



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

Distr.: General  
17 January 2012  
English  
Original: French

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**Committee against Torture**

**Communication No. 347/2008**

**Decision taken by the Committee at its forty-seventh session, from  
31 October to 25 November 2011**

<i>Submitted by:</i>	N.B-M. (not represented by counsel)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	10 April 2008 (initial submission)
<i>Date of decision:</i>	14 November 2011
<i>Subject matter:</i>	Deportation of the complainant from Switzerland to the Democratic Republic of the Congo; risk of torture and cruel, inhuman or degrading treatment
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Risk of torture following deportation; risk of cruel, inhuman or degrading treatment following deportation
<i>Article of the Convention:</i>	Article 3

[Annex]

## Annex

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

concerning

#### **Communication No. 347/2008**

*Submitted by:* N.B-M. (not represented by counsel)

*Alleged victim:* The complainant

*State party:* Switzerland

*Date of complaint:* 10 April 2008 (initial submission)

*The Committee against Torture*, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

*Meeting* on 14 November 2011,

*Having concluded* its consideration of complaint No. 347/2008, submitted to the Committee against Torture by Ms. N.B-M. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

*Having taken into account* all information made available to it by the complainant and the State party,

*Adopts* the following:

#### **Decision under article 22, paragraph 7, of the Convention against Torture**

1.1 The complainant N.B-M., is a national of the Democratic Republic of the Congo born in 1974, who faces deportation from Switzerland to her country of origin. She claims that her deportation would constitute a violation by Switzerland of article 3 of the Convention. She is not represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee brought the complaint to the State party's attention on 28 July 2008. At the same time, the Committee, pursuant to rule 108, paragraph 1, of its rules of procedure, requested the State party not to deport the complainant to the Democratic Republic of the Congo while her complaint was being considered. The State party acceded to this request on 30 July 2008.

#### **Factual background<sup>1</sup>**

2.1 In her initial submission of 10 April 2008, the complainant described how distressed she felt because of her fear of returning to the Democratic Republic of the Congo and

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<sup>1</sup> In order to make the factual background as comprehensive and coherent as possible, this section is based on both the complainant's correspondence and the judicial decisions concerning her.

because of her precarious living conditions in Switzerland. She stated that she was suffering from depression and had developed psychosomatic problems as a result of that fear and the fact that she was not working in Switzerland, since she did not have legal permission to do so. In her letter of 24 July 2008, she reiterated that she was suffering from serious health problems that required regular medical follow-up. She also alleged that she had been raped by two officials who had helped her to flee from Ndjili airport – a fact which she said she had not mentioned in her asylum application out of a sense of propriety and because she had not thought that it was important to her application.

2.2 As far as the complainant's departure from the Democratic Republic of the Congo is concerned, it is claimed in her file that in late 2000 her fiancé, who had left Kinshasa for a business trip to Lubumbashi, informed her by telephone that he was travelling to Kisangani and that he was working for the rebels led by Jean-Pierre Bemba. She claims that he also informed her in the same conversation that Joseph Kabila was not the son of Laurent-Désiré Kabila, but the son of a Rwandan, and that the assassination of Kabila senior had been planned so that a Rwandan could take control of the Democratic Republic of the Congo. The complainant claims to have shared that information with persons in her neighbourhood in Kinshasa. She states that her fiancé subsequently sent a messenger, who gave her a mobile telephone, money and a copy of the magazine *Jeune Afrique* featuring an article relating to the circumstances of the death of Laurent-Désiré Kabila, which she was to circulate. After this, the messenger was allegedly arrested and questioned. The complainant also claims to have learned that her name and that of her fiancé had been mentioned when the messenger was being questioned. She alleges that the police went to her home in her absence and found copies of the magazine *Jeune Afrique* and letters from her fiancé.

2.3 Fearing for her life, the complainant claims that she initially took refuge with relatives living in Maluku, where she stayed until 25 August 2001. Having then allegedly heard from her mother that soldiers were constantly visiting the family home and enquiring about her, the complainant decided to leave the country. She says that she flew from Ndjili airport to Bamako on 28 August 2001 and arrived in Rome — via Lagos, Accra and Addis Ababa — on 9 September 2001, before reaching Switzerland by road on 10 September 2001. The same day, she submitted an application for asylum in Vallorbe.

