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| United Nations logo | **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** | | Distr.: General  14 June 2022  English  Original: French |

**Committee against Torture**

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 881/2018[[1]](#footnote-1)\*, [[2]](#footnote-2)\*\*

*Communication submitted by:* K.M. (represented by counsel, Alfred Ngoyi Wa Mwanza)

*Alleged victim:* The complainant

*State party:* Switzerland

*Date of complaint:* 13 August 2018 (initial submission)

*Document references*: Decision taken pursuant to rules 114 and 115 of the Committee’s rules of procedure, transmitted to the State party on 20 August 2018 (not issued in document form)

*Date of adoption of decision:* 28 April 2022

*Subject matter:* Expulsion to the Democratic Republic of the Congo

*Procedural issues:* Failure to exhaust domestic remedies; failure to substantiate claims

*Substantive issue:* Risk of torture or cruel, inhuman or degrading treatment or punishment if deported to country of origin

*Article of the Convention:* 3

1.1 The complainant is K.M., a national of the Democratic Republic of the Congo born in 1980. His application for asylum in the State party was rejected, and he is now facing expulsion to the Democratic Republic of the Congo. He claims that his expulsion would constitute a violation by the State party of article 3 of the Convention. The State party made the declaration under article 22 (1) of the Convention on 2 December 1986. The complainant is represented by counsel, Alfred Ngoyi Wa Mwanza.

1.2 On 20 August 2018, pursuant to rule 114 of its rules of procedure, the Committee, acting through its rapporteur on new complaints and interim measures, requested the State party to refrain from deporting the complainant while his complaint was being considered. On 22 August 2018, the State party informed the Committee that it had suspended the complainant’s expulsion.

Facts as submitted by the complainant

2.1 The complainant was born and raised in Kinshasa, where he lived with his parents and sister. In 1990, following the death of his father, the complainant, his mother and his sister were accused of having caused his death through witchcraft and were thrown out of their home by his father’s family. The complainant found himself in the streets, where he lived and worked in difficult conditions until the age of 15. It was in that context that the complainant, then still a minor, was forcibly recruited into the army and sent to the Kibomango military training camp for military service.

2.2 From 1998 to 2004, the complainant was deployed to various regions for combat. In 2004, he completed military driver training as well as military training with General Numbi as a member of Simba Battalion in Mbankana, in the former Province of Bandundu.[[3]](#footnote-3) In 2010, the Battalion was disbanded and the complainant joined the Eleventh Military District, where he was promoted to the rank of sergeant major, warrant officer and warrant officer first class. He was General Shora’s personal driver and was responsible for the transport of troops and military equipment.

2.3 In 2014, the complainant was ordered by his commanding officer to drive in the middle of the night to Kingakati, the presidential village. General Shora, the complainant’s commanding officer, was at the logistics base, as were the city’s chief administrator and General Oleko. The complainant was ordered to drive one of the civilian trucks belonging to the municipality of Kinshasa. When he reached his destination, he was forced out of the truck so that members of the Republican Guard could drive it beyond the first security perimeter. He could see tractors digging pits. When the truck was returned to him, he noticed blood dripping around the fuel tank. When he asked General Shora about it, the General reprimanded him and ordered the Republican Guard to seize him.

2.4 The complainant was stabbed in the face and temple. He was brutally beaten and had an arm broken. He lost consciousness and came to after some time in Camp Kokolo, near the premises of the military police. It was then that General Shora shot him in the leg and ordered him taken away. The complainant has confused memories of receiving medical treatment and waking up in an underground cell connected to the military police facilities at Camp Kokolo, where political prisoners and deserters were locked away to die. While he was detained, a period of nearly six months, he learned from other detainees that the aim of the operation in which he had taken part was to remove any trace of members of the opposition by burying them in mass graves.

2.5 On the night of 24 to 25 December 2014, the complainant and a few of his fellow detainees were transferred. Shortly before, Major Nyembo had gone to the underground cell and asked the complainant to which draft class he belonged. The transferees were then put on a truck blindfolded. When the truck stopped, they were ordered out, and Major Nyembo waved them into a minibus in which three white men were sitting. The minibus drove them to the Congo River, where a pirogue was waiting to take the complainant across to Brazzaville. In Brazzaville, he was given medical attention and taken to the airport. He boarded a plane to Greece, where he stayed for three months.

