention**

1.1 The petitioner is, a Sudanese citizen, born on 11 November 1968, currently residing in the Netherlands, where he has requested asylum. He claims that his removal to Sudan would constitute a violation of article 3 of the Convention by the Netherlands. He is represented by counsel.

1.2 On 10 January 2002, the Committee, in accordance with rule 108 of its rules of procedures, requested the State party not to expel the petitioner, pending the consideration of his case by the Committee. On 11 March 2002, the State party informed the Committee that this request would be complied with.

### **The Facts as Submitted by the Petitioner**

2.1 The petitioner was a practicing lawyer in Sudan. He alleges that his sister, Zakia, is the widow of Bashir Mustafa Bashir, who was one of the 28 persons involved in the coup in Sudan in 1989, for which Mr. Bashir was executed. The petitioner's sister later became active in an opposition organization for the relatives of martyrs. Since 1993, the petitioner had been active in the banned Democratic Unionist Party (DUP) belonging to al-Tajammu' al-Watani li'adat al-Dimuqratiya (the National Democratic Alliance, a coalition of opposition parties). He is a member of the Sudanese Bar Association since 1992.

2.2 In the summer 1997, a pro-government party competed with DUP in elections for the Sudanese Bar Association. During preparations for the elections, DUP organized a meeting for its supporters. The petitioner participated as one of the organizers and speakers. He claims that the meeting was attended by so many people, that Sudanese authorities intervened and arrested several persons, among them the petitioner. He alleges that he was subsequently kept in a detention center of the state security service in Al Khartoum-Bahri for 10 days, during which he was questioned, mistreated and tortured. He was then conditionally released (travel ban).

2.3 While traveling to Port Sudan to participate in activities for the opposition party in September 1997, the petitioner was arrested for the second time. He was kept in detention in Sawakin, where he was questioned and allegedly threatened with death. After 3 days in detention, he claims that he was thrown into the sea and was picked up after about 15 minutes. He was then brought to a prison where he was detained for a week. Upon release, he was told to stop his political activities.

2.4 On the day of the elections, a conflict erupted between the government party and the supporters of the opposition over allegations of election fraud. The petitioner was once again arrested and kept in detention for 3 days, during which he claims to have been tortured. On 30 January 1998, he again was arrested while attending a mass demonstration that he had helped to organize. He was brought to a secret underground prison, a so-called "ghosthouse", where he was kept in detention for about 2 months. He managed to escape from the prison and fled to the Netherlands, where he arrived on 13 April 1998.

2.5 The petitioner requested asylum in the Netherlands on 15 April 1998. On 12 May 1998, the migration authorities interviewed with him, and the Secretary of Justice rejected his request as manifestly ill founded on 23 May 1999. The petitioner's request for residence on humanitarian grounds was also rejected.

2.6 On 14 April 2000, the Secretary of Justice rejected his request for a review of the decision. Furthermore, the petitioner's appeal to the Hague District Court was rejected on 29 March 2001.

## **The Complaint**

3. The petitioner claims that if returned to Sudan, he would be subjected to torture. In substantiation of this fear, he provides his history of previous detention, with allegations that he was tortured on account of his political activity in Sudan. He further indicates that there is a consistent pattern of human rights violations committed by Sudanese authorities, and refers to reports by human rights non-governmental organizations, and documents of the United Nations Commission on Human Rights.

## **The State Party's Observations on the Admissibility and Merits.**

4.1 By note verbale dated 11 March 2002, the State party informed the Committee that it does not object to the admissibility of the petition. The State party presented its observations on the merits of the petition on 9 July 2002.

4.2 The State party contends that petitioner's return would not violate its obligations under article 3 of the Convention. It gives a detailed description of the national proceedings in the case. Admission and expulsion of aliens are regulated by the 1965 Aliens Act, the Aliens Decree, the Regulation of Aliens and the 1994 Aliens Act Implementation Guidelines. 1/

4.3 The first interview of an asylum seeker takes place as soon as possible. It is conducted on the basis of a form on which the asylum seeker fills in relevant data. At this stage he is not asked about the reasons for leaving his country of origin. This interview is followed by a second one which focuses on the reasons for leaving the country of origin. The asylum seeker or his representative receive a copy of the report made by the interviewing officer, and have at least two days to submit corrections or additions. A decision is then made by an Immigration and Naturalisation Service (INS) official on behalf of the State Secretary for Justice.

