



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

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Committee against Torture

Forty-sixth session

9 May–3 June 2011

Decision

Communication No. 350/2008

Submitted by:

R.T-N. (represented by Kathrin Stutz of
Zürcher Beratungsstelle für Asylsuchende)

Alleged victim:

The complainant

State party:

Switzerland

Date of complaint:

5 August 2008 (initial submission)

Date of decision:

3 June 2011

Subject matter:

Risk of complainant's deportation to the
Democratic Republic of the Congo

Procedural issue:

None

Substantive issue:

Deportation of person to another State where
there are substantial grounds for believing
that he would be in danger of being subjected
to torture

Article of the Convention:

3

[Annex]

* Made public by decision of the Committee against Torture.

Annex

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

concerning

Communication No. 350/2008

Submitted by:

R.T-N. (represented by Kathrin Stutz of
Zürcher Beratungsstelle für Asylsuchende)

Alleged victim:

The complainant

State party:

Switzerland

Date of complaint:

5 August 2008 (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 3 June 2011,

Having concluded its consideration of complaint No. 350/2008, submitted by R.T-N. 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 complainant is R.T-N., a national of the Democratic Republic of the Congo born on 25 December 1970 and currently living in Switzerland. He claims that his deportation to the Democratic Republic of the Congo would constitute a violation by Switzerland of article 3 of the Convention. He is represented by Kathrin Stutz (Zürcher Beratungsstelle für Asylsuchende).

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee brought the complaint to the State party's attention on 18 August 2008. At the same time, in application of rule 114, paragraph 1, of its rules of procedure¹ (formerly rule 108), the Committee asked the State party not to deport the complainant to the Democratic Republic of the Congo while his complaint was being considered.

¹ New rules of procedure dated 21 February 2011 (CAT/C/3/Rev.5).

Factual background

2.1 The complainant is originally from the Democratic Republic of the Congo and always lived in Kinshasa, where he was an active member of a movement called the Groupe des jeunes chrétiens pour le changement (Young Christians' Movement for Change) (GJCC). In May 2004, he gave a series of talks to sensitize young people to the upcoming presidential elections, during which he informed them that President Joseph Kabila was not of Congolese origin. On 15 July 2004, he was arrested for this reason and his wife was allegedly raped. He was interrogated three days later and the same evening was flown to a prison in Katanga (a region close to the border with Zambia). He managed to escape from the prison on 13 September 2004, thanks to the help of an officer, and left the country four days later. He subsequently learned through his wife that he was being sought by the Congolese authorities.

2.2 The complainant flew to Switzerland on 20 September 2004 and filed an asylum application the same day. On 17 September 2006, the Swiss Red Cross asked if he would agree to share his experiences with the Swiss television channel Télévision Suisse Romande (TSR) for a report on coercive measures in the canton of Zurich timed to coincide with the referendum concerning new laws on asylum and foreign nationals due to take place on 26 September 2006. The complainant agreed to be interviewed without his face obscured because the reporters told him that the programme would air in Switzerland only. Shortly after the programme was broadcast, he received a number of phone calls from the Democratic Republic of the Congo because the TSR news programme was carried on TV5, a channel which also aired in that country. In the meantime, the complainant's wife had fled to Zimbabwe with their daughter. Both were granted refugee status in December 2007 and are now under the protection of the Office of the United Nations High Commissioner for Refugees (UNHCR).

2.3 The complainant developed mental health problems as a result of his experiences in the Democratic Republic of the Congo, the protracted asylum process and the situation of his wife, who is now a refugee in Zimbabwe, along with their daughter. Persistent nightmares and severe anxiety resulted in an emergency consultation at the outpatient psychiatric clinic of the university hospital in Lausanne (CHUV) on 17 February 2005. The complainant's mental health problems also led to regular consultations with two practitioners at the Bülach outpatient psychiatric centre attached to the Psychiatrie-Zentrum Hard clinic. A medical report issued at the complainant's request by the psychiatric clinic of the university hospital in Zurich on 22 January 2009 stated that the complainant's symptoms were consistent with his account of the treatment he allegedly suffered in the Democratic Republic of the Congo and concluded that, from a clinical point of view, there was no doubt that the complainant had experienced considerable traumatic stress. The report gave a diagnosis of post-traumatic stress disorder.

