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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. 954/2019*, **

Communication submitted by:	F.K.M. (represented by counsel, Willem Boelens)
Alleged victim:	The complainant
State party:	Netherlands
Date of complaint:	20 June 2019 (initial submission)
Document references:	Decision taken pursuant to rule 115 of the Committee's rules of procedure, transmitted to the State party on 18 September 2019 (not issued in document form)
Date of adoption of decision:	21 July 2022
Subject matter:	Risk of torture or other ill-treatment in case of deportation to the Democratic Republic of the Congo (non-refoulement)
Procedural issue:	Admissibility – non-exhaustion
Substantive issues:	Torture and cruel, inhuman or degrading treatment or punishment
Article of the Convention:	3

1.1 The complainant is F.K.M., a national of the Democratic Republic of the Congo, born in 1972. He claims that the State party would violate his rights under article 3 of the Convention if it removed him to the Democratic Republic of the Congo. The Netherlands has made the declaration pursuant to article 22 (1) of the Convention, effective from 21 January 1989. The complainant is represented by counsel, Willem Boelens.

Facts as submitted by the complainant

2.1 The complainant was born in Kasai in the Democratic Republic of the Congo in 1972. The complainant moved to Kinshasa as an adolescent, where he continued to live with his wife and their children.

* Adopted by the Committee at its seventy-fourth session (12–29 July 2022).

** The following members of the Committee participated in the examination of the communication: Todd Buchwald, Claude Heller, Erdogan Iscan, Maeda Naoko, Ilvija Pūce, Ana Racu, Abderrazak Rouwane, Sébastien Touzé and Bakhtiyar Tuzmukhamedov.

2.2 In 2009, the complainant started working for a man named Daruwezi, the head of the national intelligence agency of the Democratic Republic of the Congo. His activities included the preparation of meetings in several of Daruwezi's private houses in Kinshasa.[1]

2.3 On 16 January 2010, Daruwezi ordered the complainant to prepare a meeting. The next day, the complainant received three Zimbabwean soldiers at the house. Daruwezi entered the room where the soldiers, John Numbi and another man were. Daruwezi spoke harshly to the third man and had the Zimbabwean soldiers take the man to another room. After some time had passed, Daruwezi ordered the complainant to clean the room the man had been taken to. The room was covered in blood and contained the man's dead body. The complainant put the body in a bag, loaded it into Daruwezi's car with the help of Daruwezi's driver, and cleaned the room of blood. When the complainant asked the driver where he had taken the body, the driver warned Daruwezi that the complainant was asking questions. Daruwezi became furious and asked the complainant about his origins. When he learned that he was from Kasai, Daruwezi said that the complainant was with an opposition political party and that he was trying to pass on information about him. Daruwezi ordered the soldiers to take the complainant to the room the man had been killed in. There, the complainant was severely beaten by the three Zimbabwean soldiers. After Daruwezi and one of the soldiers left the place, the complainant remained behind with two soldiers. Still being mistreated, he grabbed a bottle to defend himself and hit one of the soldiers, after which he managed to escape from the house through the window.

2.4 The two soldiers went after him and tried to shoot him, but failed. He found shelter with a friend and called his wife to tell her that Daruwezi was trying to get rid of him, and that it would be very unsafe for her to remain at home any longer. Several days later, his brother was arrested while hanging around the complainant's house, and the complainant understood that the time had come to leave the country. With the help of his brother's friend, he went to the port of Boma, managed to get on board a ship and sailed to Europe as a stowaway.[2]

2.5 Upon arrival in the Netherlands, the complainant reported to the authorities to apply for asylum. On 12 October 2010, the Immigration and Naturalization Department rejected the complainant's asylum application on the basis of his interview with Department agents on 31 May 2010. The Immigration and Naturalization Department found that the complainant's reasons for leaving the Democratic Republic of the Congo were not credible, that he did not provide enough details about the meetings he helped to prepare, and that it was odd that he did not know that Daruwezi was Jean-Pierre Daruwezi Mokombe. Moreover, the way he managed to escape from his guards was not convincing, and it was impossible to confirm the arrest of his brother according to information from an objective source.

2.6 The complainant appealed to the Regional Court of Arnhem. On 29 July 2011, the Regional Court confirmed the Immigration and Naturalization Department decision,

[1] At the time, the complainant did not know the full name of his employer.

[2] The court documents contain additional serious allegations of ill-treatment and sexual harassment that took place partly in the room of Daruwezi's house and a warehouse to which he was subsequently taken. These details, however, for unknown reasons, have been left out from the complaint itself. Apart from that, the circumstances of the complainant's flight significantly differ from those presented in the complaint. These accounts read as follows in the court documents:

> In the room, the soldiers searched the complainant's pockets, stealing any money he had on him. They then told him to take off his clothes. When the complainant refused, they forcefully removed his clothing. The complainant was then forced to perform oral sex on the soldiers while threatened with a knife and revolver. He was then sodomized by two of the soldiers, causing anal bleeding and severe pain. He was also hit in the head with fists and a revolver, kicked, and beaten with a cordelette. The soldiers then tied the complainant's hands and feet, put him in the trunk of a car, and took him to a warehouse-like location where there were other detained people. The complainant was interrogated by Daruwezi and three others the next day. He was tortured throughout the interrogation. Other men interrogated and tortured the complainant for the next five days. He was whipped, kicked, beaten with a stick, forced to kneel on a hard floor for an extended period, and had hot liquid poured on his foot. On the fifth day, a man from the same area helped the complainant escape. He believed the complainant was innocent and felt remorse for having participated in his torture. He told the complainant to get out of the country.