2.4 On 13 June 2002, the Swiss Federal Office for Refugees rejected the complainant's application for asylum, deeming her claims to be implausible. The Office noted, in particular, the complainant's inability to substantiate the role of her fiancé in the rebellion led by Jean-Pierre Bemba, and did not accept her testimony that she had been responsible for spreading political propaganda in her neighbourhood. The Office considered that the complainant's low profile in the opposition undermined the credibility of her claim that there had been a major mobilization of security forces to arrest her.

2.5 On 14 November 2002, the Swiss Asylum Appeals Commission rejected the complainant's appeal on the grounds that she had failed to pay the procedural fee by the deadline set. Two successive requests for an extension of the deadline were also declared inadmissible.

2.6 On 15 August 2005, the complainant requested that the decision of the Swiss Federal Office for Refugees of 13 June 2002 be reconsidered in the light of new evidence. This included a copy of the weekly magazine *Le Courrier d'Afrique*<sup>2</sup> featuring two articles which, according to her, proved that she was wanted by the security forces of the Democratic Republic of the Congo for supporting an opposition group. She also requested that the Swiss Mission in the Democratic Republic of the Congo conduct an inquiry to

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<sup>2</sup> No. 47 (25 April to 10 May 2005).

assess the authenticity of the evidence. On 19 August 2005, the Federal Office for Migration decided that, in the absence of any new facts or evidence, and since the copy of *Le Courrier d'Afrique* submitted to the authorities had been forged, there were no grounds for examining the complainant's application for reconsideration.

2.7 On 12 September 2005, the complainant appealed against the latest decision of the Federal Office for Migration, arguing that she had provided firm evidence of the threats she faced in the Democratic Republic of the Congo. To support her appeal, she produced new evidence, including a summons served on her mother and a letter addressed to the complainant by her mother. On the basis that the appeal seemed unlikely to succeed, on 1 November 2005 the Asylum Appeals Commission's investigating judge refused to order interim measures and set a deadline for payment of the estimated procedural fees. The complainant challenged this decision on 11 November 2005 and stood by the authenticity of the documents she had submitted, to which she added a summons addressed to her on 10 October 2001. On 18 November 2005, the judge rejected the complainant's request, noting the lack of authenticity of the summons, which had, moreover, not been mentioned earlier in the proceedings.

2.8 In its decision of 31 March 2008, the Federal Administrative Court rejected the complainant's appeal on the grounds that she had not introduced any new facts or evidence, and stressed the lack of credibility of her claims and the evidence presented. It considered that the two summonses submitted by the complainant had very little evidentiary value, noting that they had been presented in 2005, almost five years after the alleged events.

2.9 On 18 July 2008, the Court again dismissed the complainant's appeal on the grounds that she had not made the advance payment for the procedural fees.

2.10 The complainant maintains before the Committee that her application for asylum is well founded and that she fears being arrested, tortured and raped if she returns to the Democratic Republic of the Congo. She says that, if she returned to her country, she would immediately be imprisoned and that she is afraid of being raped in prison, being exposed to serious illnesses and being subjected to forced labour. She adds that her mother has also received threats and has had to leave Kinshasa. She no longer has any relatives in Kinshasa and would therefore not receive any material or moral support, whereas in Switzerland she has built a social network, has accommodation, is covered by health insurance and receives welfare. In her letter of 21 August 2008, the complainant reiterated that she was suffering from depression, for which she was receiving medical treatment.

### **The complaint**

3.1 The complainant claims that her deportation from Switzerland to the Democratic Republic of the Congo would be a violation of article 3 of the Convention, as there are substantial grounds for believing that she would be in danger of being subjected to torture if returned.

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

4.1 On 22 January 2009, the State party submitted its observations on the merits of the communication. It states that the complainant has failed to establish that she would face a personal, real and foreseeable risk of torture upon her return to the Democratic Republic of the Congo. While noting the human rights situation in the Democratic Republic of the

Congo and referring to general comment No. 1 of the Committee,<sup>3</sup> the State party asserts that this situation is not in itself a sufficient basis for concluding that the complainant would be at risk of torture if she returned. It further states that the complainant has failed to demonstrate that she faces a personal, real and foreseeable risk of torture if returned to the Democratic Republic of the Congo.

