



# 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. 841/2017\*, \*\*

<i>Communication submitted by:</i>	A.M. (represented by counsel)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	4 September 2017 (initial submission)
<i>Date of present decision:</i>	15 November 2018
<i>Subject matter:</i>	Deportation to the Democratic Republic of the Congo
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issue:</i>	Risk of torture
<i>Article of the Convention:</i>	3

1.1 The complainant is a national of the Democratic Republic of the Congo, born on 2 January 1975. He applied for asylum in Switzerland, but his application was denied on 27 April 2017. He is under an expulsion order to the Democratic Republic of the Congo and considers that his expulsion would constitute a violation by Switzerland of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by Mr. Ange Sankieme Lusanga.

1.2 On 6 September 2017, the Committee, acting through its Rapporteur on new complaints and interim measures, decided not to accede to the complainant's request for interim measures.

#### The facts as presented by the complainant

2.1 The complainant worked for the National Intelligence Agency from April 2001 until his departure from the Democratic Republic of the Congo in March 2012. He is also a member of the Armée de résistance populaire, a political movement led by Major General Benoît Faustin Munene, who lives in exile in the Congo.<sup>1</sup>

\* Adopted by the Committee at its sixty-fifth session (12 November–7 December 2018)

\*\* The following Committee members participated in the consideration of the communication: Essadia Belmir, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Honghong Zhang.

<sup>1</sup> He joined the Armée de résistance populaire at the end of 2015 and produced a document, dated 10 March 2017 and signed by Major General Munene, attesting to his active membership in the Armée and to the ill-treatment to which its members are subjected on return to the country.



2.2 As part of his work with the National Intelligence Agency, the complainant was assigned to the office of the general administrator as an assistant responsible for the occupied territories during the war.<sup>2</sup> In 2002, he was transferred to the counterintelligence department as head of an operations office. From 2004 to 2009, he was assigned to the Ndjili airport as team leader responsible for checks in connection with anti-drug efforts. He also carried out general intelligence work.

2.3 The complainant entered Switzerland on 24 March 2012, with a visa, as part of a family reunification procedure to join his wife, also from the Democratic Republic of the Congo, who held a Swiss residency permit. However, owing to separation from his wife, the Population Department of the Canton of Vaud revoked his residency permit on 17 December 2014. The divorce came through in Switzerland on 13 August 2015. On 17 September 2015, the cantonal court of Vaud dismissed the complainant's appeal of the Population Department's decision and upheld the non-renewal of his residency permit as well as his expulsion from Switzerland.

2.4 On 4 April 2017, the complainant filed an asylum application in Switzerland. On 17 May 2017, the State Secretariat for Migration denied his application after hearing his case.<sup>3</sup> Although it did not question the complainant's history with the National Intelligence Agency, the State Secretariat for Migration found that the complainant was never persecuted prior to his departure from the Democratic Republic of the Congo; that he lived in Kinshasa until March 2012, where he occupied various posts in the National Intelligence Agency, without experiencing direct personal problems with the authorities; that his activities with the National Intelligence Agency were not of a sensitive nature; and that he was never politically active in the Democratic Republic of the Congo or involved in anti-government activities. In addition, the State Secretariat for Migration noted that the complainant was able to renew his passport at the consulate of the Democratic Republic of the Congo in Geneva without any trouble on 2 December 2015, which was further evidence that he did not face a tangible risk of persecution.

2.5 Furthermore, the State Secretariat found that the complainant's claim that the authorities visited his home three months after his departure from the Democratic Republic of the Congo, while plausible, was not credible inasmuch as the visit did not have any consequences and the complainant did not mention it at his initial hearing.

2.6 Regarding his political activities in Switzerland, the State Secretariat found that the complainant did not hold a decision-making post or take part in political activities relating to the Democratic Republic of the Congo likely to put him at risk. Furthermore, the State Secretariat noted that there was no evidence that the authorities of the Democratic Republic of the Congo are aware that the complainant joined the Armée de résistance populaire after fleeing the country given that his activities in Switzerland can only be described as marginal and with minimal exposure.<sup>4</sup>

2.7 The State Secretariat also noted that the complainant lived in Kinshasa until the age of 37 and had worked since 2001 for the National Intelligence Agency without once having trouble with the authorities; that he has a family network, specifically brothers, sisters and his mother, able to support him if he returned; that he has no dependent children; and that he has not mentioned any health problems. As to the general situation in the Democratic Republic of the Congo, the State Secretariat stressed that, except the conflict areas predominantly found in the east of the country, where various armed groups are active and the governmental armed forces conduct operations against opponents, the country is not at war, civil or otherwise, or experiencing widespread violence.