4.4 If an application for admission as refugee or for a residence permit is denied, the asylum seeker may lodge an objection. The decision is reviewed by a committee, which interviews the asylum seeker. If the objection is declared unfounded, an appeal can be lodged with the Hague District Court, with no possible further appeal, as provided under the 1965 Aliens Act. 2/

4.5 The State party affirms that the Dutch Minister of Foreign Affairs issues periodically country reports 3/ on the human rights situation in Sudan. According to the Sudan report of September 1998, after the coup led by General Omar Hassan al-Bashir on 30 June 1989, all political parties were banned, the leaders left the country or continued their political activities in hiding. The National Islamic Front (NIF) remained the only influential political force. Since 1993, Omar Hassan al – Bashir has been the President of Sudan. The NIF has a large majority in parliament. The report noted that arbitrary arrests and detention without charge were current. Supporters of banned political parties, trade union officials, lawyers and human rights activists were among the potential victims. Members of these groups had been known to « disappear », ending up on the security services' « ghost houses », or being harassed in other ways by the security services.

4.6 The State party argues that according to the above report, political prisoners were mainly detained in the Khartoum North Central Prison (Kober prison). By European standards, the living conditions in that prison were poor, but the prohibition of torture was respected. The military and security services had their own detention centres, where torture and detention without charge were frequent. "Ghost houses" were unofficial detention centres, not subjected to any form of oversight. Detention generally lasted from few a days to three weeks. The purpose was to intimidate suspected political adversaries; detainees were subjected to mental and physical abuse and torture. The armed attacks in eastern Sudan led to increased use of these centres in the first half of 1997, but once the government established greater control over the situation later in 1997, their use declined. The Minister concluded that since 1997, some positive changes in Sudan were discernible. The situation was not such as to imply that it would be irresponsible to return a Sudanese national whose application for admission as a refugee or for a residence permit on humanitarian grounds had been refused after careful consideration.

4.7 By letter of 20 November 1998, the State Secretary for justice notified the House of Representatives of his decision that Northern Sudanese asylum seekers would no longer be eligible for provisional residence permits. <sup>4/</sup> On 2 June 1999, the Legal Uniformity (Alien affairs) Division concluded that, on the basis of the information available, the State Secretary for Justice's decision was justified.

4.8 The country report of 1999 stated that the human rights situation in Sudan had improved slightly but remained a cause of concern. Especially, the situation in the conflict areas was troubling. Arbitrary arrest and detention had become less common, but were still possible under the National Security Act and the Criminal Code (no date specified).

4.9 On 21 July 2000, the Minister of Foreign Affairs released a supplementary report on the policy of a number of Western countries on the return of Sudanese whose applications for asylum were unsuccessful. The country reports of 1999 and 2000 led the State Secretary for Justice to alter his policy on categorial protection. In particular, members of the non-Arabic South Sudanese groups or Nuba groups who, before leaving the country, had resided undisturbed in Northern Sudan were, no more eligible for provisional residence permits.

4.10 The State party's latest country report of March 2001 notes that the human rights situation had improved slightly but remained a cause of concern, especially in conflict areas. President al-Bashir replaced the Tawali Act of January 1999 by new Act on Political Parties, permitting political parties of 100 members or more to conduct political activities. The report states that political parties can carry out political activities without adverse consequences to a reasonable extent. There is no complete freedom, however. Political leaders, for instance, have on several occasions been summoned for questioning by security services and one arrest has been reported. There were, however, no cases of detention lasting longer than a day or of a serious abuse, as there were before. Parties, such as the UP and DUP, enjoyed more freedom than before. Members of the northern opposition returned to Sudan in response to the "Motherland Call" and an amnesty for political refugees living in exile announced by President al-Bashir on several occasions and put in writing on 3 June 2000. Accordingly, the State party's policy in relation to residence requests from

Sudanese asylum seekers remained intact.

