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COMMITTEE AGAINST TORTURE
Thirty-first session
10 – 21 November 2003

DECISION

Communication No. 153/2000

Submitted by:	Z. T. (represented by Ms. Angela Cranston)
Alleged victim:	R. T.
State party:	Australia
Date of complaint:	4 January 2000 (initial submission)
Date of present decision:	11 November 2003

[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-first session

Concerning

Communication No. 153/2000

Submitted by:	Z. T. (represented by Ms. Angela Cranston)
Alleged victim:	R. T.
State party:	Australia
Date of complaint:	4 January 2000 (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 11 November 2003,

Having concluded its consideration of complaint No. 153/2000, submitted to the Committee against Torture by Ms. Z. T. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

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

Adopts the following:

Decision of the Committee Against Torture under article 22 of the Convention

1.1 The complainant in the case dated 4 January 2000 is Z. T. She submits the case on behalf of her brother, R. T., an Algerian citizen born on 16 July 1967. She claims that her brother is a victim of violations by Australia of article 3 of the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment. She is represented by counsel.

1.2 On 26 January 2000, the Committee forwarded the complaint to the State party for comments and requested it, under Rule 108, paragraph 1, of the Committee's rules of procedure, not to return the complainant to Algeria while his complaint was under

consideration by the Committee. The State party, however, expelled the complainant the same day without having had time to consider the request.

The facts as submitted by the complainant:

2.1 On 27 November 1997, the complainant, who held a visitors visa, visited Mecca in Saudi Arabia. He stayed there for 7 months. He then "purchased" an Australian visa and left for South Africa, to collect the Australian visa.

2.2 On 21 August 1998, the complainant arrived in Australia from South Africa. He destroyed his travel documents at the airport of arrival. He immediately applied for refugee status at the airport, where he was interviewed by an officer of the Department of Immigration and Multicultural Affairs (DIMA). As undocumented arrival, he was refused immigration clearance under s172 of the Australian Immigration Act. On the same day, he was detained and escorted to Westbridge Immigration Detention Centre.

2.3 On 26 August 1998, the complainant applied for a Protection Visa. He was assisted by a solicitor from the Legal Aid Commission of New South Wales. On 16 October 1998, his application was rejected by DIMA. On 16 October 1998, he appealed to the Refugee Review Tribunal. The appeal was rejected on 11 November 1998. He further appealed to the Federal Court of Australia, which dismissed his appeal on 10 March 1999.

2.4 The complainant did not appeal the decision of the Federal Court of Australia to the Full Federal Court because his representatives were of the view that, in light of the narrow grounds of review available in the Federal Court, an appeal did not have any prospect of success and therefore did not fall within the guidelines which determine whether legal aid can be granted. He alleges that without legal aid it would had been likely that he would have been unrepresented in his appeal.

2.5 The complainant sent three subsequent appeals to the Minister of Immigration and Multicultural Affairs on 17 March 1999, 6 July 1999, and 26 August 1999. He requested the Minister exercise his discretion and allow him to stay in Australia on humanitarian grounds. The Minister declined to exercise his discretion in an undated letter received by counsel on 22 July 1999, and a further letter dated 23 August 1999.
The Minister's decision was not subject to appeal. On 29 October 1999, an immigration agent from the South Brisbane Immigration and Community Legal Service appealed to the Minister asking to allow the complainant to remain in Australia on humanitarian grounds; the director of Amnesty International Australia also submitted a letter, requesting that the complainant would not be returned "in the foreseeable future".

2.6 The complainant and another two asylum seekers thereupon started a hunger strike in September 1999. On 8 October 1999, they were removed from Westbridge. They were denied the opportunity to consult with their legal advisors and were not permitted to pack their own belongings. On 16 October 1999, they submitted a complaint to the Minister for Immigration and Multicultural Affairs.

2.7 The complainant alleges that he was not notified of the decision to remove him from Australia. He was effectively removed to South Africa on 26 January 2000.

2.8 In an additional letter dated 12 April 2000, Ms. T. provides further information about her brother. She states that her brother, after his expulsion from Australia, was held for 1 or 2 days at an airport hotel in Johannesburg. He was then handed over to South African government officials and was detained as an illegal arrival in the Lindela detention centre for more than 30 days.

2.9 On or about 7 February 2000 he filed an asylum application and was granted a temporary visa, which allowed him to be released from detention.

2.10 On or about 30 January 2000, the complainant was told to expect a visit from the Algerian Ambassador to South Africa. The purpose of the visit was to provide documentation for onwards travel to Algeria. The visit did not take place, after interventions from the complainant's lawyer.

