



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

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Committee against Torture

Communication No. 435/2010

**Decision adopted by the Committee at its forty-ninth session,
29 October to 23 November 2012**

<i>Submitted by:</i>	G.B.M. (not represented by counsel)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Sweden
<i>Date of complaint:</i>	5 October 2010 (initial submission)
<i>Date of decision:</i>	14 November 2012
<i>Subject matter:</i>	Deportation to the United Republic of Tanzania
<i>Substantive issues:</i>	Risk of torture following deportation; risk of cruel, inhuman or degrading treatment or punishment following deportation
<i>Procedural issue:</i>	Substantiation of claim
<i>Article of the Convention:</i>	3

Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (forty-ninth session)

concerning

Communication No. 435/2010

Submitted by: G.B.M. (not represented by counsel)

Alleged victim: The complainant

State party: Sweden

Date of complaint: 5 October 2010 (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 14 November 2012,

Having concluded its consideration of complaint No. 435/2010, submitted to the Committee against Torture by G.B.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 and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant is G.B.M., a national of the United Republic of Tanzania born in 1968, who at the time of the initial submission of the communication was in Sweden. He claimed that his forcible return to Tanzania would constitute a violation by Sweden of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is not represented by counsel.

1.2 On 4 November 2010, the Committee, acting through its Rapporteur on new complaints and interim measures, rejected the complainant's request for interim measures of protection under article 108, paragraph 1, of the Committee's rules of procedure (CAT/C/3/Rev.4).

1.3 Subsequently, in May 2012, the complainant informed the Committee that he had been forcibly removed from Sweden, but that he escaped during a stopover on his way to the United Republic of Tanzania, and he currently resides in a third country.¹

¹ In this connection, see also paras. 4.17 and 5.1 below.

The facts as submitted by the complainant

2.1 The complainant worked as a journalist in the United Republic of Tanzania. On 31 August 2008, he arrived in Sweden to participate in training organized by the Institute for Further Education of Journalists at the Kalmar University. On 16 or 17 September 2008, the complainant received a phone call from a colleague in Tanzania, informing him that the police wanted to interrogate him concerning an article of a political nature he had written prior to his departure to Sweden (this was also confirmed by the complainant's wife). The article, published in a local newspaper on 3 August 2008, concerned the status of Zanzibar in relation to the mainland. Afraid, the complainant applied for asylum on 22 September 2008.

2.2 On 4 February 2008, he was interviewed by the Swedish Migration Board. On that occasion, he explained that in 2002 he had faced criminal charges after he had written an article criticizing the parliament and that during the interrogation he had been subjected to torture² and detained without a trial for two months. The charges against him were dropped only in 2004. Furthermore, on 15 December 2007, the Ministry of Information, Culture and Sports of the United Republic of Tanzania banned the complainant from exercising his profession as he had written articles defaming the leaders of the country.

2.3 On 5 June 2009, the complainant's application was rejected by the Swedish Migration Board. The Board based its decision mainly on a human rights report of the United States Department of State concerning the United Republic of Tanzania, wherein it was stated that Tanzania ensures and respects the freedom of expression and political freedom. In addition, the Board considered that the complainant's persecution in 2002 by the Tanzanian authorities did not justify a decision granting him asylum, because of the time elapsed.

2.4 On an unspecified date, the complainant appealed against the Board's decision with the Migration Court. On 28 May 2010, his appeal was rejected by the Court, which found the complainant's explanation of the reasons for seeking asylum unconvincing. The Court concluded that there were not enough grounds to believe that the complainant was facing a risk of being persecuted if returned to the United Republic of Tanzania and that the circumstances of the case were not sufficient to show that he was in need of protection.

2.5 On 6 August 2010, the complainant requested the Migration Court of Appeal to grant him a leave to appeal. On 27 August 2010, his request was rejected and the decision of 28 May 2010 of the Migration Court became final. The complainant was subsequently summoned twice by the Migration Board concerning the possible date of his deportation and as a consequence he decided to hide.³

The complaint

3. The complainant claims that in case of return to the United Republic of Tanzania, he would be arrested and subjected to torture there, in breach of the State party's obligations under article 3 of the Convention.

² In this regard, the complainant submitted together with his present communication a copy of a medical record, dated 20 July 2002 and issued by the Maswa Council Hospital in the United Republic of Tanzania.