2.6 On 7 May 2015, the complainant arrived in Switzerland by plane and applied for asylum. On 19 May 2015, he was summarily interviewed about his reasons for claiming asylum, his identity, the route he had travelled and his identification documents. He was subsequently directed to the canton of Geneva for the duration of the asylum procedure. On 18 April 2017, he was interviewed in greater depth about his reasons for claiming asylum. On 16 January 2018, the State Secretariat for Migration rejected the complainant’s asylum application and ordered his expulsion.

2.7 On 4 July 2018, the Federal Administrative Court rejected the complainant’s appeal. A new deadline of 7 August 2018 was set for the complainant to leave Switzerland. All domestic remedies have been exhausted, and the complainant fears that he could be expelled to the Democratic Republic of the Congo at any time.

2.8 Due to the torture and ill-treatment that he was subjected to in the Democratic Republic of the Congo, the complainant’s mental health has sharply declined, and he is undergoing psychiatric treatment in Switzerland consisting of therapy and medication.[[4]](#footnote-4)

Complaint

3.1 The complainant claims that his rights under article 3 of the Convention would be violated by his imminent deportation to the Democratic Republic of the Congo, where he runs the risk of being subjected to torture or cruel, inhuman or degrading treatment because of his knowledge of the transport and burial place of bodies and because of his flight from the Congolese army, which amounts to desertion, an offence in the Congolese military justice system.

3.2 The complainant adds that he would undoubtedly be convicted following an unfair trial and periods of pretrial detention in inhumane conditions, coupled with acts of torture or cruel, inhuman or degrading treatment. The fact that he sought asylum abroad as a State official would be considered an aggravating circumstance.

3.3 The complainant also refers to the human rights situation in the Democratic Republic of the Congo and to the tense security and political situation in this pre-electoral period, which is leading to instability and mass violations of human rights.

State party’s observations on admissibility

4.1 On 24 September 2018, the State party challenged the admissibility of the communication for failure to exhaust available domestic remedies.

4.2 The State party recalls that, on 16 January 2018, the State Secretariat for Migration, after twice interviewing the complainant in person, rejected his asylum application of 7 May 2015 on the grounds that his allegations about the risk of persecution he faced were implausible. That decision was upheld by the Federal Administrative Court on 4 July 2018 .

4.3 The State party notes that the complainant submitted to the Committee two medical reports dated 29 May 2017, in which he is found to have post-traumatic stress disorder, as well as a medical certificate dated 23 July 2018 and describing a marked decline in his health. The medical certificate was drawn up after the judgment of the Federal Administrative Court of 4 July 2018; therefore, neither the Federal Administrative Court nor the State Secretariat for Migration has had the opportunity to rule on its relevance. Yet, this subsequent element could justify a review request under article 111 (b) of the Asylum Act (No. 142.31 of 26 June 1998). As part of this procedure, the complainant may, inter alia, present evidence that comes to light after the judgment of the Federal Administrative Court but concerns facts that predate it. New facts or evidence may lead to reconsideration of a case if they are likely to have an impact on the outcome of the challenge and if the evidence presented is such as to establish the facts.

4.4 The State party specifies that the complainant can request a review of the decision of the State Secretariat for Migration to order his expulsion if enforcing the decision might breach an international commitment made by the State party.

4.5 Regarding the extraordinary appeal for the presentation of new facts, the competent authority – the State Secretariat – can decide to suspend an expulsion for the duration of the review. In any event, the decision to suspend the enforcement of an expulsion or to classify an appeal as a new asylum application is taken following an individual review of the case.

4.6 Thus, an effective means of presenting new claims and evidence is available to the complainant. He should have them examined by the competent domestic authority. However, the complainant, assisted by counsel, has decided not to file a review request with the State Secretariat. It is worth noting that the outcome of the review could be appealed before the Federal Administrative Court. The State party therefore maintains that the author has not exhausted all available domestic remedies.