2.4 On 20 September 2004, upon arrival in Switzerland, the complainant filed an asylum application while in the transit zone of Zurich airport. In a decision dated 30 September 2004, the Federal Office for Migration refused to authorize his entry to Switzerland on the grounds that his account of the alleged facts was not plausible. On 26 October 2004, the Swiss Asylum Appeals Commission (since replaced by the Federal Administrative Court) declared the complainant's appeal inadmissible on the grounds that the advance required as surety for procedural costs had not been deposited by the statutory deadline. On 11 January 2005, the complainant requested a review of the decision on his case. The Federal Office for Migration rejected his request on 27 January 2005. An appeal against this decision was declared inadmissible by the Swiss Asylum Appeals Commission on 9 March 2005 on the grounds of late payment of the required deposit to cover costs. On 17 March 2005 the complainant filed a new application with the Federal Office for Migration, which was rejected on 24 March 2005. The complainant lodged an appeal against this decision, and on

6 December 2006 the Federal Office for Migration overturned the decision of 24 March 2005 on the grounds that the complainant was invoking the existence of subjective reasons that had arisen since his flight, and that they should be considered in a second asylum application procedure.

2.5 In a decision dated 12 July 2007, the Federal Office for Migration dismissed the second asylum application pursuant to article 32, paragraph 2 (e) of the Asylum Act of 26 June 1998. The complainant's appeal against this decision was rejected by the Federal Administrative Court (formerly the Swiss Asylum Appeals Commission) on 1 February 2008 on the grounds that the new evidence submitted by the complainant provided insufficient reason to challenge the former judicial authorities' findings. On 8 April 2008 the complainant lodged a request for review with the Federal Office for Migration which, for jurisdictional reasons, was referred to the Federal Administrative Court, which in turn rejected the request on 20 June 2008. The complainant had had until 19 February 2008 to leave Switzerland. He filed a request for review accompanied by an application for interim measures, but the Federal Administrative Court rejected the request for review, and thus the application for interim measures also, on 20 June 2008. Thus, as of this date, the complainant could be deported at any time.

The complaint

3.1 The complainant claims that he would be in danger of being subjected to torture in violation of article 3 of the Convention if deported to his country of origin. As an active member of GJCC, he gave three talks about the elections in the Democratic Republic of the Congo, during which he alerted young Christians to the fact that Joseph Kabila was not of Congolese origin. After these pronouncements, he was tortured and imprisoned for two weeks before managing to escape from prison and to flee the country. The complainant affirms that the events leading up to his flight and his appearance on the Swiss television channel TSR, without his face obscured, in a programme about asylum applications which aired on 26 September 2006 have placed him at risk of being subjected to torture if deported to the Democratic Republic of the Congo. The complainant adds that his wife was raped and has for this reason become a refugee in a third country.

3.2 The complainant cites Amnesty International's annual report for 2008, which recounts the political and military tensions that degenerated into violent clashes in Kinshasa and the province of Bas-Congo. Killings, arbitrary arrests and detention, acts of torture and other cruel, inhuman and degrading forms of treatment were practised throughout the country by the security forces and armed groups, most often targeting persons perceived as being political opponents. Accordingly, the complainant affirms that the situation in the Democratic Republic of the Congo meets the specifics of the situation envisaged in article 3, paragraph 2, of the Convention, in that a consistent pattern of gross, flagrant or mass violation of human rights exists in the country. The complainant emphasizes that detainees, especially those perceived as being political opponents, are systematically tortured while in custody.

3.3 To substantiate his allegations, the complainant provides copies of the following documentation: a wanted notice issued by the Congolese national police; an article from the newspaper *Le Satellite* mentioning that a wanted notice was issued on 17 July 2004 in an attempt to find the complainant; two summonses issued to the complainant's wife and to the president of GJCC, respectively, by the same commander, Clément Konde; a wanted notice issued by the National Intelligence Agency on 10 November 2004; and a page from the newspaper *Le Palmarès*, dated 6 September 2006, which reports the disappearance of the president of GJCC in Kinshasa, specifying that he had gone missing after the disappearance of the complainant. A letter attesting to the complainant's appearance in a TSR programme subsequently broadcast on TV5 is also attached. The complainant also

provides copies of medical reports issued by psychologists and therapists which attest to his state of health since arriving in Switzerland.