4.2 The State party notes that the complainant did not inform it of her allegations that she had been raped at the time of her departure from Ndjili airport in 2001. It asserts that the explanations she has provided to justify her failure to do so are implausible. In addition, the State party notes that, in any event, the rape alleged by the complainant is said to have been committed by officials involved in her flight from the Democratic Republic of the Congo, who were therefore not acting in an official capacity. Accordingly, these events, even if proved to be true, cannot be taken into account to infer that the complainant faces a risk of torture if she returns to the Democratic Republic of the Congo.

4.3 According to the State party, the complainant lacks credibility: although she claims that she risked her life to deliver a political message, she has not been able to describe her experience in detail or to provide clarification of her fiancé's political activities. Her claim that her fiancé had sent a messenger who gave her a telephone, copies of the magazine *Jeune Afrique* and money to spread a political message in her neighbourhood are also implausible because the means deployed by the rebels seem disproportionate to the desired outcome in a neighbourhood of some 50 people. By the same token, the State party considers that the determination said to be shown by the authorities, who reportedly came to the complainant's home to look for her on many occasions in her absence, is unlikely in the case of an isolated opponent.

4.4 In the State party's view, the fact that the complainant was able to leave the Democratic Republic of the Congo from Ndjili airport (one of the places most closely watched by law enforcement officials), even though she supposedly faced a serious threat of arrest, also makes her testimony implausible. As to the two newspaper articles that she produced, they are crude forgeries. The same applies to the two summonses against the complainant and her mother, which are not sufficient to substantiate the risks faced and have very little evidentiary value, since both were produced in 2005, five years after the reported events.

4.5 Regarding her political activities, the State party notes that, although the complainant now indicates that she continues her political activities as a supporter of the Alliance des Patriotes pour la Refondation du Congo (APARECO), she has not substantiated these claims. At a hearing in 2001, she claimed that she had never been involved in politics and had never been a supporter or member of a political party. The State party therefore concludes that her testimony, which remains vague and unclear, is implausible and that her claim of current political activity is not credible.

4.6 According to the State party, the complainant's current state of health cannot be attributed to her fear of being subjected to violence if she returns to the Democratic Republic of the Congo, but rather to the fact that she is not working in Switzerland. Furthermore, her medical condition is not so severe as to prevent her removal from Switzerland, particularly since she may request financial support upon her return and consult a doctor in the Democratic Republic of the Congo. In conclusion, the State party reiterates that there are no substantial grounds for believing that the complainant faces a specific and personal risk of torture if she returns to the Democratic Republic of the Congo.

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<sup>3</sup> A/53/44, annex IX (21 November 1997). The State party also refers to communications No. 94/1997, *K.N. v. Switzerland* (Views of 19 May 1998) and No. 100/1997, *J.U.A. v. Switzerland* (Views of 10 November 1998).

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

5.1 In a communication dated 26 March 2009, the complainant argues that the State party has recognized a pattern of consistent human rights violations in the Democratic Republic of the Congo and that this situation has a direct impact on the risks that she would face if she returned. She also refers to objective fears that arose after her escape, particularly in view of the threats allegedly received by her mother. She reiterates that the newspaper articles that she has provided constitute objective evidence of the risks faced. She maintains that she currently carries out political activities within APARECO aimed at raising awareness and spreading a political message. Her name and face have thus become familiar to the Congolese community in Switzerland and, as a result, to the Congolese authorities.

5.2 The complainant maintains that she did not mention the rape she suffered to the Swiss authorities because it had been a traumatic experience that she was unable to disclose at that time. She adds that her current state of health is an important factor that should be taken into consideration in assessing the risks which she faces in the event of deportation, including the risk of suicide. Lastly, the complainant requests that the specific risks faced by women be taken into account by the Committee and maintains that her political activities in Switzerland expose her to real danger if returned to her country.