³ In May/June 2012, the complainant informed the Committee that he was forcibly expelled from Sweden, but that on his way to the United Republic of Tanzania he was able to escape and he is located at present in a third country – see para. 5.1 below.

State party's observations on admissibility and merits

4.1 By note verbale of 4 May 2011, the State party submitted its observations on the admissibility and merits. It notes that the complainant's application for a permit to stay was assessed under the 2005 Aliens Act, which was partially amended in January 2010. The Migration Board, thus, carries out the initial examination, whereas appeals against its decisions are examined by one of the three existing migration courts and the Migration Court of Appeal is the final instance.

4.2 The State party explains that an initial interview with the complainant was held on 22 September 2008, during which he stated that he had worked as a journalist for a newspaper called *Tanzania Daima* in Dar es Salaam. Because of an article he wrote in early August 2008, he was at risk of being sentenced to imprisonment and tortured if returned to his country of origin. He was a member of an opposition political party called Chadema. In April 2002 he had been arrested and tortured. He had been released at the end of June 2002 and since then, until 2004, when the charges against him were dropped, he had to report to the police authorities twice a week. A second interview was held on 4 February 2009.

4.3 On 5 June 2009, the Migration Board rejected the complainant's application. In its decision, the Board referred to the section "Freedom of speech and press" in the United States Department of State's annual human rights reports for the United Republic of Tanzania from 2006 to 2009, according to which the freedom of expression as a right is encompassed in the Constitution of Tanzania; the President has publicly expressed his support for freedom of the press, journalists are generally able to publish articles and the authorities allow the opposition free access to the media; and the political party Chadema's newspaper *Tanzania Daima* is published daily. The Board also noted that in addition, according to the reports by the Committee to Protect Journalists–Tanzania, the complainant was a correspondent for the daily newspaper *Mwananchi* and was accused of "contempt of parliament" after he claimed in an article, dated 7 April 2001, that some proposed reforms would benefit the party in Government. The complainant was arrested and interrogated,⁴ but was released without charge several hours later. However, he was threatened with further legal action. A prosecutor later stated that he had been instructed by the Parliament to prosecute the complainant, however, the Media Council of Tanzania and other defenders of freedom of expression raised objections, which prevented further charges against the complainant. The same account of events was provided also by the report "State of the Media in Southern Africa" and by the International Press Institute. Consequently, the Board established that the complainant's situation was not such that a residence permit should be issued on the grounds of especially distressing circumstances. It raised doubts as to whether the complainant had indeed been imprisoned for two months in 2002, as well as observed that since 2002 and, in particular, after 2007, when the complainant was banned from reporting on any business performed by the members of the Government, he had not been prevented from working as a journalist and had written a number of articles. Finally, the Board noted that it was extremely peculiar that the newspaper wherein allegedly his political article of 3 August 2008 was published was still operating and had not faced any legal consequences.

4.4 On 22 June 2009, the complainant appealed against the negative decision of the Migration Board to the Migration Court. On 7 May 2010, the Court held a hearing and concluded that it found no reasons to question the fact that the complainant was briefly detained in 2002 or that he was banned from his profession by the authorities in 2007. The Court decided that despite those events, the complainant had continued to work as a journalist in his home country; in addition, according to the content of his 2008 visa

⁴ It appears from the case file that the events referred to are the events of 2002.

application, he was employed by a newspaper and worked as a journalist and editor on political issues. He had continued to write and publish articles after the events of both 2002 and 2007. The Court also noted that the complainant himself had acknowledged that his employer wanted him to resume his job. In light of this, the Migration Court expressed doubts as to the existence of any threat against the complainant in the United Republic of Tanzania. It also took into account that the 2002 events took place a long time ago, and that the complainant was able, three weeks after the publication of his article, to leave his country legally, without the authorities showing any interest in him. Nor have there been any reports indicating that either the newspaper in question or the complainant himself were of interest to the authorities after the publication of the article. On these grounds, on 28 May 2010, the Migration Court rejected the complainant's appeal.

4.5 On 17 June 2010, the complainant appealed against the judgment of the Migration Court. On 27 August 2010, the Migration Court of Appeal decided not to grant the applicant leave to appeal. Finally, the State party informed the Committee that it had received information from the Swedish Migration Board that the complainant had left Swedish territory on 20 November 2010.

