

SWITZERLAND

Follow-up - Jurisprudence Action by Treaty Bodies

CAT, A/60/44 (2005)

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CHAPTER VI. CONSIDERATION OF COMPLAINTS UNDER ARTICLE 22 OF THE CONVENTION

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D. Follow-up activities

150. At its twenty-eighth session, in May 2002, the Committee against Torture revised its rules of procedure and established the function of a Rapporteur for follow-up of decisions on complaints submitted under article 22.

151. The Rapporteur on follow-up submitted an oral report to the Committee at its thirty-third session. The report contained information received since the thirty-second session from either the complainants or the States parties on the issue of follow-up to a number of decisions in which the Committee had found violations of the Convention. During the consideration of this report, the Committee requested the Special Rapporteur to provide information on follow-up to all decisions in which the Committee had found violations of the Convention, including decisions in which the Committee found violations, prior to the commencement of the Rapporteur's mandate.

152. During the thirty-fourth session, the Special Rapporteur presented a report on follow-up to all the Committee's decisions, including new information received from both the complainants and States parties since the thirty-third session. This report is provided below.

Report on follow-up to individual complaints to the¹ Committee against Torture

Complaints in which the Committee has found violations of the Convention up to thirty-fourth session

Case	Date of adoption	Nationality of complainant and country of removal if applicable	Article of Covenant violated	Interim measures granted and State party's response	Remedy	Follow-up	Further action
...							
No. 13/1993 <i>Mutombo v. Switzerland</i>	27 April 1994	Zairian to Zaire	3	Requested and acceded to by the State party	The State party has an obligation to refrain from expelling Mr. Mutombo to Zaire, or to any other country where he runs a real risk of being expelled or returned to Zaire or of being subjected to torture.	No information provided	Request information
...							
No. 21/1995 <i>Alan v. Switzerland</i>	8 May 1996	Turkish to Turkey	3	Granted and acceded to by the State party	The State party has an obligation to refrain from forcibly returning Ismail Alan to Turkey.	No information provided	Request information
No. 34/1995 <i>Aemei v. Switzerland</i>	29 May 1997	Iranian to Iran	3	Granted and acceded to by the State party	The State party has an obligation to refrain from forcibly returning the complainant and his family to Iran, or to any other country where they would run a real risk of being expelled or returned to Iran. The Committee's finding of a violation of article 3 of the Convention in no way affects	No information provided	Request information

Case	Date of adoption	Nationality of complainant and country of removal if applicable	Article of Covenant violated	Interim measures granted and State party's response	Remedy	Follow-up	Further action
No. 34/1995 <i>Aemei v. Switzerland, continued</i>					<p>the decision(s) of the competent national authorities concerning the granting or refusal of asylum. The finding of a violation of article 3 has a declaratory character. Consequently, the State party is not required to modify its decision(s) concerning the granting of asylum; on the other hand, it does have a responsibility to find solutions that will enable it to take all necessary measures to comply with the provisions of article 3 of the Convention. These solutions may be of a legal nature (e.g. decision to admit the applicant temporarily), but also of a political nature</p> <p>(e.g. action to find a third State willing to admit the applicant to its territory and undertaking not to return or expel him in its turn).</p>		
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¹ The present report reflects information up to the end of the thirty-fourth session
CAT, A/61/44 (2006)

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CHAPTER VI. CONSIDERATION OF COMPLAINTS UNDER ARTICLE 22 OF THE CONVENTION

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D. Follow-up activities

75. At its twenty-eighth session, in May 2002, the Committee against Torture revised its rules of procedure and established the function of a Rapporteur for follow-up of decisions on complaints submitted under article 22. At its 527th meeting, on 16 May 2002, the Committee decided that the Rapporteur shall engage, *inter alia*, in the following activities: monitoring compliance with the Committee's decisions by sending notes verbales to States parties enquiring about measures adopted pursuant to the Committee's decisions; recommending to the Committee appropriate action upon the receipt of responses from States parties, in situations of non-response, and upon the receipt henceforth of all letters from complainants concerning non-implementation of the Committee's decisions; meeting with representatives of the permanent missions of States parties to encourage compliance and to determine whether advisory services or technical assistance by the Office of the High Commissioner for Human Rights would be appropriate or desirable; conducting with the approval of the Committee follow-up visits to States parties; preparing periodic reports to the Committee on his/her activities.

76. During its thirty-fourth session, the Committee, through its Special Rapporteur on follow-up to decisions, decided that in cases in which it had found violations of the Convention, including Decisions made by the Committee prior to the establishment of the follow-up procedure, the States parties should be requested to provide information on all measures taken by them to implement the Committee's Decisions.

77. In a follow-up report presented to the Committee during the thirty-fifth session, the Special Rapporteur on follow-up to decisions provided information received from four States parties pursuant to this request: France; Serbia and Montenegro (in relation to 113/1998, Ristic); Switzerland; and Sweden. The following countries did not respond to the request: Austria; Canada (with respect to Tahir Hussain Khan, 15/1994); the Netherlands; Spain; and Serbia and Montenegro (in relation to 161/2000, Hajrizi Dzemajl, 171/2000, Dimitrov, and 207/2002, Dragan Dimitrijevic).

78. Action taken by the States parties in the following cases complied fully with the Committee's Decisions and no further action will be taken under the follow-up procedure: *Mutombo v. Switzerland* (13/1993); *Alan v. Switzerland* (21/1995); *Aemei v. Switzerland* (34/1995); *Tapia Paez v. Sweden* (39/1996); *Kisoki v. Sweden* (41/1996); *Tala v. Sweden* (43/1996); *Avedes Hamayak Korban v. Sweden* (88/1997); *Ali Falakaflaki v. Sweden* (89/1997); *Orhan Ayas v. Sweden* (97/1997); *Halil Haydin v. Sweden* (101/1997). In the following cases, the States parties either responded partially to the request, are in the process of taking further measures and further updates will be requested or comments on the action taken by the State are awaited from the complainant: *Arana v. France* (63/1997); *Brada v. France* (195/2003); *Ristic v. Serbia and Montenegro* (113/1998); and *Agiza v. Sweden* (233/2003).