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<sup>2</sup> The complainant's tasks consisted in sorting reports from across the country and bringing information to his superiors regarding the security, political, economic and social situations.

<sup>3</sup> A summary hearing on personal information, held on 6 April 2017, and a hearing on grounds for asylum on 27 April 2017.

<sup>4</sup> The complainant stated that he mustered support for the Armée de résistance populaire. He reportedly worked on the Armée's communication campaigns and, in that connection, was in contact with people living abroad. He also took part in meetings in Lausanne, as well as small gatherings at the homes of Armée members in Switzerland.

2.8 The complainant appealed the decision of the State Secretariat. On 26 June 2017, the State Secretariat transmitted a notice to the Federal Administrative Court, which was interpreted as notification of the complainant's return to the Democratic Republic of the Congo. On this basis, the Court ordered the case to be struck on 3 July 2017. However, on 5 July 2017, the State Secretariat informed the Court that the complainant had not left Switzerland. By interim ruling of 6 July 2017, the Court cancelled the decision to strike the case and reopened the appeal proceedings.

2.9 On 21 August 2017, the Court upheld the decision of the State Secretariat and ordered the complainant's expulsion to the Democratic Republic of the Congo. The letter of 10 March 2017 signed by Major General Munene failed to convince the Court that the complainant ran a risk of persecution owing to his political activities in Switzerland since leaving the Democratic Republic of the Congo. The Court found that the content of the letter and the circumstances of its drafting<sup>5</sup> show that it was provided as an accommodation, at the request of the complainant's counsel and for the sole purpose of the asylum proceedings in Switzerland and had, therefore, no evidentiary value.

2.10 The Court also considered the complainant's claim that he did not know the name or status of the fourth person who attended the hearing on 27 April 2017. The Court noted that, in addition to the complainant, the attendees were the hearing leader, the hearing reporter and the representative of charitable organizations. In the Court's view, the fact that the complainant did not know the name or status of one of the attendees – which is doubtful inasmuch as, according to the record, all the attendees introduced themselves – was insufficient to overturn the impugned decision. Indeed, not having this information does not prejudice the complainant in the least and has no bearing on the asylum proceedings. Lastly, the Court found that the complainant acted in bad faith by raising the alleged error only at the appeal stage when he had been free to do so at the hearing on grounds for asylum or immediately thereafter.

2.11 On 29 August 2017, the complainant filed a request for reconsideration on the basis of new facts. He raised the fact that a fourth person, whose name and status were not disclosed, was present at the hearing of 27 April 2017. Furthermore, the fact that the complainant spent over 80 days at the reception and procedure centre in Vallorbe, when the statutory limit was 60 days, should be justified. Lastly, the two judges who ruled on the appeal of the decision of the State Secretariat of 17 May 2017 were from the same Swiss political party, the same canton and the same branch of the Federal Administrative Court, thereby calling into question their neutrality, impartiality and independence. On 20 September 2017, the complainant submitted to the State Secretariat a copy of a wanted notification, dated 14 December 2016, issued by the National Intelligence Agency to all its departments of operations, stating that the complainant was wanted for desertion.<sup>6</sup>

2.12 On 29 September 2017, the State Secretariat dismissed the request for reconsideration on the grounds that the complainant had not adduced any new facts and that the arguments put forward did not change the authorities' finding that the grounds for asylum, whose plausibility had not been assessed, were irrelevant. The State Secretariat found that the Court had ruled on the claim regarding the presence of a fourth person at the hearing, noting that the person had been introduced to the complainant orally, was an employee of the State Secretariat and had co-signed the decision. The State Secretariat recalled that the statutory limit on stays at reception and procedure centres is 90 days. As for the criticisms made by the complainant's counsel regarding the judges who ruled on the complainant's request, the State Secretariat noted that the issue did not fall under its remit.

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<sup>5</sup> According to the record of the hearing of 27 April 2017, when the complainant was asked to explain how he had obtained the letter, he replied that he had not taken any particular steps and that he had merely informed his counsel, also a member of the Armée de résistance populaire, who assured him that he would telephone the Major General to inform him that the complainant was in danger. Major General Munene had then confirmed that the complainant is a member of his movement and would be in danger if he returned to the Democratic Republic of the Congo given that several members of the movement had, in the past, been arrested upon return to the country.

<sup>6</sup> A copy of the notification is on file.