4.6 As to the admissibility of the communication, the State party explains that it is not aware of the same matter being or having been subject to another procedure of international investigation or settlement, and that, with reference to article 22, paragraph 5 (b), of the Convention, domestic remedies have been exhausted. The State party contends, however, that the complainant's assertion that he is at risk of being treated in a manner that would amount to a breach of the Convention fails to attain the basic level of substantiation required for purposes of admissibility. It submits that the communication is manifestly unfounded, and thus it should be declared inadmissible under article 22, paragraph 2, of the Convention and rule 107, paragraph (b), of the Committee's rules of procedure (CAT/C/3/Rev.4).

4.7 The State party adds that if the Committee declares the communication admissible, on the merits the issue would be whether the expulsion of the complainant would violate the obligation of Sweden under article 3 of the Convention. In this respect, the State party refers to the Committee's jurisprudence, according to which the aim of the determination of whether the forced return of a person to another country would constitute a violation of article 3 of the Convention is to establish whether the individual concerned would be *personally at risk*⁵ of being subjected to torture in the country to which he or she would be returned.⁶ 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.

4.8 As far as the general human rights situation in the United Republic of Tanzania is concerned, the State party submits that according to the section "Freedom of speech and press" in the United States Department of State country reports on Tanzania (2009 and 2010), independent media were active and expressed a wide variety of views without restrictions. According to the same reports, the President of Tanzania publicly expressed support for the press freedom, and journalists were generally able to publish articles alleging, for example, corruption by Government officials, without reprisals. Publications such as the opposition newspaper *Tanzania Daima* are issued on a daily basis. The report also mentioned that in 2009, the Ministry of Information, Culture and Sports convoked four

⁵ Emphasis is added by the State party.

⁶ Communications No. 150/1999, *S.L. v. Sweden*, Views adopted on 11 May 2001, para. 6.3; and No. 213/2002, *E.J.V.M. v. Sweden*, Views adopted on 14 November 2003, para. 8.3.

editors to its offices for distorting Government statements and in 2010 it warned the editors of the *Mwananchi* newspaper of possible legal action if the newspaper continued to publish articles criticizing the Government. The State party notes, however, that no further action was taken against those editors and *Mwananchi* continued to publish critical articles. Moreover, according to the Reporters Without Borders 2010 World Press Freedom Index, Tanzania was ranked among the world's top 50 nations in terms of respect for press and media freedom. It also noted that attacks on journalists have decreased in number over the years and journalists work in steadily improving conditions.

4.9 As to the present case, the State party maintains that there may be no doubts that the circumstances referred to in the reports above and in the Migration Board's decision do not in themselves suffice to establish that the forced return of the complainant to the United Republic of Tanzania would entail a violation of article 3 of the Convention. The Committee, therefore, should determine the complainant's personal risk of being subjected to torture following his removal to Tanzania.

4.10 The State party notes that, according to the Committee's jurisprudence, for the purposes of article 3 of the Convention the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he or she is to be returned.⁷ In addition, the requirement of necessity and predictability should be interpreted in the light of the Committee's general comment No. 1 (1997) on the implementation of article 3 of the Convention,⁸ according to which it is for the complainant to present an arguable case. Moreover, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion, although it does not have to meet the test of being highly probable.

4.11 The State party adds that the complainant's claims were examined in accordance with the applicable domestic law, and that several provisions of the Aliens Act reflect the same principle as that laid down in article 3 of the Convention. Thus, the Swedish migration authorities have applied the same test in assessing the risk of being subjected to torture when considering an asylum application under the Act as the Committee would apply when examining a subsequent communication under the Convention.⁹ The State party emphasizes that the national authorities are well placed to assess the information submitted by an asylum seeker and to appraise his or her statements and claims in view of the fact that they have the benefit of direct contact with the person concerned. In the light of the above, the State party contends that a great weight must be attached to the assessment made by the Swedish migration authorities, which in the present case was well justified.

4.12 Concerning the assessments of the credibility of the complainant's statements, the State party draws the Committee's attention to the fact that the complainant provided the Committee with a document which appears to be a medical record, dated 20 July 2002 and issued by the Maswa Council Hospital in the United Republic of Tanzania. However, no such document was ever presented before the migration authorities. The State party adds that, in any event, it is not clear whether the complainant was examined by a medical doctor specializing in torture injuries, nor how the medical examination was carried out. The State party further notes that the document seems to be a medical record and not a medical report in its strict sense. The document is vague and does not contain any concrete details concerning, for example, the injuries and how they may have occurred. Consequently, the State party considers that the document in question should be given very little, if any, value

⁷ Reference is made to communication No. 103/1998, *S.M.R. and M.M.R. v. Sweden*, Views adopted on 5 May 1999, para. 9.7.