including a removal order. After receiving the decision of the Regional Court, the complainant approached medical professionals to help verify his physical and mental health conditions stemming from torture he suffered. Doctors confirmed the complainant had cirrhosis of the liver, post-traumatic stress disorder, severe depression and a heart condition for which the complainant needed surgery. The complainant was voluntarily admitted to a psychiatric hospital on 10 May 2012 and again between January and April 2014. Throughout this period, the complainant submitted applications to the Immigration and Naturalization Department to have his removal to the Democratic Republic of the Congo suspended on medical grounds. The complainant appealed the Immigration and Naturalization Department determinations and refusal to stay his expulsion to the Regional Court of Utrecht, which held on 10 June 2015 that the Immigration and Naturalization Department had rightfully refused to stay his expulsion.

2.7 On 1 March 2017, the complainant introduced a second asylum application including a medical and psychological assessment by the Institute for Human Rights and Medical Assessment of 2016 and an introductory letter from an independent expert on Congolese affairs. The Immigration and Naturalization Department rejected the complainant's second application on 31 October 2017 as manifestly unfounded. The Immigration and Naturalization Department maintained that the Institute for Human Rights and Medical Assessment report and introductory letter were not specific enough to support his new claim and overturn the decision of 12 October 2010.

2.8 On 11 January 2018, the complainant appealed the Immigration and Naturalization Department's decision to the Regional Court of Utrecht. The court held that the complainant failed to prove the core of his flight motives by means other than the Institute for Human Rights and Medical Assessment report and the independent expert's letter. Furthermore, the court held that neither the letter nor the medical report proved that the complainant could not have given a full and accurate interview on 31 May 2010 due to any medical or psychological impediments.

2.9 The complainant appealed to the Administrative Jurisdiction Division of the Council of State. At the same time, he also requested a stay of his removal from the Netherlands for the duration of the proceedings. The request for a stay was granted on 6 February 2018. On 2 October 2018, the Council of State dismissed the appeal on summary grounds, also terminating the stay of his deportation.

Complaint

3.1 The complainant contends that the State party would violate article 3 of the Convention if he were removed to the Democratic Republic of the Congo.

3.2 He argues that there is a substantial risk of him being tortured or persecuted by the State authorities if returned to the Democratic Republic of the Congo, as he was subjected to torture previously, and he could pose a risk for the perpetrators of those acts. He submits that when he was detained and interrogated, he was deliberately subjected to cruel and inhuman acts, including rape, beating, cutting, whipping, burning and death threats.

3.3 The complainant was subjected to different forms of treatment intended to cause severe pain and suffering, both physical and mental, to punish him and/or to extract information and/or a confession from him, by actors acting at the instigation of, or at least with the consent of, the authorities of the Democratic Republic of the Congo, notably the country's national intelligence agency and its (now former) head, Jean-Pierre Daruwezi Mokombe. He further submits that he is still suffering from severe mental disorders. He has never been able to overcome the traumatic events, which caused him to flee his family and home country.

3.4 The complainant maintains that he has exhausted all available domestic remedies, and that the matter is not being examined under another procedure of international investigation or settlement.

State party's observations on admissibility and the merits

4.1 On 18 March 2020, the State party submitted observations on admissibility and the merits, recalling the facts, the outcomes of the proceedings on the complainant's asylum applications, applicable law and the available legal remedies.

4.2 The State party submitted that at the time of the decision of 12 October 2010, the asylum application was assessed on the basis of the then applicable country report regarding the Democratic Republic of the Congo, dated January 2010. It asserts that neither of the categories of vulnerable persons described is applicable to the complainant.

4.3 In addition, reference is made to the relevant case law of the Committee. The Committee has, for example, noted that if the complainant provides the State party with sufficient material to support their claims of having been subjected to torture, including a medical report, this may give rise to a duty on the part of the State party to have a specialist medical examination carried out before denying the application for asylum.[3] The Committee has held that complete accuracy is seldom to be expected from victims of torture.[4] It has also concluded that if a complainant has provided documentation indicating that they were suffering from post-traumatic stress disorder and depression, this might account for some contradictions and insufficiencies in their account to the asylum authorities, but it does not provide a satisfactory explanation for gaps and inconsistencies, which concern core elements of that account.[5]

4.4 In its judgment of 9 March 2010, in *R.C. v. Sweden*,[6] the European Court of Human Rights held that a medical certificate submitted by an asylum-seeker could provide an indication that the individual in question had been subjected to inhuman treatment or torture in their country of origin. That could give rise to a duty on the part of the State concerned to conduct further investigations in order to dispel any doubts about the risk of the individual being subjected again to treatment contrary to article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) in the event of the expulsion being carried out. In *I. v. Sweden*[7] and other cases, the European Court of Human Rights clarified previous case law and held that in order to dispel a doubt such as that mentioned in the case of *R.C. v. Sweden*, the State must at least be in a position to assess the asylum-seeker's individual situation. However, this may be impossible if there is no proof of the asylum-seeker's identity and if the statements provided to substantiate the asylum request give reason to question his or her credibility.[8]

