



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

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 639/2014*, **

<i>Communication submitted by:</i>	N.A.A. (represented by counsel, Tarig Hassan)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Switzerland
<i>Date of communication:</i>	14 November 2014 (initial submission)
<i>Date of decision:</i>	2 May 2017
<i>Subject matter:</i>	Deportation to the Sudan
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Risk of torture in the event of deportation to country of origin (non-refoulement)
<i>Article of the Convention:</i>	3

1.1 The complainant is N.A.A., a Sudanese national born on 26 March 1986 and subject to a deportation order from Switzerland to the Sudan. He claims that his deportation would constitute a violation by Switzerland of his rights under article 3 (1) of the Convention. The complainant is represented by counsel, Tarig Hassan.

1.2 On 24 November 2014, the Committee, acting through its Rapporteur on new complaints and interim measures, decided to issue a request for provisional interim measures under rule 114 (1) of the Committee's rules of procedure and requested the State party not to deport the complainant to the Sudan while the complaint was being considered by the Committee.

The facts as presented by the complainant

2.1 The complainant is a Sudanese, belonging to the ethnical group "Al-Guemer" He was born in 1986 in a village near Kutum, North Darfur. In 2003, the rebels started to infiltrate the city of Kutum. The complainant's father, who was the chief of the village, supported the Sudan Liberation Movement.

2.2 In August 2005, the Sudanese army shelled the complainant's district in order to hit the rebels and the local population, which was supporting them. The complainant's father was killed during the attack while praying at a Madrassa (Koranic School). Following this

* Adopted by the Committee at its sixtieth session (18 April-12 May 2017).

** The following members of the Committee participated in the examination of the present communication: Essadia Belmir, Alessio Bruni, Felice Gaer, Abdelwahab Hani, Claude Heller-Rouassant, Jens Modvig, Sapana Pradhan-Malla, Ana Racu, Sébastien Touzé and Kening Zhang.



incident, the complainant left and stayed in Khartoum with his uncle, who supported the opposition.

2.3 In September 2005, the complainant flew to Beirut with false documents under the name of Isagh Ahmed Ademharun. His uncle was also killed in Ombdurman after he left the Sudan because of his support of the opposition.¹ The complainant stayed four years in Beirut then travelled to Switzerland through Turkey, Greece and Italy.²

2.4 Once in Switzerland, the complainant participated in several meetings and protest rallies against the Government of the Sudan in Geneva and Zurich, during which he chanted slogans against the Sudanese regime. For instance, on 10 October 2013, he participated in a protest rally in Geneva at which the protesters condemned the Government of the Sudan for its systematic use of military force against peaceful protesters.³ On 25 February 2014, the complainant attended the Geneva Summit for Human Rights and Democracy, at which he was seen with leaders from the Sudan Liberation Army⁴ and the Justice and Equality Movement.⁵ On 7 September 2014, he attended a meeting between the Justice and Equality Movement and the non-governmental organization (NGO) Geneva Call. The complainant submits that he was photographed with members of Geneva Call and of the Justice and Equality Movement, including its leader, Ahmed Atim.⁶ Since 2010, Geneva Call and the Justice and Equality Movement have been working together on banning landmines and other humanitarian issues, and it is certain that the Sudanese regime watches closely their activities.

2.5 On 13 September 2014, the author attended an event organized for the establishment of the Swiss office of the Justice and Equality Movement in Zurich, together with members of the Justice and Equality Movement and its leader.⁷ He also submits that he was photographed during the event.⁸ The author considers that this event must have attracted the attention of the Sudanese authorities.

2.6 In the meantime, the complainant formally joined the Justice and Equality Movement and received a membership card.⁹ He also claims he attended various conferences at the United Nations and that on those occasions he met and was seen by official Sudanese delegates.

2.7 On 13 April 2010, the complainant submitted an asylum request. On 17 August 2010, the Federal Office for Migration dismissed his request and ordered his expulsion to Greece. On 26 August 2010, the complainant lodged an appeal against that decision. On 8 March 2011, the Federal Office for Migration annulled its decision of 17 August 2010 and reopened the complainant's asylum procedure. On 7 January 2014, the Federal Office for Migration rejected the asylum request.

2.8 On 7 February 2014, the complainant filed an appeal of the decision rejecting his asylum request to the Federal Administrative Tribunal which was dismissed on 10 October

¹ The complainant does not provide the date of his death.

² The complainant does not indicate on which date he arrived in Switzerland.