⁸ *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr.1)*, annex IX.

⁹ Reference is made to chapter 4, sections 1 and 2 of the Act.

as evidence. In addition, even if assuming that the medical record would be sufficient to establish that the complainant had been subjected to treatment that may have amounted to torture in the past, this does not indicate that the complainant, thereby, has substantiated his claim that he would currently risk torture in the event of being returned to his country of origin. On the contrary, there are no indications that the complainant will be subjected to such treatment if returned to Tanzania.

4.13 Further, the State party holds that there are doubts as to the veracity of the complainant's assertion about the period of his detention in 2002. The State party points out that both the Committee to Protect Journalists (in its report *Attacks on the Press 2002*, published on 31 March 2003) and the United Nations Educational, Scientific and Cultural Organization (in *Media Legislation in Africa: A Comparative Legal Study*) reported that the complainant was under arrest in 2002, but only for a few hours. This information contradicts the complainant's statement that he was detained between 30 April and the end of June 2002.

4.14 The State party notes that the article which allegedly attracted the attention of Tanzanian authorities was published on 3 August 2008. However, on 27 August 2008, the Police Control Office of the Ministry of Immigration in the United Republic of Tanzania issued a passport to the complainant three and a half weeks after the publication of the article, and the complainant was able to travel legally to Sweden. The State party believes that the complainant would have been prevented from leaving his country of origin if he had been targeted by the authorities. In addition, the complainant could work as a journalist and publish articles after the alleged events of 2002 and after having been banned from reporting on any business conducted by members of the Government in 2007. According to his visa application of 28 August 2008, the complainant was employed by the *Tanzania Daima* newspaper as an editor. The State party believes that all this shows clearly that the complainant was not of interest to the authorities when he left his country and that there would be no threat against him there.

4.15 The State party notes that a substantial period of time had elapsed since the events in 2002 and recalls that although past events may be of relevance, the principle aim of the Committee's assessment is to determine whether the complainant currently runs a risk of being subjected to torture upon his arrival in the United Republic of Tanzania.¹⁰ In this regard, the State party stresses that the most recent human rights reports generally give a fairly positive picture of the current situation of journalists in Tanzania. According to the above-mentioned reports,¹¹ independent media in Tanzania express a wide variety of views and publish articles that are critical of the Government without restrictions or reprisals. Moreover, when the complainant left Tanzania, he was employed by the opposition's newspaper *Tanzania Daima*. Accordingly, nothing indicates that the complainant would attract the attention of the Tanzanian authorities because of his previous activities in case of his return.

4.16 In conclusion, the State party submits that the evidence and circumstances invoked by the complainant do not suffice to establish that the alleged risk of torture meets the requirements of being foreseeable, real and personal. The complainant has thus not shown substantial grounds for believing that he would run a real and personal risk of being subjected to treatment contrary to article 3 of the Convention if deported to the United Republic of Tanzania. Accordingly, the State party believes that the enforcement of the expulsion order, under the present circumstances, would not constitute a violation of article

¹⁰ Reference is made to communication No. 61/1996, *X, Y and Z v. Sweden*, Views adopted 6 May 1998, para. 11.2.

¹¹ See para. 4.8 above.

3 of the Convention. Since the complainant's claim under article 3 of the Convention fails to rise to the basic level of substantiation, the communication should be declared inadmissible as being manifestly unfounded, according to the State party.

4.17 In view of the fact that the complainant left Sweden on 20 November 2010, the State party finds it relevant for the Committee to establish whether the complainant still wishes to maintain his communication before the Committee. Should the Committee receive information that the complainant does not wish to maintain his communication, the State party invites the Committee to discontinue the communication.

The complainant's comments on the State party's observations

5.1 On 31 May 2012, the complainant informed the Committee that Sweden had proceeded with his forcible return to the United Republic of Tanzania, but he managed to escape during a stopover in a third country. At the moment, the complainant is hiding in the third country. On 5 June 2012, he submitted his comments to the State party's observations. On the general situation of human rights in Tanzania, he maintains that the State party lacks reliable, genuine, comprehensive and independent information on the general situation there. He further notes that the United States Department of State country reports are not credible, independent or complete. As to the situation of journalists in Tanzania, he refers to different reports from the Internet indicating the ban of newspapers, journalists' protests and searches of independent newspapers' offices and editors' homes in Tanzania.