Complainant’s comments on the State party’s observations on admissibility

5.1 In his comments of 13 December 2018, the complainant states that the medical certificate of 23 July 2018 does not contain any new elements on the basis of which a request for review could be made to the State Secretariat for Migration.

5.2 Regarding the unlawfulness of the expulsion, the complainant is of the view that he has not provided the Committee with any information of which the authorities of the State party are not already aware. The Federal Administrative Court judgment of 4 July 2018 considered his situation from the angle of the unlawfulness of the expulsion, and no new evidence concerning the complainant’s eligibility for asylum or refugee status has come to light since the judgment was rendered. Therefore, there is no justification for initiating a new asylum procedure before the authorities of the State party on those grounds.

State party’s observations on the merits

6.1 On 3 November 2020, the State party submitted its observations on the merits. It recalls the decisions of the Swiss asylum authorities. For instance, the State Secretariat for Migration pointed out contradictions regarding the complainant’s involvement in the Kingakati operation in late 2013 or early 2014 and his arrest following his return from Camp Kokolo. The State Secretariat described his statements about the motives of the strangers who allegedly helped him escape from prison and leave the country for Europe as simplistic and unconvincing and found it unlikely that he would be subjected to reprisals for having left his country while serving as a soldier. The State Secretariat noted that the situation in the Democratic Republic of the Congo does not preclude expulsions to that country. As for the complainant’s health, the State Secretariat considered the seriousness of his condition and what the appropriate treatment was before coming to the conclusion that psychotherapy and medical care would be available in the Democratic Republic of the Congo.

6.2 In response to an appeal by the complainant, who was represented by counsel, the Federal Administrative Court issued an interim ruling on 19 February 2018 in which it authorized the application for legal aid and asked the State Secretariat for Migration to rule on several specific points that had been raised by the complainant and taken up in the interim ruling. In its notice of intention of 7 March 2018, the State Secretariat highlighted further elements of the complainant’s account which it found implausible. For example, while the complainant’s injuries were documented in medical reports dated 29 May 2017, those reports could not in themselves attest to the exact cause of an injury. Moreover, the doctors’ observations are not so detailed as to render the causes alleged by the complainant credible.

6.3 In its judgment of 4 July 2018, the Federal Administrative Court specified that the fact that the complainant had served in the Congolese army was uncontested. However, the Court found both the supposed desertion and the circumstances surrounding it, as presented by the complainant, to be implausible. In support of this finding, the Court stated that the complainant had given widely diverging accounts of the drive(s) that had led to his arrest. There were contradictions or discrepancies regarding, inter alia, the places of arrest and detention, the nature and content of the interrogation(s) he underwent, the name of the interrogator and the treatment of his injuries. The Court also took into account the fact that the complainant had never personally taken any steps to flee his country and that he failed to explain the circumstances of his departure, including why strangers spontaneously helped him and how he was able to escape prison. In addition, the Court noted that, according to the complainant, he had had a biometric military card since 2009 but was later issued a military card in paper form. As for the medical reports of 29 May 2017, the Court concurred with the assessment by the State Secretariat for Migration, in particular with regard to the reports’ relevance in determining the causes of the complainant’s injuries.

6.4 The State party also points to the facts of the complaint – namely, the complainant’s claim that he would be exposed to acts of torture if he were returned to his country of origin. By and large, he repeats the claims made in support of his asylum application. Specifically, he claims that he would be exposed to the criminal penalties established in articles 43 to 45 of Act No. 024/2002 of 18 November 2002, the Military Criminal Code of the Democratic Republic of the Congo, because he was a member of the military and left the Congolese army without authorization. The complainant claims that, given his background, a conviction for desertion would undoubtedly go hand in hand with acts of torture or cruel, inhuman or degrading treatment. Both these elements and related evidence have already been thoroughly considered by the national asylum authorities. In addition to the two medical reports dated 29 May 2017, according to which he suffers from post-traumatic stress disorder, the complainant submitted to the Committee a medical certificate, dated 23 July 2018, describing a marked decline in his health.

