



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

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Committee against Torture

Forty-sixth session

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Decision

Communication No. 369/2008

<i>Submitted by:</i>	E.C.B.
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	14 December 2008 (initial submission)
<i>Date of decision:</i>	26 May 2011
<i>Subject matter:</i>	Risk of complainant's deportation from Switzerland to the Republic of the Congo or the Republic of Côte d'Ivoire
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Risk of torture following return to country of origin or to Côte d'Ivoire
<i>Articles of the Covenant:</i>	3

[Annex]

* Made public by decision of the Committee against Torture.

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-sixth session)

concerning

Communication No. 369/2008

<i>Submitted by:</i>	E.C.B.
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	14 December 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 26 May 2011,

Having concluded its consideration of complaint No. 369/2008, submitted by E.C.B. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

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

Adopts the following:

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

1.1 The complainant is E.C.B. of the Republic of the Congo, born on 10 January 1977. He claims that his return to the Republic of the Congo would constitute a violation by Switzerland of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is not represented by counsel. On 5 December 2009, the complainant designated Alfred Ngoyi wa Mwanza as his representative.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the communication to the State party on 30 December 2008.

1.3 On 21 January 2009, based on new information obtained by the complainant, the Rapporteur on new complaints and interim measures requested the State party not to deport the complainant to the Republic of the Congo or to the Republic of Côte d'Ivoire while his complaint was being considered by the Committee. He indicated that this request could be reviewed in the light of information and comments received from the State party. On 23 January 2009, the State party informed the Committee that no steps to deport the complainant would be taken while his communication was being considered by the Committee.

The facts as submitted by the complainant

2.1 The complainant is from Nkayi, a town in the south of the Republic of the Congo. He is an activist and an active member of the Pan-African Union for Social Democracy (UPADS) and has always played an important role in the establishment of democracy in his country of origin. He was president of the UPADS youth movement.

2.2 From 1997–1998, during the clash between Government troops and the militia of the future President Sassou-Nguesso, the complainant became a target of the Sassou-Nguesso militia because of his political opinions and because of the role he played against the attempt by Sassou-Nguesso's forces to take power. On 15 January 1999, the complainant was able to take refuge in Côte d'Ivoire, from where he continued his political activities. He joined the Cercle d'études pour le retour de la démocratie au Congo (Discussion group for a return to democracy in the Congo) (CERDEC). The complainant's elder brother, G.D.B., collaborates closely with the founder of CERDEC and lives in exile in Russia.

2.3 Following a recommendation by leading members of CERDEC, the complainant decided not to disclose the real reasons why he had fled in his asylum application to Côte d'Ivoire, reckoning that Sassou-Nguesso was on good terms with the president of Côte d'Ivoire and would thus be able to pursue CERDEC activists.

2.4 During his stay in Côte d'Ivoire, the complainant established an association known as Jeunesse pour la paix, l'entreprise et l'unité (Youth for peace, enterprise and unity) (JE-PEU). The association enjoyed some success and a number of young people joined, mainly supporters of Alassane Ouattara from the north. Supporters of Laurent Gbagbo thought the association likely to encourage the emergence of nationals from the north and, consequently, the complainant was threatened by some Young Patriots. Fearing for his life and safety, he left Côte d'Ivoire to join his brother in Russia. In view of the racism and attacks to which he was subjected there, the complainant left Russia.

2.5 On 26 December 2003, the complainant applied for asylum in Switzerland. On 25 August 2004, the Federal Office for Migration rejected his asylum application. On 24 November 2008, the Federal Administrative Tribunal rejected his appeal and set 5 January 2009 as the deadline for his departure from Switzerland.

2.6 During his stay in Switzerland, the complainant continued to run his JE-PEU association, which is considered close to CERDEC.

2.7 On 10 January 2009, the complainant provided new evidence, including an attestation from the president of CERDEC and some of his elder brother's identity documents.