79. During the thirty-sixth session, the Special Rapporteur on follow-up to decisions presented new follow-up information that had been received since the thirty-fifth session with respect to the following cases: *Dadar v. Canada* (258/2004), *Thabti v. Tunisia* (187/2001), *Abdelli v. Tunisia* (188/2001) and *Ltaief v. Tunisia* (189/2001) and *Chipana v. Venezuela* (110/1998). Represented below is a comprehensive report of replies received with regard to all cases in which the Committee has found violations of the Convention to date and in one case in which it did not find a violation but made a recommendation. Where there is no field entitled "Committee's decision" at the end of the provision of information in a particular case, the follow-up to the case in question is ongoing and further information has or will be requested of the complainant or the State party.

Complaints in which the Committee has found violations of the Convention up to the thirty-fourth session

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State party	SWITZERLAND
Case	Mutombo, 13/1993
Nationality and country of removal if applicable	Zairian to Zaire
Views adopted on	27 April 1994
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party
Remedy recommended	The State party has an obligation to refrain from expelling Mr. Mutombo to Zaire, or to any other country where he runs a real risk of being expelled or returned to Zaire or of being subjected to torture.
Due date for State party response	None
Date of reply	25 May 2005
State party response	Pursuant to the Committee's request for follow-up information of 25 March 2005, the State party informed the Committee that, by reason of the unlawful character of the decision to return him, the complainant was granted temporary admission on 21 June 1994. Subsequently, having married a Swiss

Author's response	national, the complainant was granted a residence permit on 20 June 1997. None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	Alan, 21/1995
Nationality and country of removal if applicable	Turkish to Turkey
Views adopted on	8 May 1996
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party
Remedy recommended	The State party has an obligation to refrain from forcibly returning Ismail Alan to Turkey.
Due date for State party response	None
Date of reply	25 May 2005
State party response	Pursuant to the Committee's request of 25 March 2005 for follow-up information, the State party informed the Committee that the complainant was granted asylum by decision of 14 January 1999.
Author's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	Aemei, 34/1995
Nationality and country of removal if applicable	Iranian to Iran
Views adopted on	29 May 1997

<p>Issues and violations found Interim measures granted and State party response</p>	<p>Removal - article 3 Granted and acceded to by the State party</p>
<p>Remedy recommended</p>	<p>The State party has an obligation to refrain from forcibly returning the complainant and his family to Iran, or to any other country where they would run a real risk of being expelled or returned to Iran.</p> <p>The Committee's finding of a violation of article 3 of the Convention in no way affects the decision(s) of the competent national authorities concerning the granting or refusal of asylum. The finding of a violation of article 3 has a <u>declaratory character</u>. Consequently, the State party is not required to modify its decision(s) concerning the granting of asylum; on the other hand, it does have a responsibility to find solutions that will enable it to take all necessary measures to comply with the provisions of article 3 of the Convention. These solutions may be of a legal nature (e.g. decision to admit the applicant temporarily), but also of a political nature (e.g. action to find a third State willing to admit the applicant to its territory and undertaking not to return or expel him in its turn).</p>
<p>Due date for State party response</p>	<p>None</p>
<p>Date of reply</p>	<p>25 May 2005</p>
<p>State party response</p>	<p>Pursuant to the Committee's request of 25 March 2005 for follow-up information, the State party informed the Committee that the complainants had been admitted as refugees on 8 July 1997. On 5 June 2003, they were granted residence permits on humanitarian grounds. For this reason, Mr. Aemei renounced his refugee status on 5 June 2003. One of their children acquired Swiss nationality.</p>
<p>Author's response</p>	<p>None</p>
<p>Committee's decision</p>	<p>No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.</p>

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VI. CONSIDERATION OF COMPLAINTS UNDER ARTICLE 22 OF THE CONVENTION

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Complaints in which the Committee has found violations of the Convention up to the thirty-eighth session

...

State party	SWITZERLAND
Case	Mutombo, 13/1993
Nationality and country of removal if applicable	Zairian to Zaire
Views adopted on	27 April 1994
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party
Remedy recommended	The State party has an obligation to refrain from expelling Mr. Mutombo to Zaire, or to any other country where he runs a real risk of being expelled or returned to Zaire or of being subjected to torture.
Due date for State party response	None
Date of reply	25 May 2005
State party response	Pursuant to the Committee's request for follow-up information of 25 March 2005, the State party informed the Committee that, by reason of the unlawful character of the decision to return him, the complainant was granted temporary admission on 21 June 1994. Subsequently, having married a Swiss national, the complainant was granted a residence permit on 20 June 1997.

Complainant's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	Alan, 21/1995
Nationality and country of removal if applicable	Turkish to Turkey
Views adopted on	8 May 1996
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party
Remedy recommended	The State party has an obligation to refrain from forcibly returning Ismail Alan to Turkey.
Due date for State party response	None
Date of reply	25 May 2005
State party response	Pursuant to the Committee's request of 25 March 2005 for follow-up information, the State party informed the Committee that the complainant was granted asylum by decision of 14 January 1999.
Complainant's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	Aemei, 34/1995
Nationality and country of removal if applicable	Iranian to Iran
Views adopted on	29 May 1997
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party

response

Remedy recommended

The State party has an obligation to refrain from forcibly returning the complainant and his family to Iran, or to any other country where they would run a real risk of being expelled or returned to Iran.