4.11 In relation to the petitioner's personal situation, the State party recalls that he claims to have begun work as a lawyer in Khartoum in March 1992, and he was member of the trade union for Sudanese lawyers (« the lawyers' union »). In 1993, he became a member of the Democratic Unionist Party (DUP), belonging to the National Democratic Alliance. The lawyers union had two fractions: one supporting the regime in power, and one supporting the DUP. The petitioner carried out activities for the DUP within the lawyers union, mainly by coordinating and organizing meetings with the aim of overthrowing the regime. According to the petitioner, his troubles started in July 1997, during the preparation for elections for the members of the board of the lawyers union, to be held in November 1997. He states that the authorities had harboured ill-will towards him and his family even before then, because his brother in law, Bashir Mustafa Bashir, had been one of the 29 officers executed for their involvement in an attempt coup on 28 June 1989.

4.12 The State party notes that the petitioner was arrested four times: in July 1997, during a meeting in the offices of the lawyers union in relation to the coming elections; in September 1997, when he wanted to attend a party meeting in Port Sudan and went to obtain a travel permit from the security services; he was informed that after his arrest in 1997, he was no longer allowed to travel. He departed nevertheless, but was arrested in Sawakin and placed in custody. After 3 days, he was thrown into the ocean by the security services. He claims that this was done to scare him; he was picked up by a trawler, accused of arms trafficking and of leaving Sudan illegally and turned over to the security services again. He was detained during seven days, after which he was released. The third arrest was in November 1997, when he was monitoring the elections within the lawyers union. The final arrest took place on 30 January 1998, during a demonstration. The petitioner alleged that he was transported to a ghost house, where major opponents of the regime were detained. He was kept in a solitary cell, measuring 0.5 by 3 meters and was interrogated twice, and subjected to psychological torture. On 20 March 1998, he was interrogated by a former classmate from secondary school. The former classmate decided to help the petitioner, and told him how to escape from the cell. On 25 March 1998, he left Sudan by ship from Port Sudan.

4.13 The State party recalls that the petitioner applied for asylum and for a residence permit on 15 April 1998. On 12 May 1998, he was interviewed by an IND official, with the help of an Arabic interpreter, regarding the reasons for seeking asylum. By a decision of 23 May 1999, his application was rejected as manifestly ill-founded; his application for resident permit was also rejected. On 17 June he lodged an objection against the decision of 23 May 1998; on 10 February 2000 he was interviewed by a committee regarding his objection. The objection was declared unfounded on 14 April 2000. The petitioner lodged an appeal against that decision on 9 May 2000. By judgment of 29 March 2001, the Hague District Court declared the appeal unfounded.

4.14 The State party considers that the existence of a consistent pattern of gross violations of human rights in a country does not as such constitute sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country; specific grounds must exist to the effect that the individual concerned would be personally at risk. 5/ The State party recalls that "substantial grounds" require more than a mere possibility of torture but need not be highly likely in order to satisfy that provision's conditions. 6/

4.15 The State party invokes the Committee's general comment on article 3, in particular paragraphs 6 and 7, 7/ and the Committee's Views in communication no. 142/1999, S.S. and S.A. v Netherlands.

4.16 The State party, in relation to the petitioner's personal risk in the event of his return to Sudan, notes that the current human rights situation in Sudan, though a cause of concern, does not provide substantial grounds for believing that all Sudanese are in general in danger of being subjected to torture. The State party refers to the Minister of Foreign Affairs' country reports and to the Committee's jurisprudence.

4.17 For the State party, the fact the petitioner was a lawyer and a member of the DUP, does not in itself constitute sufficient grounds for assuming that if he were returned to Sudan, he would be in danger of being subjected to treatment contrary to article 3 of the Convention. The State party invokes the country reports of the Minister of Foreign Affairs referred to above. Though complete freedom for activists of political parties has yet to arrive, there are no longer any cases of detention lasting longer than a day, or other serious abuse. Furthermore, in response to the "Motherland Call" and the proclamation of an amnesty, important members of the northern opposition have returned to Sudan.

