



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

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Committee against Torture

Communication No. 569/2013

**Decision adopted by the Committee at its fifty-fifth session (9
November - 9 December 2015)**

Submitted by: M. C. (represented by counsel, Ms. J.A. Pieters)
Alleged victim: The complainant
State party: The Netherlands
Date of complaint: 17 June 2013 (initial submission)
Date of present decision: 30 November 2015
Subject matter: Expulsion to Guinea
Procedural issues: Non-substantiation of the claim.
Substantive issue: Risk of torture upon return to the country of
origin
Article of the Convention: 3
[Annex]

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Annex

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

concerning

Communication No. 569/2013

Submitted by: M. C. (represented by counsel, Ms. J.A. Pieters)
Alleged victim: The complainant
State party: The Netherlands
Date of complaint: 17 June 2013 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 30 November 2015,

Having concluded its consideration of complaint No. 569/2013, submitted to the Committee against Torture by M. C., 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:

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

1.1 The complaint is M. C., a Guinean national, born in 1992. He is currently in the Netherlands awaiting deportation to Guinea. He claims that his deportation to Guinea by the State party would violate article 3 of the Convention. At the time of submission of his complaint, he requested that interim measures be granted to stop his deportation while his communication is under examination before the Committee. The complainant is represented by counsel, Ms. J.A. Pieters.

1.2 On 19 November 2013, the complainant was informed by the authorities that his return to Guinea was to take place on 26 November 2013. On 21 November 2013, pursuant to rule 114, paragraph 1, of its rules of procedure, the Committee requested the State party not to extradite the complainant to Guinea while the communication was being considered by the Committee. On 2 December 2013, the State party informed the Committee that the complainant's deportation has been postponed.

The facts as presented by the complainant

2.1 The complainant worked as a farmer in Guinea. He attended only five years of elementary school and was not politically active. After his father's death, he left his birthplace and moved to Conakry to live with his uncle. On 28 September 2009, he went

together with his cousin to the stadium where people were protesting against the government. When they just sat down, the military came in and fired randomly at the crowd. Several people were shot and died immediately and many others were wounded. The complainant was violently taken by the military to a car and sent to a prison. His cousin was shot while they were running from the gunfire and until today the complainant does not know what happened to his cousin.

2.2 While in prison, the complainant was beaten with a rifle butt. Although he told the authorities that he did not have the intention to take part in the demonstration and that neither him nor his cousin had weapons on them, the military officers forced him to confess that he was one of the demonstrators that started the gunfire. As he refused to confess, he was tortured. He was forced to crawl/creep over the harsh unequal stone floor in a manner that it caused wounds on the stretched sides of his arms and legs, and around his elbows and knees. The wounds got infected due to the poor hygiene and became septic.

2.3 The complainant was also tortured with electrical shots by a Taser gun. He was kept in prison for five months without a fair trial and access to medical care. The prison's conditions were also deplorable. The food provided was of very poor quality to the extent that one detainee died of hunger. With the help of an officer, the complainant could escape from prison and then leave Guinea.¹ However, the officer told him that he could not come back because doing so would put the officer's position at risk.

2.4 The complainant submits that in February 2010, he arrived in the Netherlands.² On 19 February 2010, he applied for asylum at the Immigration and Naturalization Services (IND). On 25 October 2010, his request for asylum was rejected by the IND. The IND stated that the complainant's statements were not credible since they were broad and general; that he was not able to provide documentation in support of his claims and to explain why he was not allowed to go free as other arrestees; that his statements had several discrepancies; that he provided different descriptions for the torture methods while he was heard by the migration authorities and medically investigated by Amnesty International.

2.5 The complainant submits that although the IND accepted that he suffered from a post-traumatic stress disorder, it considered that it was not enough to grant him asylum. Moreover, it pointed out that one of the opposition leaders who was present at the stadium on 28 September 2009 and was also arrested and ill-treated had since become the prime minister of Guinea. The complainant appealed against the IND decision to the Court of Zwolle. He claimed that there was no contradiction in his statements and that any apparent discrepancy was related to the lack of follow-up questions by the authorities. In contrast, in the medical examination made by Amnesty International doctors asked him very precise questions and follow-up questions on different issues. This medical examination team concluded that the scars on the complainant's body are highly consistent with a pattern of physical maltreatment as argued by the person concerned. Moreover, the team found that his post-traumatic stress disorder and depression affected his ability to answer in a clear and accurate manner questions related to a traumatic experience.