The complaint

3.1 The complainant claims that although an amnesty has been signed allowing all opponents to return to the Republic of the Congo, scores are settled against people from the south who are considered to be real opponents of the current regime. He also contends that his brother G.D.B.'s activities, which are very hostile to the Sassou-Nguesso regime, would put him at substantial and serious risk. Several persons close to his family have been persecuted by the current regime for their ties with his brother and have been subjected to torture and other cruel and humiliating punishment.

3.2 He also contends that as a member of an opposition party he risks being interrogated, pressured or subjected to other measures to make him disclose the true nature of his activities abroad. Moreover, the fact that he established and directed the pro-democracy association JE-PEU after he fled would place him at risk, in particular as both his association and his party are opposed to the current ideologies of the ruling power in the Congo. In support, the complainant cites the case of Mr. G.T.M., who was arrested in

December 2008 for being an active member of CERDEC, contending that this is evidence that he would be subjected to torture if he was returned to the Republic of the Congo.

3.3 With regard to a return to Côte d'Ivoire, his most recent country of residence, the complainant contends that the Young Patriots considered him to be a supporter of Mr. Ouattara; given that the rule of law did not prevail, he would be in real danger without being assured of any effective protection. Moreover, in view of the cooperation between African countries, the complainant claims that he runs the risk of being handed over to the Congolese authorities, principally for having concealed from the Ivorian authorities the real reasons why he fled the Congo in 1999.

State party's observations on admissibility and on the merits

4.1 On 30 June 2009, the State party presented its observations on the admissibility and merits of the complaint. The State party maintains that in his communication of 14 December 2008, the complainant simply reiterates the reasons that he cited to the Swiss authorities and refers to the evidence produced in support of his asylum application. The State party contends that the additional documents submitted to the Committee by the complainant on 10 January 2009 contain no pertinent evidence or argument that would call into question the Federal Administrative Tribunal's judgement of 24 November 2008.

4.2 The State party recalls the Committee's case law and its general comment No. 1, which provide that the complainant must establish that he would be in personal, real and serious danger of being subjected to torture if deported to his country of origin. With regard to evidence of systematic, flagrant or gross human rights violations in the State concerned, the State party refers to the Federal Administrative Tribunal's judgement of 24 November 2008 which held that after the civil wars had ended and a peace agreement had been signed between the Government of Sassou-Nguesso and the opposition militias, the situation in the country has calmed down considerably and a generalized state of civil war no longer prevails. Furthermore, the complainant is not from Pool, which is the most unstable region in the country, but from Nkayi. The State party also underscores that the complainant has at no time claimed to have been tortured or ill-treated in the past.

4.3 With regard to the complainant's alleged political activities in the Congo, the State party maintains that the Swiss authorities found that the complainant's statement lacked substance and that he had made a number of contradictory and inconsistent statements. At his first hearing in December 2003, the complainant claimed to have been the coordinator of the UPADS youth movement in Nkayi, whereas at his hearing on 10 February 2004 maintained that he had been president of the UPADS youth movement. Moreover, the complainant claimed to have left Nkayi in November 1998 because of the attacks by Sassou-Nguesso's militias during that month, whereas the attacks had in fact begun only in December 1998.¹ Furthermore, the claim dated 20 January 1996 that the Secretary-General of UPADS was an activist does not indicate when the complainant joined the party or that he was president or coordinator of a section. In addition, the State party emphasizes that the complainant did not provide any details of his alleged political activities or the dangers that they entailed. Moreover, the Federal Administrative Tribunal has found that members of UPADS, one of the largest legal opposition parties in the Congo, are not at present subject to reprisals.² After the peace agreement, the National Assembly passed an amnesty law in

¹ United States Committee for Refugees and Immigrants, *U.S. Committee for Refugees World Refugee Survey 1999 – Congo-Brazzaville*, 1 January 1999; Amnesty International, *Republic of Congo: An old generation of leaders in new carnage*, 25 March 1999.

