



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

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Committee against Torture

Communication No. 382/2009

**Decision adopted by the Committee at its forty-eighth session, 7 May–1
June 2012**

<i>Submitted by:</i>	M.D.T. (unrepresented)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	11 April 2009 (initial submission)
<i>Date of decision:</i>	14 May 2012
<i>Subject matter:</i>	Deportation of the complainant from Switzerland to the Democratic Republic of 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>Articles of the Convention:</i>	3, paragraph 1

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-eighth session)

concerning

Communication No. 382/2009

Submitted by: M.D.T. (unrepresented)
Alleged victim: The complainant
State party: Switzerland
Date of complaint: 11 April 2009 (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 May 2012,

Having concluded its consideration of complaint No. 382/2009, submitted by M.D.T. 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 is M.D.T., a national of the Democratic Republic of the Congo, born on 29 June 1977, who faces deportation from Switzerland to his country of origin. He claims that his deportation would constitute a violation by Switzerland of article 3, paragraph 1, of the Convention. The complainant requested that immediate measures of protection be provided to stay his removal to the country of origin. He 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 29 April 2009. 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 his complaint was being considered. The State party acceded to this request on 1 May 2009.

The facts as presented by the complainant

2.1 In his initial submission of 11 April 2009, the complainant claims that his deportation from Switzerland to his country of origin – the Democratic Republic of the Congo – would constitute a violation by Switzerland of article 3, paragraph 1, of the Convention as he would face a risk of torture if returned.

2.2 The complainant joined the principal opposition party, the Movement for the Liberation of the Congo (MLC), in 2005 and became its active member shortly after. He participated in several MLC activities seeking a restoration of the rule of law in the country. In the neighbourhood, he was well-known for his active promotion of MLC activities. During the presidential electoral campaign in 2006, Kinshasa witnessed very violent clashes between the followers of the outgoing President Laurent Kabila and his principal political rival Jean-Pierre Bemba. Jean-Pierre Bemba gained an electoral victory in Kinshasa as well as the Provinces of Equateur and Bas-Congo. The complainant is from Bas-Congo by origin.

2.3 On 22 and 23 March 2007, the new conflict arose in Kinshasa, which was regarded as an act of retaliation by the security forces of the newly elected president Joseph Kabila against the followers of Jean-Pierre Bemba. The complainant states that he was stopped on 22 March 2007 by the presidential guard in the Gombe neighbourhood of Kinshasa due to his active political-religious views as he could be easily distinguished as a participant to the demonstrations by his cap bearing the image of Bemba's MLC. He was subjected to torture, including using rifle butts, slaps, hits, insults and threats. The complainant allegedly lost consciousness and was reportedly left bleeding on a side-walk in a sand-box. Two of the complainant's teeth were reportedly broken during the incident.

2.4 Following the incident, the complainant went into hiding in Kimbanseke, a suburb of Kinshasa, in order to escape persecution by the police. When in hiding, the complainant learned that he was being sought and that an arrest warrant against him had been issued on 6 April 2007 by the National Intelligence Agency. Given the threats against his family and relatives and fearing for his life and security, in particular due to the incidents of torture on 22 March 2007, the complainant decided to flee the Democratic Republic of the Congo.

2.5 Upon arrival in Switzerland on 26 December 2007, the complainant submitted a request for asylum. The Federal Office for Migration in its decision of 14 January 2009 rejected the complainant's request as unsubstantiated and ordered him to leave Switzerland before 11 March 2009. The complainant appealed against the decision to the Federal Administrative Tribunal, which on 16 March 2009 dismissed the appeal and ordered an immediate execution of the Federal Office for Migration order for the forced return of the complainant. However, the Office extended the time limit for the complainant's departure from Switzerland to 16 April 2009.

The complaint

3.1 The complainant claims that his deportation from Switzerland to the Democratic Republic of the Congo, which has signed an agreement with Switzerland on the readmission of refused asylum seekers, would constitute a violation of article 3, paragraph 1, of the Convention as there are substantial grounds for believing that he would be in danger of being subjected to torture if returned.