4.5 The State party also refers to the three judgments of 27 June 2018, in which the Administrative Jurisdiction Division ruled on how the Institute for Human Rights and Medical Assessment and other medical reports should be dealt with within the asylum procedure. In these judgments, the Administrative Jurisdiction Division confirmed the assessment framework regarding corroborating medical evidence set out in earlier case law, and established a new assessment framework for determining whether psychological problems make it difficult for asylum-seekers to make complete, coherent and consistent statements during interviews. If a medical report shows that the corroborating medical evidence strongly indicates that the alleged inhuman treatment in the country of origin was the cause of the asylum-seeker's injuries, the Government may be obliged to carry out a further investigation into that evidence, in order to eliminate any doubt as to whether the asylum seeker is at risk of being subjected to torture or inhuman treatment after being expelled to their country of origin.

[3] *M.O. v. Denmark* (CAT/C/31/D/209/2002); *A.A.C. v. Sweden* (CAT/C/37/D/227/2003); and *G.I. v. Denmark* (CAT/C/61/D/625/2014).

[4] *G.E. v. Australia* (CAT/C/61/D/725/2016), para. 7.6.

[5] *X. v. Netherlands* (CAT/C/68/D/863/2018), para. 8.8.

[6] European Court of Human Rights, *R.C. v. Sweden*, Application No. 41827/07, judgment, 9 March 2010, paras. 53–56.

[7] European Court of Human Rights, *I. v. Sweden*, Application No. 61204/09, judgment, 5 September 2013, para. 62.

[8] European Court of Human Rights, *D.N.W. v. Sweden*, Application No. 29946/10, judgment, 6 December 2012, para. 42.

4.6 As to admissibility, the complainant has emphasized that he is still suffering from "severe mental complaints", as he has not recovered from the traumatic events he experienced, and that he still takes psychiatric medication on a daily basis. To the extent that these remarks are intended to support the complainant's claim that he cannot return to the Democratic Republic of the Congo due to his medical problems, the State party emphasizes that he made two requests for the application of section 64 of the Aliens Act of 2000. As part of this procedure, his state of health was assessed in depth and various authorities considered the question of whether his return would give rise to a medical emergency. In the last procedure, ending with the District Court's decision of 10 June 2015, the complainant did not exhaust all available legal remedies. He could have appealed against that decision, in which the court had concluded that his request for the application of section 64 was correctly denied, but he failed to do so. Accordingly, to the extent that the complainant wishes to base his communication on his medical circumstances, the State party argues that he has not exhausted all available domestic remedies.

4.7 As regards the risk of torture upon return, the State party submits that the complainant's account of his past experiences in the Democratic Republic of the Congo suffered from inconsistencies, and that he has not provided any information credibly indicating that he would now be of interest to the authorities of the Democratic Republic of the Congo, or the persons he claims to fear. In this regard, the State party observes that the complainant alleges he was ill-treated, raped and detained in a shed in 2010 on the orders of Jean-Pierre Daruwezi Mokombe. Country reports indicate that this person was head of the National Intelligence Agency (*Agence nationale de renseignements*) until 11 September 2011, when he was appointed Minister of National Economy and Trade. After the Government was dissolved on 5 March 2012, he held no other posts in the public domain, as far as can be ascertained. The principal question before the Committee is whether the complainant currently faces a risk of torture if returned to the Democratic Republic of the Congo.[9] The information made available to the State party and the Committee does not indicate that, 10 years after the alleged events occurred, the complainant would still be at risk of being subjected to torture if returned to his country of origin. Moreover, his claims do not establish that the assessment of his asylum application by the Immigration and Naturalization Department failed to comply with the standards of review required by the Convention.

4.8 In conclusion, the State party argues that the complainant has not succeeded in establishing on the basis of credible statements that he faces a real risk of torture on his return to the Democratic Republic of the Congo. The medical report submitted on 13 December 2016 does not lend credibility to the complainant's stated grounds for asylum. Furthermore, he has failed to make a plausible case that the authorities, or certain persons, had any interest in him in the past or would have any interest in him now. The risk factors he adduces, viewed separately or in conjunction with each other, are insufficient to conclude that there is a foreseeable, real and personal risk of torture if he is returned to the Democratic Republic of the Congo.

4.9 In view of the above, the State party is of the opinion that it has not been satisfactorily established that the complainant would be subjected to treatment contrary to article 3 of the Convention upon his return to the Democratic Republic of the Congo. The communication is therefore unfounded in its entirety, and the decision of the State party to return the complainant to the Democratic Republic of the Congo does not constitute a violation of article 3 of the Convention. The State party requests the Committee to conclude that the expulsion of the complainant would not constitute a violation by the Netherlands of its obligations under article 3 of the Convention.

Complainant's comments on the State party's observations

5.1 On 14 July 2020, the complainant submitted additional comments, indicating that the medical report by the Institute for Human Rights and Medical Assessment was based on assessments of 2016. He claims that the influence of physical and/or mental problems on his ability to give complete, coherent and consistent statements is not limited to specific parts of the memory but extends to the memory as a whole. Making a clear distinction between which

[9] *G.E. v. Australia* (CAT/C/61/D/725/2016), para. 7.8.

events someone is able to remember and which ones they cannot is possible only in exceptional circumstances.