2.11 The complainant claims that he does not feel safe in South Africa after his expulsion from Australia. He argues that there is no guarantee under South African law that he cannot be expelled at any time. His concern about the actions of the South African government include the notification of the Algerian Ambassador of his presence in South Africa; accepting and then revoking acceptance of an asylum application and revoking the grant of temporary visa; his detention beyond the statutory limit of 30 days in the Lindela detention centre. He claims that because of arms trade between the governments of South Africa and Algeria, he fears his application will be rejected in deference to trade imperatives.

2.12 It is submitted that the complaint has not been submitted to any other procedure of international investigation or settlement.

The complaint:

3.1 The complainant claims that there are substantial grounds for believing that he would be in danger of being subjected to torture upon return to Algeria and that, therefore, Australia would be violating article 3 of the Convention if he were returned there. He claims that he fears prosecution in Algeria on account of his political opinions and membership of the Islamic Salvation Front (FIS). He also fears having to serve in the Algerian army, and claims that members of his family were accused by the Algerian authorities of supporting armed Islamic groups. As a consequence he and other members of his family were targeted by the Algerian army.

3.2 It is submitted that the complainant is personally at risk of being subjected to torture because of his support of the FIS and his close family relationship with several people who have been targeted because of their membership of the FIS and, in some cases, their history of standing as FIS candidates.

3.3 Finally, it is submitted that the complainant is personally at risk of being subjected to torture due to the publication of the decision of the Federal Court. The decision provides personal details and family details, his claims, and the process of his application for protection in Australia. The complainant claims that such publication

rendered him personally at risk if he is forcibly returned to Algeria because of the probability that the Algerian authorities are aware of the published decision and of the details of his application for protection.

3.4 The author argues that Algeria remains an authoritarian state with a consistently poor record of gross and flagrant human rights abuses. It is submitted that those detained on national security grounds in Algeria are routinely subjected to torture, and the reports of several organizations are invoked in support of this argument. This evidence is said to establish "substantial grounds" for believing that the complainant would be in danger of being subjected to torture on return to Algeria.

3.5 The complainant seeks a finding that his expulsion from Australia, in circumstances where he does not have the right to return or go to any other country except Algeria, constitutes a violation of article 3 of the Convention.

The State party's submission on the admissibility and merits of the complaint:

4.1 On 14 November 2000, the State party submitted its observations on the admissibility and merits of the case. It explains that it was unable to comply with the Committee's request for interim measures of protection because no written request from the Committee had been received by the time of the complainant's removal from Australia on 26 January 2000. The State party adds that UNHCR's office in Australia was notified of the complainant's imminent removal and did not object, and that all potential risks of return had been fully assessed based on available country information.

4.2 For the State party, the complaint is inadmissible as incompatible with the provisions of the Convention. Further, the State party alleges that the complainant has failed to make out a *prima facie* case that there are substantial grounds for believing that he would be subjected to torture, on the event of his return to Algeria. The State party adds that the complainant has failed to disclose any reasonable basis for his belief that he is at risk of torture.

4.3 The State party observed that there is no evidence that Algerian authorities have ever tortured the complainant in the past, and evidence that he has actually been involved in the political activities of the FIS is very scant. It argues that the account of the complainant's activities contains many inconsistencies, which casts doubts on his credibility. On the strength of the evidence, the State party does not accept that the complainant is a FIS supporter.

4.4 On the possibility that the complainant may be required to undergo military service upon his return to Algeria, the State party argues that the complainant was unlikely to be required to undergo further military service either because he has already completed the service, or because he is too old to be drafted into military service. The State party states that, in any event, any requirement to pertain military service does not constitute torture. In addition, the State party invokes the Refugee Review Tribunal's (RRT) finding that the complainant has fabricated his claim to have outstanding military service obligations. The RRT stated that the complainant had exaggerated his claims in comparison to when he first raised them on arrival in Australia.

4.5 As to the publication of the judgment of the Federal Court of Australia, the State party denies that this might prompt the Algerian authorities to torture the complainant upon his return to Algeria. There is no evidence to suggest that the Algerian authorities have shown any interest in the complainant's activities since 1992, when he claims to have been arrested and detained for 45 minutes. The State party notes that the suggestion that the Algerian authorities would be scanning internet legal databases in Australia to determine his whereabouts, strains credulity. For the State party, it is highly unlikely that that the publication, on Internet, to refuse him a protection visa would have come to the Algerian authorities' attention. Accordingly, there are no substantial grounds for believing that the complainant is in danger of torture on this count.

4.6 The State party concedes that DIMA had noted that the author's relatives who had experienced harm or mistreatment had been active members of the FIS or Islamic clerics, but his own evidence, the complainant was neither of these, and had not attracted the attention of the authorities, except once in 1992, when he claimed to have been detained for 45 minutes. Further, the State Party cites the RRT's finding that the complainant was able to depart from Algeria on three occasions and to return twice without any problems. This indicates that the complainant does not attract the authorities' attention.