2.6 On 29 February 2012, the Court of Zwolle rejected the complainant's appeal on the same grounds as the IND's negative decision. The complainant appealed before the Administrative Court. On 30 November 2012, the Administrative Court dismissed his appeal. On 7 May 2012, the complainant applied for suspension of departure on medical grounds before the IND. He claimed that due to his medical conditions he would not be

¹ The complainant does not provide dates or any other details regarding these events.

² The complainant provides no details concerning his travel.

able to fly back to Guinea.³ On 4 September 2012, the IND rejected the complainant's application, citing a medical report from the Medical Advice Bureau (BMA), dated 24 August 2012, that found he was fit to fly to Guinea on the condition that he had to be assisted by a psychiatric nurse. The report also held that if the medical treatment would be stopped, no medical emergency would occur in the short term. On 17 October 2012, the IND confirmed its decision of 4 September 2012. On 20 December 2012, the complainant appealed this decision before the Court of Almelo, but his appeal was rejected.

The complaint

3.1 The complainant submits that the denial of his asylum request by the State party and his potential deportation, together with the events he went through prior to his departure from Guinea as well as the human rights record of his country and the current impunity related to the massacre of 28 September 2009, put him at risk of torture or cruel or other inhuman or degrading treatment and constitute a violation of article 3 of the Convention.

3.2 The complainant maintains that his accounts are consistent with the human rights report on Guinea and on the events that took place in the so-called "Bloody Monday." As reflected in different reports, there was an excessive use of force, including lethal force, by the police in the events of 28 September 2009, in which 150 persons were killed and 40 women publicly raped. Impunity and lack of discipline of the security forces continue to be a concern and the perpetrators of the massacre have not even been suspended from duty.⁴

3.3 Against this background, the complainant claims that there is a real risk that he would be tortured or that his security would be endangered if returned since there is a consistent pattern of gross and massive violations of human rights in Guinea, which according to article 3, paragraph 2, of the Convention, should prevent the State party from deporting him. He also claims that, immediately after his arrival, he will be detained for taking part in the demonstration of 28 September 2009 and accused of starting the gunfire. Moreover, he further claims that since he witnessed the massacre and was then subjected to torture, he will be considered a threat to the security forces. He points out that although there is a new transitional government, there are still senior military officers in positions of influence in the Guinean Presidential Cabinet.

3.4 The complainant also holds that as a result of the acts of torture, he has scars on his body and that an examination carried out by Amnesty International's medical doctors confirmed that they are consistent with his allegations of torture. Further, he was also diagnosed with post-traumatic stress disorder due to the painful events he faced prior to his departure from his country of origin.⁵

State party's observations on admissibility and merits

4.1 By Note Verbale of 21 May 2014, the State party submits that the complainant entered the Netherlands on 18 February 2010, and applied for temporary asylum residence permit on 19 February 2010. The first interview for asylum took place on 20 February 2010. During the second interview, on 1 April 2010, the complainant was given an opportunity to elaborate on his initial testimony.

³ The complaint does not provide the specific medical reasons that would have prevented him to fly back to Guinea.

⁴ The complainant refers to the 2012 Amnesty International Reports: Guinea and a Human Rights Watch's report on these events, published on 5 December 2012.

⁵ The complainant provides a copy of two medical reports dated 4 September 2011 and 12 December 2012, issued by Amnesty International and the Institute for Human Rights and Medical Examination.

4.2 On 8 July 2010, the complainant gave an additional interview. These interviews were held with the participation of an interpreter, and the complainant was given an opportunity to submit written additions. On 9 September 2010, the government issued a notice of intent to deny the asylum application. On 7 October 2010, the complainant submitted his comments to this notice. The asylum application was nevertheless rejected on 25 October 2010.

4.3 The State party submits that on 18 November 2010, the complainant applied for judicial review of this decision. By judgment of the full-bench chamber of the Hague district court, sitting in Zwolle, the application for judicial review was declared unfounded. The complainant then appealed this judgment to the Administrative Jurisdiction Division of the Council of State. The Administrative Jurisdiction Division declared the application manifestly ill-founded.⁶

4.4 On 26 April 2012, the complainant submitted a new application for a temporary asylum. This application was rejected by the IND's decision of 10 May 2012. On 11 May 2012, the complainant applied to the Hague district court, which rejected the application on 24 September 2012, declaring it "unfounded." The complainant did not appeal against this decision.

4.5 Regarding the claims that were made by the complainant in the framework of the present case, the State party submits that although the human rights situation in Guinea gives a concern, according to various sources,⁷ the deportation will not lead to violation of article 3 of the Convention.