2.13 Concerning the wanted notification submitted as new evidence, the State Secretariat noted that it had not been mentioned at the hearings of 6 and 27 April 2017 even though it was dated December 2016. Moreover, the notification was a copy of an easily forgeable document which cannot be considered authentic. In the State Secretariat's view, the document on its own was not of a nature to change the outcome of the case or to justify enquiries.

2.14 On 12 October 2017, the complainant lodged an appeal against the decision of the State Secretariat and requested interim measures. He claimed that, since the State Secretariat had deemed the wanted notification attached to his file to be fake, it was under the obligation to prove this claim and make the necessary enquiries to that end. A forensic examination could have been ordered. As for the State Secretariat's assertion that the wanted notification was not transmitted in a timely fashion, the complainant submits that he transmitted it as soon as he was made aware of it, in other words on 19 September 2017.

2.15 By interim ruling of 17 October 2017, the Federal Administrative Court acceded to the complainant's request for interim measures and authorized him to remain in Switzerland until the end of the proceedings. The appeal proceedings are ongoing.

### **The complaint**

3.1 The complainant claims that his expulsion to the Democratic Republic of the Congo would violate article 3 of the Convention. In that country, deserters from the National Intelligence Agency are considered traitors. As such, the complainant risks the death penalty and/or inhuman and degrading treatment. In order to leave the country and travel to Switzerland, the Agency had given him an exit permit valid for one month.<sup>7</sup> The permit having expired, the complainant would be considered a traitor upon return, especially since he is one of the members of the Armée de résistance populaire closest to Major General Munene.

3.2 In the Democratic Republic of the Congo, human rights defenders are persecuted, arrested and even killed, and the political situation in the country is currently tense owing to the collapse of political talks between the Government and the opposition. These assertions are supported by several reports and various human rights sources, which denounce serious mass violations of the rights of human rights defenders by the security forces.

3.3 A potential expulsion from Switzerland therefore represents a real risk to the complainant's life. The risk is all the more regrettable that it stems from a decision taken on the basis of the assumption that one of the pieces of evidence is fake, even though no checks were undertaken to prove the assumption. In this type of situation, the State party usually conducts additional enquiries, typically through the Swiss diplomatic mission in the complainant's country of origin. However, nothing of the sort was undertaken in the complainant's case even though it would have been apposite to try to shed light on the situation and dispel any reasonable doubts on the direct involvement of Major General Munene in the present case.

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

4.1 On 1 March 2018, the State party submitted its observations on the admissibility and merits of the communication. It recalls the facts and the proceedings undertaken by the complainant in Switzerland with a view to obtaining asylum, notes that the asylum authorities have duly considered the complainant's arguments and states that the communication does not include any new information that might invalidate the asylum authorities' decisions.

4.2 Regarding the admissibility of the communication, the State party is of the view that the complainant has not exhausted all available domestic remedies. Prior to submitting his communication to the Committee, the complainant filed a request for reconsideration to the State Secretariat for Migration, submitting a new element, namely a wanted notification dated 14 December 2016. The appeal against the State Secretariat's rejection of the asylum

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<sup>7</sup> A copy of the authorization issued by the National Intelligence Agency on 23 March 2012 is on file.

application is pending before the Federal Administrative Court, and the complainant is authorized to remain in Switzerland until a decision is reached in that proceeding. Furthermore, because the complainant did not mention the wanted notification at any point of the asylum procedure, despite it being dated 14 December 2016, the national authorities were unable to consider this piece of evidence before the present communication was submitted to the Committee.

4.3 On the merits, the State party points out that, under article 3 of the Convention, States parties are prohibited from expelling, returning or extraditing 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. For the purpose of determining whether there are such grounds, the competent authorities should take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. With regard to the Committee's general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22, the State party adds that the author must establish the existence of a personal, present and substantial risk of being subjected to torture upon return to his or her country of origin. The existence of such a risk must be assessed on grounds that go beyond mere theory or suspicion. There must be grounds for describing the risk of torture as "substantial" (see general comment No. 1, paras. 6 and 7). The following elements must be taken into account in this regard: any evidence of a consistent pattern of gross, flagrant or mass violations of human rights in the country of origin; any claims of torture or ill-treatment in the recent past and independent evidence to support those claims; the political activity of the author within or outside the country of origin; any evidence as to the credibility of the author; and any factual inconsistencies in the author's claims (*ibid.*, para. 8).