6.5 Should the Committee find the communication admissible, the State party will reaffirm the soundness of the decisions of the national authorities in the light of article 3 of the Convention and the Committee’s jurisprudence and general comments. The State party submits that, in principle, the complainant, who must present an arguable case – that is, make substantiated arguments showing that such a risk exists – bears the burden of proof.

6.6 The State party points out that in order to consider whether there are substantial grounds for believing that a complainant would be in danger of being subjected to torture if deported, the Committee must take into account all relevant considerations, in accordance with article 3 (2) of the Convention, in particular the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of such a determination is, however, to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned.[[5]](#footnote-5) It follows that the existence of a pattern of human rights violations, as mentioned in article 3 (2) of the Convention, does not constitute a sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to his or her country.[[6]](#footnote-6) There must, therefore, be additional reasons for the risk of torture to be considered foreseeable, present, personal and real within the meaning of paragraphs 11 and 38 of general comment No. 4 (2017).[[7]](#footnote-7) 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 were returned there.[[8]](#footnote-8) Notwithstanding episodic local unrest and clashes and tensions, mostly in the eastern part of the country, the whole of the Democratic Republic of the Congo is not in a state of war, civil or otherwise, or beset by widespread violence. The State party concludes that the complainant has not adduced evidence that he would face a foreseeable, real and personal risk of being subjected to torture if he were returned to the Democratic Republic of the Congo.

6.7 The State party notes that the complainant contends that he was brutally assaulted during the Kingakati operation and his ensuing arrest. However, although the medical reports of 29 May 2017 attest to his injuries, both the State Secretariat for Migration and the Federal Administrative Court found that the implausibility of his account rules out the possibility that the injuries occurred in the circumstances he described. It follows that the allegations of torture or ill-treatment are unsubstantiated.

6.8 The State party also points out that the complainant has not claimed that he took part in political activities either in his country of origin or abroad.

6.9 The State party is of the view that the complainant’s fear of being subjected to treatment prohibited under article 3 of the Convention because he deserted the Congolese army was considered in depth during the asylum procedure. The complainant had every opportunity to substantiate and clarify his claims before the State Secretariat and the Federal Administrative Court. The fact that the complainant served for a time in the Congolese army is not in dispute. However, the evidence he provided did not lead either the Federal Administrative Court or the State Secretariat to believe that his alleged arrest and detention, the story of his escape or his supposed desertion were plausible. Moreover, there is nothing in the file to indicate that the Congolese authorities have initiated criminal proceedings against the complainant.

6.10 The complainant, represented by counsel, does not call into question how the asylum proceedings unfolded. He merely presents his account of the events that were considered by the competent national authorities. In other words, he is contesting the assessment of the facts by the State Secretariat for Migration and the Federal Administrative Court in their respective decisions, not the procedural aspects of his application for asylum. There is nothing concrete in the asylum application or the communication to lend credence to the claim that the complainant would face a foreseeable, personal and real risk of being subjected to torture within the meaning of article 3 of the Convention if he were returned to the Democratic Republic of the Congo. According to the State party, the present complaint does not contain any new facts or evidence likely to change the finding of the national authorities – namely, that the complainant’s allegations do not establish a well-founded fear of future persecution in the event of his expulsion to the Democratic Republic of the Congo. Moreover, the complainant does not present anything concrete that would credibly show, with the slightest degree of plausibility, that he would face a foreseeable, present, personal and real risk of being subjected to acts of torture within the meaning of article 3 of the Convention if he were deported to the Democratic Republic of the Congo.

6.11 Accordingly, the State party considers that the complainant has not demonstrated that there are substantial grounds for believing that he would face a specific and personal risk of being subjected to treatment contrary to the Convention if he were returned to his country of origin.

Complainant’s comments on the State party’s observations on the merits

7.1 In his comments of 30 August 2021, the complainant repeats that he runs a significant risk of being tortured if returned to the Democratic Republic of the Congo. He includes medical documents detailing the treatment he is undergoing for the psychological problems resulting from the torture he was subjected to in his country of origin[[9]](#footnote-9) and underscores that these documents are evidence of his claim of torture and cruel, inhuman or degrading treatment.