³ The complainant submits the programme of a protest rally (no date included).

⁴ The Sudan Liberation Army was formed in 2001 by Darfurians from non-Arab communities. Power struggles caused it to splinter. The main factions are the SLA-MM, led by Minni Arku Minawi (Zaghawa), and the SLA-AW, led by Abdelwahid Mohammed Ahmed Nur (Fur). See <https://d2071andvip0wj.cloudfront.net/223-sudan-and-south-sudan-s-merging-conflicts.pdf>.

⁵ The Justice and Equality Movement is one of the main, original Darfur rebel groups. It was established early in 2003 by a group of educated, politically experienced Darfurians. Since 2007, it has worked actively to recruit Darfuri Arab, including from government-supported militias or "Janjaweed". From the outset, the Justice and Equality Movement sought national reform and regime change, using the atrocities in Darfur to delegitimize the government internationally. See http://www.ecoi.net/file_upload/90_1445927515_arc-sudan-darfur-201510.pdf.

⁶ The author submits pictures of the meeting, including one where he submits he is standing next to Mr. Atim.

⁷ The complainant submits pictures of the event.

⁸ The complainant attaches pictures of the event.

⁹ The complaint does not indicate on which date he joined the Justice and Equality Movement. He attaches his membership card.

2014. The complainant received a letter ordering him to leave Switzerland by 18 November 2014.

2.9 The Tribunal considered that the complainant had failed to credibly demonstrate that he was from and lived in North Darfur. Referring to its prior decision BVGE 2013/5, the Tribunal also considered that a relocation of people from Darfur to Khartoum was possible. Regarding the complainant's political activities, the Tribunal considered that, according to its jurisprudence, political activities in exile only lead to recognition of refugee quality if political persecution in the country of origin is the highly probable result of such activity. The Tribunal considered that, despite his political activities, the complainant was most probably not monitored by the Sudanese authorities and that he would not be at risk of being subjected to torture or inhumane or degrading treatment if returned to the Sudan.

2.10 The complainant argues that, contrary to the Tribunal's determination, he clearly demonstrated his origins from Darfur and the events that led to his escape. He submits that he never possessed any identity document and that he informed the authorities of the State party thereof at the start of his asylum procedure. He refers to article 7 of the Swiss asylum law,¹⁰ according to which "any person who applies for asylum must prove or at least credibly demonstrate their refugee status", and argues that this article does not require strict proof. In that regard, he recalls that he submitted a confirmation of residence issued by the local authorities of Kutum, as well as the false passport with which he had travelled to Switzerland, in order not to hide anything from the Swiss authorities. He submits that he described his village and the city of Kutum according to his faculties, limited by the fact that he was poorly educated. The complainant also submits that he described his father's functions and activities to the best of his knowledge, considering that he was still young at the time of the events, but that he was still able to describe his killing with details and in a concise way.

2.11 In regard to the possible alternative flight, the complainant submits that internal relocation is not a valid option for him, as he runs the risk of being persecuted by the Sudanese authorities, which are present throughout the territory of the Sudan, and not by the rebels in the case addressed by the Tribunal in its decision BVGE 2013/5. As an example, the complainant refers to the reports of arbitrary arrests, extrajudicial executions and ill-treatment of detainees, including reports on the detention of a large number of persons living in Khartoum, following the attack launched by the Justice and Equality Movement on Omburman.¹¹

2.12 Regarding the Tribunal's argument that the complainant's fear of persecution due to his political activities in exile is unfounded, the complainant submits that it contradicts the European Court of Human Rights judgment in *A.A. v. Switzerland*. In that case, the Court clarified that those at risk of persecution include not only high-profile political opponents, but also those merely suspected of rejecting the current Sudanese regime and supporting opposition movements.¹² The Court considered that the Sudanese authorities register persons who are politically active abroad, in particular those associated with the Sudan Liberation Army and take part to its international meetings in Geneva. In the opinion of the Tribunal, the complainant, who is not a member of the Sudan Liberation Army, does not have a prominent political profile in the sense of the Court's jurisprudence. The complainant considers that such conclusion is inconsistent with the Court's ruling in *A.A. v. Switzerland*. He claims that, according to that ruling, his political activities are relevant and should have been taken into account by State party's authorities as a source of a real, foreseeable and personal risk for him.