4.6 The State party submits that it "exercised due care" during the asylum procedure. According to section 31, subsection 1, of the Aliens Act 2000, the applicant is required to supply all information, including relevant documents, on the basis of which, it can be decided whether sufficient grounds exist to grant asylum. The asylum procedure gives an opportunity for the applicant to prove the veracity of his testimony: only credible accounts are considered during the assessment.

4.7 The State party considers that the complainant's account in support of his asylum application is not credible. Even if the statements were to be considered credible, the complainant has not shown that his return to Guinea would result in violation of article 3 by the State party. In providing the details in support of his application, the State party considers that the complainant has been insufficiently cooperative. He has not submitted a single document to establish his nationality, identity, or travel route. He has also failed to produce any documents that would allow him to travel. These circumstances undermine the credibility of the complainant.

4.8 In addition, the complainant made very cursory statements about the death of his parents. He cannot say when his father died, not even by approximation. He also cannot say who attended his funeral in 2005. It is also unlikely that he spent three days in hospital after being beaten up by his uncle since he cannot say what medication he was given there and what physical complaints he had. The complainant also failed to provide details of his trip to Conakry after he was discharged from the hospital.

⁶ The State party submits that that the Administrative Jurisdiction Division may simply confine itself to stating that the application is "manifestly ill-founded", without providing further explanations.

⁷ The State party refers to the following reports: US State Department: Country Report on Human Rights Practices 2013 – Guinea of 27 February 2014; Human Rights Watch: World Report 2014 – Guinea of 21 January 2014; Amnesty International Report 2013 – the State of the World's Human Rights – Guinea and the Country Report on Guinea by the Dutch Minister of Foreign Affairs of 28 March 2013.

4.9 The State party further submits that the complainant failed to provide details about his stay in Conakry. The complainant doesn't remember any hotels, shops, banks near the house where he allegedly stayed. This also throws into doubt his account regarding problems he says he encountered in Conakry.

4.10 The State party further submits that it doubts that the complainant took part in the events of 28 September 2009 as he cannot specify when he went to the stadium, or how long he was there, and he provides very few details about what happened at the stadium after the soldiers entered. During the 8 July 2010 interview, for example, the complainant stated that "nothing noteworthy" happened when the military entered the stadium. This account is inconsistent with previously mentioned reports by the Human Rights Watch and the Amnesty International. According to these organizations, shots were fired, which caused great commotion in the stadium.

4.11 While the complainant stated that he was imprisoned for five months, he doesn't remember names or description of his cellmates, or cannot describe the prison itself, and how he was able to escape. The State party further considers that the complainant concocted a story with a captain who helped him escape from the prison.

4.12 Regarding the medical evidence, the State party submits that the report dated 14 September 2011 by the Amnesty International Medical Examination Group and the letter from the Institute for Human Rights and Medical Assessment dated 12 December 2012 do not lend credibility to the complainant's account.

4.13 The judgment of the Administrative Jurisdiction Division of 19 February 2014 sets out how corroborating medical evidence is taken into account in asylum procedures. If the corroborating medical evidence strongly indicates that the alleged inhuman treatment was the cause of the alleged injuries, the State party may be obliged to carry out a further investigation into evidence in order to remove any doubt. Regarding the medical evidence submitted by the author, the State party submits that it does not warrant a further investigation.

4.14 The State party considers that the account of facts and events in the medical reports reveals further discrepancies with the complainant's account of facts during the asylum interviews. For example, the complainant failed to mention during the asylum interviews that he was subjected to electric shocks, or that he was questioned while he was in "tiger crawl position". Further, the Amnesty International report leaves open the possibility that the scars on the complainant were sustained differently from the way described by the complainant.

4.15 The State party further submits that it is not clear whether "due care has been exercised in reaching the conclusions in the medical report". The Amnesty International's report seems to have accepted the complainant's statements as facts, and there is nothing to show that this report is based on any "objective data."

The complainant's comments on the State party's observations on admissibility and merits

5.1 In reply to the State party's observations, on 12 August 2014, the complainant submits that the State party does not have enough reasons to doubt his credibility. The State party failed to consider the fact that the complainant suffered from a post-traumatic stress disorder as a result of his traumatic experience while in detention.

5.2 The State party, for example, refers to several contradictions in his account of facts and events. Some of the contradictions are easily explained. For example, during his father's death, the complainant was very young, even before he went to school. At the time of his mother's death, he was only 12 years old.