**Additional submissions by the complainant**

6.1 On 15 April 2010 the complainant informed the Committee that she had applied for a residence permit on grounds of "serious personal hardship", under article 14 (2) of the Asylum Act.<sup>4</sup> The Federal Office for Migration rejected the initial application dated 13 January 2010 and rejected it on appeal on 12 February 2010, the main reason being that the complainant did not meet the conditions listed in article 14 (2) of the Asylum Act; she had lived in Switzerland for only eight years and had not demonstrated that she was sufficiently integrated socially, professionally and family-wise in the country. The Office also noted that there was no indication that the complainant could not successfully reintegrate in the Democratic Republic of the Congo, a country she did not leave until she was 27 years old.

6.2 On 15 October 2010, the complainant further informed the Committee that in January 2010 she had filed an appeal against the last decision of the Federal Office for Migration, cited above. On 14 May 2010, the Federal Administrative Court denied her application for legal aid in relation to this appeal and instructed her to pay the procedural fees. On 29 June 2010, the Federal Office for Migration presented a submission to the Court relating to the procedure undertaken by the complainant under article 14 (2) of the Asylum Act, reiterating that the complainant had not sufficiently integrated into Swiss society and that she had no close ties binding her with Switzerland. On 1 July 2010, the Court instructed the complainant to submit her comments by 16 August 2010, which she did.<sup>5</sup>

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<sup>4</sup> Article 14 (2) of the Federal Asylum Act (26 June 1998) stipulates that:  
"The canton may with consent of the Federal Office grant a person for whom it is responsible in terms of this Act a residence permit if:

- (a) The person concerned has been a resident for a minimum of five years in Switzerland since filing the asylum application;
  - (b) The place of stay of the person concerned has always been known to the authorities;
- and
- (c) In light of their advanced stage of integration, there is a case of serious personal hardship."

<sup>5</sup> The complainant enclosed her submission to the Court dated 18 August 2010 as an annex.

6.3 In the same submission of 15 October 2010, the complainant reiterated her fears about returning to Kinshasa, claiming that she was still an active member of APARECO in Zurich. She added that the Parti du Peuple pour la Reconstruction et la Démocratie, which was close to President Kabila, was also active in Zurich, and reported on members of the opposition working against the Kinshasa regime, which exacerbated the risks she would face if she returned. The applicant also informed the Committee that her mother had died in the Democratic Republic of the Congo in June 2010, and said that her fiancé was still missing and that she had had no news of him. Lastly, she drew the Committee's attention to her state of health, enclosing with her submission a medical certificate attesting to the fact that she had numerous disorders, both physical and psychiatric, including depression, severe insomnia and suicidal tendencies.

#### **Additional submissions by the State party**

7.1 On 14 April 2011, at the request of the Committee, the State party submitted observations on the rules applicable to the free assistance of a lawyer in appeal proceedings, as well as the rules on the advance payment of fees in asylum proceedings. On the first of these points, the State party begins by stressing that article 3 of the Convention cannot be construed as placing an obligation on the State party to pay the fees of a court-appointed lawyer in every case, regardless of the circumstances of the case.<sup>6</sup> The State party adds that, under the relevant domestic law, three conditions must be met for the court-appointed lawyer's fee to be paid: (a) the applicant must be indigent; (b) their application must have some chance of success; and (c) representation must be necessary, in the sense that the case must present, in law or in fact, specific difficulties that the party is not capable of resolving on their own.<sup>7</sup> According to the State party, the requirements of article 3 of the Convention do not go further than these principles.

7.2 As for the procedural fees, the State party stresses that the initial application for asylum is free of charge. However, a fee is payable for review procedures processed by the Federal Office for Migration and for repeated asylum applications.<sup>8</sup> The Office may, moreover, require advance payment of the estimated procedural fees.<sup>9</sup> If an application for reconsideration is submitted shortly before execution of the expulsion order, and the expulsion has already been planned, it is the practice of the Office to skip the request for advance payment of fees and process the application as quickly as possible. The same practice is adopted in certain other circumstances, such as when the application is submitted at an airport or while the applicant is in detention. In other cases, if the applicant is not indigent, or if their application appears doomed to failure, advance payment of the fees is usually requested, for either an application for reconsideration or a new asylum application. Normally the inquiries to determine if fees must be paid in advance are carried out as soon as the application is submitted.