² *Amnesty International Report 2008, Congo, (Republic of)*; Human Rights Watch, *Congo (Brazzaville)*; United States Department of State, *2007 Country Reports on Human Rights Practices –*

August 2003 for the militias that had clashed with Sassou-Nguesso's government troops. In August 2008, UPADS held a party meeting in Brazzaville without any report of trouble or reprisals. Consequently, the State party maintains that the complainant has no objective grounds to expect any form of persecution because of his alleged membership of UPADS.³

4.4 With regard to the complainant's claim that he worked for the CERDEC platform after he fled his home town, the State party emphasizes that it is difficult to imagine that the complainant would have immediately been able to work for an organization which, according to him, had just been established in Paris in December 1998. Moreover, the complainant spoke only in vague terms about his activities for CERDEC and mentioned only at the second hearing that his activities for CERDEC could place him in danger in the Congo. In his additional submission of 10 January 2009 to the Committee, the complainant says that a high-ranking member of CERDEC was arrested in December 2008. However, as he has not established his involvement or reputation as a political opponent, he cannot infer any personal risk from this fact. With regard to the identity documents of the complainant's alleged brother, G.D.B., the State party maintains that the family name of the alleged brother, a political opponent, is different from the complainant's family name and does not match that of the president of CERDEC Russia, G.D.B. The alleged brother's handwritten attestation is not sufficient to establish a family relationship.

4.5 With regard to the allegations of persecution as a result of his activities for JE-PEU, the association that the complainant claims to have established in Côte d'Ivoire in 2000, the State party maintains that the signature on the memorandum of association is different from the complainant's signature on the records of the hearings and that his name does not appear on the receipt issued by the Ministry of Interior. Moreover, the complainant's account of the activities that he organized for CERDEC and the resultant threats are vague and evidently lack substance. Furthermore, the complainant claims to have been threatened by groups of Young Patriots, not by agents of the State. The State party therefore contends that it appears highly improbable that the complainant would be subjected to treatment which, in accordance with article 1, paragraph 1, of the Convention, could be ascribed to persons acting in an official capacity. In addition, according to investigations carried out by the Swiss embassy in Abidjan, the complainant never mentioned his involvement in JE-PEU or difficulties with Young Patriots. The State party maintains that the complainant has not plausibly established that he was a member of UPADS or that he was engaged in activities for CERDEC or JE-PEU; apart from that, the activities in which he claims to have engaged for them could not currently sustain a well-founded fear of persecution in the Congo or the Côte d'Ivoire.

4.6 The fact that UNHCR in Côte d'Ivoire recognized the complainant as a refugee is not evidence that he was individually persecuted in the Congo. According to the Swiss embassy in Abidjan, which the complainant does not challenge, he was recognized as a refugee because of the general situation in the Congo.

4.7 The State party underscores that the complainant has not substantiated his claim to be still engaged in political activities for his association, JE-PEU, in Switzerland, and there is no indication that such activities have been brought to the attention of the Congolese authorities or that they could lead to persecution by the authorities. The State party therefore submits that, all considered, nothing would indicate that there are substantial

Congo, Republic of the, 11 March 2008.

³ See European Court of Human Rights decision of 28 June 2008 on the inadmissibility of application No. 25087/06, *M. v. United Kingdom*, in which the Court finds that the current situation in the Congo would not give a former employee and supporter of former President Lissouba cause to fear inhumane treatment if he were returned there.

grounds to fear that the complainant would be at real and personal risk of torture in the event of his return to the Congo.