2.13 He also claims that this argument is not consistent with the ruling of the Tribunal in its decision BVGE 2013/21. In that decision, the Tribunal considered that the Sudanese authorities only become aware of people who are politically involved or criticize the Government of the Sudan, or are suspected of supporting an opposition movement.¹³

¹⁰ Available from www.admin.ch/opc/en/classified-compilation/19995092/201610010000/142.31.pdf.

¹¹ The author does not provide a specific date.

¹² See *A.A. v. Switzerland*, European Court of Human Rights decision dated 7 January 2014, No. 58802/12, para. 40.

¹³ BVGE 2013/21, unpublished E. 10.5 (BVGer E-1979/2008, 31 May 2013).

Sudanese who reside abroad for a long period of time face interrogation by the Sudanese security forces about possible contacts they had with the opposition while they were outside of the country. In the Tribunal's view, people in contact with the Sudan Liberation Movement and Sudan Liberation Army are most certainly registered by the Government of the Sudan. In that regard, the complainant emphasizes that, during his political activities, he met with important leaders of the Sudan Liberation Army and the Justice and Equality Movement.

2.14 The complainant further submits that the Justice and Equality Movement in Switzerland has only a few members, who can therefore be easily monitored by regular embassy-staff and some government-loyal voluntary informants. Considering the complainant's participation in protest rallies, at which he chanted slogans, and his meetings with various leading members of the Justice and Equality Movement, he considers that he is very probably known to the Government of the Sudan.

2.15 The complainant also refers to the judgement dated 4 November 2009 of the Asylum and Immigration Tribunal of the United Kingdom of Great Britain and Northern Ireland, according to which: "Darfurians may raise the suspicion of the security forces ... by having travelled abroad, or having been in contact with individuals and organizations abroad".¹⁴ He claims that, owing to his contacts, particularly as an active member of the Justice and Equality Movement abroad, he would be put at risk of grave persecution in case of return to the Sudan.

The complaint

3.1 The complainant claims that by deporting him to the Sudan the State party would violate his rights under article 3 of the Convention since he faces a foreseeable, real and personal risk of being subjected to torture and cruel, inhuman and degrading treatment.

3.2 He claims that, as a politically involved activist and a member of the Justice and Equality Movement, he belongs to a high-risk group and that, in case of return to the Sudan, he will be persecuted by the Sudanese authorities. This fear is reinforced by the fact that his father was killed by the Sudanese army. He submits that, if expelled, he will probably be arrested at the airport in the Sudan and be exposed to a risk of torture and inhuman treatment. The author refers to independent sources that confirm the use of arbitrary arrests and torture against Darfuris by Sudanese authorities.¹⁵ The author adds that prison conditions are extremely poor in the Sudan, with overcrowded facilities, and that there are reports of government officials routinely mistreating persons in custody.¹⁶ The complainant also refers to a report of Amnesty International, according to which the use of force, arbitrary detention and torture is very common against protesters in the Sudan.¹⁷ The report also indicates that torture and ill-treatment during arbitrary detention is still a common practice of security forces against members of opposition movements and protesters.

3.3 The complainant claims that there is a proven pattern of gross and flagrant human rights violations in the Sudan, as defined by article 3 (2) of the Convention.

State party's observations on admissibility and merits

4.1 The State party submits that the Federal Office for Migration examined thoroughly all the complainant's arguments related to a risk of persecution by Sudanese authorities in case of removal to the Sudan. The State party adds that the author has not submitted any

¹⁴ See United Kingdom: Asylum and Immigration Tribunal, *AA v. Secretary of State for the Home Department* (18 December 2009), para. 5. Available from www.refworld.org/pdfid/4b2fa3202.pdf.

¹⁵ Amnesty International, "Darfur crisis reaches Sudanese capital" (23 May 2008); United States of America Department of State, "2008 Country Report on Human Rights Practices: Sudan", available from www.state.gov/j/drl/rls/hrrpt/2008/af/119026.htm.

¹⁶ See "2008 Country Report on Human Rights Practices" (footnote 15 above).

¹⁷ Amnesty International, *Excessive and deadly: The use of force, arbitrary detention and torture against protesters in Sudan* (London, 2014). Available from www.amnesty.org/en/documents/AFR54/020/2014/en/.

new evidence in his complaint to the Committee that could modify the decisions taken by the Federal Office for Migration and the Federal Administrative Tribunal.