The Committee's finding of a violation of article 3 of the Convention in no way affects the decision(s) of the competent national authorities concerning the granting or refusal of asylum. The finding of a violation of article 3 has a declaratory character. Consequently, the State party is not required to modify its decision(s) concerning the granting of asylum; on the other hand, it does have a responsibility to find solutions that will enable it to take all necessary measures to comply with the provisions of article 3 of the Convention. These solutions may be of a legal nature (e.g. decision to admit the applicant temporarily), but also of a political nature (e.g. action to find a third State willing to admit the applicant to its territory and undertaking not to return or expel him in its turn).

Due date for State party response

None

Date of reply

25 May 2005

State party response

Pursuant to the Committee's request of 25 March 2005 for follow-up information, the State party informed the Committee that the complainants had been admitted as refugees on 8 July 1997. On 5 June 2003, they were granted residence permits on humanitarian grounds. For this reason, Mr. Aemei renounced his refugee status on 5 June 2003. One of their children acquired Swiss nationality.

Complainant's response

None

Committee's decision

No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.

Case

262/2005, Losizkaja

Nationality and country of removal if

Belarusian to Belarus

applicable

Views adopted on 20 November 2006

Issues and violations found Removal - article 3

Interim measures granted and State party response Granted and acceded to by the State party

Remedy recommended The complainant's removal to Belarus by the State party would constitute a breach of article 3 of the Convention 10. The Committee urges the State party, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to the views expressed above.

Due date for State party response 27 February 2007

Date of reply 23 March 2007

State party response The State party informed the Committee that the complainant has now received permission to stay in Switzerland (specific type of permission not provided) and no longer risks removal to Belarus.

Committee's decision No further consideration under the follow-up procedure, as the State party has complied with the Committee's decision.

Case 280/2005, El Rgeig

Nationality and country of removal if applicable Libyan, Libyan Arab Jamahiriya

Views adopted on 15 November 2006

Issues and violations found Removal - article 3

Interim measures granted and State party response Granted and acceded to by the State party

Remedy recommended The forcible return of the complainant to the Libyan Arab Jamahiriya would constitute a breach

by Switzerland of his rights under article 3 of the Convention. The Committee invites the State party to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in accordance with the above observations.

Due date for State party response

26 February 2007

Date of reply

19 January 2007

State party response

On 17 January 2007, the Federal Migration Office partially reconsidered its decision of 5 March 2004. The complainant has now received refugee status and no longer risks removal to Libya.

Committee's decision

No further consideration under the follow-up procedure, as the State party has complied with the Committee's decision.

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CAT, CAT/C/SR.776 (2007)

COMMITTEE AGAINST TORTURE

Thirty-eighth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC) OF THE 776th MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 15 May 2007, at 3 p.m.

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ORGANIZATIONAL AND OTHER MATTERS (agenda item 3)

Follow-up procedures (CAT/C/38/R.1)

1. The CHAIRPERSON invited the Committee to consider the report of on follow-up to individual communications as contained in document CAT/C/38/R.1.

2. Mr. SCHMIDT, Petitions Unit, introducing the report, said that it dealt with follow-up activities since the end of the Committee's previous session, 24 November 2006. The cases C. T. and K. M. v. Sweden, Losizkaja v. Switzerland and El Rgeig v. Switzerland should not pose problems because the States parties concerned had applied the Committee's recommendations. With regard to the cases Falcón Riós v. Canada, Suleymane Guengueng and others v. Senegal, Thabti v. Tunisia, Abdelli v. Tunisia and Ltaeif v. Tunisia, the Committee could decide on further follow-up measures. Finally, the document contained a list of States parties that had not replied to the Committee's requests for information. The Committee could thus decide to seek authorization to conduct a follow-up mission to a country which had not discharged its obligations if it felt that the situation called for it.

...

7. [Mr. MARIÑO MENÉNDEZ] Regarding the cases C. T. and K. M. v. Sweden, Losizkaja v. Switzerland and El Rgeig v. Switzerland he proposed that no further follow-up action be taken, as the States parties had granted the complainants residence permits in accordance with the Committee's recommendations.

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14. The CHAIRPERSON said that if he heard no objection he would take it that the Committee wished to adopt the proposals of the Rapporteur

15. It was so decided.

...

CAT, CAT/C/SR.817 (2008)

COMMITTEE AGAINST TORTURE
Fortieth session

SUMMARY RECORD (PARTIAL)* OF THE 817th MEETING
Held at the Palais Wilson, Geneva,
on Friday, 2 May 2008, at 3 p.m.

Follow-up on decisions adopted under article 22 of the Convention (continued)
(CAT/C/40/R.1)

1. The CHAIRPERSON invited the Committee to resume its consideration of the report on follow-up activities (CAT/C/40/R.1) relating to the Committee's decisions on individual complaints submitted under article 22 of the Convention.

...

17. Mr. MARIÑO MENÉNDEZ said that no further action was required in the case of Jean-Patrick Iya v. Switzerland (communication No. 299/2006). The State party (Switzerland) had acceded to the Committee's request for interim measures of protection by granting the complainant temporary admission, as a result of which he no longer risked removal to the Democratic Republic of the Congo.

18. Ms. SVEAASS, Mr. KOVALEV and Mr. GALLEGOS CHIRIBOGA expressed concern about the status of temporary admission and the protection it provided for the complainant.

19. Ms. FOX (Petitions team) read out a short note in French from the Swiss authorities on the subject.

20. Mr. MARIÑO MENÉNDEZ said that the situation was still somewhat ambiguous, and he would therefore contact the Swiss authorities for clarifications.

21. The CHAIRPERSON said that if the Swiss authorities provided the necessary assurances that the complainant would not be returned to the Democratic Republic of the Congo, there would be no need to refer the matter back to the Committee, since the State party had already complied with the Committee's decision. He took it the Committee agreed to that course of action.