4.4 The State party points out that the existence of a consistent pattern of gross, flagrant or mass violations of human rights does not, in itself, constitute sufficient grounds for believing that a particular person would be subjected to torture upon return to his or her country of origin. The Committee must establish whether the complainant is "personally" at risk of being subjected to torture in the country to which he or she would be expelled.<sup>8</sup> Additional grounds must be adduced in order for the risk of torture to qualify as "foreseeable, real and personal" for the purposes of article 3 (1) of the Convention.<sup>9</sup> The risk of torture must be assessed on grounds that go beyond mere theory or suspicion (see general comment No. 1, paras. 6).

4.5 Regarding the general situation in the Democratic Republic of the Congo, the Federal Administrative Court noted in its decision of 21 August 2017 that notwithstanding local unrest and clashes of an episodic nature, the country is not at war, civil or otherwise, or plagued by generalized violence that would lead spontaneously – and independently of the circumstances of the present case – to the presumption that all complainants from this State face real danger. Moreover, the general situation in the country does not, in itself, constitute sufficient grounds to conclude that the complainant would be at risk of torture if he returned there.<sup>10</sup> Yet, the complainant did not adduce evidence that he would face a foreseeable, real and personal risk of being subjected to torture if expelled to the Democratic Republic of the Congo.

4.6 With regard to claims of torture or ill-treatment in the recent past and the existence of independent evidence to support those claims, the State party points out that States parties to the Convention have a duty to consider any such claims with a view to assessing the risk that the complainant concerned would be subjected to torture if he or she were sent back to his or her country of origin (see general comment No. 1, para. 8 (b)). The State party recalls that the complainant has not claimed to have been subjected to torture or ill-treatment in his country of origin. He lived in Kinshasa until the age of 37, where he

<sup>8</sup> See *K.N. v. Switzerland* (CAT/C/20/D/94/1997), para. 10.2.

<sup>9</sup> *Ibid.*, para. 10.5 and *J.U.A. v. Switzerland* (CAT/C/21/D/100/1997), paras. 6.3 and 6.5.

<sup>10</sup> See *M.F. v. Switzerland* (CAT/C/59/D/658/2015), para. 7.3, and *T.Z. v. Switzerland* (CAT/C/62/D/688/2015), para. 8.4.

worked for the National Intelligence Agency from 2001 onward, without ever encountering any problems with the authorities.

4.7 Concerning the complainant's political activity in his country of origin, the State party notes that, according to his statements, the complainant was never politically active in the Democratic Republic of the Congo nor did he engage in any anti-government activities. It should be noted that the complainant's functions in the National Intelligence Agency were not of a sensitive nature.

4.8 As for the complainant's political activity in Switzerland, the State party points out that, according to his statements, the Armée de résistance populaire that he joined at the end of 2015 has some 20 members in Switzerland who meet at a bar in Lausanne or at the home of the head of the Armée's Switzerland chapter. The complainant has not demonstrated that the authorities of the Democratic Republic of the Congo are aware that he joined the Armée after leaving the country. Moreover, his political activity in Switzerland, which can only be described as marginal and with minimal exposure, does not indicate that he currently holds a decision-making position within the movement that is likely to be of concern to the authorities of the Democratic Republic of the Congo.

4.9 Regarding the letter signed by Major General Munene, the complainant has stated that he took no steps to obtain it. He merely informed his counsel for the domestic proceedings, who is the Major General's nephew and a member of the Armée in Switzerland, that he was in danger. The counsel reportedly replied that he would telephone the Major General to inform him. The Major General's letter arrived at the counsel's home, as indicated in the record of the hearing of 27 April 2017. As noted by the Federal Administrative Court, the letter and the circumstances of its drafting show that it was provided as an accommodation, at the request of the complainant's counsel and for the sole purpose of the asylum proceedings in Switzerland and had, therefore, no evidentiary value. Moreover, the complainant did not demonstrate close ties with Major General Munene other than through his counsel, who is a relative of the Major General. Therefore, given the limited scope of the complainant's political activity in Switzerland, there are no substantial grounds to believe that he is at risk of being subjected to torture if expelled to the Democratic Republic of the Congo.