4.2 As regards the evidence on the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the Sudan, the State party notes that, in its 10 October 2014 decision, the Federal Administrative Tribunal determined that there is no generalized context of violence in the Sudan outside the Darfur region.¹⁸ According to the Tribunal's jurisprudence, the existence of an alternative flight has been admitted for refugees from Darfur, as the region of Khartoum is considered as safe.¹⁹

4.3 The State party submits that the complainant has failed to demonstrate credibly that he is under a personal, real and concrete risk to be subjected to treatment that would violate the Convention if returned to a region outside the Darfur region.

4.4 The State party also submits that the complainant has not alleged to have suffered torture or mistreatment in the past. He has even admitted that he never had any personal problems with the Sudanese authorities and that he has never been arrested.²⁰

4.5 The State party notes that the complainant has denied to have been involved in any political activity in the Sudan,²¹ and that he was not a member of any rebel organization in Darfur as he and his father were "against that".²²

4.6 The State party notes that the complainant has claimed to have participated in various meetings and protests against the Government of the Sudan. It also notes the complainant's claim that he is a member of the Justice and Equality Movement. The State party submits that the national authorities have examined those arguments and determined that there is not sufficient evidence to conclude that the complainant is under a risk of suffering treatment that would amount to a violation of the Convention in case of return to the Sudan.²³

4.7 The State party notes that the author has no specific political profile to be a target of persecution by the Government of the Sudan. Before his departure from the Sudan, he was a farmer and had never been involved in any political activity. The State party submits that it is not possible that the Sudanese authorities, even if they became aware in the future of his political activities, suddenly would consider the complainant as a "danger" and persecute him.

4.8 The State party argues that the complainant's alleged membership to the Justice and Equality Movement or the fact that he has a certificate from an organization of people in exile does not put him at risk of persecution. The State party adds that there are numerous certificates from this kind of organizations in Europe that can be obtained easily. The complainant has admitted that he had no particular role during the demonstrations in which he participated.²⁴ He never made any speech during the demonstrations, but only chanted slogans.²⁵

4.9 The State party considers that the Sudanese authorities are able to distinguish between those numerous Sudanese participating in political activities in Europe in the hope of obtaining a residence permit from the political activists who may pose a threat to the regime and who have already been registered by the Sudanese authorities before leaving the Sudan. The State party submits that the national authorities have determined that the author does not belong to any group of active Sudanese in foreign countries that would be the target or of interest to the Sudanese authorities.

¹⁸ The State party refers to the decision of the Federal Administrative Tribunal dated 10 October 2014, para. 8.5, p. 17.

¹⁹ *Ibid.*, para. 6.3, p. 13.

²⁰ The State party refers to the transcript of the hearing dated 22 April 2010, p. 7; and that of the hearing dated 17 December 2013, pp. 9-10.

²¹ The State party refers to the transcript of the hearing dated 17 December 2013, p. 10.

²² *Ibid.*, p. 13.

²³ The State party refers to the decision of the Office for Migration, 7 January 2014, para.5; and the decision of the Federal Administrative Tribunal, 10 October 2014, para. 6.4.

²⁴ The State party refers to the transcript of the hearing dated 17 December 2013, p. 14.

²⁵ *Ibid.*, p. 16.

4.10 The Federal Administrative Tribunal has also determined that the author does not have a particular political profile under risk, in the sense of the decision of the European Court of Human Rights in *A.A. v. Switzerland*.²⁶ The State party adds that the alleged reasons for asylum largely differ from those claimed by the complainant of the present communication, particularly as it concerns the extent and length of his activities and its exposure.

4.11 The State party submits that the national authorities determined that the author had failed to establish credibly his claims during the request for asylum procedures. The Federal Office for Migration and the Tribunal concluded that it was not credible that the author was originally from Kutum, North Darfur.²⁷ During the hearings of 17 December 2013, the complainant confirmed that he had never had identity papers under the name of N.A.A. He claimed to only have a “confirmation of residence” and a certificate of marriage under that name.²⁸ According to the jurisprudence and the practice of Swiss authorities, the certificate of residence delivered by a local authority in Kutum does not fill the required conditions to be considered a valid identity paper. In addition, the certificate is only a copy and not the original document, it does not contain a security mechanism and it is notorious that this kind of document can be easily purchased. The translated (into English) marriage certificate neither constitutes evidence — because, as admitted by the complainant, there is no official procedure to establish this kind of certificate — nor demonstrates that he is originally from Darfur, where he allegedly married.²⁹