5.2 On the issue of whether he is still personally at risk of being subjected to torture, the complainant submits that the fact that he is facing such a risk is evident by his past experience in 2002 and the fact that in 2007 he was banned from practicing his profession as a journalist. He notes that the State party has failed to present concrete evidence that he would not be subjected to ill-treatment in the United Republic of Tanzania and adds that the State party, as well as its migration authorities, had based their conclusions on mere assumptions.

5.3 As to the issue of his medical record, the complainant notes that there are no medical doctors specializing in torture injuries in Africa.

5.4 In conclusion, the complainant explains that he wishes to maintain his communication before the Committee as he was forcibly removed and that he is still in need of international protection.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention.

6.2 The Committee has ascertained, as required by 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, and notes that, as required by article 22, paragraph 5 (b), of the Convention, domestic remedies have been exhausted.

6.3 The Committee has noted that the State party submits that the communication is inadmissible as manifestly unfounded. It considers, however, that the arguments put forward by the complainant raise substantive issues under article 3 of the Convention, which should be dealt with on the merits. Accordingly, the Committee finds no further obstacles to the admissibility and declares the communication admissible, and proceeds with its consideration on the merits.

Consideration of the merits

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

7.2 In the present case, the issue before the Committee is whether the forcible return of the complainant to the United Republic of Tanzania 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.

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 his country of origin. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 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.

7.4 The Committee recalls its general comment No. 1 on the implementation of article 3, 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",¹² the Committee recalls that the burden of proof generally falls on the complainant, who must present an arguable case that he faces a "foreseeable, real and personal" risk.¹³ While under the terms of its general comment the Committee is free to assess the facts on the basis of the full set of circumstances in every case, it recalls that it is not a judicial or appellate body, and that it must give considerable weight to the findings of fact that are made by organs of the State party concerned.¹⁴

7.5 In the present case, the Committee notes that the State party's migration authorities have taken into account the fact that the human rights record of the United Republic of Tanzania was not up to the highest standards, but still moderate in terms of press freedom and the right to freedom of expression. However, while not underestimating the concerns that may legitimately be expressed with respect to the current human rights situation in Tanzania concerning press freedom and the right for freedom of expression, the State party's authorities and courts have established that the situation in that country does not in itself suffice to establish that the complainant's forced return there would entail a violation of article 3 of the Convention.

7.6 The Committee notes the complainant's claim that he was detained and tortured between 30 April 2002 and the end of June 2002. It also notes the State party's doubts

¹² General comment No. 1, para. 6.

¹³ *Ibid.*, para. 5. See also communication No. 203/2002, *A.R. v. The Netherlands*, Views adopted on 14 November 2003, para. 7.3.

¹⁴ See, *inter alia*, communication No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May 2010, para.7.3.

expressed in this connection, i.e. that credible reports attested that the complainant was kept arrested only for few hours in 2002 (see para. 4.13 above). The Committee also notes that the complainant did not specifically refute this information in his comments.

7.7 The Committee also takes note of the period of time elapsed since the events in 2002, and recalls that although past events may be of relevance, the principle aim of its assessment is to determine whether the complainant currently runs a risk of being subjected to torture upon his arrival in the United Republic of Tanzania.¹⁵ In this connection, the Committee notes also the State party's reference to recent human rights reports assessing the current situation of journalists in Tanzania (see para. 4.15 above).

7.8 The Committee further notes that that the complainant has not refuted the State party's observations concerning the fact that the article which allegedly attracted the attention of Tanzanian authorities to him was published on 3 August 2008, but that, notwithstanding, the complainant after that date was issued a passport on 27 August 2008 and was able to travel abroad without any obstruction.

7.9 Finally, as to the medical record submitted in the framework of this communication, the Committee observes that the complainant has not provided any explanation as to why he did not present it before the State party's authorities, and that, in any event, nothing in the said record brings additional pertinent details on his alleged past ill-treatment.

8. In the circumstances, and in the absence of any other pertinent information on file, the Committee finds that the complainant has not established that in case of his expulsion to his country of origin he would face a foreseeable, real and personal risk of being tortured within the meaning of article 3 of the Convention.

9. Accordingly, 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 complainant's forcible return to the United Republic of Tanzania would not constitute a breach of article 3 of the Convention.

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

¹⁵ Reference is made to *X, Y and Z v. Sweden*, para. 11.2.