5.2 The complainant does not base his communication on his medical condition as such, but on a real risk of being subjected to torture when removed to the Democratic Republic of the Congo. In this respect, all domestic remedies have been exhausted, which is also acknowledged by the State party.

5.3 The assumption that the complainant has not made plausible that the former head of the national intelligence agency is still interested in him is only based on the 10 years' lapse of time since the events occurred. The State party does not give sufficient weight to the fact that the complainant was not only accused of alleged ties with the Congolese opposition, but that he also eye-witnessed a brutal murder on behalf of his former employer, and that he was severely tortured in the aftermath, all on direct orders or under the direct responsibility of a man with an already very disturbing human rights record. The complainant considers himself both as a witness and victim of especially grave crimes to which no limitation applies, which can get even the former head of the national intelligence agency in serious trouble when brought to the attention of third parties. For that reason, the lapse of time as such does not imply that the complainant can safely return to the Democratic Republic of the Congo.

5.4 The complainant's identity and nationality have never been contested by the State party, and documents to support his statements on his itinerary and personal asylum account are simply not available, which is quite likely in view of his means of travel and the nature of his claim for international protection. The lack of documentary evidence does not lead to the conclusion that the complainant has showed a lack of cooperation with the authorities of the Netherlands.

5.5 As regards the argument that the complainant was not able to describe his travel route, which has undermined the credibility of his statements, the complainant submits that such objection is not relevant to the core of his accounts. Moreover, such an approach is derived from the concept of "positive conviction", which imposes a very high burden of proof on an asylum-seeker who is not capable of providing material proof of, or giving verifiable statements on, their identity, nationality, itinerary and/or asylum account, which had been largely applied in asylum cases in the Netherlands since 2000, but which was abandoned in 2014 for not being in accordance with the asylum law of the European Union.

5.6 As to the lack of knowledge of the name of his former employer and his employer's aids, these concerns have been addressed by Kris Berwouts, an independent expert on Central Africa. The assertion that it is not plausible that the complainant did not know the name of a man he claimed to have met about 50 times is incorrect. The complainant did not know his full name, which is not at all odd, according to Mr. Berwouts. The same expert also disagreed with the State party's assessment of the lack of veracity of the complainant's statements on the meetings he had attended. In addition, the State party's argument that "it might be expected" that some sort of screening took place is speculative, while the State party does not give concrete reasons for expressing that Daruwezi's reaction did not fit in the "general picture of their relationship". On the contrary, the complainant seemed to show interest in the facts of the murder instead of just doing what he was told and keeping silent. In addition, bearing in mind that Daruwezi was a ruthless security officer, his reaction did match the events as exposed by the complainant.

5.7 It is true that the statements made by the complainant regarding the escape during the first asylum procedure are incorrect. What really happened, and the reasons why the complainant gave a partially different account in the first place, is described and explained in the Institute for Human Rights and Medical Assessment's report, which forms an integral part of the comments. Further, the Institute's report does not mention specific but only dates as to the succession of events, and the timeline provided by the complainant in relation to the date when he left the country is not essential to the credibility of his account.

5.8 The fact that information was obtained third hand does not mean that the information is not reliable as such. Moreover, the arrest of his brother is not a core element of the complainant's asylum account.

5.9 The "fairly strong indication" that the complainant was subjected to "some form" of inhumane treatment but not to the treatment exposed in the Institute for Human Rights and Medical Assessment's report disregards the value of the very specific medical evidence in this case. The complainant cannot bring this argument into line with the views adopted by the Committee in cases of a similar nature.[10] Instead of dismissing the Institute's report because the complainant's statements are found vague and contradictory, the State party should have realized that a further medical examination was in order.[11]

5.10 In the attached report of 5 July 2020, the Institute for Human Rights and Medical Assessment recalled its initial assessments, contained in the letter in support of this case, of 14 December 2017, to be read together with the associated guide of that period (2016). The Institute notes that it is primarily the task of a medical expert to provide a substantive response to a forensic medical examination. The Government of the Netherlands, by virtue of the Immigration and Naturalization Department, is of the opinion that in response to the Institute's report in this case, it does not need to change the outcome of its credibility assessment, nor must it launch a further medical examination of its own in response to the Institute's report.

5.11 As regards the degree of credibility, the Institute for Human Rights and Medical Assessment has assessed the overall picture of physical scars and patterns of systems of the complainant as being consistent to highly consistent with the alleged account, based on the degrees listed in section 187 of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). The Institute has classified the nature, contents and course of the complainant's psychological symptoms as being typical for the alleged asylum account. However, the authorities are of the opinion that the qualifications given by the Institute are not strong indicators of the probability of the alleged account because one, two or more other options are possible. Violence can cause very specific scars or signs, but this is not necessarily the case. Second, the account of abuse has not been accepted as true by the Institute, and the reliability of the examination has always been assessed, objecting to the Immigration and Naturalization Department claims that the Institute took the veracity of the complainant's statements and of the events as a starting point. The State party holds that account should be taken of the possibility that asylum-seekers make false statements to the Institute in order to improve their position. However, forensic guidelines prescribe that a forensic medical report is a critical and objective reflection of a medical expert's medical findings. The medical expert may not automatically accept the assertions of the alien. If the State party concludes that certain phrases in a report reveal that the account is taken as true, it might be an indication of the clarity of the words in the report. In any case, the absolute starting point of a forensic medical examination is that an investigator never assumes that the alleged account is true. The allegation that the Institute automatically follows the links between scars, physical and psychological symptoms, and the account of the abuse as presented by the alien is therefore incorrect.