22. It was so decided.

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The discussion covered in the summary record ended at 4 p.m.

* No summary records was prepared for the rest of the meeting.

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CHAPTER VI. CONSIDERATION OF COMPLAINTS UNDER ARTICLE 22 OF THE CONVENTION

...

D. Follow up activities

93. At its twenty-eighth session, in May 2002, the Committee against Torture revised its rules of procedure and established the function of a Rapporteur for follow-up of decisions on complaints submitted under article 22. At its 527th meeting, on 16 May 2002, the Committee decided that the Rapporteur shall engage, inter alia, in the following activities: monitoring compliance with the Committee's decisions by sending notes verbales to States parties enquiring about measures adopted pursuant to the Committee's decisions; recommending to the Committee appropriate action upon the receipt of responses from States parties, in situations of non response, and upon the receipt henceforth of all letters from complainants concerning non implementation of the Committee's decisions; meeting with representatives of the permanent missions of States parties to encourage compliance and to determine whether advisory services or technical assistance by the Office of the United Nations High Commissioner for Human Rights would be appropriate or desirable; conducting with the approval of the Committee follow up visits to States parties; preparing periodic reports for the Committee on his/her activities.

94. During its thirty fourth session, the Committee, through its Special Rapporteur on follow up to decisions, decided that in cases in which it had found violations of the Convention, including Decisions made by the Committee prior to the establishment of the follow up procedure, the States parties should be requested to provide information on all measures taken by them to implement the Committee's recommendations made in the Decisions...

95. Action taken by the States parties in the following cases complied fully with the Committee's Decisions and no further action will be taken under the follow up procedure:... *Mutombo v. Switzerland* (No. 13/1993); *Alan v. Switzerland* (No. 21/1995); *Aemei v. Switzerland* (No. 34/1995); *V.L. v. Switzerland* (No. 262/2005); *El Rgeig v. Switzerland* (No. 280/2005);... and *Jean-Patrick Iya v. Switzerland* (No. 299/2006).

...

98. During the thirty ninth and fortieth sessions, the Special Rapporteur on follow up to decisions presented new follow up information that had been received since the last annual report with respect to the following cases:... *Jean-Patrick Iya v. Switzerland* (No. 299/2006);...

99. Represented below is a comprehensive report of replies received with regard to all 45 cases in which the Committee has found violations of the Convention to date and in one case in which although the Committee did not find a violation of the Convention it did make a recommendation.

**Complaints in which the Committee has found violations of the
Convention up to the fortieth session**

...

State party	SWITZERLAND
Case	Mutombo, 13/1993
Nationality and country of removal if applicable	Zairian to Zaire
Views adopted on	27 April 1994
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from expelling Mr. Mutombo to Zaire, or to any other country where he runs a real risk of being expelled or returned to Zaire or of being subjected to torture.
Due date for State party response	None
Date of reply	25 May 2005
State party response	Pursuant to the Committee's request for follow-up information of 25 March 2005, the State party informed the Committee that, by reason of the unlawful character of the decision to return him, the complainant was granted temporary admission on 21 June 1994. Subsequently, having married a Swiss national, the complainant was granted a residence permit on 20 June 1997.
Complainant's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.

Case

Nationality and country of removal
if applicable

Views adopted on

Issues and violations found

Interim measures granted and State party
response

Remedy recommended

Due date for State party response

Date of reply

State party response

Complainant's response

Committee's decision

Case

Nationality and country of removal
if applicable

Views adopted on

Issues and violations found

Interim measures granted and State party
response

Remedy recommended

Alan, 21/1995

Turkish to Turkey

8 May 1996

Removal - article 3

Granted and acceded to by the State party.

The State party has an obligation to refrain
from forcibly returning Ismail Alan to Turkey.

None

25 May 2005

Pursuant to the Committee's request of
25 March 2005 for follow-up information, the
State party informed the Committee that the
complainant was granted asylum by decision
of 14 January 1999.

None

No further consideration under the follow-up
procedure as the State party has complied with
the Committee's decision.

Aemei, 34/1995

Iranian to Iran

29 May 1997

Removal - article 3

Granted and acceded to by the State party.

The State party has an obligation to refrain
from forcibly returning the complainant and
his family to Iran, or to any other country
where they would run a real risk of being

expelled or returned to Iran.

The Committee's finding of a violation of article 3 of the Convention in no way affects the decision(s) of the competent national authorities concerning the granting or refusal of asylum. The finding of a violation of article 3 has a declaratory character. Consequently, the State party is not required to modify its decision(s) concerning the granting of asylum; on the other hand, it does have a responsibility to find solutions that will enable it to take all necessary measures to comply with the provisions of article 3 of the Convention. These solutions may be of a legal nature (e.g. decision to admit the applicant temporarily), but also of a political nature (e.g. action to find a third State willing to admit the applicant to its territory and undertaking not to return or expel him in its turn).

Due date for State party response

None

Date of reply

25 May 2005

State party response

Pursuant to the Committee's request of 25 March 2005 for follow-up information, the State party informed the Committee that the complainants had been admitted as refugees on 8 July 1997. On 5 June 2003, they were granted residence permits on humanitarian grounds. For this reason, Mr. Aemei renounced his refugee status on 5 June 2003. One of their children acquired Swiss nationality.

Complainant's response

None

Committee's decision

No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.

Case

262/2005, V.L.

