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Committee against Torture**Decision adopted by the Committee under article 22 of the Convention, concerning Communication No. 1052/2021^{*, **}**

<i>Submitted by:</i>	H. U. (represented by counsel, Marjaana Laine)
<i>Alleged victim(s):</i>	The complainant
<i>State party:</i>	Finland
<i>Date of complaint:</i>	27 January 2021 (initial submission)
<i>Date of adoption of decision:</i>	17 November 2023
<i>Subject matter:</i>	Deportation to the Democratic Republic of the Congo of a person claiming to be at risk of torture
<i>Substantive issue(s):</i>	Non-refoulement
<i>Procedural issue(s):</i>	Admissibility; level of substantiation of claims
<i>Article(s) of the Convention:</i>	3

1.1 The complainant is H. U., a national of the Democratic Republic of the Congo (DRC). She claims that the State party would violate her rights under article 3 of the Convention if it removed her to the DRC. The State party has made the declaration pursuant to article 22 (1) of the Convention, effective from 30 August 1989. The complainant is represented by counsel.

1.2 On 31 May 2021, pursuant to rule 114 (1) of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party not to expel the complainant while the communication was being considered by the Committee. In its submission to the Committee on 4 June 2021 the State party informed that it followed the request.

1.3 On 19 August 2021, the Committee, acting through its Rapporteur on new complaints and interim measures, decided to examine the admissibility of the communication together with its merits.

Facts as submitted by the complainant

2.1 The complainant is a Christian woman, citizen of the DRC,. In 2014, she started to work for an NGO focusing on investigation of the State's responsibility for the disappearances of "kulunas" (violent organized gangs). The investigation included the analysis of links between the State's response to the "kulunas", the increasing disappearances

* Adopted by the Committee at its seventy-eighth session (30 October–24 November 2023).

** The following members of the Committee participated in the examination of the communication: Mr. Todd Buchwald, Mr. Claude Heller, