

UN Committee against Torture 46th Session (May 2011)

MAY 2012

SUMMARIES OF DECISIONS on admissibility and merits taken by the UN Human Rights Committee during its 46th session in May to June 2011. Produced by lawyers at the Open Society Justice Initiative, with the assistance of the Pro Bono Program at University of Virginia School of Law, in order to bring the decisions of global human rights tribunals to the widest possible audience.

All decisions are UN Doc. CAT/C/46/D/[communication number]

Admissibility Decisions

[H. E-M. v. Canada](#) (Communication no. 395/2009)

Lebanese national sought to prevent deportation to Lebanon, claiming likelihood of torture by the government. The complainant exhausted domestic remedies by failing to pursue an application for leave and judicial review with due diligence, thus rendering the case inadmissible before the Committee.

[F.M-M. v. Switzerland](#) (Communication no. 399/2009)

Congolese national sought to prevent deportation to the Republic of the Congo, claiming likelihood of torture upon return. The Committee held that the complainant's failure to present new evidence to the national judicial authorities, which he submitted to the Committee, rendered the case inadmissible because the State party must first have an opportunity to examine the new evidence.

Decisions on the Merits

[Mondal v. Sweden](#) (Communication no. 338/2008)

Former BNP member who is a Hindu and a homosexual has provided sufficient evidence of risk of torture if returned to Bangladesh; however, claims under Article 16 of the Convention (prevention of torture) failed to reach the requisite level of substantiation.

[Jahani v. Switzerland](#) (Communication no. 357/2008)

Iranian national who was involved in separatist movement in Iran and has been active in the Iranian opposition movement in Switzerland has provided sufficient evidence of risk of torture if returned to Iran.

[Khalsa et al. v. Switzerland](#) (Communication no. 336/2008)

Four relatives who are Indian nationals, Sikh militants who are involved in the Sikh community and in anti-Indian political activities in Switzerland, provided sufficient evidence of risk of torture if returned to India.

[E. C. B. v. Switzerland](#) (Communication no. 369/2008)

Congolese national who claims to have been involved in political activities, in the Republic of Congo, Côte d'Ivoire, and Switzerland, failed to provide sufficient evidence of risk of torture if returned to the Republic of Congo.

[T. D. v. Switzerland](#) (Communication no. 375/2009)

Ethiopian national who claimed to be persecuted on political grounds in Ethiopia and who became involved in an opposition group after denial of first asylum application failed to provide sufficient evidence of risk of torture if returned to Ethiopia.

[Ktiti v. Morocco](#) (Communication no. 419/2010)

French national facing extradition to Algeria for involvement in drug trafficking, provided sufficient evidence of risk of torture if returned to Algeria; and failure to investigate allegations that evidence underpinning extradition was obtained by torture is a separate breach of Article 15.

[M.S. G. et al.v. Switzerland](#) (Communication no. 352/2008)

Turkish national, who provided fraudulent documents and made statements that were either unverifiable or contradicted by evidence obtained by Swiss Embassy, failed to provide sufficient evidence of risk of torture if his family returned to Turkey.

[Singh v. Canada](#) (Communication no. 319/2007)

Indian national who was detained and tortured several times for suspected activities as a militant provided sufficient evidence of risk of torture if returned to India.

[Chahin v. Sweden](#) (Communication no. 310/2007)

Syrian national who had been tortured and convicted of anti-State activities provided sufficient evidence of risk of torture if returned to Syria.

[Hanafi v. Algeria](#) (Communication no. 341/2008)

Algerian national brought claims when her husband died after being detained and tortured by Algerian officials; the Committee ruled that the complainant must have the right to pursue the procedure initiated in the Committee and found multiple violations.

[R. T-N. v. Switzerland](#) (Communication no. 350/2008)

DRC national who was allegedly tortured and whose wife was allegedly raped as a result of his political activities in the DRC, failed to substantiate causal link between his political activities and risk of torture if returned to the DRC.

[Bakatu-Bia v. Sweden](#) (Communication no. 379/2009)

DRC national who was detained, raped, and tortured for her involvement in a politically radical parish provided sufficient evidence of risk of torture if returned to the DRC, based primarily on the consistencies between her accounts of her experiences and the general situation in the DRC.

Admissibility Decisions

H. E-M v. Canada

23 May 2011, UNCAT, 395/2009

Inadmissible under Article 22(5)(b) (exhaustion of domestic remedies)

Facts. The complainant, a Lebanese national facing deportation in Canada, claimed that his return to Lebanon would violate Article 3 of the Convention. He claimed he was a well-known member of the “Shia party” and that, if deported to Lebanon, he would face torture for being a Shiite Muslim and for his past role in politics. The Canadian Minister of Citizenship, Immigration and Multiculturalism issued a Danger Opinion finding that the complainant could lose his refugee status protection under Article 33(2) of the Convention relating to the Status of Refugees because he posed a danger to the Canadian public. The complainant’s application for leave and judicial review was denied by the Federal Court on 7 July 2009 on the grounds of failure to submit his case file.

Decision. The Committee found that the complainant failed to submit evidence or written comments explaining why he was personally at risk of torture if he returned to Lebanon, and that he subsequently did not pursue his application for leave and judicial review with due diligence, omitting to submit to the Federal Court a case file in support of his application. The Committee further found that errors made by a privately retained lawyer, who in this case failed to pursue available remedies diligently, cannot constitute justification for the complainant’s failure to exhaust domestic remedies.

Link to [full decision](#) (PDF)

F. M-M v. Switzerland

26 May 2011, UNCAT, 399/2009

Inadmissible under Article 22(5)(b) (exhaustion of domestic remedies)

Facts. The complainant, a Congolese national facing deportation in Switzerland, claimed that his return to the Republic of Congo would violate Article 3 of the Convention. He believed he would be tortured because of his close ties to exiled former President Psacal Lissouba, his role in founding the Swiss branch of *Cercle d’études pour le retour de la démocratie au Congo* (Discussion group for a return to democracy in the Congo), and because he “was a rebel soldier.” The Federal Office for Refugees refused the request for asylum, saying that his statements were not credible. The Federal Administrative Tribunal rejected the complainant’s appeal, citing inconsistencies and inauthenticity of evidence submitted. The complainant had not presented evidence of some of these factors to the national judicial authorities before presenting his complaint to the Committee.

Decision. The Committee found that the complainant had not exhausted domestic remedies because the State party must have the opportunity to examine the new evidence before the Committee considers it. The Committee therefore found that the communication is inadmissible because the conditions of Article 22(5)(b) have not been met. However, the Committee noted that complainant has the right to file a new request for asylum on the basis of the new evidence.

Link to [full decision](#) (PDF)

Decisions on the Merits

Mondal v. Sweden

23 May 2011, UNCAT, 338/2008

Violation of Article 3 (non-refoulement); No violation of Article 16 (prevention of torture).

Facts. The complainant, a Bangladeshi national facing deportation from Sweden, claimed that his return to Bangladesh would violate Article 3 of the Convention. He claimed that he had been tortured and raped in Bangladesh because of his political activities, religion, and homosexuality. The Migration Board initially rejected complainant's asylum application. Complainant appealed to the Migration Board of Appeals, and the Stockholm Migration Court took over the matter when that body ceased to exist. The complainant's appeals were rejected by the Stockholm Migration Court and subsequently by the Supreme Court of Migrations Appeals.

Decision. The Committee held that the part of the communication related to Article 16 of the Convention (prevention) is inadmissible because the complainant failed to provide substantiation for those claims. However, it found the part of the communication regarding an alleged violation of Article 3 of the Convention (non-refoulement) to be sufficiently substantiated for the purposes of admissibility. As to the merits, the Committee held that the fatwa issued against the complainant because of his homosexuality, the evidence of past persecution for his involvement in the BNP, and medical documentation regarding the consequences of past torture provide sufficient evidence to show that he personally runs a real and foreseeable risk of being subjected to torture were he to be returned to his country of origin. The Committee therefore held that the expulsion of the complainant to Bangladesh would constitute a violation of Sweden's obligations under Article 3.

Link to [full decision](#) (PDF)

Jahani v. Switzerland

23 May 2011, UNCAT, 357/2008

Violation of Article 3 (non-refoulement) – Torture.

Facts. The complainant, a national of the Islamic Republic of Iran facing deportation from Switzerland, claimed that his return to Iran would violate Article 3 of the Convention. He believed he would be tortured for being of the Kurdish minority, and because of his extensive activities as a member of the Communist Workers' Party in Iran and as leader of the cantonal branch of the Democratic Association for Refugees in Switzerland. The Federal Administrative Tribunal instructed the Federal Office of Migration (FOM) to consider the merits of the case. The FOM rejected the application, and an appeal was rejected because it was not timely filed. A new complaint filed less than 3 months later was rejected, and the complainant was ordered to leave the country by July 30, 2008. He has since been residing in Switzerland illegally.

Decision. The Committee noted that, although the complainant did not disclose this in his asylum application, he was detained by Iranian authorities in 2002 as a result of his political activity. The nature and extent of his political activities while living in Switzerland, which included several demonstrations, radio broadcasts, and publications, are such that the Iranian government would have known of his involvement in them. The Committee thus found that deportation would violate Article 3 of the Convention.

Link to [full decision](#) (PDF)

Khalsa et al. v. Switzerland

26 May 2011, UNCAT, 336/2008

Violation of Article 3 (non-refoulement) – Torture.

Facts. The complainants, various members of the Khalsa family, citizens of India facing deportation from Switzerland, claimed that their return to India would violate Article 3 of the Convention. Complainants believed they would be tortured for past militant activities and for current political activity and involvement in the Sikh community in Switzerland. All four complainants were sentenced to death in Pakistan for their roles in the hijacking of two planes as a protest move, but their death sentences were commuted to life imprisonment when Benazir Bhutti became Prime Minister. Complainants were released in 1994 and instructed to leave the country. They have been living in Switzerland ever since. Complainants believed they would be tortured because of their involvement in the Sikh community in Switzerland and their participation in anti-Indian activities, claiming that their relatives in India have already been harassed. The Swiss Federal Office rejected their claims for asylum in 2003, which was affirmed on appeal. Complainants submitted several petitions for reconsideration between 2003 and 2007, all of which were rejected. The Federal Administrative Tribunal issued a final decision confirming refusal to grant asylum.

Decision. In relation to one applicant, Dalip Singh Khalsa, the Committee discontinued the communication because Dalip had received a regular residence permit from Switzerland. Committee found that deportation of the other applicants would violate Article 3 of the Convention for the following reasons: other individuals who had participated in similar hijackings and detained and tortured and/or killed upon return to India; complainants are known Sikh militants who have been actively involved in the Sikh community abroad; and Indian justice authorities questioned relatives about complainant's whereabouts as late as 2005. Committee also noted that complainants might not have opportunity to reapply for protection from abroad because India is not a signatory to the Convention.

Link to [full decision](#) (PDF)

E. C. B. v. Switzerland

5 July 2011, UNCAT, 369/2008

No violation of Article 3 (non-refoulement) – Torture – Non-refoulement – Evidence

Facts. The complainant, a national of the Republic of Congo facing deportation from Switzerland, claimed that his return to Congo would violate Article 3 of the Convention. The complainant believed he would be tortured because of past and current involvement in movements opposing the Congolese government. Complainant was president of the Pan-African Union for Social Democracy youth movement in Congo, but fled to Côte d'Ivoire after being targeted by government troops and militia for his political opinions and involvement. In Côte d'Ivoire, he established an association known as *Jeunesse pour la paix, l'entreprise et l'unité* (Youth for peace, enterprise and unity, JE-PEU) and joined the *Cercle d'études pour le retour de la démocratie au Congo* (Discussion group for a return to democracy in the Congo), but was threatened by supporters of Laurent Gbagbo for his political activity. He then joined his brother exiled in Russia, but, following racism and attacks there, left and sought asylum in Switzerland. He has continued to run JE-PEU from Switzerland. The Federal Office of Migration rejected his asylum application and Federal Administrative Tribunal rejected his appeal of that decision. The complainant submitted several petitions for reconsideration between 2003 and 2007, all of which were rejected. The Federal Administrative Tribunal issued a final decision confirming refusal to grant asylum.