7.2 The complainant asserts that experience has shown that victims of acts of torture or other forms of violence can suppress their emotions, experience feelings of shame or guilt and suffer from post-traumatic stress disorder. It is issues such as these that his attending physician observed and reported in the medical reports that were submitted along with the communication. Victims of such acts tend to have particular difficulty explaining their reasons for seeking asylum. They are deeply affected by the torture and cruel, inhuman or degrading treatment to which they were subjected, to the point that they have trouble retelling their stories in asylum proceedings without contradicting themselves and forgetting important details of their experiences. The complainant believes that his statements during the in-depth interview and the additional interview were not given the consideration required by the investigation. His statements should have been given special weight if the file had been considered in a comprehensive manner in keeping with the rule of the preponderance of the evidence.

7.3 The complainant claims that his fear of returning to his country, where he risked being subjected to torture or cruel, inhuman or degrading treatment for his desertion, is well-founded. In that connection, he cites article 47 of the Military Criminal Code, which states that the following persons will be declared deserters abroad:

(1) a member of the military or person of equivalent status who, three days after the absence has been recorded, crosses, without authorization, the boundaries of the territory of the Republic or, outside this territory, leaves the unit, detachment, base or formation to which he or she belongs or the ship or aircraft he or she has boarded;

(2) a member of the military or person of equivalent status who, outside the territory of the Republic, at the expiration of the period specified in subparagraph 1 for his or her return from leave, mission or travel, does not report to the unit, detachment, base or formation to which he belongs or the ship or aircraft he has boarded.

Article 48 of the Code stipulates that:

A member of the military or person of equivalent status who is found guilty of desertion abroad in peacetime is liable to 5 years’ imprisonment.

Where the deserter took a weapon or equipment belonging to the State, deserted while on duty or committed conspiracy and desertion, the penalty is 3 to 10 years’ imprisonment.

Where desertion abroad occurs in times of war or exceptional circumstances, the penalty can be increased to life imprisonment and even death.

7.4 The complainant, if expelled, would undoubtedly be convicted pursuant to these criminal provisions, not to mention face an unfair trial and periods of pretrial detention in inhumane conditions, coupled with acts of torture or cruel, inhuman or degrading treatment. In addition, given that the security and political situation in the Democratic Republic of the Congo remains characterized by mass violations of human rights, the offence would be considered aggravated by the fact that he was able to apply for asylum abroad as a State official.

7.5 The complainant refers to jurisprudence of the European Court of Human Rights, according to which a certain degree of speculation is inherent in the preventive purpose of article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) – a norm, from which no derogation is possible, banning States from exposing an individual under their authority to inhuman or degrading treatment – and the persons concerned should not be required to provide clear proof of their claim that they would be exposed to proscribed treatment.[[10]](#footnote-10) In this regard, the Court has specified that, when such claims are made, it is the responsibility of the returning State to dispel any doubt about them and that the alleged risk must be subject to close scrutiny, in the course of which the authorities of the returning State must consider the foreseeable consequences of removal for the individual concerned in the receiving State in the light of the general situation there and the individual’s personal circumstances.[[11]](#footnote-11) The Court has added that where, after the relevant information has been examined, serious doubts persist regarding the impact of removal on the persons concerned – on account of the general situation in the receiving country and/or their individual situation – the returning State must obtain individual and sufficient assurances from the receiving State, as a precondition for removal, that a situation contrary to article 3 of the European Convention on Human Rights will not arise.[[12]](#footnote-12)

7.6 The complainant submits that he was prosecuted for events connected to the regime of Joseph Kabila. The fact that the Democratic Republic of the Congo underwent a regime change following the presidential elections of 30 December 2018 is not in question. Since Félix-Antoine Tshisekedi Tshilombo came to power, the country has seen improvements in terms of the freedoms of expression and assembly. However, notwithstanding the release of some high-profile political prisoners known to the public and to human rights organizations, several political prisoners and prisoners of conscience who were not known or were not as well known and had run into difficulties with the Joseph Kabila regime remain in detention. Some political prisoners who were arrested before the December 2018 election recovered their liberty under the new President, but the same cannot be said for several others who continue to languish in prison in difficult conditions. In the complainant’s case, there is nothing to indicate that despite the nature of the charges against him, he would be easily acquitted. The President has changed, but the regime has not. The intelligence and security services set up by the previous President remain in operation. Furthermore, the complainant refers to a recent judgment of the Federal Administrative Court concerning a national of the Democratic Republic of the Congo in which the judges acknowledged that, given the powers retained by Joseph Kabila, individuals who have had difficulties with his regime and his security services in the past remain at risk of encountering problems even now.[[13]](#footnote-13)

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. 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.