5.3 The State party finds it incredible that the complainant doesn't remember medications that were given to him at the hospital. Again, the complainant was very young, and was beaten by his uncle. The hospital staff did not inform him of the drugs he was taking.

5.4 Regarding his travel to Conakry, the complainant submits that he did not have enough money for a normal seat, so he had to travel in the trunk of a car, so he could not see much during the trip. He also doesn't know exactly where he stayed in Conakry, which is plausible, because he only stayed there for one week.

5.5 The complainant further describes the panic after the shooting had begun at the stadium, that his cousin got shot, that he was arrested and taken to a large house. Subsequently, he was put in a large cell together with six other people. As for the 5-month detention, it is very difficult for the complainant to describe this time, because he was traumatized by "horrible things that happened to him during his detention." His memory of this time is vague, because he tries to forget this experience.

5.6 Regarding the medical evidence, the complainant submits that the State party has to take it seriously. The report from the Amnesty International documented scars on his forearms as a result of ill-treatment during the detention. The conclusion of this report is that the scars are "consistent" or "very consistent" with the pattern of abuse as described by the complainant. The psychological symptoms of the complainant diagnosed as post-traumatic stress disorder and major depressive disorder are typical to the experience suffered by the complainant.

5.7 The complainant submits that since the medical evidence in support of his position is so strong, the State party has no choice but to order further medical examinations. Instead, the State party paid attention only to small discrepancies. For example, the abusive "pumping"⁸ position is the same as "tiger-crawling," which was considered a discrepancy by the State party.

5.8 The complainant in conclusion submits that substantial risks exist that he will be tortured if returned to his home country. He submits that he runs a risk of being persecuted for his role in demonstrations, and revenge by military officers for rendering public his story. Furthermore, he submits that he has suicidal thoughts, and even tried to commit suicide twice. The complainant submits a reference from a psychiatrist who considers that if deported, the complainant "could get suicidal".

Further submissions by the parties

6.1 By its Note Verbale of 27 July 2015, the State party further reiterates its position, and insists that the complainant's statements are not credible. For example, his young age when he was beaten up by his uncle and admitted to the hospital is an "insufficient reason for his lack of knowledge" of the specific medications that he was administered. In addition, even if he travelled in the trunk of a car, it still does not explain lack of any detail regarding his trip, and duration of this trip.

6.2 Regarding the inconsistencies during the events at the stadium, the State party points out further inconsistencies. According to the Human Rights Watch and Amnesty International reports, there were shots fired outside of the stadium, a fact that the complainant failed to mention. The complainant claims that he did not see soldiers until he was inside the stadium and this contradicts the above cited reports as well.

⁸ The complainant describes this as "crossing your hands while holding your ears moving your body up and down".

6.3 The State party also notes that even if it can be assumed that the complainant had been tortured in the past, this does not necessarily mean that more than six years later, he will be tortured again if returned to his home country.⁹

6.4 Regarding the complainant's health situation, including his suicide attempts, the State party refers to the Committee's jurisprudence, according to which, the aggravation of the person's health as a result of deportation does not amount to cruel, inhuman or degrading treatment envisaged by article 16 of the Convention.¹⁰

6.5 The State party submits that the Medical Advisor's Office, upon the request by the complainant, examined his case, and made a finding that he was fit to travel, although accompanied by a psychiatric nurse, and transferred to psychiatrist upon arrival. The State party claims that such psychiatric care is available in Guinea.

6.6 On 5 November 2015, the complainant, responding to the State party's further observations, reiterates his position. He submits that small inconsistencies in his story regarding the medicines he was taking, his journey to Conakry were due to his age and inexperience. Regarding the medical evidence that he has provided, he submits that the doctors, especially those who specialize in treating persons with signs of torture, are in best position to make conclusions about post-traumatic psychological symptoms and stress disorders. The doctors are unambiguous in their conclusion that these symptoms are directly related to torture.

6.7 Regarding the risk of torture upon return, the complainant submits that those responsible for the massacre at the stadium have not been punished. He also fears that, if returned, he will be questioned about his whereabouts during the past six years. The complainant also mentions that there is a risk that he will commit suicide if returned. The complainant therefore reiterates that his return to Guinea would constitute violation of article 16 of the Convention.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering a claim contained in a communication, the Committee 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, 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.