5.12 In addition, the State party is of the view that the Institute for Human Rights and Medical Assessment failed to clarify on which medical information it assessed that it was highly probable that the complainant was limited in his capacity to make coherent, consistent and complete statements during his asylum interview in 2010. The Institute for Human Rights and Medical Assessment acknowledges that medical information predating or dating from the time of the asylum interviews in the period March to May 2010 was not available. One of the reasons is that the complainant went to the general doctor with symptoms after the asylum interviews. But this is in line with the picture that the complainant never reported his account to the authorities out of shame and distrust, which is typical for someone who alleged sexual abuse. The extensive medical file dating from mid-2010 to mid-2016 has been assessed, as described by the investigator. The diagnosed post-traumatic stress disorder symptoms, of which avoidance is a characteristic, support the conclusion of the rapporteur that he has psychological problems, and it is highly probable that at the time of the asylum

[10] *Dewage v. Australia* (CAT/C/51/D/387/2009), para. 10.6; and *Chahin v. Sweden* (CAT/C/46/D/310/2007), para. 9.5.

[11] *M.C. v. Netherlands* (CAT/C/56/D/569/2013), para. 8.6; and *F.K. v. Denmark* (CAT/C/56/D/580/2014), para. 7.6.

interviews it interfered with his ability to make a coherent, consistent and complete statement. A lengthy interval spanning several years between the asylum interviews and a forensic medical examination does not necessarily stand in the way of a diligent and reliable investigation, as supported by the case law of the Council of State of the Netherlands.

5.13 It is important for national authorities to determine in asylum procedures any established limitations to making consistent, coherent and complete statements, which may influence parts of an asylum account. In this case, the State party holds that the limitations in the ability to make statements, as established by the Institute for Human Rights and Medical Assessment, pertain to the alleged violence and sexual abuse and the psychological impact on him. However, in this case, the authorities have partly based its credibility opinion on, in its view, vague, surprising and/or contradictory statements on other factual parts of the asylum account. The authorities have taken as a starting point that even if limitations in the ability to make statements have been found, the asylum seeker in question should still be able to make consistent, coherent and complete statements about the main outlines of the asylum account. The State party ignores the fact that there is no clarity as to the main outlines and details of an asylum account. In other words, it is not clear if main outlines and details have the same significance for an individual asylum seeker as for the State party. The research has shown that in the end the victim decides what constitutes the core information and what constitutes the peripheral information, what constitutes main outlines and what constitutes details, and that this depends on what a victim focuses on at that particular time. In any event, the State party cannot deduce from the Institute's report that if any limitations to the ability to make statements about sexual violence and torture have been established, this would automatically mean that an asylum-seeker should be able to make statements normally about other factual parts of the account without limitations.

5.14 Furthermore, the Institute for Human Rights and Medical Assessment expands on the retention of traumatic events and ability or inability to make statements. One of the important factors is the degree of trust in the person to whom someone is talking. Research has shown how, for instance, asylum-seekers who experienced sexual violence have more problems with disclosure than asylum-seekers who have not experienced sexual violence. Shame results in an avoidance of discussing traumatic events. Such problems affect the entire memory and a person's functioning. From a scientific standpoint, it is impossible to meet the requirement of the assessment framework of the Administrative Jurisdiction Division of the Council of State of the Netherlands, namely to indicate which part of the asylum account was or was not affected by the limitation to the ability to make complete, consistent and coherent statements. This requirement can only be met in exceptional circumstances. In conclusion, the Institute for Human Rights and Medical Assessment submits that it stands firmly behind the report about the complainant, and remains available to provide further information to the Committee.

State party's additional observations

6.1 On 1 April 2021, the State party submitted that the further comments submitted by the complainant, including the report of the Institute for Human Rights and Medical Assessment, do not give any reason to alter the position as set out in its observations of 18 March 2020. Since the complainant repeats to a certain extent the arguments set out in his initial communication, the State party addresses only some of the issues raised.

6.2 First of all, the State party reiterates that the complainant has not presented an arguable case showing that the danger of being subjected to torture is foreseeable, present, personal and real. The principal question before the Committee is whether the complainant currently faces a risk of torture if returned to the Democratic Republic of the Congo. The information made available to the Committee does not, in the State party's view, indicate that 10 years after the alleged events occurred, the complainant would still be at risk of being subjected to torture if returned to his country of origin. Indeed, the complainant has not substantiated that the former head of the security service would still be interested in him after all these years. In this context, the State party reiterates that the burden of proof lies on the complainant. In his further comments of 14 July 2020, the complainant states that he was both witness and victim of gruesome crimes and that this could get the former head of the security service into serious trouble. This alone, however, does not substantiate sufficiently the claim that the

complainant, even after more than 10 years, still faces any fears from his alleged former employer. The communication should therefore be declared ill-founded.