3.2 Referring in general to information from unspecified human rights organizations, the complainant alleges that many of those who were arrested during the events of 22 and 23 March 2007, including the members of MLC, followers of Jean-Pierre Bemba and those coming from the Provinces of Equator and Bas-Congo, have been subjected to secret detention. The complainant also claims that no amnesty has been granted to those arrested many of whom have been killed or have disappeared.

3.3 The complainant claims, without providing any details, that his family members have continued to suffer persecution by the security agents as a reprisal for not disclosing his whereabouts. To further demonstrate the substantial grounds for believing that he would be at risk of being subjected to torture if returned, the complainant draws to the Committee's attention the medical certificate concerning his treatment of two broken teeth

as well as the arrest warrant issued against him by the National Intelligence Agency of the country.

State party's observations on the merits

4.1 On 27 October 2009, the State party submitted its observations on the merits of the communication, without any comments on its admissibility.

4.2 The State party recalls that the complainant left the Democratic Republic of the Congo on 25 December 2007 on board a plane to Rome, via Paris. He arrived in Switzerland by car. The State party argues that the complainant based his allegations of risk of torture solely on the existence of the arrest warrant against him and a medical certificate for dental treatment. Those facts have been duly considered in the decisions of the Federal Office for Migration of 14 January 2009 and of the Federal Administrative Tribunal of 16 March 2009. In addition, the State party notes that the complainant failed to explain the incoherence and contradictions of his allegations as identified by the competent Swiss authorities. Since the complainant submitted to the Committee only the rulings of the decisions, without their justification, together with the arrest warrant, the State party considers the arguments of the complainant to be misleading.

4.3 Referring to the Committee's jurisprudence¹ and its general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22,² the State party asserts that the complainant has failed to demonstrate that he faces a personal, real and foreseeable risk of torture if returned to the Democratic Republic of the Congo. According to the State party, the existence of a risk of torture must be evaluated in light of the evidence which cannot be limited to mere allegations or suspicions. While noting the human rights situation in the Democratic Republic of the Congo, the State party contends that this situation is not in itself a sufficient basis for concluding that the complainant would be at risk of torture if returned.

4.4 Referring to the decisions by the relevant asylum authorities in the complainant's case, the State party states that the complainant used to live in Kinshasa and not in the East which has been the least stable part of the country. According to the State party, the political situation in the country has become less strained since the departure of Jean-Pierre Bemba in 2007.

4.5 In addition, the complainant's allegations concerning his supposed beating by the security forces during the demonstrations of 22 March 2007 for wearing a cap bearing the image of Bemba's MLC lack credibility, in particular due to contradictions and inconsistencies in the complainant's assertions. Moreover, the State party does not consider the medical certificate of the complainant's dental treatment relevant as it does not describe the sources of dental problems. Importantly, it does not suggest in any respect that the complainant would be at risk of torture if returned to the country of origin. Finally, the State party notes that the complainant has not submitted any further evidence to prove that he had been subjected to ill-treatment in the past.

4.6 In the State party's view, the complainant's allegations of his political activity were not credible as he could not establish that he had been politically active. Moreover, the complainant could not provide any details about his involvement or membership in MLC.

¹The State party also refers to the communications No. 94/1997, *K.N. v. Switzerland*, Views adopted on 19 May 1998, paras. 10.2 and 10.5, and No. 100/1997, *J.U.A. v. Switzerland*, Views adopted on 10 November 1998, paras. 6.3 and 6.5.

²*Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40 (A/53/44)*, annex IX, para. 6.

In addition, he conceded that he had not exercised any political activities since his arrival in Switzerland.

4.7 Both the Federal Office for Migration and the Federal Administrative Tribunal considered that the allegations of the complainant were not reliable and thus could not support a conclusion that the complainant would be at risk of torture. Furthermore, both authorities have considered the arrest warrant against the complainant to be fake, with some parts of the document being incomprehensible and erroneous while other parts were missing. The State party also pointed out that the arrest warrant has been produced in colour, which is not a regular practice, and stressed that the procurement of false documents is fairly easy in the country.

4.8 In the view of the Federal Office for Migration and the Federal Administrative Tribunal, the complainant's request for asylum lacked substance while many of his statements in support of the request were perceived as contradictory and inconsistent.