7.2 The Committee recalls that, in accordance with article 22, paragraph 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. It notes that in the present case, the State party has recognized that the complainant has exhausted all available domestic remedies. Accordingly, the Committee finds no further obstacles to the admissibility, declares the communication admissible and proceeds with its examination on the merits, as far as the complainant's claim under article 3 of the Convention is concerned.

⁹ The State party refers to, *inter alia*, communication No. 235/2003, *M.S.H. v Sweden*, decision adopted on 14 November 2005; communication No. 186/2001, *K.K. v. Switzerland*, decision adopted on 11 November 2003.

¹⁰ The State party refers to communication 183/2001, *B.S.S. v Canada*, decision adopted on 12 May 2004.

Consideration of the merits

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

8.2 The issue before the Committee is whether the removal of the complainant to Guinea would violate the State party's obligation under article 3 of the Convention not to expel or return (*refouler*) a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. 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 Guinea. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not of itself constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country. The aim of such a 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 return.

8.3 The Committee observes that it expressed its concerns "by credible reports of acts of torture and ill-treatment practised in such places as facilities for the deprivation of liberty and especially in gendarmeries and military detention camps"¹¹ in its recently adopted concluding observations following the examination, in May 2014, of the country situation in Guinea, in the absence of a State party's report. In those same concluding observations, the Committee noted the "slow pace" with which Guinea is working "to determine responsibility for the acts of torture, summary executions, rapes, sexual abuse, instances of sexual slavery, arrests, arbitrary detention and enforced disappearances perpetrated during those events by law enforcement officers"¹² regarding the events that took place on 28 September 2009 at the Conakry Stadium.

8.4 The Committee also recalls its general comment No. 1, 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 notes that the burden of proof generally falls on the complainant, who must present an arguable case that he or she faces a foreseeable, real and personal risk.¹³ 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 organs of the State party concerned, while at the same time it is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case (para. 9).

8.5 The Committee takes note of the medical evidence presented by the complainant, particularly a report dated 14 September 2011 by Amnesty International's Medical Examination Group, and a letter from the Institute for Human Rights and Medical Assessment dated 12 December 2012. The complainant also submitted a letter with findings of his psychiatric examination. The conclusion of these reports is that the scars on the complainant's body are consistent or very consistent with a pattern of abuse allegedly

¹¹ Committee against Torture, Concluding observations on Guinea in the absence of its initial report, adopted on 20 June 2014 (CAT/C/GIN/CO/1), para. 9.

¹² *Ibid.*, para. 10.

¹³ See, *inter alia*, communications No. 203/2002, *A.R. v. Netherlands*, decision adopted on 14 November 2003, and No. 258/2004, *Dadar v. Canada*, decision adopted on 23 November 2005.

suffered. In addition, the complainant was diagnosed with post-traumatic stress disorder and major depressive disorder.

8.6 The Committee notes the State party's admission that it would have ordered further medical investigation if the initial medical findings warranted such an investigation. The Committee observes that such examination would have been warranted and beneficial for further determination of the previous occurrences of torture, especially in light of such a strong and almost unequivocal medical reports. This evidence includes findings that the complainant's scars "are highly consistent with a pattern of a physical mistreatment as argued by the person concerned". While the State party points to the alleged discrepancies in the medical reports regarding the facts as submitted by the complainant, it does not clearly refute the findings of the medical examinations themselves.¹⁴

8.7 In light of these considerations read as a whole, and taking into account the present political situation and the reports regarding the general human rights situation in Guinea, especially regarding those persons who were involved in events at the Conakry Stadium on 28 September 2009, the complainant's previous imprisonment and detailed description of torture and ill-treatment suffered there supported by substantiating elements adduced as proof thereof by the complainant, such as medical documentation, the Committee considers that there are substantial grounds for believing that the complainant risks being subjected to torture if returned to Guinea.

9. 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 there are substantial grounds for believing that the complainant would face a foreseeable, real and personal risk of being subjected to torture by government officials if returned to Guinea. The Committee therefore concludes that the deportation of the complainant to Guinea would amount to a breach of article 3 of the Convention.

10. The Committee is of the view that the State party has an obligation, in accordance with article 3 of the Convention, to refrain from forcibly returning the complainant to Guinea or to any other country where there is a real risk of him being expelled or returned to Guinea. 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 present decision.

¹⁴ The State party argues, *inter alia*, that it is "not clear whether due care has been exercised in reaching the conclusions in the medical report" referring to the report by the Amnesty International's Medical Group. Regarding the conclusion about the psychological problems suffered by the complainant, the State party also claims that "there is nothing to show that Amnesty International based this conclusion on any objective data"