6.3 In regard to medical reports, the Institute for Human Rights and Medical Assessment states that it often sees non-medical experts, usually national immigration services, submitting medical responses that fall outside the scope of its expertise. As far as these comments are general and do not relate to the present communication, the State party notes that they are not relevant for the Committee's assessment of the present communication. The framework for assessing whether a medical report is established carefully is based on legal requirements of the relevant case law.[12] It is therefore not outside the scope of the expertise of national immigration services to determine whether a medical report meets the legal requirements of careful assessment. Whenever a medical assessment raises medical questions, the State party can rely on the expertise of the Bureau of Medical Advice, a special division of the Immigration and Naturalization Service of the Netherlands. Only the national competent authorities are qualified to determine the veracity of an asylum account. The role of a neutral medical expert is to make statements about the extent to which the asylum account could fit in well with the corroborating medical evidence. The State party adds that the report by the Institute for Human Rights and Medical Assessment makes a clear distinction between corroborating medical evidence (physical and psychological evidence) on the one hand, and on the other hand, the extent to which a medical situation interferes with the ability to make complete, coherent and consistent statements.

6.4 The Institute for Human Rights and Medical Assessment is of the opinion that the physical and psychological corroborating medical evidence paints a clear picture, which could fit in well with the alleged account. The State party does not dispute the qualifications given by the Institute as such. The Government, however, reiterates that the qualification given by the Institute on the physical medical corroborating evidence is not a strong indicator (the second and third qualifications out of five). There are many or multiple other possible explanations for the existence of the physical scars. Therefore, the physical corroborating evidence does not provide a strong indication that the alleged violence actually took place and can be disregarded. The qualification on the psychological medical corroborating evidence, on the other hand, is fairly strong (the fourth qualification out of five). However, based on the aforementioned relevant case law of the Administrative Jurisdiction Division of the Council of State, and in accordance with the Committee's views,[13] the State party believes that the psychological corroborating evidence can be put aside for the following reason. As explained earlier, the psychological corroborating evidence does not provide a satisfactory explanation for the many gaps and inconsistencies, which concern core elements of the complainant's account. The State party is therefore of the opinion that the psychological corroborating evidence, despite being a strong indication in itself, can be disregarded as well.

6.5 The State party, therefore, reiterates that neither the physical, nor the psychological corroborating medical evidence sufficiently support the complainant's claims of having been subjected to torture as described by the complainant.

6.6 In its observations of 18 March 2020, the State party explained why the conclusions of the Institute for Human Rights and Medical Assessment's report with regard to medical limitations to make complete, coherent and consistent statements do not give cause to alter the conclusion that the complainant's account is not credible.

6.7 First of all, it is important to note that there is no medical information available dating or predating from the period in which the interviews took place, which the Institute for Human Rights and Medical Assessment acknowledges. Still, the Institute states that it is highly probable that the complainant was limited in making complete, coherent and consistent statements during the interviews held with the asylum authorities. According to the Institute's reading guide and as testified by the Institute before the Administrative Jurisdiction Division of the Council of State, such an examination can only be carried out on the basis of medical information dating from or predating the period in which the interview

[12] Administrative Jurisdiction Division of the Council of State, 27 June 2018, ECLI:NL:RVS:2018:2084, 2085 and 2086.

[13] *X. v. Netherlands* (CAT/C/68/D/863/2018), para. 8.8.

took place. The Institute explains that the absence of medical information is the result of shame and distrust, which are symptoms of post-traumatic stress disorder, with which the complainant was diagnosed. In the State party's view, however, this alone cannot lead to the conclusion that there were medical limitations in making complete, coherent and consistent statements.

6.8 The Institute for Human Rights and Medical Assessment further states that a lengthy interval spanning several years between the asylum interviews and a medical examination does not stand in the way of a diligent and reliable investigation. To substantiate this claim, the Institute refers to the aforementioned ruling of the Administrative Jurisdiction Division. The Government does not dispute the claim that a lengthy interval between the interviews and the medical examination does not stand in the way of a reliable investigation. However, the State party is of the opinion that this may be the case if the medical examination was based exclusively on medical information stemming from the period during which the interviews were conducted. The State party maintains its conclusion that the medical examination on the existence of limitations in making statements in the present case can be disregarded as this examination has not been conducted on the basis of medical information stemming from that period.

6.9 Even if the conclusion that there were limitations in making complete, coherent and consistent statements is accurate, this would only provide a satisfactory explanation for gaps and inconsistencies concerning some details of complainant's asylum account, but not for core elements of that account. In its initial observations, the State party referred to views of the Committee, in which it considered that if a complainant has provided documentation indicating that they were suffering from post-traumatic stress disorder and depression, this might account for some contradictions and insufficiencies in their account to the asylum authorities, but it does not provide a satisfactory explanation for gaps and inconsistencies that concern core elements of that account.

6.10 In his submissions, the complainant does not dispute that he has made odd, vague, cursory and contradictory statements that concern core elements of his asylum account. However, in his opinion, the assessment framework as described in the State party's initial observations should be reviewed. The complainant states, with reference to the Institute for Human Rights and Medical Assessment's new reading guide, that this assessment framework can no longer be scientifically corroborated.