Nationality and country of removal if applicable	Belarusian to Belarus
Views adopted on Issues and violations found	20 November 2006 Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The complainant's removal to Belarus by the State party would constitute a breach of article 3 of the Convention 10. The Committee urges the State party, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to the views expressed above.
Due date for State party response	27 February 2007
Date of reply	23 March 2007
State party response	The State party informed the Committee that the complainant has now received permission to stay in Switzerland (specific type of permission not provided) and no longer risks removal to Belarus.
Committee's decision	No further consideration under the follow-up procedure, as the State party has complied with the Committee's decision.
Case	280/2005, El Rgeig
Nationality and country of removal if applicable	Libyan to Libyan Arab Jamahiriya
Views adopted on	15 November 2006
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The forcible return of the complainant to the

Libyan Arab Jamahiriya would constitute a breach by Switzerland of his rights under article 3 of the Convention. The Committee invites the State party to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in accordance with the above observations.

Due date for State party response

26 February 2007

Date of reply

19 January 2007

State party response

On 17 January 2007, the Federal Migration Office partially reconsidered its decision of 5 March 2004. The complainant has now received refugee status and no longer risks removal to Libya.

Committee's decision

No further consideration under the follow-up procedure, as the State party has complied with the Committee's decision.

Case

299/2006, Jean-Patrick Iya

Nationality and country of removal if applicable

Democratic Republic of the Congo national and deportation to the Democratic Republic of the Congo

Views adopted on

16 November 2007

Issues and violations found

Removal - article 3

Interim measures granted and State party response

Granted and acceded to by the State party.

Remedy recommended

The forcible return of the complainant to the Democratic Republic of the Congo would amount to a breach of article 3 of the Convention. The Committee invites the State party, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to the decision expressed above.

Due date for State party response

28 May 2008

Date of reply

19 February 2008

State party response

On 7 February 2008, the Federal Refugee Office Migration Board granted the complainant "temporary admission" and thus no longer risks removal to the Democratic Republic of the Congo.

Committee's decision

No further consideration under the follow-up procedure, as the State party has complied with the Committee's decision.

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CAT, CAT/C/SR.855 (2008)

COMMITTEE AGAINST TORTURE

Forty-first session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 855th MEETING

Held at the Palais Wilson, Geneva,
on Friday, 14 November 2008, at 3 p.m.

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CONSIDERATION OF COMMUNICATIONS UNDER ARTICLE 22 OF THE CONVENTION (continued)

Follow-up progress report of the Committee against Torture on individual communications (CAT/C/41/R.1)

1. The CHAIRPERSON invited the Special Rapporteur to introduce the follow-up progress report (CAT/C/41/R.1) relating to the Committee's decisions on complaints submitted under article 22 of the Convention.

2. Mr. MARIÑO MENÉNDEZ (Special Rapporteur on Follow-up), introducing the report, said that it contained follow-up information submitted since the Committee's fortieth session...

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8. Mr. WANG Xuexian (Vice-Chairperson) took the Chair.

...

Communication No. 299/2006: Jean-Patrick Iya v. Switzerland

12. Mr. MARIÑO MENÉNDEZ, summarizing the replies received from Switzerland, proposed that, as the State party had complied with the Committee's decision, the Committee should decide to close the matter under the follow-up procedure.

13. The CHAIRPERSON said he took it that the Committee agreed to the course of action proposed by the Special Rapporteur.

14. It was so decided.

...

The public part of the meeting rose at 4.35 p.m.

*/ The summary record of the second part (closed) of the meeting appears as document CAT/C/SR. 855/Add.1.

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VI. CONSIDERATION OF COMPLAINTS UNDER ARTICLE 22 OF THE CONVENTION

...

D. Follow-up activities

89. At its twenty-eighth session, in May 2002, the Committee against Torture revised its rules of procedure and established the function of a Rapporteur for follow-up of decisions on complaints submitted under article 22. At its 527th meeting, on 16 May 2002, the Committee decided that the Rapporteur shall engage, inter alia, in the following activities: monitoring compliance with the Committee's decisions by sending notes verbales to States parties enquiring about measures adopted pursuant to the Committee's decisions; recommending to the Committee appropriate action upon the receipt of responses from States parties, in situations of non response, and upon the receipt henceforth of all letters from complainants concerning non implementation of the Committee's decisions; meeting with representatives of the permanent missions of States parties to encourage compliance and to determine whether advisory services or technical assistance by the Office of the United Nations High Commissioner for Human Rights would be appropriate or desirable; conducting with the approval of the Committee follow up visits to States parties; preparing periodic reports for the Committee on his/her activities.

90. During its thirty fourth session, the Committee, through its Special Rapporteur on follow up to decisions, decided that in cases in which it had found violations of the Convention, including decisions made by the Committee prior to the establishment of the follow up procedure, the States parties should be requested to provide information on all measures taken by them to implement the Committee's recommendations made in the decisions. ...

91. Action taken by the States parties in the following cases complied fully with the Committee's decisions and no further action will be taken under the follow up procedure: ... *Mutombo v. Switzerland* (No. 13/1993); *Alan v. Switzerland* (No. 21/1995); *Aemei v. Switzerland* (No. 34/1995); *V.L. v. Switzerland* (No. 262/2005); *El Rgeig v. Switzerland* (No. 280/2005); ... and *Jean-Patrick Iya v. Switzerland* (No. 299/2006).

...

94. During the forty-first and forty-second sessions, the Special Rapporteur on follow up to decisions presented new follow up information that had been received since the last annual report with respect to the following cases: ... *Jean-Patrick Iya v. Switzerland* (No. 299/2006); ...

95. Represented below is a comprehensive report of replies received with regard to all 48 cases in which the Committee has found violations of the Convention to date and in 1 case in which although the Committee did not find a violation of the Convention it did make a recommendation.

Complaints in which the Committee has found violations of the Convention up to the forty-second session

...

State party

SWITZERLAND

Case

Mutombo, 13/1993

Nationality and country of removal
if applicable

Zairian to Zaire

Views adopted on

27 April 1994

Issues and violations found

Removal - article 3

Interim measures granted and State
party response

Granted and acceded to by the State party.