4.7 Moreover, the State party claims that during the hearing, the complainant admitted that none of his immediate family had problems with the authorities (with the exception of his brother-in-law, in 1995), and that he personally had had no problems since his detention in 1992. This again indicates that the complainant does not attract adverse attention from the authorities.

4.8 The State party observes that the complainant has a general fear of harm as a result of civil conflict in Algeria; this fear however is not sufficient to bring him under the Convention's protection. The State party adds that the Minister of Immigration and Multicultural Affairs considered information received from the French and United Kingdom authorities to the effect that they were unaware of any instance in which a person returning to Algeria from those countries had met with violence upon return. The State party also refers to recent reports that indicate that the human rights situation in Algeria has improved.

4.9 The State party also invokes DIMA's opinion, which noted that the Algerian authorities are aware that many citizens who travel to foreign countries make refugee applications to escape from the civil strife and adverse economic situation in Algeria. It is noted that a mere asylum application by an Algerian citizen in another country is not a reason for the Algerian authorities to attempt to persecute or torture that person.

4.10 The State party notes that by letter of 25 January 2000, the complainant was advised that arrangements had been made for him to leave Australia on South African Airways flight SA281, departing Sydney for Johannesburg at 9:40 pm on 26 January 2000. He was accompanied by 3 escorts on the flight to South Africa. Further, the State party adds that the complainant's current whereabouts are unknown to Australian authorities.

Issues and proceedings before the Committee :

Consideration of admissibility:

5.1 The Committee has noted the State party's information that the return of the complainant was not suspended and that it had not received in time the Committee's request for interim measures under rule 108, paragraph 1, of its rules of procedure. The complainant was returned to Johannesburg on 26 January 2000. He stayed in South Africa for some time, but his current whereabouts are unknown.

5.2 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. In this respect the Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee also notes that the State party has not contested that domestic remedies have been exhausted. The State party further submits that the complainant has not substantiated his case for purposes of admissibility. It refers to the Committee's Views in G.R.B. v. Sweden[1], in which the Committee held that "A State's party's obligation to refrain from forcibly returning a person to another State where there are substantial grounds to believe that he or she would be in danger of being subjected to torture is directly linked to the definition of torture as found in the article 1 of the Convention". The State party also notes that the Committee stated that the burden is on the author to present an arguable case. The State party explains that this means establishing a factual basis for the author's position sufficient to require a response from the State party. It argues that the facts relating to the complainant are not such as to warrant any response from Australia, and reiterates that the Committee noted that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. For the State party, there are no substantial grounds for believing that the complainant will be subjected to torture.

5.3 Notwithstanding the State party's observations, the Committee considers that the complainant has provided sufficient information on the danger the complainant claims to run in the event of his return to Algeria to warrant consideration of his complaint on the merits. As the Committee sees no further obstacles to admissibility, it declares the complaint admissible and proceeds to the consideration of the merits.

Consideration of the merits:

6.1 The Committee must decide whether the forced return of the complainant to Algeria would violate the State party's obligation, under article 3, paragraph 1 of the Convention, not to expel or return (refouler) an individual to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. In order to reach its conclusion the Committee must take into account all relevant considerations, including the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. The aim, however, is to determine whether the individual concerned would personally risk torture in the country to which he or she would return. It follows that, in conformity

[1] Case No. 083/1997, Views adopted 15 May 1998.

with the Committee's jurisprudence and despite the allegations of the complainant in regard to the situation in Algeria outlined in paragraph 3.4 above, the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining whether the particular person would be in danger of being subjected to torture upon his 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 gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

6.2 The Committee notes that the petitioner invokes protection under article 3 of the Convention on the ground that he is personally at danger of being arrested and tortured in connection with his and his relatives' support for the FIS. His alleged connections with the FIS date back to 1992, when he was detained and interrogated for 45 minutes. It is not submitted that the complainant was tortured or prosecuted for his connections with the FIS before leaving for Saudi Arabia. The complainant has not satisfied the burden placed upon him to support his claim that there are substantial grounds for believing that he would be in danger of being subjected to torture, and that Algeria is a country, where a consistent pattern of gross, flagrant or mass violations of human rights exist.

6.3 In the present case, the Committee also notes that the political activities of the complainant's brother-in-law took place about 10 years ago, and that they may not in themselves constitute a risk for the complainant himself to be subjected to torture, should he be returned to Algeria. It further observes that the complainant's alleged fear for military recall is not relevant to the issue under consideration.

6.4 The Committee recalls that, for the purposes of article 3 of the Convention, a foreseeable, real and personal risk must exist of being tortured in the country to which a person is returned or, as in this case, a third country where it is foreseeable that he subsecuently may be expelled. On the basis of the above considerations, the Committee considers that the complainant has not presented sufficient evidence to convince it that he would face a personal risk of being subjected to torture in the event of his return to Algeria.

6.5 The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the removal of the complainant to South Africa, on the basis of the information submitted, did not entail a breach of article 3 of the Convention.

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