4.9 The State party also states that the complainant's accounts of the events following the incident of his beating have not been credible. The allegations that the complainant was left in a sand-box by the security forces which reportedly issued later on an arrest warrant against him are implausible in the view of the State party. The complainant's claims of being persecuted by the security forces were not considered credible either since the complainant stayed working in Kinshasa for several months following the incident despite the fact that he allegedly knew about the arrest warrant of 6 April 2007. Moreover, the State party notes that the complainant conceded during his interview of 23 January 2008 that with the exception of one demonstration in Matadi in June 2006, he has not been politically active. He subsequently changed his opinion affirming that he was an important member of MLC who was responsible for awareness-raising. The Federal Administrative Tribunal dismissed as unsubstantiated the complainant's appeal of 17 February 2009, alleging inter alia a misunderstanding of the question during the first interview on 23 January 2008, since the questions had been clear and simple. It should be also noted that the complainant did not present any convincing arguments or supporting documents with respect to his political activities for MLC. Nor did he show any awareness of the structure and leaders of the party.

4.10 According to the State party, the complainant has failed to clarify numerous inconsistencies revealed during the asylum procedure both before the national authorities and the Committee. The Government has thus aligned itself with the findings of the decisions by the Federal Office for Migration and the Federal Administrative Tribunal due to absence of credibility of the complainant's allegations.

4.11 The State party concludes that nothing indicates that serious grounds exist to believe that the complainant would face a serious and personal risk of torture if returned to the Democratic Republic of the Congo. His allegations and the evidence do not adequately justify the finding that the complainant would face a real, concrete and personal risk of torture prohibited under article 1 of the Convention if returned. In the State party's view, should the Committee decide to consider this communication admissible, it is requested to conclude that the facts and allegations before it do not present a violation of the obligations of Switzerland under article 3 of the Convention.

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

5.1 In his comments dated 28 May 2010, the complainant recalls that his complaint has been based on a concrete and personal risk of torture and other ill-treatment if returned. He points out that he was arrested, tortured and ill-treated by the security service of the Democratic Republic of the Congo due to his political opinions, allegations of which have been supported by the arrest warrant and the medical certificate. At the same time, he contests the need to submit new elements and makes a reference to the claims raised during

the asylum procedure. He maintains that the purpose of his communication has not been to review the decisions of the Swiss authorities but to seek justice. He also opposes the allegations of contradictions and inconsistencies by the State party, which are not substantial in his view. He makes a reference to the traumatizing events he went through, including the departure from his country and the questioning by unknown officials of a foreign country. He further stated that it was not easy to provide an identical account of events during the first and second hearings by the asylum authorities. Disputing the State party's consideration of the medical certificate as unreliable, the complainant suggests that the Committee contact the dentist to verify the reasons for treatment.

5.2 In addition, the complainant contests the State party's consideration of the arrest warrant as forgery and considers such claims to be inaccurate and misleading. While conceding the practice of manipulation with the official documents in the Democratic Republic of the Congo, he opposes the State party's challenge to the authenticity of the arrest warrant. He suggests that the best way to refute any doubts would be to seek further clarifications from the security authorities of the Democratic Republic of the Congo through the Swiss Embassy.

5.3 The complainant recalls that he was a vigilant member of MLC and played an active role during the electoral campaign in 2006. According to the complainant, the documents proving his affiliation to MLC were seized during his arrest as explained to the Swiss authorities in the context of asylum procedure. As regards the structure of MLC, the complainant argues that he answered all the questions to the best of his knowledge and draws attention to the records of the asylum procedure hearings. Concerning the inconsistencies surrounding the events subsequent to his beating, the complainant states that he regained consciousness in Kimbanseke without knowing the circumstances of how he got there. For the rest of the queries, he refers to the records of the hearings.

5.4 Finally, the complainant contends that the above explanations and circumstances of his case fall within the scope of the general comment No. 1 of the Committee and reasserts that he is afraid of returning to the country as the majority of persons arrested in connection with the events of 22 and 23 March 2007 have remained in detention without conviction or due process.

Issues and proceedings before the Committee

6. Before considering any claim 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.

7.1 The issue before the Committee is whether the removal of the complainant to the Democratic Republic of the Congo would violate the State party's obligation under article 3 of the Convention not to expel or 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.