State party's observations on admissibility and the merits

4.1 The State party submitted its observations on the admissibility and the merits of the complaint on 18 February 2009. Briefly reviewing the facts as presented by the complainant, the State party contends that he has presented no new evidence to the Committee, except perhaps for the information on his deteriorating state of health. On this point, the State party recalls that the judicial authorities, and specifically the Federal Administrative Court, considered the complainant's situation in depth prior to issuing the decisions of 1 February and 20 June 2008 and that none of the arguments put forward by the complainant provided sufficient grounds to challenge their decisions. The State party also underlines that, in his communication, the complainant failed to explain the inconsistencies and contradictions inherent in his allegations, although they had been clearly highlighted by the competent Swiss authorities.

4.2 Recalling the provisions of article 3 of the Convention, the State party refers to the case law of the Committee and its general comment No. 1. Pursuant to paragraph 6 et seq. of general comment No. 1, the author must establish that he would face a personal, present and serious risk of being subjected to torture if deported to his country of origin. The State party notes that this provision means that the grounds must go beyond mere suspicion and that they must demonstrate a serious risk. Comparing the various factors to be taken into account in assessing this risk with the complainant's specific situation, the State party acknowledges that the situation in the Democratic Republic of the Congo is worrying. However, based on the case law of the Committee and the aforementioned general comment, the situation in the complainant's country does not in itself constitute sufficient grounds to conclude that the complainant would be at risk of being subjected to torture in the event of his return.

4.3 With regard to the complainant's allegations of torture, the State party notes that the allegations were presented to the Committee without further details being given. The only items of evidence presented to substantiate the allegations in the course of the proceedings were two medical reports, dated 27 September 2006 and 30 August 2007, which had been considered by the Federal Office for Migration in its decision of 12 July 2007, and by the Federal Administrative Court in its judgement of 1 February 2008, respectively. The State party emphasizes that prior to submitting the two medical reports the complainant had not at any time raised such allegations of torture before the Swiss authorities. These allegations were in fact raised for the first time while the complainant was being questioned about the content of the first medical report, on 28 March 2007. The State party adds that both reports rested on a case history based on the patient's account alone, and did not therefore prove the veracity of the alleged facts, notably with regard to the circumstances, the reasons or even the perpetrator of the ill-treatment. Furthermore, the reports made no mention of signs of physical torture.

4.4 The State party does not dispute the mental health problems documented by the doctors, but notes that the medical reports did not prove the alleged cause of the mental health problems, which, moreover, the attending physicians attributed to other factors. The medical reports indicated that the complainant's suffering was attributable to his separation from his family and his precarious status in Switzerland. The State party adds that the problems from which the complainant appears to be suffering are not in any case of sufficient gravity to constitute an obstacle to his deportation, especially since he has the option of consulting a doctor in his country of origin by requesting, if necessary, financial assistance for his return. The State party therefore endorses the assessment made by the domestic judicial authorities and contends that the medical reports do not establish the

veracity of the alleged facts, and consequently do not constitute grounds to conclude that the complainant would actually face a risk of torture if returned to his country of origin. The State party adds that the asylum application submitted by the complainant's wife to the Swiss Ambassador to Zimbabwe on 17 April 2008 made no mention, or at least no explicit mention, of torture or violence suffered in the Democratic Republic of the Congo. The State party therefore concludes that none of the evidence in the case file substantiates the claim that the complainant has been subjected to torture in the past.