Complainant's comments on the State party's submission

5.1 On 21 August 2009, the complainant made his comments on the State party's observations. He rejects the State party's observation that the Congo is not in a generalized situation of violence and war and asserts that there are mass human rights violations. He emphasizes that the amnesty agreements of 2003 concerned only former opponents of the current regime who had changed position; the UPADS members who had been able to meet unhindered and participate in the elections were corrupt and did not belong to the real UPADS, which advocated democracy and justice. To illustrate the acts of torture and ill-treatment against journalists, human rights defenders and certain members of political parties in exile and those close to them, he cites the example of the journalist B.O. and the recent statement by the president of CERDEC decrying the re-election of Sassou-Nguesso and asserting that Sassou-Nguesso follows Stalinist and dictatorial practices.

5.2 On the subject of personal, substantial and serious risk, he repeats that his efforts to establish the rule of law and democracy are known to the Congolese authorities and have made him an enemy of the Government. He emphasizes that the risks of torture are serious because of his political activity before and after his arrival in Switzerland and because of his relationship to the president of CERDEC Russia-CIS branch, G.D.B.⁴ The complainant confirms that he did not claim to have been tortured prior to his departure but fears persecution upon return.

5.3 On 10 April 2009, the complainant established CERDEC in Switzerland. Moreover, he continues his activities through JE-PEU, which has legal personality in Switzerland. He maintains that his political activities are known to the Congolese authorities, represented in Switzerland by the embassy and by secret agents among the Congolese population in Switzerland.

5.4 With regard to the factual contradictions mentioned by the State party, the complainant clarifies that the words president or coordinator of an association are often used interchangeably, and that that does not detract from the credibility of his political activities in the Congo. With regard to the statement about his political activism, he emphasizes that it could do no more than prove his membership and commitment as a member of the political party.

5.5 With regard to the European Court of Human Rights decision of 28 June 2008 (see paragraph 4.3), the complainant states that the person concerned was a former employee and ardent supporter of the former President Lissouba, whereas the complainant had been politically active within UPADS and, abroad, in CERDEC and JE-PEU.

5.6 Moreover, the complainant contends that his return to Côte d'Ivoire would place him in danger in view of his continuing activities in JE-PEU in Switzerland.

Additional comments by the complainant

6. On 5 December 2009, the complainant, through his new counsel Alfred Ngoyi wa Mwanza,⁵ asked the Committee to suspend consideration of his communication in order to

⁴ A letter from his brother explains that they are born of the same father and mother and that brothers are not required to have the same name. He offers to undergo a blood test in order to establish that he is the complainant's brother.

⁵ A power of attorney was attached to the letter of 5 December 2009.

allow the Zurich cantonal authorities to continue with proceedings for granting a humanitarian permit.

Additional observations by the State party

7. On 6 January 2010, the State party observed that the competent authorities of the Canton of Zurich could not decide on applications for permits in hardship cases (humanitarian permits) while other proceedings were under way, before the Committee or elsewhere. It pointed out that the grant of a hardship permit is subject to the approval by the federal authorities and is governed by criteria entirely distinct from the conditions stipulated in article 3 of the Convention.

Further comments by the author

8.1 In a letter dated 7 January 2010, after being notified of the State party's position, the complainant asked the Committee to cancel the suspension and to take a decision on his complaint.

8.2 On 13 June 2010, the complainant submitted a second confirmation from his elder brother, who is an active member of CERDEC. His brother underscores that the complainant would face persecution within the meaning of article 3 of the Convention given his former and current political activities as president of CERDEC Switzerland and the family relationship between them.

8.3 In a letter dated 25 August 2010, the complainant asked the Committee to consider his complaint at its next session. He explains that the cantonal authorities of Zurich were disposed to grant him a humanitarian permit as a hardship case, provided that his case before the Committee was settled. In addition, he emphasizes that his current status is precarious.

Deliberations of the Committee

Consideration of admissibility

9. Before considering any claim contained in a communication, 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. In addition, the Committee notes that all domestic remedies have been exhausted and that the State party has not challenged the admissibility of the communication. Accordingly, the Committee finds the communication admissible and proceeds to its consideration on the merits.

Consideration of the merits

10.1 In accordance with article 22, paragraph 4, of the Convention, the Committee has considered the present communication in the light of all information made available to it by the parties concerned.