Decision. The Committee held that refoulement either to Congo or Côte d'Ivoire would not violate Article 3 of the Convention. The complainant claimed that his political activities in the Congo, Côte d'Ivoire and

Switzerland, in addition to his relationship to the president of the Russian branch of CERDEC, would place him in danger of persecution, but he failed to provide substantial evidence of his active role in a political party or his political activities that would justify his fear of persecution.

Link to [full decision](#) (PDF)

T. D. v. Switzerland

26 May 2011, UNCAT, 375/2009

No violation of Article 3 (non-refoulement) – Torture – Non-refoulement – Evidence

Facts. The complainant, an Ethiopian national facing deportation from Switzerland, claimed that Article 3 of the Convention would be violated if he was returned to Ethiopia because he would be tortured for political reasons. He claimed that he was detained for six months for being a member of Oromo Neetsaanet Gymbaar, although he did not allege that he was tortured during that time. He sought asylum in Switzerland, but the Federal Office of for Refugees (subsequently replaced by the Federal Office for Migration (ODM)) rejected his request on credibility grounds, and the Swiss Asylum Review Board dismissed the complainant's appeal. The complainant ignored orders to leave Switzerland and claims that he then became politically active, founding an Ethiopian opposition party in Switzerland and organizing demonstrations and meetings of the Ethiopian opposition in Switzerland. The complainant then filed a second application for asylum, which was rejected by the ODM. The complainant appealed again, but the Federal Administrative Tribunal dismissed the appeal on the basis that the complainant was not one of Ethiopia's "hard core" opponents and, as such, was not at risk of being subjected to torture if returned to Ethiopia.

Decision. The Committee found that merely being a member or supporter of an opposition party does not in itself entail risk of persecution in Ethiopia, unless that party is the Oromo Liberation Front or Ogaden National Liberation Front. The complainant is not involved in either of those groups. The Committee therefore found that deportation of the complainant would not violate Article 3 of the Convention because the complainant failed to provide sufficient evidence that he would be subjected to torture if returned to Ethiopia.

Link to [full decision](#) (PDF)

Ktiti v. Morocco

14 April 2010, UNCAT, 419/2010

Violation of Article 3 (non-refoulement) – Torture; State violation of Article 15 (use of statement obtained through torture)

Facts. The complainant brought a claim on behalf of his brother (Ktiti), a French national facing extradition from Morocco to Algeria. The complainant claimed that Ktiti's return to Algeria would violate Article 3 of the Convention because Ktiti would be tortured for his alleged involvement in trafficking of cannabis from Algeria to France. Ktiti was detained in Morocco after another man, M.K., identified Ktiti as an accomplice in a trafficking scheme. M.K. identified Ktiti as involved in the trafficking while he was himself detained and tortured in Algeria: his relatives reported several visible injuries after visiting him at the detention center, but did not wish to record this in writing for fear of reprisals against M.K. by authorities. Ktiti has allegedly been tried in absentia and sentenced to life imprisonment in Algeria. The Chief Justice of the Supreme Court of Morocco has been informed of the risks of torture upon return to Algeria.

Decision. The Committee considered Article 15 of the Convention, in addition to Article 3, even though the complainant did not raise that issue. The Committee found that Ktiti's extradition to Algeria would violate Article 3 of the Convention, taking into account: the periodic report on Algeria detailing torture of detainees by law enforcement; the fact that Algeria never made public that it had sentenced Ktiti to life imprisonment in absentia; the fact that the extradition request was made under an international arrest warrant; and the fact that Ktiti's accuser made accusations against him while under torture. The Committee also found that the State breached Article 15 by failing to investigate the possibility that allegations against Ktiti were made under torture.