4.5 With regard to the question of whether or not the complainant engaged in political activities within or outside his country of origin, the State party notes that he claims to have been an events organizer for GJCC in the Democratic Republic of the Congo. However, the GJCC documents (specifically the complainant's membership card) and the statements from GJCC parish leaders who confirmed that in 2004 the complainant had given talks on the subject of "the elections and nationality" do not constitute evidence of a present and real risk of torture. The State party also makes reference to a document issued by the Swiss Refugee Council (OSAR) on 24 March 2005 which was submitted during the proceedings by the complainant. The complainant had contacted OSAR to request various items of information and seek its advice on his case. In its reply, OSAR had confirmed that members of religious groups such as GJCC were not subject to persecution and had raised certain doubts as to the veracity of the complainant's claims. The State party adds that Joseph Kabilà's origin has been a subject of contention for years, both before and during the presidential election campaign. His victory on 29 October 2006 not only confirmed Joseph Kabilà as the country's President, but also gave him a legitimacy that he could not claim beforehand. The State party emphasizes that the complainant has been unable to explain why he should be wanted in the Democratic Republic of the Congo for pre-electoral propaganda which was widely used at the time by opposition parties that are now represented in the Congolese parliament.

4.6 In Switzerland, the complainant recounted his story in a report on coercive measures broadcast on the Swiss television channel TSR on 17 September 2006, prior to the referendum on the asylum law. He did not claim to have criticized the Congolese Government in this broadcast, nor did he provide information about the circumstances behind his asylum application. The mere fact that the authorities of his country learned through this programme that he had applied for asylum in Switzerland was not grounds to conclude that he would actually face a risk of torture if returned to his country. The State party adds that the complainant has failed to provide evidence of the messages and telephone calls he supposedly received after the report was broadcast on TSR and TV5. The State party also concurs with the Federal Administrative Court's observation (in its decision of 1 February 2008, observation 6.2) that the complainant's appearance in this programme without his face obscured was inconsistent with the behaviour of a person who felt genuinely persecuted and threatened, and therefore detracts from his credibility.

4.7 The State party notes that other items of evidence, in addition to those set out above, indicate that the author's allegations are not plausible. This evidence has been analysed by the Swiss authorities.² Among this evidence, the State party cites the fact that upon his arrival in Switzerland the complainant attempted to mislead the authorities by presenting fake identity documents and a Red Cross identity card which had clearly been falsified. In addition, at the end of 2006, the complainant tried to gain entry to France using a residence permit (C permit) that was not his. These facts give grounds to doubt the complainant's credibility.

² Decisions of the Federal Office of Migration of 30 September 2004 and 12 July 2007; interlocutory decision of the investigating judge of the Swiss Asylum Appeals Commission of 5 October 2004; and Federal Administrative Court judgements of 1 February 2008 and 20 June 2008.

4.8 To his request for review dated 11 January 2005 and his appeal to the Swiss Asylum Appeals Commission dated 27 January 2005, the complainant attached a press release and a look-out notice posted on the Internet site www.societecivile.cd on 15 October 2004, which indicated that the non-governmental organization Action contre les violations des droits des personnes vulnérables (Action against Violations of the Rights of Vulnerable Persons) (ACVDP) was searching for him. In an e-mail sent to the complainant's counsel on 18 February 2005, the President of ACVDP, Crispin Kobolongo, confirmed that GJCC had informed him of the complainant's abduction and that this information had prompted ACVDP to speak with the president of GJCC and the complainant's wife. She had confirmed that her husband had been abducted, that she had been raped on the same day, and that her husband had since been missing. It was because the investigations to ascertain the complainant's whereabouts had reportedly proved fruitless that the look-out notice and press release had been issued. However, the complainant's family — specifically his wife and his uncle — had had mobile telephone, fax and e-mail contact with the complainant while he was confined to Zurich airport in late September and early October 2004, and were therefore aware of his whereabouts. The State party concludes from this that the wife's sole interest in having the notice published was to provide her husband with documentary evidence to support his asylum application in Switzerland. The fact that the complainant himself provided this supposedly convincing evidence in 2005, when he had actually been in telephone contact with his wife at least two weeks before its publication, further discredits the complainant and his entourage.