Remedy recommended

The State party has an obligation to refrain from expelling Mr. Mutombo to Zaire, or to any other country where he runs a real risk of being expelled or returned to Zaire or of being subjected to torture.

Due date for State party response

None

Date of reply

25 May 2005

State party response

Pursuant to the Committee's request for follow-up information of 25 March 2005, the State party informed the Committee that, by reason of the unlawful character of the decision to return him, the complainant was granted temporary admission on 21 June 1994. Subsequently, having married a Swiss national, the complainant was granted a residence permit on 20 June 1997.

Complainant's response

None

Committee's decision

No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.

Case

Alan, 21/1995

Nationality and country of removal
if applicable

Turkish to Turkey

Views adopted on	8 May 1996
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from forcibly returning Ismail Alan to Turkey.
Due date for State party response	None
Date of reply	25 May 2005
State party response	Pursuant to the Committee's request of 25 March 2005 for follow-up information, the State party informed the Committee that the complainant was granted asylum by decision of 14 January 1999.
Complainant's response	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	Aemei, 34/1995
Nationality and country of removal if applicable	Iranian to Iran
Views adopted on	29 May 1997
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from forcibly returning the complainant and his family to Iran, or to any other country where they would run a real risk of being expelled or returned to Iran.
	The Committee's finding of a violation of article 3

of the Convention in no way affects the decision(s) of the competent national authorities concerning the granting or refusal of asylum. The finding of a violation of article 3 has a declaratory character. Consequently, the State party is not required to modify its decision(s) concerning the granting of asylum; on the other hand, it does have a responsibility to find solutions that will enable it to take all necessary measures to comply with the provisions of article 3 of the Convention. These solutions may be of a legal nature (e.g. decision to admit the applicant temporarily), but also of a political nature (e.g. action to find a third State willing to admit the applicant to its territory and undertaking not to return or expel him in its turn).

Due date for State party response

None

Date of reply

25 May 2005

State party response

Pursuant to the Committee's request of 25 March 2005 for follow-up information, the State party informed the Committee that the complainants had been admitted as refugees on 8 July 1997. On 5 June 2003, they were granted residence permits on humanitarian grounds. For this reason, Mr. Aemei renounced his refugee status on 5 June 2003. One of their children acquired Swiss nationality.

Complainant's response

None

Committee's decision

No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.

Case

V.L., 262/2005

Nationality and country of removal if applicable

Belarusian to Belarus

Views adopted on

20 November 2006

Issues and violations found

Removal - article 3

Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The complainant's removal to Belarus by the State party would constitute a breach of article 3 of the Convention 10. The Committee urges the State party, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to the views expressed above.
Due date for State party response	27 February 2007
Date of reply	23 March 2007
State party response	The State party informed the Committee that the complainant has now received permission to stay in Switzerland (specific type of permission not provided) and no longer risks removal to Belarus.
Committee's decision	No further consideration under the follow-up procedure, as the State party has complied with the Committee's decision.
Case	El Rgeig, 280/2005
Nationality and country of removal if applicable	Libyan to Libyan Arab Jamahiriya
Views adopted on	15 November 2006
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The forcible return of the complainant to the Libyan Arab Jamahiriya would constitute a breach by Switzerland of his rights under article 3 of the Convention. The Committee invites the State party to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in accordance with the above observations.

Due date for State party response	26 February 2007
Date of reply	19 January 2007
State party response	On 17 January 2007, the Federal Migration Office partially reconsidered its decision of 5 March 2004. The complainant has now received refugee status and no longer risks removal to Libya.
Committee's decision	No further consideration under the follow-up procedure, as the State party has complied with the Committee's decision.
Case	Jean-Patrick Iya, 299/2006
Nationality and country of removal if applicable	Democratic Republic of the Congo national and deportation to the Democratic Republic of the Congo
Views adopted on	16 November 2007
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The forcible return of the complainant to the Democratic Republic of the Congo would amount to a breach of article 3 of the Convention. The Committee invites the State party, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to the decision expressed above.
Due date for State party response	28 May 2008
Date of reply	24 June 2008 (it had responded on 19 February 2008)
State party response	On 7 February 2008, the Federal Refugee Office Migration Board granted the complainant "temporary admission" and thus no longer risks removal to the Democratic Republic of the Congo.

On 24 June 2008, the State party responded to a request by the Committee to explain what is meant by “temporary admission”. It explained that temporary admission is regulated by chapter 11 of the federal law of 16 December 2005 on foreigners which entered into force on 1 January 2008. Under the terms of this law the return of a foreigner to his/her State of origin or to a third State is not lawful if such a return would be contrary to Switzerland’s obligations under international law. This status cannot be removed unless there is a radical political change in the country of origin obviating any risk to the person concerned. In the event that such a provision is lifted, the individual would have certain remedies to exhaust under the terms of the same legislation. In addition, this type of status comes to an end if the individual leaves Switzerland definitely, or obtains a residence permit which may be requested after five years of residency in the State party and is based on the individual’s level of integration. Under certain conditions, the individual’s spouse and children may be able to benefit from family reunification.

Committee’s decision

No further consideration under the follow-up procedure, as the State party has complied with the Committee’s decision.

...

CAT, A/65/44 (2010)

...

CHAPTER VI. CONSIDERATION OF COMPLAINTS UNDER ARTICLE 22 OF THE CONVENTION

...