7.3 The indigence requirement is met when the person concerned cannot afford to pay the procedural fee without using money needed for their personal needs or their family's needs. Case law considers that a case has no chance of success if the prospects of winning it are considerably less than losing it and if success cannot be seen as a serious possibility, to the extent that a reasonable, well-off litigant would not embark on the procedure on account of the costs they would be liable to incur. On the other hand, legal aid may be granted when the chances of success or failure are about the same, or when the first are only slightly lower than the latter. The official decision is based on a brief pre-evaluation of the evidence

<sup>6</sup> The State party refers to the Committee's general comment No. 1, para. 5.

<sup>7</sup> Federal Constitution of the Swiss Confederation of 18 April 1999, art. 29, para. 3 (Cst., RS 101).

<sup>8</sup> Federal Asylum Act, art. 17b, para. 1.

<sup>9</sup> Federal Asylum Act, art. 17b, para. 3.

in the case file; the applicant's allegations must be verified. In asylum proceedings, most refusals to exempt a person from payment of fees are motivated by the fact that the application appears doomed to failure from the outset. In practice, when the Federal Office for Migration sends a letter to the applicant requesting advance payment of fees, it sets a deadline of 15 days from the date the letter is posted; this deadline is not extended, even if the applicant is late in collecting the letter from the post office. If the advance requested — which corresponds to the expected cost of the proceedings — is not paid, the Federal Office for Migration does not take up the application. The applicant has 30 days to appeal against this decision to the Federal Administrative Court.

7.4 In the specific case of the complainant, the State party points out that no fees were charged for the first decision of the Federal Office for Migration, issued on 13 June 2002. Nor did the Office charge a fee for informing the complainant that her application for reconsideration, filed on 15 August 2005, provided no grounds for it to reconsider its decision of 13 June 2002. The Office did, however, charge a fee of 600 Swiss francs for processing the complainant's application for review dated 9 April 2008, which it rejected by decision of 4 June 2008.

7.5 On 12 July 2002, the complainant appealed against the aforementioned decision of the Federal Office for Migration to the Swiss Asylum Appeals Commission (which was later replaced by the Federal Administrative Court). By registered letter of 24 July 2002, the Commission gave her until 8 August 2002 to make the advance payment of the procedural fee of 600 Swiss francs, telling her, as is standard practice, that, as a rule, payment by instalments was not allowed, and that her appeal would be declared inadmissible if the advance was not paid in time. A letter from the complainant dated 6 August 2002 on her precarious financial situation was interpreted by the Commission as a request to waive payment of the procedural fee, which it rejected by decision of 23 October 2002, after examining the decision of the Federal Office for Migration and the complainant's arguments and concluding that, on the face of it, her appeal appeared to be doomed to failure. The Commission gave the complainant another three days to pay the procedural fee. When she failed to do so, the Commission declared her appeal inadmissible by decision of 14 November 2002. A fee of a further 200 Swiss francs was charged for this decision. On 2 December 2002 she contacted the Commission to say that she had not received any notification that the decision of 23 October was ready for collection at the post office, and that she had that very day made the advance payment requested. She also requested, by letter of 12 December 2002, an extension of the deadline. By decision of 23 December 2002, the Asylum Appeals Commission declared this request inadmissible, on the grounds that the deadline extension was set at 10 days from the cessation of the impediment that led to the failure to observe the deadline. A fee of 200 Swiss francs was charged for this decision.

7.6 On 16 January 2003, the complainant, through a lawyer, asked the Asylum Appeals Commission to reconsider this decision, on the grounds that she had not received the decisions of 23 October 2002 and 14 November 2002 in time to prepare an appeal. By letter of 3 February 2003, the Commission sent the complainant's representative various documents attesting to the fact that the decision of 14 November 2002 had been mailed to her on 15 November 2002 and that it had been received at the post office before 25 November 2002. In a letter dated 6 February 2003, the complainant's representative refused to comment on this point. On 27 February 2003, the Asylum Appeals Commission consequently declared the complainant's second request for an extension of the deadline to be inadmissible, and a fee of 400 Swiss francs was charged for this decision.