4.18 In the State party's opinion, it cannot be concluded that the petitioner would run a foreseeable, real and personal risk of being tortured if returned to his country of origin. There remained some doubt as to the credibility of the petitioner's allegations that the authorities harbour ill-will towards him and his family, because his brother in law participated in a coup attempt on 23 September 1989. The State party argues that it is not aware of a coup attempt on that date; all its reports stated that a coup took place on 30 June 1989, under the leadership of Lieutenant-General al-Bashir, since then the President of Sudan. The State party argues that the petitioner has failed to substantiate his claims that his problems with the authorities in 1989 arose as a result of the activities of his brother in law, and were such that he must fear treatment in violation of the Convention.

4.19 The State party dismisses as implausible the petitioner's allegation that he was detained from 30 January 1998 to 23 March 1998. His statements allegedly were contradictory, vague and imprecise. In particular, he gave contradictory accounts of the number of people present at his interrogations.

4.20 The petitioner was unable, according to the State party, to provide details about the prison in which he was held and, despite having been detained for over two months, could not describe his cell in any detail. The State party dismisses as implausible his statement that obstacles in the cell made it impossible for him to walk. It is unimaginable, in the State party's opinion, that during a detention of almost two months, he would not investigate his surroundings. He should have been able to describe his cell in more detail, at least because he alleges that food was thrown into his cell daily.

4.21 The State party voices doubts about the ease with which the petitioner claims to have been able to leave his prison. It contends that it stretches imagination that major Sudanese opponents of

the regime would be detained in a prison with unlocked doors. The State party also considers it curious that the petitioner was able to leave undetected in a car that was waiting for him only 100 meters from the prison. As final conclusion, the State party considers implausible the petitioner's account of his detention.

4.22 The State party concludes that, in its opinion, the inconsistencies in the petitioner's presentation of the facts are material and raise doubts about the veracity of his claims; these inconsistencies are related to essential aspects of the reasons given by him for leaving Sudan. The State party believes that there were sufficient grounds for regarding it as implausible that the Sudanese authorities harbour ill-will towards him and that, as a result, he would, on returning to Sudan, be in danger of torture, or that the grounds for this belief are substantial in a way that such danger would be personal and present.

4.23 The State party contends that even if credence was given to the petitioner's statements regarding his problems in connection with his activities for the DUP within the lawyers' union, this does not justify the conclusion that he would undergo treatment contrary to article 3 of the Convention if he were now to return to Sudan. The State party notes that it does not find it plausible that the Sudanese authorities were fully aware of the petitioner's individual political activities given that they were carried out under cover of the lawyers' union. The State party notes also that according to the petitioner's own statements, he was never personally arrested or ill-treated (in its own home town, for instance) by the authorities. His arrests took place once in the context of intervention by the police during a large-scale disruption of public order and once because he had violated a travel ban.

4.24 The State party further concludes that given the general situation in Sudan and the personal circumstances of the petitioner, there is no reason to conclude that substantial grounds exist for believing that the petitioner would run a foreseeable, real and personal risk of being subjected to torture upon his return in Sudan.

### **The Petitioner's Comments**

5.1 In his comments on the State party's observations of 22 December 2002, the petitioner notes the State party's expression of *some* doubts about the credibility of his statements, and argues that "some" doubts is insufficient to contest the credibility of his statements. He challenges the State party's doubts about the credibility of his statements related to his detention from 30 January 1998 to 23 March 1998. He notes that the State party does not contest his involvement in the demonstration on 30 January 1998, and declares that the contradictions pointed by the State party are minor ones. He dismisses the State party's observations as speculative because it did not take into consideration that he was detained in a "ghosthouse" which is not a normal detention facility, and information on such "ghosthouses" is not readily available. He objects that the State party did not take into consideration the circumstances under which he was detained and the fact that he was at that time already a victim of previous acts of torture.

5.3 According to the petitioner, the State party has not expressed, before, explicitly doubts about

the credibility of his statements concerning his first, second and third detentions. The petitioner views his statements as detailed, consistent and without contradictions.