D. Follow-up activities

108. At its twenty-eighth session, in May 2002, the Committee against Torture revised its rules of procedure and established the function of a Rapporteur for follow-up of decisions on complaints submitted under article 22. At its 527th meeting, on 16 May 2002, the Committee decided that the Rapporteur shall engage, inter alia, in the following activities: monitoring compliance with the Committee's decisions by sending notes verbales to States parties enquiring about measures adopted pursuant to the Committee's decisions; recommending to the Committee appropriate action upon the receipt of responses from States parties, in situations of non-response, and upon the receipt henceforth of all letters from complainants concerning non-implementation of the Committee's decisions; meeting with representatives of the permanent missions of States parties to encourage compliance and to determine whether advisory services or technical assistance by the Office of the United Nations High Commissioner for Human Rights would be appropriate or desirable; conducting with the approval of the Committee follow-up visits to States parties; preparing periodic reports for the Committee on his/her activities.

109. During its thirty-fourth session, the Committee, through its Rapporteur for follow-up of decisions on complaints, decided that in cases in which it had found violations of the Convention, including decisions made by the Committee prior to the establishment of the follow-up procedure, the States parties should be requested to provide information on all measures taken by them to implement the Committee's recommendations made in the decisions. To date, the following countries have not yet responded to these requests: Canada (with respect to *Tahir Hussain Khan*, No. 15/1994); Serbia¹ and Montenegro (with respect to *Dimitrov*, No. 171/2000,² *Danil Dimitrijevic*, No. 172/2000, *Nikolić, Slobodan and Ljiljana*, No. 174/2000, *Dragan Dimitrijevic*, No. 207/2002 and *Besim Osmani v. Republic of Serbia*, No. 261/2005); and Tunisia (with respect to *Ali Ben Salem*, No. 269/2005).

110. Action taken by the States parties in the following cases complied fully with the Committee's decisions and no further action will be taken under the follow-up procedure: *Halimi-Nedibi Quani v. Austria* (No. 8/1991); *M.A.K. v. Germany* (No. 214/2002);³ *Hajrizi Dzemajl et al. v. Serbia and Montenegro* (No. 161/2000), *the Netherlands* (with respect to *A.J.*, No. 91/1997); *Mutombo v. Switzerland* (No. 13/1993); *Alan v. Switzerland* (No. 21/1995); *Aemei v. Switzerland* (No. 34/1995); *V.L. v. Switzerland* (No. 262/2005); *El Rgeig v. Switzerland* (No. 280/2005); *Tapia Paez v. Sweden* (No. 39/1996); *Kisoki v. Sweden* (No. 41/1996); *Tala v. Sweden* (No. 43/1996); *Avedes Hamayak Korban v. Sweden* (No. 88/1997); *Ali Falakflaki v. Sweden* (No. 89/1997); *Orhan Ayas v. Sweden* (No. 97/1997); *Halil Haydin v. Sweden* (No.

101/1997); *A.S. v. Sweden* (No. 149/1999); *Chedli Ben Ahmed Karoui v. Sweden* (No. 185/2001); *Dar v. Norway*⁴ (No. 249/2004); *Tharina v. Sweden* (No. 266/2003); *C.T. and K.M. v. Sweden* (No. 279/2005); and *Jean-Patrick Iya v. Switzerland* (No. 299/2006).

111. In the following cases, the Committee considered that for various reasons no further action should be taken under the follow-up procedure: *Elmi v. Australia* (No. 120/1998); *Arana v. France* (No. 63/1997); and *Ltaief v. Tunisia* (No. 189/2001). In one case, the Committee deplored the State party's failure to abide by its obligations under article 3 having deported the complainant, despite the Committee's finding that there were substantial grounds for believing that he would be in danger of being tortured: *Dadar v. Canada* (No. 258/2004). In one case, given the author's voluntary return to his country of origin, the Committee decided not to consider the case any further under the follow-up procedure: *Falcon Rios v. Canada* (No. 133/1999).

112. In the following cases, either further information is awaited from the States parties or the complainants and/or the dialogue with the State party is ongoing: *Dadar v. Canada* (No. 258/2004); *Brada v. France* (No. 195/2003); *Guengueng et al. v. Senegal* (No. 181/2001); *Ristic v. Serbia and Montenegro* (No. 113/1998); *Blanco Abad v. Spain* (No. 59/1996); *Urra Guridi v. Spain* (No. 212/2002); *Agiza v. Sweden* (No. 233/2003); *Thabti v. Tunisia* (No. 187/2001); *Abdelli v. Tunisia* (No. 188/2001); *M'Barek v. Tunisia* (No. 60/1996); *Saadia Ali v. Tunisia* (No. 291/2006); *Chipana v. Venezuela* (No. 110/1998); *Pelit v. Azerbaijan* (No. 281/2005); *Bachan Singh Sogi v. Canada* (No. 297/2006); *Tebourski v. France* (No. 300/2006); and *Besim Osmani v. Republic of Serbia* (No. 261/2005).

113. During the forty-third and forty-fourth sessions, the Rapporteur for follow-up of decisions on complaints presented new follow-up information that had been received since the last annual report with respect to the following cases: *Guengueng et al. v. Senegal* (No. 181/2001); *Agiza v. Sweden* (No. 233/2003); *Bachan Singh Sogi v. Canada* (No. 297/2006); *Falcon Rios v. Canada* (No. 133/1999); *Blanco Abad v. Spain* (No. 59/1996); *Urra Guridi v. Spain* (No. 212/2002); *M'Barek v. Tunisia* (No. 60/1996); *Saadia Ali v. Tunisia* (No. 291/2006).

114. Represented below is a comprehensive report of replies received with regard to all 49 cases in which the Committee has found violations of the Convention to date and in 1 case in which although the Committee did not find a violation of the Convention it did make a recommendation.

¹ On 11 June 2008, following requests by the Committee to Serbia and Montenegro to confirm which State would be following up on Decisions adopted by the Committee and registered against the State party "Serbia and Montenegro", the Secretariat received a response from Montenegro only which stated that all the cases were within the remit of the Republic of Serbia.