8.2 The Committee notes that, in accordance with article 22 (5) (b) of the Convention, it will not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. This rule does not apply where it has been established that the application of the remedies has been unreasonably prolonged or is unlikely to bring effective relief to the complainant.[[14]](#footnote-14)

8.3 In this regard, the Committee notes the State party’s argument that the complainant has not applied for review under article 111 (b) of the Asylum Act on the basis of new facts or evidence concerning his state of health. The Committee also notes the complainant’s assertion that the medical certificate established after the issuance of the national authorities’ decision does not contain anything new that would justify a request for review of the decision of the State Secretariat for Migration and that he did not submit to the Committee any evidence concerning the unlawfulness of the expulsion of which the authorities of the State party were not already aware. Accordingly, the Committee is of the view that article 22 (5) (b) of the Convention does not constitute an obstacle to the admissibility of the present communication.

8.4 As the Committee finds no further obstacles to admissibility, it declares the complaint admissible under article 3 of the Convention and proceeds to its consideration of the merits.

Consideration of the merits

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

9.2 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 (“refouler”) a person to another State where there are grounds for believing that he or she would be in danger of being subjected to torture or other cruel, inhuman or degrading treatment or punishment. The Committee recalls that the prohibition of torture is absolute and non-derogable and that no exceptional circumstances whatsoever may be invoked by a State party to justify acts of torture.[[15]](#footnote-15)

9.3 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 he were returned to the Democratic Republic of the Congo. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such a determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of torture in the country to which he or she would be returned. 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 reason 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.[[16]](#footnote-16) 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.[[17]](#footnote-17)

9.4 The Committee recalls its general comment No. 4 (2017), according to which 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 that may be at risk of being tortured in the State of destination. The Committee’s practice in this context has been to determine that “substantial grounds” exist whenever the risk of torture is “foreseeable, personal, present and real”.[[18]](#footnote-18) Indications of personal risk may include in particular the political affiliation or political activities of the complainant or members of his or her family, or the existence of an arrest warrant without a guarantee of fair treatment and trial.[[19]](#footnote-19) The Committee notes that the burden of proof is borne by the complainant, who must present an arguable case – that is, submit substantiated arguments showing that the danger of being subjected to torture is foreseeable, personal, present and real. However, when complainants are in a situation where they cannot elaborate on their 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.[[20]](#footnote-20) The Committee also notes that it gives considerable weight to findings of fact made by organs of the State party concerned; however, it is not bound by such findings and will make a free 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.[[21]](#footnote-21)

9.5 In the present case, the Committee notes the complainant’s argument that his expulsion to the Democratic Republic of the Congo would constitute a violation by the State party of his rights under article 3 of the Convention. The Committee also notes the complainant’s claim that as a deserter from the Congolese army holding the ranks of sergeant major, warrant officer and warrant officer first class, who was General Shora’s personal driver and transported troops and military equipment, he is likely to be subjected to ill-treatment if he is returned to his country of origin. In this connection, the Committee notes that the State party has not disputed the fact that the complainant served in the Congolese army.

