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COMMITTEE AGAINST TORTURE
Thirty-seventh session
6-24 November 2006

DECISION

Complaint No. 284/2006

Submitted by:	R.S.A.N. (represented by counsel)
Alleged victim:	The complainant
State Party:	Canada
Date of complaint:	12 December 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: Non-exhaustion of domestic remedies

Substantive issues: Risk of torture and cruel, inhuman or degrading treatment or punishment on deportation

Articles of the Convention: 3, 22 (5) (b)

[ANNEX]

*Made public by decision of the Committee against Torture.

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

Complaint No. 284/2006

Submitted by:	R.S.A.N. (represented by counsel)
Alleged victim:	The complainant
State Party:	Canada
Date of complaint:	12 December 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. 284/2006, submitted to the Committee against Torture by R.S.A.N. 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 draft decision under article 22, paragraph 7, of the Convention against Torture.

1.1 The complainant is R.S.A.N., a national of Cameroon born in 1969, currently residing in Canada and awaiting deportation to his country of origin. He claims that his forcible return to Cameroon would constitute a violation by Canada of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

1.2 The Committee transmitted the complaint to the State party on 13 January 2006, without requesting interim measures of protection.

The facts as submitted by the complainant

2.1 In August 1995, the complainant, then a student at the University of Yaoundé, participated in a strike organized by a student assembly opposed to President Paul Biya. During a peaceful student march, he was forced into a police car, handcuffed, beaten and brought to a police station. He was accused of being one of the leaders of the student assembly and arrested together with 50 other students, with whom he had to share a cell

designed for no more than 10 persons. One after the other, they were interrogated by police, forced to sing and dance and beaten with a stick. Those who resisted were subjected to more severe torture. The complainant was thrown on the ground and dragged by his feet for at least 5 meters, as a result of which he has a scar on his back measuring 7 cm in length and 3 cm in width. After 24 hours of torture and humiliation, he was released and warned never to take part in a student demonstration again. Following the strike, some student leaders were arrested and sentenced to heavy prison terms. One student was allegedly burned alive in his dormitory so as to bring false charges against members of the student assembly; several others were shot to death during demonstrations. The government also adopted a decree prohibiting the recruitment of participants in the strike to the public service or to any of the country's large public and private companies.

2.2 In October 1995, the complaint left Cameroon for Côte d'Ivoire where he continued his studies and obtained a Master degree in psychology from the University of Abidjan. In July 1997, together with three fellow students, he founded and became secretary-general of an NGO to assist women and child victims of sexual violence ("SOS Violences Sexuelles"). He organized press conferences and continued to protest against the Cameroonian government, e.g. by participating in a sit-in on the premises of the Cameroonian Embassy in Abidjan on 11 October 1997, the day before the Presidential elections in Cameroon. He also gave radio and television interviews and wrote a number of newspaper articles on the human rights situation in Cameroon. After his NGO had uncovered a pedophile ring in Côte d'Ivoire in which a Minister and an Ambassador were involved, the premises of the organization were devastated and the complainant received anonymous death threats.

2.3 On 9 June 2000, the complainant entered Canada on a visitor's visa to participate in a human rights conference from 11 to 30 July. During his stay in Canada, the political situation in Côte d'Ivoire deteriorated following a failed coup d'état. After a colleague from "SOS Violences Sexuelles" had warned the complainant that he would not be safe in Côte d'Ivoire, he applied for refugee status in Canada on 12 July 2000. On 20 July 2001, the Canadian Immigration and Refugee Board rejected his application, based on the following contradictions in his counts: (a) His contention that the President of Yaoundé University had removed the names of all participants in the August 1995 strike from the student register and the fact that he was nevertheless able to submit grade reports dated October 1995 to the Board as evidence; (b) inconsistencies between the complainant's chronology of events and official records according to which the student strike took place in August 1996 rather than in August 1995; (c) his inability to produce any newspaper articles or other evidence that would confirm his participation in the alleged events of 1995; and (d) the fact that official documents suggest that the punishment of strike participants was not as severe as claimed by the complainant.