4.12 The State party submits that the complainant’s statements related to his place of origin are contradictory, they do not reflect the reality and they are not concrete. For example, the complainant first indicated that he lived in the town of Kutum. Then, after been questioned by the authorities, he changed his statement and declared that he lived in a village around 45 minutes from that town.³⁰ The complainant has failed to provide convincing information on the characteristics of the town of Kutum or on the clashes between the Government of the Sudan and the rebel organizations around the town. In addition, the places mentioned by the complainant as being around the town of Kutum are not in reality situated near that town.³¹

4.13 The national authorities have concluded instead that the complainant may have come from another region of the Sudan and that he probably lived outside of Darfur for a certain amount of time before leaving the Sudan. The State party considers that the reasons for his asylum request — to escape the civil war in Darfur — are not founded.³²

4.14 The national authorities also found that the complainant’s allegations regarding the violent death of his father were partly contradictory and inaccurate. During the first hearing, the complainant indicated that his father represented the Movement for Liberation of Darfur and that he incited young people to liberate Darfur.³³ During the second hearing, the complainant denied that his father had been involved in political activities.³⁴ The complainant was unaware of the precise date of the death of his father and the story of the alleged violent death was inaccurate.³⁵ He was not able to indicate who was the killer (“certainly people with links with Sudanese authorities”, “people in uniform”), the date when he was buried or the cause of the death. First, the complainant alleged that his father had been shot; second, that he had died in a bombing; and third, when asked to clarify the question, he answered that “he was killed by bullets and at the same time under the

²⁶ The State party refers to the decision of the Federal Administrative Tribunal, 10 October 2014, para. 6.4.

²⁷ The State party refers to the transcript of the hearing dated 17 December 2013, p. 5.

²⁸ *Ibid.*, p. 3.

²⁹ *Ibid.*, p. 4.

³⁰ *Ibid.*, pp. 5 and 7.

³¹ *Ibid.*, p. 5.

³² Office for Migration decision, 7 January 2014, para.2; Federal Administrative Tribunal decision, 10 October 2014, para. 6.1.

³³ The State party refers to the transcript of the hearing dated 22 April 2010, p. 7.

³⁴ The State party refers to the transcript of the hearing dated 17 December 2013, p. 13.

³⁵ *Ibid.*, pp. 10-12.

bombings”). In addition, the complainant first claimed that he had been by the side of his father when he was killed and then that he had not seen anything.

4.15 Regarding the reasons why his father would have been killed, the complainant first claimed that he had incited people against the Government or supported the rebels, and then he claimed that his father had not been involved in political activities. The complainant affirmed that his father had had relations with the armed groups active in Darfur, but that he was not aware of the kind of relations he had actually had with them. In addition, the complainant first claimed that he was unaware whether his father had been active for the rebel organizations or had taken part in the armed conflict against the Sudanese regime, then he declared that his father had been against the rebel organizations.

4.16 The State party further submits that the complainant has failed to be credible with regard to the reasons behind his asylum request — to escape from the civil war, and the death of his father — and that no elements in the file make it possible to establish that he would face a risk of repression as a consequence of his father’s alleged activities.

4.17 The State party concludes that the complainant has failed to demonstrate, through the evidence submitted and his allegations, that he is under a real, concrete and personnel risk of torture in case of return to the Sudan and invites the Committee to determine that the return of the complainant to the Sudan does not constitute a violation of the obligations of Switzerland under article 3 of the Convention.

Complainant’s comments on the State party’s observations

5.1 With regard to the human rights situation in the Sudan, the complainant refers to two decisions of the European Court of Human Rights referring to members of the Justice and Equality Movement, in which the Court held that the situation of political opponents had become worst since the beginning of 2014.³⁶ The complainant adds that the general elections of April 2015 did not alter the situation and that the pressure and harassment against the media and civil society have continued after the elections.³⁷

5.2 Regarding his place of origin, the complainant notes that the State party brings forward the argument that the “confirmation of his residence” can be easily purchased and therefore has no value as evidence, and that the copy of the marriage certificate does not have any value as evidence either. The complainant submits that the standard of proof for asylum cases, as defined in article 7 of the National Asylum Law, does not require “full proof” but only to provide credible arguments. The complainant argues that he does not possess other identity papers and that the documents he presented are the only ones he was able to obtain. He submits that they are a valid proof of his identity, even though they may not be considered as “full proof”. The State party’s argument that this type of document can be purchased easily in the Sudan is not sufficient to question the credibility of the complainant. The complainant adds that he has no reason to delude the State’s authorities concerning his identity.