Link to [full decision](#) (PDF)

M. S. G. et al. v. Switzerland

30 May 2011, UNCAT, 352/2008

No violation of Article 3 (non-refoulement) – Torture – Evidence – Credibility

Facts. The complainant applied on behalf of himself, his wife, and their son who were facing deportation from Switzerland to Turkey. He claimed that their return to Turkey would violate Article 3 of the Convention on the grounds that he and his wife would be tortured because he is a Kurdish minority and because of the government's belief of his involvement in PKK party. The complainant claimed that he made contributions to the PKK, a Kurdish political party, but was otherwise not involved in the party. The complainant and his family left their hometown for Istanbul after he was detained and beaten several times on account of his alleged involvement in the PKK. They subsequently left Istanbul after the government published an Article with the complainant's picture stating that police were searching for him. In Switzerland, the Federal Office for Refugees (FOR) rejected the complainant's asylum application, noting that the newspaper Article and a purported copy of a warrant for his arrest appeared to be forged. FOR rejected several appeals and eventually rejected a request for revision after the complainant failed to pay an advance fee for revision of the case. The last request for revision was based on the complainant's possession of certified evidence that his name was on PKK party list.

Decision. The Committee found that the complainants failed to provide sufficient evidence that they would be subjected to torture if they returned to Turkey. The Commission cited the false newspaper clipping and arrest warrant, as well as evidence obtained by the Swiss Embassy that the complainants are not in fact sought by the police. The Committee therefore held that refoulement to Turkey would not constitute a violation of Article 3 of the Convention.

Link to [full decision](#) (PDF)

Singh v. Canada

20 June 2007, UNCAT, 319/2007

Violation of Article 3 (non-refoulement) – Torture.

Facts. The complainant, a national of India facing deportation from Canada, claimed that his return to India would violate Article 3 of the Convention because he would be tortured due to his activities as a Sikh priest and his suspected involvement in the militant organization Khalistan Liberation Force (KLF). The complainant had already been detained and tortured three times in India, and one period of detention lasted three years; he was eventually acquitted of all charges. The complainant's application for refugee status protection was rejected by the Immigration and Refugee Board (Board) on the basis of credibility. The Federal Court rejected the complainant's request for judicial review of the Board's decision. The complainant then applied to remain in Canada for humanitarian reasons and for protection under the

Immigration and Refugee Protection Act. Both requests were rejected, as were his requests for judicial review of those decisions. The Federal Court also refused a motion for stay of deportation.

Decision. The Committee found that return of the complainant to India would violate Article 3 of the Convention. The Committee found that the complainant submitted sufficient evidence that he was apprehended and tortured in three different regions of India because he was a Sikh priest and because of his suspected involvement in militant activities. The Committee also noted that he also presented sufficient evidence that Indian authorities continued to search for him and harass his family regarding his whereabouts long after he fled to Canada, indicating that he was still at risk.

Link to [full decision](#) (PDF)

Chahin v. Sweden

30 May 2011, UNCAT, 310/2007

Violation of Article 3 (non-refoulement) – Torture.

Facts. The complainant, a national of Syria, had previously been deported from Sweden to Syria in 1997 after serving time for a manslaughter conviction, where he claims he was tortured by the Syrian security service for fighting against Syrian forces in the Lebanese civil war and related offenses. Also in 1997, he was convicted and sentenced in Syria to three years of hard labour for membership in a terrorist organization. The complainant later returned to Sweden, and was facing deportation from Sweden to Syria a second time. He claimed that his return to Syria would constitute a violation by Sweden of Article 3 of the Convention and of the Swedish Aliens Act, claiming that he would be tortured again if returned to Syria. The Swedish Migration Board submitted an opinion stating that the complainant did not face a risk of torture because he had not originally been prohibited from leaving Syria. The Government denied complainant's request for revocation of expulsion order as a result.

Decision. The Committee dismissed the complainant's allegations that the State violated Article 3 by deporting him the first time because he failed to apply for asylum and submitted inconsistent statements that undermined his credibility. With respect to the current deportation order, the Committee found that the complainant's return to Syria would violate Article 3 of the Convention because he presented an authenticated copy of his conviction for membership in a terrorist organization, because there was credible evidence of past torture, and because of the current human rights situation in Syria.

Link to [full decision](#) (PDF)

Hanafi v. Algeria

3 June 2011, UNCAT, 341/2008

Violation of Articles 1, 2, 11, 12, 13, 14, 22 – Torture, Lack of Thorough Investigation, Lack of Redress, Compensation, and Lack of Prompt and Impartial Investigation; Interference in Committee Investigation.