7.2 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 analysis is to determine whether the complainant runs a personal

risk of being subjected to torture in the country to which he would be returned. The existence of a pattern of gross, flagrant or mass violations of human rights in a country does not in itself constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture upon returning 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 particular person might not be in danger of being subjected to torture.

7.3 The Committee takes note of the prevalence of the precarious human rights situation in the Democratic Republic of the Congo, including the escalation of human rights violations during the presidential elections of 2006. The Committee observes that the State party has taken this factor into account when evaluating the existence of a personal risk the complainant might face if returned to his country, including its consideration of the situation as less strained since the departure of Jean-Pierre Bemba from the country in 2007.

7.4 The Committee recalls its general comment No. 1 on the implementation of article 3, which states 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”, but must be personal and present.³ In this regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal.⁴ The Committee recalls that under the terms of its general comment No. 1, it gives considerable weight to findings of fact that are made by organs of the State party concerned, while at the same time it is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.⁵

7.5 The complainant claims that he faces a personal and present risk of torture in the Democratic Republic of the Congo because of his membership in MLC and active opposition to the candidature of Mr. Kabila in the 2006 presidential elections and that, as a result, he was arrested and beaten by the security forces which have since been looking for him. The complainant based his allegations of a risk of torture on the arrest warrant reportedly issued against him and a medical certificate of dental treatment provided as proof for his allegations of ill-treatment. While the complainant requested an extension of a deadline for his response to the State party’s observations on the merits with a justification of the need to seek further evidence from his contacts in the Democratic Republic of the Congo, he did not submit any new documents that would help to substantiate his allegations.

7.6 The Committee further observes that the State party has challenged the authenticity of the arrest warrant the complainant has produced, which it has considered as forgery. The State party has also questioned the relevance of the medical certificate for dental treatment adduced by the complainant. The complainant has maintained before the Committee that the arrest warrant and medical certificate are authentic and relevant. However, the complainant has not put forward sufficient evidence of the authenticity of the arrest warrant, nor has he clarified why the dental certificate does not show the cause of his broken teeth. In this connection, the Committee notes that according to the report on the

³ See, *inter alia*, communications No. 94/1997, *K.N. v. Switzerland*, Views adopted on 19 May 1998, paras. 10.2 and 10.5, and No. 100/1997, *J.U.A. v. Switzerland*, Views adopted on 10 November 1998, paras. 6.3 and 6.5.

⁴ See, *inter alia*, communications No. 258/2004, *Dadar v. Canada*, Decision adopted on 23 November 2005, and No. 226/2003, *T.A. v. Sweden*, Decision adopted on 6 May 2005.

⁵ See, *inter alia*, Communication No. 356/2008, *N.S. v. Switzerland*, Decision adopted on 6 May 2010.

complainant's hearing by the Federal Office for Migration, the complainant stated that the acquisition of a copy of the arrest warrant had cost a lot of money, which led the State party to its conclusion that the document was forged against a bribe. 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.

7.7 With regard to the risk of torture that the complainant claims he faces because of the fact that he was a vigilant member of MLC and played an active role during the presidential electoral campaign in 2006, the Committee observes the State party's challenges to the substantiation and credibility of the complainant's claims. It also notes the complainant's statement that the documents proving his affiliation to MLC were seized during his arrest by the security forces. The Committee notes the lack of complainant's capacity to provide further details about the structure and management of MLC. It further notes that the complainant did not participate in the political activities of MLC in Switzerland. The complainant has not provided any explanation of the reasons for which he has not been involved in the activities of MLC after the departure from his country. The Committee concludes that the complainant has not shown to have been involved in political activities to such an extent to convincingly demonstrate how this would expose him to a specific risk if he were to be returned to the Democratic Republic of the Congo.

7.8 In view of all the information before it, the Committee considers that the material before it does not show that the complainant who may have been active in the context of 2006 presidential elections is still a wanted person or that he would be at risk of torture or ill-treatment. Consequently, the Committee is not able to conclude that the complainant's return to the Democratic Republic of the Congo would expose him to a real, specific and personal risk of torture within the meaning of article 3 of the Convention. The Committee is concerned at the many reports of human rights violations, including the use of torture in the Democratic Republic of the Congo, but recalls that for the purposes of article 3 of the Convention the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he or she is returned. In the light of the foregoing, the Committee deems that such a risk has not been established.

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

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