7.7 On 12 September 2005, the complainant appealed against the decision of the Federal Office for Migration of 19 August 2005, in relation to her first application for review. By interlocutory decision of 1 November 2005, the Asylum Appeals Commission gave her

until 16 November 2005 to pay advance fees of 1,200 Swiss francs. It considered that, to begin with, the articles in *Le Courrier d'Afrique* filed by the complainant were forgeries with no evidentiary value whatsoever, and that they clearly did not reflect her statements on the reasons for her asylum application. The Commission also noted that the complainant had produced no new information to support her asylum application. Accordingly, on 1 November 2005, after a prima facie review of the appeal, the Commission concluded that the appeal had no chance of success. As the advance payment of fees had been made on 11 and 23 November 2005, the appeal was heard by the Federal Administrative Court, which rejected it on 31 March 2008, insofar as it was admissible.

7.8 On 7 June 2008, the complainant challenged the decision of the Federal Office for Migration dated 4 June 2008, on her second application for review. Taking the view that this was an appeal, the Office forwarded it to the Federal Administrative Court, the body competent to deal with it. As it referred to the complainant's precarious financial situation, the Court took it as a request to be exempted from paying the procedural fees, which it rejected by decision of 19 June 2008: in any case, the appeal appeared doomed to fail as the application contained no new information and the documents attached thereto did not demonstrate that the complainant was engaged in any political activity in exile. Moreover, the Court noted that the health problems she referred to did not pose an obstacle to her removal, as she could receive psychiatric treatment in Kinshasa. The Court gave the complainant until 4 July 2008 to pay the advance fees, estimated at 1,200 Swiss francs, and informed her that if she did not pay, her appeal would be declared inadmissible and the deadline would not be extended any further, even if she reapplied for legal aid. On 30 June 2008, the complainant applied again to be exempted from payment of the advance fees, claiming she was on welfare. The Federal Administrative Court therefore declared the appeal to be inadmissible by decision of 18 July 2008. A fee of 200 Swiss francs was charged for this decision.

7.9 As for the rules on representation of asylum-seekers by a court-appointed lawyer, on which the Committee had also requested information, the State party refers it to the relevant legal provisions<sup>10</sup> and points out that the complainant was represented at her first application for review. The lawyer concerned had not asked for his fees to be covered by legal aid. The complainant was not represented at her second application for reconsideration. It is clear from her statement of 9 April 2008, as well as from the rest of her case file, that the complainant did not at any point ask for a lawyer to be assigned to her. Moreover, the State party points out that, according to the various authorities called upon to rule on the matter, the complainant's applications for reconsideration clearly had no chance of success. Nor did the case present any legal problems, since the only issue was whether the complainant had refugee status within the meaning of the Federal Asylum Act, and whether there were any reasons for objecting to her removal. Her first application for reconsideration, for which she was represented by a lawyer, was rejected, as were her subsequent applications. It is likely that the outcome of the proceedings would have been the same if the complainant had been represented by a lawyer, and she has not suffered any harm as a result of not being represented during the proceedings before the Federal Office for Migration.

7.10 As for the proceedings before the Federal Administrative Court, the complainant was represented by a lawyer for her second request for an extension of the deadline, addressed to the Asylum Appeals Commission on 16 January 2003. Just as she never asked for a lawyer to be assigned to her for the proceedings before the Federal Office for Migration, she never asked for one in the proceedings before the Federal Administrative

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<sup>10</sup> See para. 7.1 above.

Court. As she was denied legal aid because her appeals had no chance of success, it is likely that any request for a court-appointed lawyer would have been rejected too. The case file shows that the complainant had a good understanding of the criteria applied in asylum proceedings and that she was capable of formulating her reasons clearly and intelligibly, and that she had even included references to case law in her applications for reconsideration. Consequently, the complainant did not need the assistance of a court-appointed lawyer to adequately assert her rights, and she has not suffered any harm as a result of not being represented in all the proceedings.

7.11 In conclusion, the State party reiterates that article 3 of the Convention cannot be construed as requiring exemption from procedural fees and the assignment of a court-appointed lawyer in every case. In view of all the circumstances in the case at hand, it believes that the fact that no exemption was granted from the obligation to pay procedural fees and that no lawyer was appointed by the court does not constitute a violation of article 3 of the Convention. Moreover, the State party maintains all its earlier conclusions on the merits of the case.