5.3 With regard to the State party’s assertion that the complainant’s statements are not credible and are inaccurate, he claims that the State party failed to take into consideration his social background and age. The complainant submits that he stated that he lived in “Hai el Wedi”, also spelled “Al-Wadi” which is considered as part of Kutum,³⁸ even though it is 45 minutes away by car. He explains that the reason why he was not aware of the number of inhabitants or the exact location of the hospital is because he only visited Kutum for shopping. He further submits that he was able to provide information on a refugee camp named Kassab; the name of several districts in Kutum and the military airport in Kutum; and the fact that the rebels had been in control in Kutum and that the city had been bombed by government forces in 2005.

³⁶ See *A.A. v. France*, No. 18039/11, of 15 January 2015; *A.F. v France*, No. 80086/13, of January 2015.

³⁷ See Agence France Presse, “Sudan seizes print runs of 10 newspapers in crackdown” (25 May 2015). Available from www.yahoo.com/news/sudan-seizes-print-runs-9-newspapers-crackdown-002336598.html.

³⁸ No further information is provided in that regard.

5.4 The complainant explains that he was born in 1986 and left the country at the age of 20 and therefore his knowledge of the city is not as good as could be expected from an adult who had lived in a city for 20 years. The complainant further explains that he received very little education and therefore cannot be expected to know the exact number of inhabitants of Kutum, nor the size of the area of Kutum.

5.5 The complainant further explains that, during the interviews of asylum seekers in Switzerland, it is standard that a representative of an NGO is present as an observer and to provide comments. In his case, a representative from the organization HEKS who was present during the interview held on 17 December 2013 found that the complainant had been credible with respect to his origin from Kutum and his allegations that his father had supported the opposition against the Government of the Sudan and had been killed by the Sudanese army. The representative also noted that the evidence submitted by the complainant to confirm his political activities in Switzerland was not “sighted or discussed in detail” during the interview.³⁹ The representative concluded that there were indications of persecution by the Sudanese authorities; his recommendation was “to examine the application for asylum substantively and clarify the individual danger of persecution of the applicant in detail”. He argued that “it might be necessary to undertake a supplementary interview”, because the political profiles of the complainant and his father, and possibly other family members, “have not been evaluated completely”.

5.6 The complainant also submits that the State party’s argument that during the second interview the complainant stated that his father had not been politically active is a misinterpretation of his statement. During the second interview, the complainant stated that his father had brought up people against the Government or who supported the rebels.⁴⁰ The complainant then confirmed that his father had had “relations” with people and that “sometimes people came to visit him” and that meetings had sometimes taken place at his father’s house.⁴¹ The complainant was not allowed to take part in those meetings and therefore did not know to which group the people belonged. The complainant also submits that he mentioned that he had not been aware whether his father had worked for the “Arko Mannaw” or the “Abdelwahaer”, who are both leaders in the Sudan Liberation Movement, and that he had demonstrated that he was familiar with the Sudan Liberation Movement.

5.7 Regarding his father’s violent death, the complainant argues that he is only able to remember that he was killed in August 2005 because he was young when he was killed and because he had little access to education. He further comments that, in his culture, dates are not considered as important, and he submits that he was still able to describe the exact circumstances of his father’s death.⁴² In that connection, he submits that his father had gone with a group of elderly people to a recitation at a Koranic school one night from Thursday to Friday. At 3 a.m., the time of the morning prayer, the complainant heard a gunshot and a confrontation took place between the Sudanese army and the inhabitants of his village. He stayed in his house then went to look for his father at the Koranic school, where he found him badly wounded. Before dying, his father told him to flee to his uncle. The complainant acted accordingly. He claims that it is perfectly logical that he said on the one hand that he did not know who killed his father and did not see anything himself, and on the other hand that he was with him at the time of this death. He adds that the claim that his father died in a bombing and shooting seems to be plausible in the framework of heavy clashes as described.

5.8 The complainant argues that he faces a risk of persecution because of his “Al-Guemer” ethnicity and the political activities of his father. He explains that other members of his family are also politically active. He claims that the Sudanese army had attacked members of ethnic minorities in Darfur because they had been suspected of supporting the rebels. He claims that his district was bombed because the Sudanese army intended to hurt

³⁹ The author provides a “sheet of signature of the representative of the non-governmental aid organization (HWV) according to art. 30(4) AsylG”.

⁴⁰ The author refers to Q117 of the interview dated 17 December 2013 (document in German).