5.4 The petitioner contests the State party's conclusion in paragraph 4.24 above. He recalls that, first, since the lawyers union elections were highly political, it is not implausible that the authorities were aware of his political involvement. He reiterates that he was questioned about his activities and he was asked to stop them.

5.5 The petitioner further argues that the facts do not support the State party's observation that he was not "singled out". The first time he was arrested, questioned and tortured, he was one of the organizers and speakers of the meeting in the lawyers' union offices. The second time he was arrested, detained and tortured, and told to stop his political activities, after he violated a travel ban. The third time, he was among those who had detected an electoral fraud scheme.

5.6 The petitioner considers also that the State party should, but did not, take into consideration that every time he was detained, he was tortured.

5.7 Finally, the petitioner states that the State party should, but did not, take into account that lawyers in his position remain a group at risk in Sudan. 8/

### **Issues Before the Committee**

6. Before considering any claim contained in a complaint, the Committee 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 or is not being examined under another procedure of international investigation or settlement. The Committee notes that the State party has not raised any objections to the admissibility of the communication, and that it has requested the Committee to proceed to an examination of the merits. The Committee concludes that no obstacles to the admissibility of the complaint exist and proceeds with the consideration of the merits.

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

7.2 The issue before the Committee is whether or not the forced return of the petitioner to Sudan 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 would be in danger of being subjected to torture.

7.3 The Committee recalls that in reaching its decision, it must take into account all relevant considerations, pursuant to article 3, paragraph 2, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would be returned. 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 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.

7.4 In the instant case, the Committee notes the inconsistencies in the petitioner's account, as pointed out by the State party, as well as the general failure by the petitioner, to substantiate his allegations that he was subjected to torture.

7.5 The Committee further notes the State party's remarks that the petitioner failed to give any information on the conditions of detention in a so-called "ghosthouse", that he failed to describe the cell in which he alleges to have been detained for several weeks. The petitioner has not responded to these arguments other than by noting that it is insufficient for the State party to manifest "some doubts" about the credibility of his statements. The Committee also notes that the petitioner failed to respond to the doubts voiced by the State party concerning the ease with which he claims to have been able to leave the prison.

7.6 The Committee finally notes the State party's observations on the evolution of the political system in Sudan over the last few years, in particular the legalisation of the political parties, the presidential amnesty of political refugees of 3 June 2000, and the "Motherland call" under which important members of the opposition have returned to Sudan. The Committee notes that the petitioner has not challenged any of these arguments in his comments.

7.7 On the basis of the above, the Committee considers that the information made available by the petitioner does not show that substantial grounds exist for believing that he would be personally in danger of being subjected to torture in the event of his return to Sudan.

8. The Committee against Torture, acting under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is of the view that the return of the petitioner to Sudan by the State party would not constitute a violation to article 3 of the Convention by the Netherlands.

[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.]

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## Notes

1/ Preliminary, the State party informs the Committee that although on 1 April 2001, a new Aliens Act entered into force that has no consequences of substance for the petitioner's situation.

2/ The State party declares, however, that a Legal Uniformity Division exists within the Hague District Court, in order to promote consistency in the application of the law in asylum cases and other proceedings involving aliens.

3/ The reports on the situation in countries of origin are issued, using information of non governmental organisations and reports received by the Dutch diplomatic missions

4/ The State party explains that this type of policy is known in the Netherlands as categorial protection (*categoriale bescherming*)

5/ The State party recalls the Committees' Views in communications no. 91/1997, *A. v. Netherlands*, and no. 94/1997, *K.N. v. Switzerland*

6/ The State party refers to the Committee's Views in communication no. 28/1995, *E.A. Switzerland*.

7/ « ...

6. Bearing in mind that the State party and the Committee are obliged to assess whether there are substantial grounds for believing that the petitioner would be in danger of being subjected to torture where 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.

7. The petitioner must establish that he/she would be in danger of being tortured and that the grounds for so believing are substantial in the way described, and that such danger is personal and present. All pertinent information may be introduced by either party to bear on this matter ».

8/ The petitioner gives as example an NGO appeal and a Report of the Special Representative of the United Nations Secretary General on Human Rights Defenders of 27 February 2002.