#### **Additional submission by the complainant**

8.1 On 29 August 2011, the complainant informed the Committee that her application for a residence permit on grounds of “serious personal hardship” had been rejected by the Federal Administrative Court in a decision of 8 August 2011.<sup>11</sup> The Court found, among other things, that the complainant had not demonstrated that she was integrated in Switzerland socially, professionally and family-wise, and that she would be able to successfully reintegrate in the Democratic Republic of the Congo, a country she had left when she was already 27 years old. The complainant points out that she has been living in Switzerland for 10 years and that she has not been able to work because her legal status in Switzerland does not allow her to do so. She repeats that there would be a serious risk to her health and safety if she was deported to the Democratic Republic of the Congo, because of the tragic human rights situation there, especially for women, because of her opposition to the current regime and her activities within APARECO, and because of the worrying state of her health. Moreover, she no longer has any family in the Democratic Republic of the Congo and would no longer feel integrated there.

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

9.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee further notes that domestic remedies have been exhausted and that the State party does not contest admissibility. Accordingly, the Committee finds the complaint admissible and proceeds to its consideration on the merits.

9.2 With regard to the procedural aspects of the State party’s law and practice, particularly the issue of advance payment of fees and representation by a lawyer when submitting an appeal in an asylum case, the Committee has taken note of the information supplied by the State party. It notes that the complainant was represented by a lawyer for part of the proceedings and that at no point did she submit a request for legal aid and representation by a lawyer. With regard to the advance payment of procedural fees, the Committee notes that when the Asylum Appeals Commission declared her appeal

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<sup>11</sup> See above, para. 6.1 et seq.

inadmissible for non-payment of such fees on 14 November 2002, the complainant was able to appeal against this decision to the Federal Administrative Court on 16 January 2003, and that she was represented by a lawyer on this occasion. The Committee notes that she did not raise any grievance in respect of the appeals procedure to the various instances and that nothing in the case file suggests that the complainant has suffered any harm as a result of the lack of legal representation or the denial of legal aid.

9.3 The issue before the Committee is whether the 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 a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

9.4 In assessing whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned to the Democratic Republic of the Congo, the Committee must take account of all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such an analysis is to determine whether the complainant runs a personal risk of being subjected to torture in the country to which she would be returned. 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 grounds for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

9.5 The Committee acknowledges the dire human rights situation in the Democratic Republic of the Congo, especially for women,<sup>12</sup> and recalls its jurisprudence on the issue.<sup>13</sup> The Committee observes that the State party has taken this factor into account in evaluating the risk the complainant might face if returned to her country. It concludes, moreover, on the basis of information on the prevailing situation in Kinshasa,<sup>14</sup> where the complainant would be returned, that the weight to be attached to this factor is not sufficient to prevent her removal. The Committee therefore proceeds to an analysis of the personal risk facing the complainant with respect to article 3 of the Convention.

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<sup>12</sup> See, inter alia, the second joint report of seven United Nations experts on the situation in the Democratic Republic of the Congo (A/HRC/13/63, 8 March 2010), as well as the report of the United Nations High Commissioner for Human Rights on the situation of human rights and the activities of her Office in the Democratic Republic of the Congo (A/HRC/13/64, 28 January 2010).

<sup>13</sup> Communication No. 322/2007, *Njamba and Balikosa v. Sweden*, decision adopted on 14 May 2010, para. 9.5.

<sup>14</sup> The Committee has requested the views of the Office of the United Nations High Commissioner for Refugees (UNHCR) regarding the return of asylum-seekers to the Democratic Republic of the Congo, including Kinshasa. In the guidelines that it made available to the Committee on 11 November 2009, UNHCR makes a distinction between the situations of asylum-seekers as a function of their region of origin: UNHCR considers that any asylum-seeker who is a resident of North Kivu, South Kivu, Maniema or Orientale provinces (Ituri, Bas-Uélé and Haut-Uélé districts) needs international protection, given the massive human rights violations currently taking place in these conflict zones. UNHCR is of the view that requests for asylum from residents of the other areas of the Democratic Republic of the Congo (including Kinshasa) should be considered on a case-by-case basis in order to determine their acceptability under the 1951 Convention relating to the Status of Refugees. UNHCR nevertheless invites States to take into account any pertinent humanitarian considerations, as well as their obligations under human rights conventions.