4.9 In support of his appeal dated 27 January 2005, the complainant also submitted the notice of his disappearance published in the biweekly newspaper *Le Satellite* on 22 October 2004. In this notice, his family urged readers to report any information that might help ascertain his whereabouts to a family member or the police. The State party finds it incongruous that the family should urge readers of the newspaper to facilitate the police's efforts to ascertain the complainant's whereabouts. Noting that the issue of the wanted person notice by the National Intelligence Agency on 10 November was also contrived, the State party underlines that both the notice dated 19 September 2004 and the summons dated 26 September 2004 (in which the complainant's wife was asked to report to the police station the next day at 10.30 a.m.) have very little evidentiary value. The two documents, both of which were signed by Clément Konde, had been issued a week apart, each on a Sunday, when offices are usually closed. The State party notes that the Swiss authorities generally doubted the evidentiary value either of the summonses (which are for the most part faxed copies) or of the articles published in the press or on the Internet. It also notes that in Kinshasa it is easy to obtain such documents for payment.

4.10 In his request for review dated 8 April 2008, the complainant claimed that, after losing all contact for several years, he had finally managed to find his wife in March 2008. She had supposedly informed him that she had left Kinshasa in 2005, as the Congolese authorities' efforts to find the complainant were putting her in danger. Before leaving to request asylum in Zimbabwe at the end of 2007, she had reportedly spent most of the time living with her parents in the centre of the country. The Federal Administrative Court considered that, since the complainant's wife could easily have found people in contact with her husband since his disappearance, the couple's claims of a total loss of contact, with contact re-established only a few days after the complainant was informed of the imminent outcome of his appeal, were hardly convincing.

4.11 Lastly, the State party notes that the assessment made by the Federal Office for Migration in the first asylum proceedings, in which it had concluded that the complainant lacked credibility, was shared by UNHCR, to which the case had been referred on 27

September 2004. In light of the documents submitted and the human rights situation prevailing in the Democratic Republic of the Congo, UNHCR had concluded that the complainant was clearly not at risk of persecution in his country of origin.³

4.12 With regard to the medical report dated 22 January 2009 submitted to the Committee by the complainant and forwarded to the State party, the State party notes that, as in the case of the previous medical reports submitted by the complainant, the facts set out in the case history rest solely on the patient's account, and that the report does not prove the origin, as claimed by the complainant, of the mental health problems documented (post-traumatic stress disorder, depression). The State party maintains that these problems could be attributed to other factors, such as the complainant's separation from his family and his precarious status in Switzerland. In addition, an examination of the medical report reveals that certain facts recounted by the complainant are inconsistent with the claims he made in the asylum proceedings. For example, in the report he claims for the first time to have heard about his wife's rape. He makes no mention of his transfer from Kinshasa to Kasapa prison in Katanga. In the request for review submitted to the Federal Administrative Court, the complainant had claimed that he had not been able to speak to his wife until March 2008, after years of total loss of contact, while in the medical report he says contact was restored in October 2008. These contradictions and inconsistencies detract from the complainant's credibility. Lastly, the complainant gives no details of the ill-treatment allegedly suffered in the Democratic Republic of the Congo. The State party therefore maintains that the medical report dated 22 January 2009 provides no evidence on which to conclude that the complainant would be in danger if he were returned to his country of origin.

Complainant's comments on the State party's observations

5.1 On 27 April 2009, the complainant wrote that, with regard to the torture, the medical reports dated 4 March 2005 and 1 June 2006 showed that in his initial therapy sessions he had already reported the ill-treatment in the Democratic Republic of the Congo. The reports also stated that the complainant had been traumatized by the events experienced in the Democratic Republic of the Congo. With his comments, the complainant also provides a copy of the wanted notice issued by the National Intelligence Agency, which was displayed at all border crossing points in the Democratic Republic of the Congo. He also refers to confirmations provided by three churches where he reportedly had given talks. The complainant points out that the State party has so far failed either to carry out investigations or to provide any evidence to disprove his allegations. He adds that the first hearing of the asylum proceedings had been conducted by a police officer who had failed to gain the complainant's trust. Because of the manner in which the police had treated him (making threats and ordering him to undress), the complainant had not felt able to speak freely about the torture he had been subjected to in the Democratic Republic of the Congo.