² In December 2009, the Secretariat learned verbally from the State party that this case had been subsequently reopened but nothing has been received in writing to this effect.

³ Although no violation was found in this case, the Committee welcomed the State party's readiness to monitor the complainant's situation and subsequently provided satisfactory information in this regard (see chart below).

⁴ The State had already remedied the breach prior to consideration of the case.

Complaints in which the Committee has found violations of the Convention up to the forty-fourth session

...

State party	Switzerland
Case	<i>Mutombo, 13/1993</i>
Nationality and country of removal if applicable	Zairian to Zaire
Views adopted on	27 April 1994
Issues and violations found	Removal - Article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from expelling Mr. Mutombo to Zaire, or to any other country where he runs a real risk of being expelled or returned to Zaire or of being subjected to torture.
Due date for State party response	None
Date of reply	25 May 2005
State party response	Pursuant to the Committee's request for follow-up information of 25 March 2005, the State party informed the Committee that, by reason of the unlawful character of the decision to return him, the complainant was granted temporary admission on 21 June 1994. Subsequently, having married a Swiss national, the complainant was granted a

residence permit on 20 June 1997.

Complainant's comments	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	<i>Alan, 21/1995</i>
Nationality and country of removal if applicable	Turkish to Turkey
Views adopted on	8 May 1996
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The State party has an obligation to refrain from forcibly returning Ismail Alan to Turkey.
Due date for State party response	None
Date of reply	25 May 2005
State party response	Pursuant to the Committee's request of 25 March 2005 for follow-up information, the State party informed the Committee that the complainant was granted asylum by decision of 14 January 1999.
Complainant's comments	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.

Case	<i>Aemei, 34/1995</i>
Nationality and country of removal if applicable	Iranian to Iran
Views adopted on	29 May 1997
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	<p>The State party has an obligation to refrain from forcibly returning the complainant and his family to Iran, or to any other country where they would run a real risk of being expelled or returned to Iran.</p> <p>The Committee's finding of a violation of article 3 of the Convention in no way affects the decision(s) of the competent national authorities concerning the granting or refusal of asylum. The finding of a violation of article 3 has a declaratory character. Consequently, the State party is not required to modify its decision(s) concerning the granting of asylum; on the other hand, it does have a responsibility to find solutions that will enable it to take all necessary measures to comply with the provisions of article 3 of the Convention. These solutions may be of a legal nature (e.g. decision to admit the applicant temporarily), but also of a political nature (e.g. action to find a third State willing to admit the applicant to its territory and undertaking not to return or expel him in its turn).</p>
Due date for State party response	None
Date of reply	25 May 2005
State party response	Pursuant to the Committee's request of 25 March 2005 for follow-up information, the State party informed the Committee that the complainants had been admitted as refugees on 8 July 1997. On 5 June 2003, they were granted residence permits on humanitarian grounds.

For this reason, Mr. Aemei renounced his refugee status on 5 June 2003. One of their children acquired Swiss nationality.

Complainant's comments	None
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	<i>V.L., 262/2005</i>
Nationality and country of removal if applicable	Belarusian to Belarus
Views adopted on	20 November 2006
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The complainant's removal to Belarus by the State party would constitute a breach of article 3 of the Convention 10. The Committee urges the State party, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to the views expressed above.
Due date for State party response	27 February 2007
Date of reply	23 March 2007
State party response	The State party informed the Committee that the complainant has now received permission to stay in Switzerland (specific type of permission not provided) and no longer risks removal to Belarus.

Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.
Case	<i>El Rgeig, 280/2005</i>
Nationality and country of removal if applicable	Libyan to Libyan Arab Jamahiriya
Views adopted on	15 November 2006
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The forcible return of the complainant to the Libyan Arab Jamahiriya would constitute a breach by Switzerland of his rights under article 3 of the Convention. The Committee invites the State party to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in accordance with the above observations.
Due date for State party response	26 February 2007
Date of reply	19 January 2007
State party response	On 17 January 2007, the Federal Migration Office partially reconsidered its decision of 5 March 2004. The complainant has now received refugee status and no longer risks removal to Libya.
Committee's decision	No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.

Case	<i>Jean-Patrick Iya, 299/2006</i>
Nationality and country of removal if applicable	Democratic Republic of the Congo national and deportation to the Democratic Republic of the Congo
Views adopted on	16 November 2007
Issues and violations found	Removal - article 3
Interim measures granted and State party response	Granted and acceded to by the State party.
Remedy recommended	The forcible return of the complainant to the Democratic Republic of the Congo would amount to a breach of article 3 of the Convention. The Committee invites the State party, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to the decision expressed above.
Due date for State party response	28 May 2008
Date of reply	24 June 2008 (it had responded on 19 February 2008)
State party response	<p>On 7 February 2008, the Federal Refugee Office Migration Board granted the complainant “temporary admission” and thus the complainant no longer risks removal to the Democratic Republic of the Congo.</p> <p>On 24 June 2008, the State party responded to a request by the Committee to explain what is meant by “temporary admission”. It explained that temporary admission is regulated by chapter 11 of the federal law of 16 December 2005 on foreigners which entered into force on 1 January 2008. Under the terms of this law the return of a foreigner to his/her State of origin or to a third State is not lawful if such a return would be contrary to Switzerland’s obligations under international law. This status cannot be removed unless there is a radical political change in the country of origin obviating any risk to the person concerned. In the event that such a provision is lifted, the individual would have certain remedies to exhaust under the terms of the same legislation. In addition, this type of status comes to an end if</p>

the individual leaves Switzerland definitely, or obtains a residence permit which may be requested after five years of residency in the State party and is based on the individual's level of integration. Under certain conditions, the individual's spouse and children may be able to benefit from family reunification.

**Committee's
decision**

No further consideration under the follow-up procedure as the State party has complied with the Committee's decision.

...