6.11 The State party is of the opinion that this view should be rejected. According to the Institute for Human Rights and Medical Assessment's 2016 reading guide, the extent to which a medical situation interferes with the ability to make complete, coherent and consistent statements concerns details of the asylum account. The Institute clarified this view before the Administrative Jurisdiction Division of the Council of State in the aforementioned rulings of June 2018, and as a result, the Administrative Jurisdiction Division ruled that this view does not exempt the complainant from making plausible statements about the core elements of the asylum account. Only shortly after the ruling of the Administrative Jurisdiction Division, the Institute reviewed this opinion by stating that this view could scientifically no longer be corroborated. Even if this view should be accepted, in the case of the complainant specifically, the Institute is of the opinion that the complainant remembered the traumatic events vividly, although he cannot retrieve all details from his memory. The Institute's report, therefore, does not give a satisfactory explanation for the many odd, vague, cursory and contradictory statements, which concern core elements of his asylum account.

6.12 Lastly, as the Institute for Human Rights and Medical Assessment pointed out, credibility is key in this case. The Government is of the opinion that the Immigration and Naturalization Department, the national governmental authority on verifying the credibility of asylum accounts, has thoroughly assessed the asylum claim of the complainant, taking into account all relevant information that was available at that time.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any complaint submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any complaint from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. This rule does not apply if it is established that the application of domestic remedies has been or would be unreasonably prolonged or would be unlikely to bring effective relief.[14] The Committee notes that the State party has challenged the admissibility of the part of the complainant's claim under article 3 of the Convention that his return to the Democratic Republic of the Congo would constitute a medical emergency, due to non-exhaustion of domestic remedies, as the District Court's decision on this asylum ground could be appealed to the Administrative Jurisdiction Division of the Council of State. The Committee also notes that this objection was not disputed by the complainant. Accordingly, the Committee considers this part of the communication inadmissible due to non-exhaustion of available domestic remedies, under article 22 (5) (b) of the Convention. Since the other claims by the complainant under article 3 of the Convention have been sufficiently substantiated, the Committee declares this part of the communication admissible and will consider it on the merits.

Consideration of the merits

8.1 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.

8.2 The issue before the Committee is whether the forcible removal 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 to return (*refouler*) a person to another State where there are substantial grounds for believing that the person would risk being subjected to torture.

8.3 In the present case, the Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally at risk of being subjected to torture upon return 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.[15] However, the Committee recalls that the aim of the determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned.[16] It follows that the existence of a 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. 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]

8.4 The Committee recalls its general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, 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,

[14] Committee against Torture, general comment No. 4 (2017), para. 34.
[15] See e.g. *X and Y v. Switzerland* (CAT/C/66/D/776/2016), para. 7.3.
[16] *E.T. v. Netherlands* (CAT/C/65/D/801/2017), para. 7.3.
[17] *Y.G. v. Switzerland* (CAT/C/65/D/822/2017), paras. 7.2–7.3.

either as an individual or a member of a group which may be at risk of being tortured in the State of destination. The Committee recalls that "substantial grounds" exist whenever the risk of torture is "foreseeable, personal, present and real".[18] Indications of personal risk may include, but are not limited to the complainant's: (a) ethnic background and religious affiliation; (b) previous torture; (c) incommunicado detention or other form of arbitrary and illegal detention in the country of origin; (d) political affiliation or political activities; (e) arrest and/or detention without guarantee of a fair trial and treatment; (f) violations of the right to freedom of thought, conscience and religion; and (g) clandestine escape from the country of origin for threats of torture.[19]

8.5 The Committee further recalls that the burden of proof is upon the complainant, 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, unless the complainant is in a situation where he or she cannot elaborate on his or her case.[20] The Committee further recalls 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 freely assess 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]

8.6 In assessing the risk of torture as relates to the present communication, the Committee notes the complainant's claims that following his eye-witness account of killing of an unknown person, he was ill-treated, raped and detained in a shed in 2010 in the Democratic Republic of the Congo, on the orders of Jean-Pierre Daruwezi Mokombe. The Committee also notes that the country reports indicate that this person was head of the National Intelligence Agency until 11 September 2011, when he was appointed Minister of National Economy and Trade.[22] The Committee notes the complainant's claim that he fears being sought, tortured and eventually killed if returned to the Democratic Republic of the Congo, and is traumatized by the idea of returning as he suffers from post-traumatic stress disorder and depression, due to the acts of torture suffered. In this context, the Committee notes the complainant's claim that Daruwezi might still enjoy the influence to retaliate against him to prevent his eventual testimony.