⁴¹ The author refers to Q122-125 of the interview dated 17 December 2013 (document in German).

⁴² The complainant refers to Q94-100 and 107 of the interview dated 17 December 2013 (document in German).

the rebels and the ethnic minorities who supported them. After the complainant left Kutum, his uncle was killed in Ombdurman. The complainant claims that, because of the political profile of his family, he faces a real danger of persecution. He argues that the only reason why he was never tortured or was not killed before is because he fled the country immediately after the violent death of his father. He claims that, if returned, he would be imprisoned immediately, interrogated and tortured.

5.9 The complainant reiterates that he took part in several political meetings in Switzerland against the Government of the Sudan and that he is an activist in the small community of the Swiss branch of the Justice and Equality Movement. The complainant notes that the State party, while not contesting that he is a member of the Justice and Equality Movement, claims that this membership does not expose him to a particular risk of persecution. The complainant further reiterates his arguments related to the likely monitoring of the activities of Geneva Call and the Justice and Equality Movement, and to the likely identification of his participation in such meetings.

5.10 In this connection, the complainant reiterates his reference to the decision of the European Court of Human Rights in *A.A. v. Switzerland*, according to which those at risk of persecution include not only high-profile people but also those merely suspected of opposing the current regime and that it has been acknowledged that the Government of the Sudan monitors activities of political opponents abroad. The complainant concludes that the intensity and duration of his political activities make them relevant according to the ruling of the Court.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any complaint submitted in a communication, the Committee against Torture must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (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.

6.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the present case, the State party acknowledges that the complainant has exhausted all available domestic remedies.

6.3 The Committee notes that the State party does not challenge the admissibility of the complaint on any other grounds, and it therefore finds no obstacles to admissibility. Accordingly, the Committee declares the complaint admissible and proceeds with its consideration on the merits.

Consideration of the merits

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

7.2 In the present case, the issue before the Committee is whether the removal of the complainant to the Sudan would constitute a violation of 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.

7.3 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 the Sudan. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3 (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. 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; and 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 (1997) on the implementation of article 3 of the Convention, 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” (para. 6), 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. The Committee further recalls that, in accordance with its general comment No. 1, it gives considerable weight to findings of fact that are made by the organs of the State party concerned, while at the same time it is not bound by such findings and instead has the power, under article 22 (4) of the Convention, to assess the facts on the basis of the full set of circumstances in every case.⁴³

7.5 The Committee notes that State party’s authorities determined that the complainant had failed to credibly demonstrate that he was originally from North Darfur, and that his allegations regarding the violent death of his father had been partly contradictory and inaccurate. In that regard, the Committee notes the complainant’s argument that he provided information to the best of his knowledge and that the State party did not take into consideration his young age at the time of the events, and his low level of education. The Committee also notes that the State party considers that neither the “confirmation of residence” delivered by a local authority in Kutum, nor the translated marriage certificate, constitute a valid piece of evidence as these types of document could be purchased easily in the Sudan. The Committee notes that the State party does not provide any evidence in that regard, and considers that such affirmation is not sufficient to question the credibility of the complainant. In addition, the Committee considers that no due consideration has been given by the State party to the fact that the author had to escape a conflict area and therefore had no access to other official documents. The Committee therefore considers that the complainant has submitted sufficient elements to suggest that he is originally from North Darfur, and that he fled the Sudan to escape the civil war in Darfur.

7.6 The Committee takes note of the complainant’s submission that he is an active member of the Justice and Equality Movement and that he has participated in several meetings and protests rallies against the Government of the Sudan in Geneva and Zurich, during which he chanted slogans against the regime. It notes that the complainant was photographed during those events together with members of the Justice and Equality Movement. It also notes the State party’s argument that the complainant does not have a prominent political profile that would make him a target of persecution by the Sudanese authorities. It observes that the State party’s authorities determined that, based on his political activities in Switzerland, there is insufficient evidence to conclude that the complainant is under risk of suffering treatment that would violate the Convention in case of return to the Sudan.

7.7 However, the Committee notes that the NGO representative present at the interview of 17 December 2013 in the context of the asylum request procedure of the author concluded that the evidence submitted by the complainant to confirm his political activities in Switzerland had not been “sighted or discussed in detail” during the interview. In that connection, the Committee considers that the arguments submitted by the State party do not enable the Committee to conclude that the participation of the complainant in a meeting between the Justice and Equality Movement and Geneva Call, where he was photographed, may not have attracted the attention of the Sudanese authorities, particularly taking into account that both organizations have been working together on issues of interest to the

⁴³ See, inter alia, communication No. 466/2011, *Alp v. Denmark* decision dated 14 May 2014, para. 8.3.