10.2 The issue before the Committee is whether the removal of the complainant to the Republic of the Congo or the Republic of Côte d'Ivoire would violate the State party's obligation under article 3 of the Convention not to expel or return (*refouler*) a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

10.3 In assessing the risk of torture, the Committee takes into account all relevant considerations, in accordance with article 3, paragraph 2, including the existence of a

consistent pattern of gross, flagrant or mass violations of human rights. The aim of such assessment, however, is to determine whether the individual concerned would personally risk torture in the country to which he or she would be returned. It follows that the existence in a country of a consistent pattern of gross, flagrant or mass violations of human rights does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture on his or her return to that country. Additional grounds must be adduced to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person may not be subjected to torture in his or her specific situation.

10.4 The Committee recalls its general comment No. 1 on implementation of article 3 of the Convention in the context of article 22,⁶ which states that the Committee must assess whether there are substantial grounds for believing that the complainant would be in danger of torture if returned to the country in question. The risk of torture need not be highly probable, but it must be personal and present. In this regard, the Committee has established in previous decisions that the risk of torture must be “foreseeable, real and personal”.⁷

10.5 As to the burden of proof, the Committee again recalls its general comment No. 1 and its case law, which provides that the burden is generally on the complainant to present an arguable case and that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. In its general comment, the Committee also emphasized that it would give considerable weight to findings of fact made by organs of the State party concerned but reserved the power to freely assess the facts based upon the full set of circumstances in every case.⁸

10.6 In assessing the risk of torture in the case under consideration, the Committee takes note of the complainant’s claim that he was president of the Pan-African Union for Social Democracy (UPADS) youth movement and that he was forced to leave the country because of his political opinion. It also notes that in Côte d’Ivoire, the complainant continued his political activities, joined the Cercle d’études pour le retour de la démocratie au Congo (Discussion group for a return to democracy in the Congo) (CERDEC) and created an association known as Jeunesse pour la paix, l’entreprise et l’unité (Youth for peace, enterprise and unity) (JE-PEU). The Committee notes the complainant’s assertion that his relationship to the president of CERDEC Russia-CIS, a prominent person known to be very hostile to the Sassou-Nguesso Government, would mean that he was likely to face persecution. Lastly, it notes that the complainant is said to have been targeted by the Young Patriots in Côte d’Ivoire as a supporter of Ouattara in the north, and that returning to Côte d’Ivoire would thus be likely to expose him to real danger without protection from the State.

10.7 The Committee further notes the State party’s argument that, apart from the identity documents of his alleged brother and an article reporting the arrest in December 2008 of a high-ranking member of CERDEC, the complainant has not submitted any new evidence to the Committee, and all other documents have been considered in depth by the domestic courts. The Committee notes that the State party believes that the peace agreements and the amnesty laws adopted by the Congo have given rise to a new situation that was not one of generalized civil war and, further, notes that the complainant does not come from Pool but

⁶ A/53/44, annex IX.

⁷ Communication No. 203/2002, *A.R. v. the Netherlands*, Views adopted on 14 November 2003, para. 7.3; communication No. 285/2006, *A.A. et al. v. Switzerland*, Views adopted on 10 November 2008, para. 7.6.

⁸ See communication No. 195/2002, *Brada v. France*, decision adopted on 17 May 2005, para. 13.2.

from Nkayi. The Committee notes that the State party has pointed to some contradictions and inconsistencies in the complainant's allegations about his political activity in UPADS and that, according to independent sources, members of UPADS, one of the largest opposition parties in the Congo, are not subject to reprisals. The Committee notes that the complainant's claims about his activities in CERDEC are very vague, and that the statement of his alleged brother and president of CERDEC Russia-CIS does not establish a family relationship. The State party has argued that the complainant was recognized as a refugee in Côte d'Ivoire because of the general situation in the Congo. The Committee notes the State party's argument that the complainant alleged to have been threatened by non-State agents in Côte d'Ivoire and, furthermore, had not credibly shown that he had been involved in activities for CERDEC or JE-PEU. In addition, according to the State party, the alleged activities do not give justifiable grounds for fearing persecution. Lastly, the Committee notes the State party's assertion that the complainant has not substantiated his political activities in Switzerland and that nothing indicates that such activities have been brought to the attention of the Congolese authorities.