4.10 With regard to the complainant's credibility and the consistency of the facts, the decisions of the national asylum authorities show that the complainant's statements do not in any way indicate that there are substantial grounds to believe that he would be exposed to torture if expelled to the Democratic Republic of the Congo. The complainant once again submitted to the Committee that he was a deserter from the National Intelligence Agency and, as such, would be considered a traitor. This argument does not call into question the decisions of the national authorities as the State Secretariat for Migration did not cast doubt on his history with the Agency. However, the national authorities found that the complainant's statements did not indicate that he had been exposed, after leaving the Democratic Republic of the Congo, to any persecution that would have a bearing on the decision. The Federal Administrative Court agreed with the findings of the State Secretariat, ruling that the claims, all of a general nature, according to which deserters from the Agency were considered traitors and were liable to the death penalty if they returned to the Democratic Republic of the Congo, did not render it likely, in this case, that the complainant ran a tangible risk of persecution. Thus, the argument raised by the complainant regarding his history with the Agency does not call into question the decisions of the national authorities.

4.11 Concerning the authorities' alleged visit to the complainant's home following his departure from the Democratic Republic of the Congo, it should be noted that the visit, inasmuch as it can be considered likely to have happened in the absence of any tangible evidence that it did, did not have any consequences. Furthermore, when he was asked multiple times at the hearing of 27 April 2017 to describe the consequences of his failure to respect his exit permit, the complainant did not spontaneously mention the visit of the authorities to his former home. He did not provide any convincing explanations for this omission. Caution should, therefore, be exercised with regard to the credibility of these statements.

4.12 As for the complainant's grievance that the national authorities did not undertake additional enquiries through the Swiss diplomatic mission in the Democratic Republic of the Congo, it should be noted that such measures are not taken automatically, contrary to what the complainant's counsel has claimed. In this case, there was no justification for such enquiries. Indeed, it is sufficiently clear from the file that the complainant did not perform sensitive functions at the National Intelligence Agency or, after his departure from the country, engage in political activity likely to cause trouble for him if he returned. The fact that, in December 2015, he was able to renew his passport at the consulate of the Democratic Republic of the Congo in Geneva without any problems also points to the lack of a tangible risk of persecution.

4.13 In sum, there is nothing concrete in the communication to lend credence to the claim that the complainant would be exposed to a foreseeable, personal and real risk of being subjected to acts of torture within the meaning of article 3 of the Convention were he expelled to the Democratic Republic of the Congo.

4.14 Lastly, it should be noted that, following his request for reconsideration of 29 August 2017, the complainant transmitted a copy of the wanted notification of 14 December 2016 to the State Secretariat for Migration via email on 20 September 2017. The State party is surprised that, at no time during the hearings of 6 and 27 April 2017, did the complainant mention the existence of the document even though it was dated 14 December 2016. Moreover, it is a copy of an easily forgeable document. On its own, this piece of evidence is not of a nature to affect the outcome of the case.

#### **Complainant's comments on the State party's observations**

5.1 The complainant submitted his comments on the State party's observations on 12 June 2018.

5.2 Regarding admissibility, the complainant notes that a request for reconsideration is an extraordinary procedure and has no bearing on the ordinary asylum request before the Committee. While the Federal Administrative Court has acceded to the request for interim measures, the complainant is authorized to remain in Switzerland only until the end of the proceeding before the Court. Since the Court's decision, which could be handed down at any time, might go against the complainant, were the Committee to find the communication inadmissible, the complainant would have to leave Switzerland without delay. Therefore, the communication is admissible under article 22 (5) (b) of the Convention.

5.3 As for the merits of the communication, the complainant submits that the Committee should find a violation of article 3 of the Convention on the basis of the case file.

#### **Issues and proceedings before the Committee**

##### *Consideration of admissibility*

6.1 Before considering any complaint contained in a communication, the Committee must decide whether the complaint 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 may not consider any communications from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. It notes that the State party, in referring to a request for reconsideration of the dismissal of the complainant's asylum application based, inter alia, on a new element, namely a wanted notification of 14 December 2016, submits that the complainant has not exhausted all available domestic remedies.

6.3 The Committee notes the complainant's claim that his request for reconsideration of the dismissal by the State Secretariat for Migration is an extraordinary procedure and has no bearing on the communication before the Committee. It also notes that the complainant did not mention the wanted notification in his allegations before the Committee and, what is

more, that he encouraged the Committee to base its decision on the case file. Accordingly, given that the complainant does not explicitly refer to the wanted notification of 14 December 2016 in support of the claims submitted to the Committee, that he specifies that the notification was submitted as part of a domestic procedure of an extraordinary nature, and that the authorities of the State party did not have the opportunity to assess the notification during the domestic proceeding, the Committee will not be taking it into account in its consideration of the present communication.

6.4 In the absence of any other issues regarding the admissibility of the communication and insofar as the communication raises issues under article 3 of the Convention, the Committee declares it admissible and proceeds to its examination on the merits.