2.4 The complainant did not apply for leave to appeal the decision of the Immigration and Refugee Board to the Federal Court, but followed the advice of his lawyer to file an application in the Post-Determination Refugee Claimants class instead. On 8 December 2004, his application was transformed into a Pre-Removal Risk Assessment application under the new Immigration Law. On 13 October 2005, Citizenship and Immigration Canada rejected his PRRA application, in the absence of sufficient grounds to believe that he would be exposed to a personal risk of torture in Cameroon. The PRRA officer based her decision, *inter alia*, on the following grounds: (a) The fact that the complainant had manipulated a date and pasted his name into a copy of the report of the UN Special Rapporteur on Torture on his

visit to Cameroon (E/CN.4/1999/61) which he submitted as evidence; (b) his failure to raise his torture claim before the Immigration and Refugee Board and the late submission of that claim on 7 January 2005; and (c) his low political and journalistic profile. The complainant did not appeal the PRRA decision to the Federal Court, as he was advised by his lawyer that 99 percent of such appeals were unsuccessful.

2.5 In the meantime, the complainant established a common law relationship with a woman from Cameroon with permanent residence in Canada with whom he has been living since March 2004. A son was born out of their relationship on 20 December 2004.

2.6 On 9 November 2005, the complainant was informed that his removal from Canada had been scheduled for 6 December 2005 and that an arrest warrant would be issued against him, if he failed to present himself to the immigration authorities at Montreal International Airport. Subsequently, he filed an application for permanent residence based on his common-law relationship with a Canadian resident. On 21 November 2005, the complainant unsuccessfully requested the suspension of his deportation order, as well as priority consideration of his application for permanent residence. On 28 November 2005, the mother of his child filed an application to sponsor him as a common-law partner in the family class; the application was subsequently suspended at the mother's request.

2.7 The complainant was allegedly unable to comply with the removal order on 6 December 2005 as he fell ill and had to go to hospital. An arrest warrant was subsequently issued against him. No further date has been set for his deportation but the police came looking for the complainant at his partner's apartment.

The complaint

3.1 The complainant claims that his forcible return to Cameroon would expose him to a risk of torture, in violation of article 3 of the Convention, by reason of his activities as a student leader, his participation in conferences, and his critical radio interviews and newspaper articles that he published in Côte d'Ivoire and in Canada, on the human rights situation in Cameroon. He submits that he was tortured at the hands of the Cameroonian police during his detention in 1995, as a result of which he still displays physical and psychological *sequelae*.

3.2 The complainant submits that the evidence submitted by him shows that several other human rights activists were arrested and tortured, or had disappeared, upon return to Cameroon. As a political opponent who applied for political asylum in Canada and continued to criticize the Cameroonian regime, he would be accused of defamation of the Cameroonian government and tortured by government agents who would enjoy full impunity.

3.3 For the complainant, the human rights situation in Cameroon has further deteriorated during the past 10 years. Student opposition leaders and human rights activists continued to be intimidated and persecuted. Certain provinces, including the complainant's native Eastern province, were considered rebel provinces and any person from that region facing charges was likely to be presumed guilty merely on the basis of ethnic affiliation to the predominantly Bamiléké population of that province.

3.4 In support of his claims, the complainant submits, *inter alia*, the following evidence:

(a) A medical report dated 23 November 2005 issued by a Montréal health centre confirming that the complainant has a scar on his back measuring 3 by 7 cm;
(b) A psychological report dated 28 November 2005 from a social worker of the Jewish Board of Family and Children's Services in New York (USA), based on a telephone conversation with the complainant, confirming that he has symptoms of PTSD, i.e. nightmares, exaggerated startle response, memory impairment, emotional numbness, re-experiencing details of torture, flashbacks and intrusive symptoms;
(c) A letter from a pastor of Cameroonian origin working at the Eglise Evangélique de Pentecôte in Montréal who had known the complainant in Côte d'Ivoire in her capacity as secretary-general of an African women's rights NGO and confirms the complainant's political activities in Cameroon and Côte d'Ivoire, concluding that he would run a risk of being detained and tortured or even killed if he were to be deported to Cameroon;
(d) A letter dated 21 November 2005 from the secretary-general of "SOS Violences Sexuelles," stating that the complainant was a student opposition leader in Cameroon in the early 1990s and that he was repeatedly threatened by the authorities in Côte d'Ivoire after he had uncovered the pedophile ring;
(e) Letters in support of the complainant's request to suspend his deportation order from the Canadian Committee to Aid Refugees, the Ligue des Droits et Libertées and the Scalabrini Centre for Migrants and Refugees;
(f) Several newspaper articles by the complainant, two of which briefly criticize the political situation in Cameroon, as well as articles about his work as secretary-general of "SOS Violences Sexuelles";
(g) A number of articles about the fate of political opponents who were returned to Cameroon, some of whom have allegedly disappeared;
(h) Reports published in 2005 by Amnesty International, FIDH and the U.S. Department of State stating that torture in police custody and prisons is widespread and rarely punished in Cameroon.