8.7 The Committee observes that the State party's authorities considered that the complainant was not credible because he provided inconsistent statements concerning essential elements of his asylum account in his first application, including itinerary, succession of events and the date when he left the country. The State party has claimed that only the national competent authorities are qualified to determine the veracity of an asylum account. The Committee also notes that during the first asylum proceeding, the complainant did not ask the Immigration and Naturalization Service to order a medical examination, and that he went to see the generalist only after the asylum interview. In that context, the Committee notes the complainant's assertion that he never reported his account to the authorities out of shame and distrust, which is typical for someone who alleged sexual abuse. The Committee further notes the State party's observation that the report issued by the Institute for Human Rights and Medical Assessment does not prove that the complainant was subjected to torture, because the scars it describes could have had other causes. The State party also argued that the psychological corroborating evidence does not provide a satisfactory explanation for the many gaps and inconsistencies, which concern core elements of the complainant's account. The State party held that the Institute's medical examination on the existence of limitations in making statements in the present case can be disregarded as that examination was not conducted on the basis of medical information stemming from the time during which the interviews were conducted. Although the Institute's report appears convincing as regards the psychological sequels and their origin, impacting the ability to give

[18] Committee against Torture, general comment No. 4, para. 11.
[19] Ibid., para. 45.
[20] Ibid., para. 38.
[21] Ibid., para. 50.
[22] After the Government was dissolved on 5 March 2012, he held no other posts in the public domain.

complete, coherent and consistent statements,[23] those do not justify, in the State party's view, the existence of a present risk of torture for the complainant, if removed.

8.8 The Committee recalls that it must ascertain whether the complainant would currently face a risk of being subjected to torture, if removed to the Democratic Republic of the Congo.[24] The Committee notes that the complainant had the opportunity to provide additional supporting evidence of his claims to the domestic authorities, and that the authorities considered the complainant's claims in the context of two asylum applications. The Committee also notes that the inconsistencies in the complainant's statements led the authorities to conclude that he had not demonstrated that he would face a foreseeable, present, personal and real risk of torture if returned to the Democratic Republic of the Congo. The Committee notes, in particular, that the complainant's claims before the Committee partly differ from the grounds for asylum raised before the Immigration and Naturalization Department and the domestic courts.[25] The Committee recalls that complete accuracy is seldom to be expected from victims of torture,[26] and observes that the complainant has provided documentation indicating that he was suffering from post-traumatic stress disorder and depression already in 2010, as subsequently confirmed by the Institute for Human Rights and Medical Assessment report of December 2016. However, while observing that the complainant's state of mental health may account for some contradictions and insufficiencies in his account to the asylum authorities, the Committee considers that it does not provide a satisfactory explanation for the aforementioned inconsistencies, which concern core elements of his account.

8.9 Furthermore, taking into account the two reports issued by the Institute for Human Rights and Medical Assessment in 2016 and 2020, which indicated that the complainant's scars were consistent with his account, the Committee observes that even if it were to disregard the inconsistencies in the complainant's account of his past experiences in the Democratic Republic of the Congo and accept his statements as true, the complainant has not provided any information credibly indicating that he would be of interest at present to the authorities of the Democratic Republic of the Congo.[27] The information made available to the Committee does not indicate that 12 years after the alleged events occurred, the complainant would be at risk of being subjected to torture if returned to his country of origin.[28]

8.10 While recalling that the burden of proof is on the complainant, the Committee notes the State party's observations that the complainant's account of his past experiences in the Democratic Republic of the Congo suffered from inconsistencies and was not credible as concerns key elements of his claims. The Committee also notes that the complainant was subjected to torture more than 12 years ago, and that he has failed to make a plausible case that the authorities, or persons he claims to fear (a former head of security service), had any interest in him in the recent past or would have any interest in him at present. The Committee notes that although past events may be of relevance, the principal question before the Committee is whether the complainant currently runs a risk of torture if returned to the Democratic Republic of the Congo.[29] In addition, the Committee observes that the complainant has not submitted adequate medical evidence, which could justify the medical grounds for lack of coherence of his statements during the first asylum proceedings in 2010. In the light of the above considerations and on the basis of all the information submitted by the complainant and the State party, including on the general situation of human rights in the Democratic Republic of the Congo, the Committee considers that the complainant has not provided sufficient evidence to enable it to conclude that his removal to the Democratic

[23] The complainant has argued that a lengthy interval spanning several years between the asylum interviews and a forensic medical examination does not necessarily stand in the way of a diligent and reliable investigation.

[24] See e.g. *G.B.M. v. Sweden* (CAT/C/49/D/435/2010), para. 7.7.

[25] See the complainant's accounts contained in footnote 2.

[26] *G.E. v. Australia* (CAT/C/61/D/725/2016), para. 7.6.

[27] *H.R.E.S. v. Switzerland* (CAT/C/64/D/783/2016), para. 8.9.

[28] *X and Y v. Switzerland* (CAT/C/71/D/807/2017), para. 9.8; and *V.M., G.M., S.M. and T.M. v. Sweden* (CAT/C/71/D/883/2018), para. 8.8.

[29] *G.E. v. Australia* (CAT/C/61/D/725/2016), para. 7.8.

Republic of the Congo would expose him to a foreseeable, present, personal and real risk of torture within the meaning of article 3 of the Convention. Moreover, his claims do not establish that the evaluation of his asylum applications by the State party's authorities would have been arbitrary or amounted to a denial of justice or manifest procedural errors.[30]

9. The Committee, acting under article 22 (7) of the Convention, concludes that the complainant's removal by the State party to the Democratic Republic of the Congo would not constitute a violation of article 3 of the Convention.

[30] *V.M., G.M., S.M. and T.M. v. Sweden*, para. 8.8.