10.8 The Committee notes the author's argument that, despite the peace agreements and the amnesty, there were mass human rights violations and the real UPADS, which promoted the values of democracy and justice, was still in danger. Furthermore, it notes that according to the complainant, his political activities in the Congo and in Switzerland and his relationship to G.D.B., the president of CERDEC Russia-CIS, are known to the Congolese authorities. Lastly, it notes the complainant's assertion that his activities in JE-PEU would place him in danger were he to return to Côte d'Ivoire.

10.9 Having taken into account the arguments submitted by the parties, the Committee finds that the complainant has not provided evidence of a real, present and foreseeable risk. The Committee points out that the complainant contends that his political activities in the Congo, in Côte d'Ivoire and in Switzerland, in addition to his relationship to the president of CERDEC Russia-CIS, would place him in danger of persecution, without however providing substantial evidence of his active role in a political party or his political activities that would justify his fear of persecution.

10.10 With regard to his fear of persecution in the event of his return to the Republic of the Congo, the Committee observes that the complainant submitted an attestation that he was an active member of UPADS that did not mention his role as president of the UPADS youth movement. It also notes that according to independent sources, UPADS members are not subject to reprisals in the Congo. The Committee observes that apart from a newspaper article concerning the arrest of the former Minister of Finance and member of CERDEC, the complainant has not sufficiently substantiated his allegation that the Congolese authorities persecuted and tortured all CERDEC members. Moreover, even if the complainant was in fact an active member of UPADS and of CERDEC, he has not clearly established that his activities are sufficiently important to arouse the interest of the authorities if he were returned to the Congo. Furthermore, and regardless of the credibility of his relationship to the president of CERDEC Russia-CIS, the Committee observes that the only evidence in the file comes from his alleged brother, who states that the complainant would face persecution if he were to return to the Congo. Although the complainant asserts that other members of his family have had problems because of their relationship to G.D.B., the Committee has no information about or evidence of these problems and no objective indication that the complainant's possible relationship to G.D.B. would place him at risk of torture.

10.11 As the State party does not specify the country to which the complainant would be returned, the Committee must also determine whether the complainant risks being subjected to torture if he is returned to the Republic of Côte d'Ivoire. By way of substantiating his personal risk, the complainant asserts that as the founder of JE-PEU, he left Côte d'Ivoire

fearing for his life and safety because of problems with the Young Patriots, supporters of Laurent Gbagbo. The Committee observes that the information obtained in Abidjan by the State party did not mention his membership of JE-PEU or difficulties encountered with the Young Patriots. The Committee notes that, during its deliberations, Mr. Ouattara, whom the complainant supported, was elected President. It also observes that the complainant has not established a personal, present and serious risk of torture upon his return to Côte d'Ivoire and that his allegations are merely theories.

10.12 Lastly, the Committee observes that on 10 April 2009, the complainant established CERDEC in Switzerland and registered JE-PEU in the register of associations. Nevertheless, the complainant has not established that his activities in Switzerland were sufficiently important to arouse the interest of the Congolese or Ivorian authorities at present.

10.13 Taking into account all the information made available to it, the Committee considers that the complainant has failed to provide sufficient evidence to demonstrate that he would face a real and foreseeable risk of being subjected to torture if deported to the Republic of the Congo or the Republic of Côte d'Ivoire.

11. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, considers that the deportation of the complainant to the Republic of the Congo or the Republic of Côte d'Ivoire 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.]