3.5 The complainant claims to have exhausted domestic remedies, as no further remedies are available to him. His failure to lodge an appeal against the rejection of his application for refugee protection and against the rejection of his PRRA application was due to the inadequate advice from his lawyer. He argues that, in any event, he would have been unable to pay the legal fees for lodging appeals against those decisions and that the PRRA procedure cannot be considered an effective remedy for asylum seekers, given that 98.5 percent of all applications are rejected. The complainant submits that the State party failed to give effect to a new Section of the Immigration and Refugee Protection Act which had been adopted by Parliament and provided for more effective appeals against decisions on applications for refugee protection.

3.6 The complainant submits a report of the American Association of Jurists dated October 2005, which confirms that only 1.5 percent of PRRA applications are accepted. It describes the PRRA procedure as an administrative and summary decision on deportation and criticizes the lack of independence of PRRA officers. Leave to appeal decisions on refugee applications to the Federal Court was granted in only 10 to 12 percent of all cases. Moreover, rather than conducting a full review on the merits, the Court's limited its judicial review to a control of

the reasonableness of decisions to expel an individual, which had been criticized by the Committee Against Torture in its concluding observations on the fourth and fifth periodic report of Canada.

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

4.1 On 25 July 2006, the State party submitted its observations on the admissibility and, subsidiarily, on the merits of the complaint, arguing that the complainant has failed to exhaust all available domestic remedies, as he did not appeal the decisions of the Immigration and Refugee Board and of the PRRA officer, and that in any event, his claim under article 3 of the Convention is without merit and fails even to rise to the minimum level of substantiation required for purposes of admissibility.

4.2 The State party submits that the complainant could have requested leave to apply for judicial review of the decision of the Immigration and Refugee Board, which would have been granted by the Federal Court upon showing "a fairly arguable case." The burden of proof was on him to show that his failure to avail himself of this remedy was due to the inadequate advice from his lawyer. The Court's judicial review covers jurisdictional matters, breaches of principles of natural justice, errors in law, erroneous findings of fact made in a perverse or capricious manner, or any other breach of the law by the authorities. The decision of the Federal Court can be appealed to the Court of Appeal if the judge finds that the case involves a serious question of general importance. If leave is granted, the decision of the Court of Appeal can be appealed to the Supreme Court of Canada.

4.3 The State party argues that the Committee has recognized the effectiveness of the system of judicial review in its recent jurisprudence,[1] and has consistently held that this remedy must be exhausted by complainants.[2] Similarly, it has recently acknowledged that applications for leave and judicial review of PRRA decisions "are not mere formalities, but that the Federal Court may, in appropriate cases, look at the substance of a case."[3] For the State party, the PRRA procedure further enhances the protection afforded by the former Post-Determination Refugee Claimants procedure which had been considered effective by the Human Rights Committee.[4]

4.4 The State party disagrees with the Committee's decision in *Falcon Rios v. Canada*,[5] arguing that PRRA officers are impartial and specifically trained to assess the risk of rejected applicants on the basis of international law, including the Convention Against Torture and the International Covenant on Civil and Political Rights. The low acceptance rate in the PRRA procedure was due to the fact that most PRRA applicants were individuals whose application for refugee status had already been rejected by the Immigration and Refugee Board, which had accepted a total of 40 percent of refugee applications in 2004/05. The aim of the PRRA procedure was to evaluate any new risk elements at the time of deportation that did not exist

[1] See, e.g., Communication No. 183/2001, *B.S.S. v. Canada*, at para. 11.6.
[2] Communications Nos. 22/1995, 42/1996, 66/1997, 86/1997 and 95/1997.
[3] Communication No. 273/2005, *Aung v. Canada*, at para. 6.3
[4] Human Rights Committee, Communication No. 603/1994, *Badu v. Canada*, at para. 6.2; Communication No. 604/1994, *Nartey v. Canada*, at para. 6.2; Communication No. 654/1995, *Adu v. Canada*, at para. 6.2.
[5] Communication No. 133/1999 (2004), at para. 7.5.

at the time of the hearing before the Immigration and Refugee Board. The PRRA procedure was not a discretionary procedure but one that was governed by statutory criteria.