5.2 The complainant emphasizes that the asylum application lodged by his wife in Zimbabwe is backed up by proof of the violence that she suffered in the Democratic Republic of the Congo. With regard to safety and security in the Democratic Republic of the Congo in general, the complainant underlines that the Swiss Refugee Council's report cannot be considered relevant, due to the absence of research on GJCC and on the complainant's activities in the Democratic Republic of the Congo. The complainant highlights, however, that the Swiss Refugee Council acknowledges the risks to which activists of certain religious communities who are said to have engaged in political activities opposing Joseph Kabilé and the Government on behalf of their groups may be exposed. The complainant adds that he has regularly taken part in activities organized by

³ The UNHCR assessment is annexed to the State party's observations.

political parties and associations of the Congolese diaspora in Switzerland. He is a supporter of the Alliance des Patriotes pour la Refondation du Congo (Alliance of Patriots for the Refoundation of the Congo) (APARECO), a political party led by President Ngbanda, which is based in Paris, France. He is also a regular contributor to programmes on Radio Kimpwanza hosted by the political group Rassemblement des Patriotes pour la Libération du Congo (Rally of Patriots for the Liberation of Congo) (RPLC). However, the complainant's uncertain status in Switzerland limits his contributions to this movement, especially since the television programme broadcast first by TSR and then by TV5 has already led to more than enough media exposure.

5.3 The complainant adds that even though it was aware of his whereabouts, GJCC had a duty to inform the human rights organization of his disappearance, firstly to expose the abuse perpetrated by the Kabila Government, and secondly to encourage human rights organizations to monitor violations of this kind. The article published in *Le Satellite* simply repeated the content of the press release issued in July 2004, at which point the complainant's family was not yet aware of his abduction. When the complainant's wife learned of her husband's departure for Switzerland in September 2004, she was unable to inform the newspaper, as her husband was still in detention in Zurich airport.

5.4 The complainant maintains that the wanted person notices challenged by the State party could have been issued on a Sunday because of the delicate nature of their content and the urgency attached to issuing such documents. If their issue had been contrived, the second wanted person notice would no doubt have been amended to correct the error in the first. The complainant further specifies that he had no contact with his wife from May or June 2005, when his wife left Kinshasa, until March 2008, when he was able to talk to her thanks to help from the Red Cross in Zurich. With regard to the UNHCR position, the complainant thinks that the Office must have based its assessment solely on the documents submitted to it by the Federal Office for Migration. Lastly, the complainant notes that during the first asylum proceedings he had been asked to submit all evidence supporting his application within two weeks of filing the request. For a person in flight from their home, meeting such a deadline is impossible.

Additional comments by the parties

6.1 On 14 May 2009, the State party commented on the new allegations and evidence presented by the complainant in his comments. The State party points out that an asylum application presented to the Swiss Ambassador in Zimbabwe by the complainant's wife was rejected on 19 August 2008 and that no appeal against the decision was lodged with the Federal Administrative Court. Furthermore, the complainant's wife failed to provide any evidence to support her asylum application. She also failed to take the opportunity to comment on an advance notice relating to her application issued by the Federal Office for Migration on 27 June 2008. The State party notes that the medical certificate dated 1 June 2006 confirms that the complainant reportedly consulted a doctor in 2004 about the violence to which he had reportedly been subjected in the Democratic Republic of the Congo. Noting also the information concerning the complainant's claim to be a member of APARECO and his supposedly regular contributions to programmes on Radio Kimpwanza, the State party observes that neither of these items of information were ever brought to the attention of the Swiss authorities in the course of the domestic appeals, and that in any case neither can be considered to have evidentiary value, since the certificate does not establish the veracity of the claims and the complainant's claimed affiliation to the political party APARECO does not appear to be of an extent sufficient to place him at risk in the event of deportation to his country of origin.

6.2 On 19 May 2009, the complainant informed the Committee that on 24 April 2009 he had been arrested by the Zurich police, even though the State party had deferred execution

of his deportation since 19 August 2008. Although the cantonal immigration offices were still open and a simple administrative check could therefore have been carried out, the complainant had been arrested and detained for four days. Not until 28 April 2009 was it established, thanks to checks performed first by the public prosecutor and then by the investigating judge, that the complainant was legally residing in Switzerland following the Committee's request for interim protection measures.

6.3 On 19 June 2009, the complainant informed the Committee that his wife's health had deteriorated, and submitted a medical certificate issued by Harare Central Hospital in Zimbabwe attesting to the fact that she too was suffering from post-traumatic stress disorder.