9.6 The Committee recalls that it must ascertain whether the complainant would currently run the risk of being subjected to torture if he were returned to the Democratic Republic of the Congo. It notes that the complainant had ample opportunity to provide supporting evidence and more details about his claims at the national level, first to the State Secretariat for Migration and then to the Federal Administrative Court, but that the evidence provided did not lead the national authorities to conclude that he would be at risk of torture or cruel, inhuman or degrading treatment upon his return to the Democratic Republic of the Congo. It notes, too, that the situation in that country has changed with the end of Joseph Kabila’s regime following the elections of 30 December 2018 and the release of political prisoners. The Committee recalls that the existence of human rights violations in a complainant’s country of origin is not, in itself, sufficient for it to conclude that he or she runs a personal risk of being tortured.[[22]](#footnote-22) Therefore, the mere fact that human rights violations occur in the Democratic Republic of the Congo is not in itself sufficient to conclude that the complainant’s expulsion to that country would constitute a violation of article 3 of the Convention.[[23]](#footnote-23) The Committee notes that it appears from the case file that the State party’s authorities took into account the relevant background information when examining the complainant’s asylum applications. It finds that in the present case the complainant has not proved that he has been prosecuted for actions in connection with the Joseph Kabila regime or that his desertion from the army is significant enough to attract the interest of the authorities of his country of origin and concludes that the information provided does not demonstrate that he would be personally at risk of torture or cruel, inhuman or degrading treatment if he were returned to the Democratic Republic of the Congo.[[24]](#footnote-24)

9.7 The Committee notes that the complainant claims to suffer from post-traumatic stress disorder but has not demonstrated that he has been tortured or subjected to ill-treatment in the recent past or produced any evidence that might cast doubt on the Swiss authorities’ reasons for their rejection of his application for asylum.[[25]](#footnote-25)

9.8 The Committee notes that the complainant submitted in support of his complaint medical reports dating from 2017, 2018 and 2019 attesting to the fact that he is suffering from post-traumatic stress disorder and that, in his view, being deported to the Democratic Republic of the Congo would violate his rights under the Convention. The Committee also notes the State party’s argument that the complainant’s health problems can be treated in his country of origin. The Committee therefore considers that the complainant’s situation, including his physical and psychological condition, has been thoroughly examined by the Swiss authorities, who have found that there are no major risks that the complainant’s rights under the Convention would be violated if he were returned to the Democratic Republic of the Congo.

9.9. The Committee is therefore of the view that the information submitted by the complainant is insufficient to substantiate his claim that he would be at a foreseeable, real and personal risk of torture if he were returned to the Democratic Republic of the Congo.

10. The Committee, acting under article 22 (7) of the Convention, concludes that the return 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.