Government since 2010.⁴⁴ In that regard, the Committee notes the complainant's argument that the Justice and Equality Movement in Switzerland only has a few members and therefore can be monitored easily. It also notes the decision of the European Court of Human Rights in *A.A. v. Switzerland*, according to which those at risk of persecution include not only high-profile people but also those merely suspected of opposing the current regime, and that it has been acknowledged that the Government of the Sudan monitors activities of political opponents abroad.⁴⁵ The Committee considers that, due to his political activities in Switzerland, the complainant can be perceived as opposing the Government of the Sudan and could risk being subjected to reprisals if deported, particularly considering the constant surveillance of political opponents abroad by the Sudanese authorities.

7.8 The Committee notes the complainant's claim that his father had supported the Sudan Liberation Movement and had been killed during an attack by the Sudanese army. It also notes that his uncle had also been killed because of his support of the opposition and that other members of his family had been politically active. In that connection, the Committee notes that, according to the information available in the file, the political profiles of the complainant and his father and of other family members were not given sufficient weight and were not thoroughly assessed by the authorities of the State party.

7.9 The Committee further notes the State party's argument that the complainant has not alleged to have suffered torture or mistreatment in the past. However, it also notes the complainant's argument that the only reason he was not previously tortured or killed is that he had fled the country immediately after the violent death of his father.

7.10 The Committee observes the general human rights situation in the Sudan, particularly the reports confirming the use of arbitrary detention and torture against protesters and returnees⁴⁶ and the reports of torture against individuals accused of providing information to the Justice and Equality Movement.⁴⁷ Furthermore, the Committee notes that, since the Sudan is not a party to the Convention, the complainant would be deprived of the legal option of recourse to the Committee for protection of any kind if he were to be deported to the Sudan.⁴⁸

7.11 In the light of all the above circumstances, including the information publicly available on the human rights situation in the Sudan, the involvement of the complainant in political activities in Switzerland, and the alleged killings of his father and uncle by the Sudanese army because of their involvement in political activities, the Committee is of the opinion that the State party failed to investigate sufficiently whether the complainant would be in danger of being subjected to torture or ill-treatment if returned to the Sudan. In particular, the Committee notes that the State party disregarded the suggestions made by the NGO representative present at the asylum interview of 17 December 2013 to "examine the application for asylum substantively and clarify the individual danger of persecution of the applicant in detail" and to conduct a supplementary interview to evaluate the political profiles of the complainant and his father, and possibly the other family members.

⁴⁴ See, for example, Geneva Call, "Annual report 2015" (June 2016). Available from http://genevacall.org/wp-content/uploads/dlm_uploads/2016/07/2015-Geneva-Call-AnnualReport-short-version.pdf.

⁴⁵ See *A.A. v. Switzerland* (footnote 12 above), para. 40.

⁴⁶ See para. 3.2 above. See also Human Rights Watch, "World Report 2017" (12 January 2017), available from www.refworld.org/docid/587b581ba.html; Human Rights Watch, "'Make Their Lives Miserable': Israel's Coercion of Eritrean and Sudanese Asylum Seekers to Leave Israel", available from www.hrw.org/report/2014/09/09/make-their-lives-miserable/israels-coercion-eritrean-and-sudanese-asylum-seekers; and Bethan Staton, "Sudanese refugees forcibly deported from Jordan fear arrest and torture", *Guardian*, 19 January 2016, available from www.theguardian.com/world/2016/jan/19/sudanese-refugees-forcibly-deported-from-jordan-fear-arrest-and-torture.

⁴⁷ See United States Department of State, "Sudan 2015 Human Rights Report". Available from www.state.gov/documents/organization/252945.pdf.

⁴⁸ See also communication No. 470/2011, *X v. Switzerland*, Views adopted on 24 November 2014, para. 7.9.

7.12 The Committee, acting under article 22 (7) of the Convention, therefore concludes that the deportation of the complainant to the Sudan would amount to a breach of article 3 of the Convention.

8. The Committee is of the view that the State party has an obligation to refrain from forcibly returning the complainant to the Sudan. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee invites the State party to inform it, within 90 days from the date of the transmittal of the present decision, of the steps it has taken in response to the observations made above.