6.4 On 10 July 2009, the State party commented on the allegations made by the complainant on 19 May 2009. It observed that the complainant had been arrested by the Zurich police during an identity check. Suspected by the police of being in Switzerland illegally, he had been placed in custody for violation of the provisions of the Federal Act on Foreign Nationals, and not for the purpose of his deportation. He had been referred to the prosecution service in Zurich-Limmat. On 27 April 2009, the sole judge sitting on the Zurich district court refused to place the complainant in pretrial detention, since execution of his deportation had been suspended following the Committee's request for interim protection measures on 18 August 2008. The complainant was immediately transferred to the Migration Office of the Canton of Zurich, which released him the following day. The cantonal authorities could not in any case have deported him without an order from the Federal Office for Migration. The complainant therefore was not at any time in danger of being expelled from Switzerland, and these details are not relevant to the content of the communication before the Committee.

6.5 On 19 October 2010, the complainant drew the Committee's attention to his precarious situation, as he was living in an emergency assistance centre under constant threat of arbitrary arrest and of repeated identity checks by the police, and to the financial hardship associated with emergency assistance, which provided a daily living allowance of 10 Swiss francs. The complainant also informed the Committee that although he had applied for a hardship permit (a permit granted on humanitarian grounds) his application could not be considered while the current procedure was before the Committee. He reiterated the fact that the Congolese Government did not safeguard citizens' rights in the Democratic Republic of the Congo, citing the recent assassinations of Mr. Armand Tungulu, an activist within the Congolese diaspora in Belgium, and Mr. Floribert Chebeya Bahizire, and the disappearance of Mr. Fidèle Bazana Edadi.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any complaint submitted in a communication, the Committee against Torture must decide whether or not 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 also notes that all domestic remedies have been exhausted pursuant to article 22, paragraph 5 (b), and that the State party is not contesting the admissibility of the complaint. The Committee therefore declares the communication admissible and proceeds to its consideration on the merits.

Consideration of the merits

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

8.2 The Committee must determine whether, in deporting the complainant to the Democratic Republic of the Congo, the State party would be failing in its 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.

8.3 In assessing the complainant's allegations under article 3, the Committee must take into account all relevant considerations, including the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of such assessment, however, is to determine whether the complainant would personally be in danger of being subjected to torture in the Democratic Republic of the Congo. It follows that the existence in that country of a consistent pattern of gross, flagrant or mass violations of human rights does not in itself constitute sufficient grounds for determining that a particular person would be in danger of being subjected to torture if expelled to that country. Additional grounds must be adduced to show that the individual concerned would be personally at risk.⁴

8.4 The Committee recalls its general comment No. 1 on implementation of article 3 of the Convention in the context of article 22, which states that while it is not necessary to demonstrate that the risk of torture is highly probable, the risk must be personal and present. In this regard, the Committee has established in previous decisions that the risk of torture must be "foreseeable, real and personal".⁵ As to the burden of proof, the Committee recalls that it is generally incumbent upon the complainant to present an arguable case and that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion.

8.5 The Committee is aware of the dire human rights situation in the Democratic Republic of the Congo⁶ and notes that the State party acknowledges that the situation in the country gives cause for concern. However, it also notes the doubts expressed by the State party as to the credibility of the allegations made by the complainant since his first asylum application was lodged in September 2004 and the State party's reference to a letter from

⁴ Communication No. 282/2005, *S.P.A. v. Canada*, Views adopted on 7 November 2006; see also communication No. 333/2007, *T.I. v. Canada*, Views adopted on 15 November 2010; and communication No. 344/2008, *A.M.A. v. Switzerland*, Views adopted on 12 November 2010.

⁵ Communication No. 203/2002, *A.R. v. the Netherlands*, Views adopted on 21 November 2003, para. 7.3; communication No. 285/2006, *A.A. et al. v. Switzerland*, Views adopted on 10 November 2008, para. 7.6.