1. \* Adopted by the Committee at its seventy-third session (19 April–13 May 2022). [↑](#footnote-ref-1)
2. \*\* The following members of the Committee participated in the examination of the communication: Todd Buchwald, Claude Heller, Erdogan Iscan, Liu Huawen, Maeda Naoko, Ilvija P‎ūce, Ana Racu, Abderrazak Rouwane, Sébastien Touzé and Bakhtiyar Tuzmukhamedov. [↑](#footnote-ref-2)
3. In 2015, Bandundu Province was divided into three new provinces – namely, Kwango, Kwilu and Mai-Ndombe. [↑](#footnote-ref-3)
4. In substantiation of his allegations of torture and ill-treatment in the Democratic Republic of the Congo, the complainant included various medical reports and certificates. [↑](#footnote-ref-4)
5. *A.M. v. Switzerland* ([CAT/C/65/D/841/2017](http://undocs.org/en/CAT/C/65/D/841/2017)), para. 7.3. [↑](#footnote-ref-5)
6. Ibid. [↑](#footnote-ref-6)
7. See also, among others, *N.S. v. Switzerland* ([CAT/C/44/D/356/2008](http://undocs.org/en/CAT/C/44/D/356/2008)), para. 7.2, and *T.Z. v. Switzerland* ([CAT/C/62/D/688/2015](http://undocs.org/en/CAT/C/62/D/688/2015)), para. 8.3. [↑](#footnote-ref-7)
8. *A.M. v. Switzerland*, para. 7.4, *M.F. v. Switzerland* ([CAT/C/59/D/658/2015](http://undocs.org/en/CAT/C/59/D/658/2015)), para. 7.3, and *T.Z. v. Switzerland*, para. 8.4. [↑](#footnote-ref-8)
9. The complainant submits the following documents: (a) a medical certificate dated 28 February 2019 stating that he has been receiving treatment at the Servette Outpatient Integrated Psychotherapy and Psychiatry Centre and at the unit for victims of torture and war at the Geneva University Hospital since 27 September 2018; and (b) a medical certificate indicating that the complainant “is benefiting from a regular occupation that distracts him from the anxious ruminations about his relatives who stayed behind in his country and past traumatic experiences” and that “a three- to six-month extension of his residence permit would maximize the chances of long-term psychiatric stabilization”. [↑](#footnote-ref-9)
10. European Convention on Human Rights, *Paposhvili v. Belgium*, application No. 41783/10, judgment of 13 December 2016, para. 186. [↑](#footnote-ref-10)
11. Ibid., para. 187. [↑](#footnote-ref-11)
12. Ibid., para. 191. [↑](#footnote-ref-12)
13. Federal Administrative Court judgment No. D-7269/2017 of 9 October 2020, preliminary para. 5.4. [↑](#footnote-ref-13)
14. See, for example, *E.Y. v. Canada* ([CAT/C/43/D/307/2006/Rev.1](http://undocs.org/en/CAT/C/43/D/307/2006/Rev.1)), para. 9.2, and Committee against Torture, general comment No. 4 (2017), para. 34. [↑](#footnote-ref-14)
15. Committee against Torture, general comment No. 2 (2007), para. 5. [↑](#footnote-ref-15)
16. *Alhaj Ali v. Morocco* ([CAT/C/58/D/682/2015](http://undocs.org/en/CAT/C/58/D/682/2015)), para. 8.3, *R.A.Y. v. Morocco* ([CAT/C/52/D/525/2012](http://undocs.org/en/CAT/C/52/D/525/2012)), para. 7.2, *L.M. v. Canada* ([CAT/C/63/D/488/2012](http://undocs.org/en/CAT/C/63/D/488/2012)), para. 11.3, and *K.M. v. Switzerland* ([CAT/C/71/D/865/2018](http://undocs.org/en/CAT/C/71/D/865/2018)), para. 7.3. [↑](#footnote-ref-16)
17. *Kalinichenko v. Morocco* ([CAT/C/47/D/428/2010](http://undocs.org/en/CAT/C/47/D/428/2010)), para. 15.3, and *K.M. v. Switzerland*, para. 7.3. [↑](#footnote-ref-17)
18. Committee against Torture, general comment No. 4 (2017), para. 11. [↑](#footnote-ref-18)
19. Ibid., para. 45. [↑](#footnote-ref-19)
20. Ibid., para. 38. [↑](#footnote-ref-20)
21. Ibid., para. 50. [↑](#footnote-ref-21)
22. *A.M. v. Switzerland*, para. 7.7. [↑](#footnote-ref-22)
23. *H.K. v. Switzerland* ([CAT/C/49/D/432/2010](http://undocs.org/en/CAT/C/49/D/432/2010)), para. 7.5, *R.D. v. Switzerland* ([CAT/C/51/D/426/2010](http://undocs.org/en/CAT/C/51/D/426/2010)), para. 9.7, *X. v. Denmark* ([CAT/C/53/D/458/2011](http://undocs.org/en/CAT/C/53/D/458/2011)), para. 9.6, *E.E.E. v. Switzerland* ([CAT/C/54/D/491/2012](http://undocs.org/en/CAT/C/54/D/491/2012)), para. 7.7, *M.F. v. Switzerland*, para. 7.7, *T.Z. v. Switzerland,* para. 8.7, *X v. Switzerland* ([CAT/C/65/D/765/2016](http://undocs.org/en/CAT/C/65/D/765/2016)), para. 7.8, and *K.M. v. Switzerland*, para. 7.6. [↑](#footnote-ref-23)
24. *Z v. Switzerland* ([CAT/C/64/D/738/2016](https://undocs.org/en/CAT/C/64/D/738/2016%20) and [CAT/C/64/D/738/2016/Corr.1](https://undocs.org/en/CAT/C/64/D/738/2016/Corr.1)), para. 7.6. [↑](#footnote-ref-24)
25. Committee against Torture, general comment No. 4 (2017), para. 49 (b). [↑](#footnote-ref-25)