9.6 The Committee recalls its general comment on the implementation of article 3, that “the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable”.<sup>15</sup> The complainant contends that she faces a personal and present risk of torture in the Democratic Republic of the Congo because, at her fiancé’s behest, she spread a political message in her neighbourhood against the regime in power and that, as a result, she received threats from the security services, which have been looking for her since her departure from the family home and, subsequently, from her country in 2001. The Committee notes that the State party challenges the credibility of the complainant’s statements, particularly her claim that she spread a political message that she had received from her fiancé. It noted that the means reportedly deployed, both by the rebels to spread this message and by the Congolese authorities to find an isolated opponent such as the complainant, were disproportionate and therefore implausible. The complainant has not put forward a persuasive argument that would allow the Committee to call into question the State party’s conclusions in this respect. In view of all these circumstances, the Committee is not convinced that, 11 years after the event described in the Democratic Republic of the Congo, the complainant, who was never politically active in that country, is a wanted person. As for her political activities in Switzerland, and despite her late claim to be active in the Alliance des Patriotes pour la Refondation du Congo,<sup>16</sup> she does not specify how long she has been involved in this movement or demonstrate convincingly how such activities would expose her to a specific risk of violation of article 3 if she were to be returned to the Democratic Republic of the Congo.

9.7 With regard to the complainant’s claim that she was raped at Kinshasa airport as she was about to leave the Democratic Republic of the Congo, which she mentioned in her second letter to the Committee,<sup>17</sup> the Committee cannot grant much weight to the allegation, as she raised it only summarily to the Committee, merely mentioning that she had been raped by two officials who had helped her to flee, without further substantiating the allegation.

9.8 With regard to the complainant’s claims regarding her current state of health, the Committee has noted the difficulties that she is experiencing. It has also noted the State party’s contention that the complainant could consult a doctor in the Democratic Republic of the Congo. She has not challenged this argument, and the Committee has itself found reports which, while they demonstrate the uncertainties and high cost of health care in the Democratic Republic of the Congo, show that facilities do exist in Kinshasa for the treatment of depression.<sup>18</sup> The Committee further observes that, even if the state of health of the complainant were to deteriorate after her deportation, this would not, of itself, amount to cruel, inhuman or degrading treatment attributable to the State party within the meaning of article 16 of the Convention.<sup>19</sup>

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<sup>15</sup> See footnote 9 above (para. 6.4).

<sup>16</sup> This claim appears only in the complainant’s fourth submission to the Committee (dated 26 March 2009).

<sup>17</sup> Dated 24 July 2008.

<sup>18</sup> See, for example, the country file for the Democratic Republic of the Congo in the “Country of Return Information” project (November 2008), para. 3.6.1, and the report by the Organisation suisse d’aide aux réfugiés (OSAR) entitled “DRC: Psychiatrische Versorgung”, A. Geiser, 10 June 2009, p. 2.

<sup>19</sup> See communication No. 186/2001, *K.K. v. Switzerland*, Views of 11 November 2003, para. 6.8; and communication No. 83/1997, *G.R.B. v. Sweden*, Views of 15 May 1998, para. 6.7.

9.9 The Committee recalls its jurisprudence, according to which it is normally for the complainant to present an arguable case.<sup>20</sup> On the basis of all the information submitted to it, including information on the situation in Kinshasa, the Committee is of the view that the complainant has not provided sufficient evidence to allow it to consider that her return to the Democratic Republic of the Congo would put her at a real, present and personal risk of being subjected to torture, as required under article 3 of the Convention.

10. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, therefore concludes that the return of the complainant to the Democratic Republic of the Congo would not constitute a breach of article 3 of the Convention.

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

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<sup>20</sup> See communication No. 298/2006, *C.A.R.M. et al. v. Canada*, Views adopted on 18 May 2007, para. 8.10; communication No. 256/2004, *M.Z. v. Sweden*, Views adopted on 12 May 2006, para. 9.3; communication No. 214/2002, *M.A.K. v. Germany*, Views adopted on 12 May 2004, para. 13.5; and communication No. 150/1999, *S.L. v. Sweden*, Views adopted on 11 May 2001, para. 6.3.