⁶ See, inter alia, *Report of the United Nations High Commissioner for Human Rights on the situation of human rights and the activities of her Office in the Democratic Republic of the Congo*, 10 January 2011 (A/HRC/16/27); *Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo*, 17 January 2011 (S/2011/20); the Committee's concluding observations on the report submitted by the Democratic Republic of the Congo under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/DRC/CO/1/CRP.1), 2006; concluding observations of the Human Rights Committee on the report submitted by the State party under the International Covenant on Civil and Political Rights (CCPR/C/COD/CO/3), 2006; *Technical Assistance and Capacity Building. Combined report of seven thematic special procedures on technical assistance to the Government of the Democratic Republic of the Congo and urgent examination of the situation in the east of the country* (A/HRC/10/59), 5 March 2009.

UNHCR, dated 30 September 2004, in which UNHCR had concluded, in light of the documents submitted and the human rights situation in the Democratic Republic of the Congo, that the complainant was clearly not at risk of persecution in his country of origin.

8.6 In assessing the risk of torture in the case under consideration, the Committee notes the complainant's claims that as an active member of the Christian group GJCC he organized three talks on the presidential elections in the Democratic Republic of the Congo, and at these events alerted young Christians to the fact that Joseph Kabilà, the main candidate, was not of Congolese origin; that, after making these pronouncements he was arrested, interrogated, and then transferred to a prison in Katanga where he was tortured; and that two weeks later he escaped from prison and fled the country for Switzerland. The Committee notes that according to the complainant, his wife was raped at the time of his arrest and, a few years later, had in turn managed to flee the country and seek asylum in Zimbabwe. The Committee also notes the complainant's claim that his appearance, without his face obscured, on a TSR programme that was subsequently aired on TV5, his political activities as a supporter of APARECO and his participation in programmes broadcast on Radio Kimpwanza contribute to the risk of torture that he would face if deported to his country of origin. Lastly, it notes the information according to which the various medical reports issued by psychotherapists since 2005 attest to post-traumatic stress disorder in the complainant, confirming the trauma suffered as a result of the events he experienced in the Democratic Republic of the Congo.

8.7 The Committee notes the State party's argument that the medical reports submitted by the complainant rest on a case history based solely on information provided by the patient and that they do not prove the veracity of the allegations made, notably with regard to the circumstances, the reasons or even the identity of the perpetrator of the alleged ill-treatment. The Committee notes that the State party is not contesting the mental health problems, but is questioning the causal link between these problems and their alleged origin. It further notes that these problems are attributed by the doctors themselves to other factors, including the anxiety associated with the complainant's separation from his family and his precarious status in Switzerland. The Committee also notes the doubts raised by the State party with regard to the credibility of the acts alleged by the complainant, which are the basis for the alleged risk of torture that he would face if deported to the Democratic Republic of the Congo. In this connection the Committee notes that the complainant provides no details about the torture he allegedly suffered in the Democratic Republic of the Congo, that documents such as the wanted notices and press articles submitted lack evidentiary value, and that the complainant's statements regarding contact with his wife since leaving the Democratic Republic of the Congo are contradictory.

8.8 In light of the information provided by the parties, the Committee observes that the complainant has not substantiated a causal link between the events that led him to leave his country of origin and those that have occurred since his arrival in Switzerland on the one hand and the risk of torture he would face if deported to the Democratic Republic of the Congo on the other. The complainant has not in fact provided any information that would give grounds to conclude that pronouncements concerning the non-Congolese origin of President Joseph Kabilà made by Christian movements such as GJCC would lead to the Congolese authorities' torturing the persons concerned, years after the event, when the same issue has apparently been widely discussed by the opposition. In addition, the complainant has provided no details about the torture allegedly suffered during his detention in the Democratic Republic of the Congo and has failed to prove that his appearance in the TSR report and his participation in radio programmes would place him at risk of being subjected to torture if returned to his country of origin. The Committee recalls that the tragic acts to which the complainant's wife was reportedly subjected do not in themselves create a real, personal and foreseeable risk of torture for the complainant.

8.9 Taking into account all information made available to it, the Committee considers that the complainant has failed to provide sufficient evidence to demonstrate that he would face a real and foreseeable risk of being subjected to torture if deported to his country of origin.

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 the deportation of the complainant to the Democratic Republic of the Congo would not constitute a breach of article 3 of the Convention.

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