4.5 The State party submits that the complainant could have applied for judicial review of the PRRA decision and, at the same time, a stay of his deportation order pending the outcome of his appeal. The fact that his lawyer advised him not to do so and instead to file an application for permanent residence based on his common law relationship with the mother of his child showed that the complainant had freely chosen not to avail himself of this remedy. However, this did not exempt him from the requirement to exhaust domestic remedies, in accordance with article 22, paragraph 5 (b), of the Convention.

4.6 According to the State party, the complainant can still apply for permanent residence on humanitarian grounds, a remedy for applicants who would face unreasonable hardship if they were to apply for Canadian permanent residence in their country of origin. The fact that a favourable outcome of this procedure had caused the Committee to discontinue a number of cases in the past showed the effectiveness of this remedy.

4.7 While acknowledging that the general human rights situation in Cameroon is critical, the State party submits that the complainant did not adduce sufficient elements to believe that he would be exposed to a personal risk of being subjected to torture upon return to Cameroon. The credibility of his claim to have been detained for 24 hours and tortured in 1995 was undermined by a number of contradictions identified by the Immigration and Refugee Board, an independent tribunal, and by the PRRA officer. Due weight should be accorded to the findings of these organs, unless it can be demonstrated that such findings are arbitrary or unreasonable.

4.8 The State party submits that the complainant's medical report merely confirms the existence of a scar on his back without specifying the cause of this injury. Even assuming that he was tortured in 1995, this would not constitute sufficient grounds to believe that he would still risk to be subjected to torture in Cameroon in 2006. The State party concludes that his claim under article 3 of the Convention is inadmissible under article 22, paragraph 5 (b), fails to meet the minimum level of substantiation required for purposes of admissibility, and is without merit in any event.

Complainant's comments on the State party's observations

5.1 On 23 September 2006, the complainant commented on the State party's submission, reiterating that the PRRA procedure, including judicial review thereof, does not constitute an effective remedy for refused refugee applicants and that his failure to apply for judicial review of the decision of the Immigration and Refugee Board, which he considers an effective remedy albeit limited in scope, was to be attributed to the inadequate advice that he had received from his lawyer.

5.2 The complainant argues that an application for permanent residence on humanitarian grounds is a purely discretionary remedy but admits that it had led to favourable results in a number of cases. However, all elements for a humanitarian solution were before the Minister of Immigration and Refugees whose decision on the complainant's application for family sponsorship was still pending after more than nine months, although such decisions were normally taken after six to eight months.

Issues and proceedings before the Committee

6.1 Before considering any of the allegations in a communication, the Committee against Torture must decide whether or not the communication is admissible under article 22 of the Convention. The Committee has ascertained that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 In accordance with article 22, paragraph 5 (b), of the Convention, the Committee does not consider any communication unless it has ascertained that the complainant has exhausted all available domestic remedies; this rule does not apply where it has been established that the application of the remedies has been unreasonably prolonged, or that it is unlikely, after a fair trial, to bring effective relief to the alleged victim.

6.3 The Committee takes note of the State party's argument that the complaint should be declared inadmissible under article 22, paragraph 5 (b), of the Convention as the complainant failed to apply for judicial review of the decisions taken by the Immigration and Refugee Board and by the PRRA officer, or for permanent residence based on humanitarian grounds. It also notes the complainant's arguments as to the ineffectiveness and the discretionary nature of the PRRA and humanitarian procedures. However, the Committee need not pronounce itself on the effectiveness of these remedies if it can be ascertained that the complainant could have availed himself of the possibility of applying for judicial review of the rejection of his application for refugee protection by the Immigration and Refugee Board.

6.4 The Committee recalls that the complainant does not generally contest the effectiveness of judicial review of decisions on applications for refugee protection, despite the limited scope of such review. However, he claims that he was precluded from availing himself of this remedy because of his difficult financial situation and because of the advice from his lawyer not to apply for judicial review of the decision of the Immigration and Refugee Board. In this regard, the Committee notes that the complainant has not provided any information on the costs of legal representation or court fees, nor on the possibilities or any efforts on his part to obtain legal aid for the purpose of initiating proceedings before the Federal Court. It also observes that alleged errors made by a privately retained lawyer cannot normally be attributed to the State party. The Committee concludes that the complainant has not adduced sufficient elements which would justify his failure to avail himself of the possibility to apply for judicial review of the decision of the Immigration and Refugee Board.

6.5 The Committee is therefore of the view that domestic remedies have not been exhausted, in accordance with articlse 22, paragraph 5 (b), of the Convention.

7. Accordingly, the Committee decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the authors of the communication and to the State party.

[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.]