*Consideration of the merits*

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

7.2 The issue before the Committee is whether the expulsion of the complainant to the Democratic Republic of the Congo would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or 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 or to cruel, inhuman or degrading treatment or punishment.

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 if expelled to the Democratic Republic of the Congo. In assessing this risk, the Committee must, pursuant to article 3 (2) of the Convention, take into account all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the State concerned (see general comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, para. 43). However, the Committee recalls that the aim of the assessment 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 was expelled. It follows that 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 that a particular person would be in danger of being subjected to torture on 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 flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances. Moreover, the Committee notes that, since the Democratic Republic of the Congo is not a party to the Convention, in the event of a violation of the complainant's Convention rights in that country, he would be deprived of the legal option of recourse to the Committee for protection of any kind.<sup>11</sup>

7.4 The Committee recalls paragraph 11 of its general comment No. 4, which states that the non-refoulement obligation exists whenever there are "substantial grounds" for believing that the person concerned would be in danger of being subjected to torture in a State to which he or she is facing deportation, either as an individual or as a member of a group which may be at risk of being tortured in the State of destination and that the Committee's practice has been to determine that "substantial grounds" exist whenever the risk is "foreseeable, personal, present and real". The Committee further recalls that the burden of proof is upon the author of the communication, who must present an arguable case, that is submit substantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real. However, when the complainant is in a situation where he or she cannot elaborate on his or her case, the burden of proof is reversed and the State party concerned must investigate the allegations and verify the information on which the communication is based (see general comment No. 4, para. 38). The Committee gives considerable weight to findings of fact made by the organs of the State party concerned; however, it is not bound by such findings and will make a free

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<sup>11</sup> See *Tahmuresi v. Switzerland* (CAT/C/53/D/489/2012), para. 7.7.



assessment of the information available to it in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to each case (ibid., para. 50).

7.5 In the present case, the Committee takes note of the complainant's argument that, were he expelled to the Democratic Republic of the Congo, he would be considered a traitor for deserting the National Intelligence Agency and, as such, would face the death penalty and/or inhuman and degrading treatment. It also notes that the complainant proclaims to be a member of the Armée de résistance populaire and one of its closest members to Major General Munene.

7.6 The Committee notes that the Swiss authorities did not call into question the complainant's history with the Agency but did point out that he did not perform sensitive functions there. The Committee also notes the State party's assessment that: the complainant was not subjected to torture or ill-treatment in his country of origin; he was never politically active in that country and his political activity in Switzerland did not point to his occupying a decision-making position in the Armée de résistance populaire likely to be of concern to the authorities of the Democratic Republic of the Congo; and he failed to demonstrate that the Congolese authorities are aware of his membership in the Armée. The Committee further notes that the complainant failed to demonstrate close ties with Major General Munene other than through his counsel, who is reportedly a relative of the Major General. The Committee observes that, although the complainant has made a number of allegations, he did not clearly or sufficiently establish that he faced a personal, present, foreseeable and real risk of torture if expelled to the Democratic Republic of the Congo.

7.7 The Committee recalls that it must ascertain whether the complainant currently runs a risk of being subjected to torture if expelled to the Democratic Republic of the Congo. The Committee notes that the complainant had ample opportunity to provide supporting evidence and more details about his claims, at the domestic level, to the State Secretariat for Migration and the Federal Administrative Court, but that the evidence provided did not allow the national authorities to conclude that his alleged desertion from the National Intelligence Agency or his participation in political activities in Switzerland could place him at risk of being subjected to torture or inhuman or degrading treatment upon his return. Furthermore, the Committee recalls that the existence of human rights violations in the complainant's country of origin is not, in itself, sufficient for it to conclude that a complainant runs a personal risk of being tortured. On the basis of the information before it, the Committee finds that the complainant has not proven that his political activities are important enough to attract the interest of the authorities of his country of origin or that he is considered a traitor for leaving the Agency and concludes that the information provided does not demonstrate that he would be personally at risk of torture or inhuman or degrading treatment if he were to return to the Democratic Republic of the Congo.

7.8. In the light of the above, the Committee considers that the information submitted by the complainant is insufficient to substantiate his claim that he would face a personal, foreseeable and real risk of torture if he were expelled to the Democratic Republic of the Congo.

8. The Committee, acting under article 22 (7) of the Convention, concludes that the expulsion of the complainant to the Democratic Republic of the Congo would not constitute a breach of article 3 of the Convention by the State party.