Facts. The complainant, a national of Algeria, petitioned on behalf of her husband who died hours after being released from detention. In 1998, her husband went to work at the food store and disappeared. He was detained, severely beaten, and denied medical care for three days. Fellow detainees testified that he was vomiting blood and in a serious state but that officials denied him medical care despite the detainee's requests. The State identified the cause of death as "suspicious death" but failed to provide the complainant with a copy of an autopsy or to provide relief as required by law. The complainant, *inter alia*, asked the Committee to request that the State not invoke domestic legislation against the wife and members of her family that might restrict their right to pursue the procedure initiated in the Committee.

Decision. The Committee found that the State committed torture as defined in Articles 1 and 2 because the wounds inflicted on the deceased were so harsh that he died within hours of release and because the authorities failed to provide medical attention during detention and to conduct an immediate investigation into the circumstances of his death. The State also violated the following Articles: 11, because of its failure to provide medical attention even though it claimed that decedent was released because of stomach pains and because the only medical examination was conducted post mortem; 12 and 13 for lack of an impartial and thorough criminal investigation in spite of identifying the cause of death in death certificate as “suspicious;” 14 for failure to launch an investigation and provide redress to complainant; and 22 for interfering in the Committee’s procedure by questioning the complainant, the complainant’s brother-in-law, and the decedent’s fellow detainees with an eye to persuading them from withdrawing previous statements made to Committee.

Link to [full decision](#) (PDF)

R. T-N. v. Switzerland

3 June 2011, UNCAT, 350/2008

No violation of Article 3 (non-refoulement) – Torture – Non-refoulement – Evidence

Facts. The complainant, a national of the Democratic Republic of the Congo (DRC) facing deportation from Switzerland, claimed that his return to the DRC would violate Article 3 of the Convention. Prior to arriving in Switzerland, as a result of his political activities opposing DRC President Joseph Kabila, the complainant was detained and tortured for two weeks and his wife was allegedly raped. An officer helped him escape from prison, and he sought asylum in Switzerland, where he learned from his wife that he was being sought by DRC authorities. While awaiting adjudication of his petition, the complainant agreed to speak in a documentary without concealing his face because he was informed that it would only air in Switzerland. The documentary aired in the DRC, and his wife and daughter fled to Zimbabwe, where they are currently refugees. The complainant filed two asylum applications in Switzerland, both of which the Federal Office for Migration rejected. The first appeal was deemed inadmissible because he failed to pay surety for procedural costs. The second appeal was rejected because new evidence submitted in the second application provided insufficient reason to challenge the former judicial authorities’ findings.

Decision. The Committee found no violation of Article 3 because the complainant failed to establish a causal link between (1) his reasons for leaving the DRC and subsequent actions in Switzerland and (2) the current risk of torture. The Committee noted that the complainant did not provide details about his torture, that his statements about communications with his wife are contradictory, and that he failed to show that his appearance in documentary places him at risk of torture.

Link to [full decision](#) (PDF)

Bakatu-Bia v. Sweden

3 June 2011, UNCAT, 379/2009

Violation of Article 3 (non-refoulement) – Torture.

Facts. The complainant, a national of the Democratic Republic of the Congo (DRC) facing deportation from Sweden, claimed that her return to the DRC would violate Article 3 of the Convention. The complainant believed she would be tortured upon return to the DRC for her involvement in a radical parish that opposed the current government. The pastor of the parish had been detained, tortured and killed because of his political beliefs, which the complainant, who was his secretary, shared. Before fleeing to Sweden, the complainant alleges that she was arrested without having committed any wrongdoing. Those

involved in the arrest allegedly looted her house, stole her identity documents, and beat and repeatedly raped her while she was incarcerated. The Swedish Migration Board rejected her asylum application because she failed to prove her Congolese origin, even though she speaks the language of the region from which she claims to originate.

Decision. The Committee found that the situation in the DRC, particularly with respect to violence against women, is so dire that the State cannot identify an area of the country to which it would be safe to return the complainant. The Committee found that refoulement would violate Article 2 because the complainant's account of her experiences is consistent with the UN reports' accounts of the present situation in the DRC.

Link to [full decision](#) (PDF)

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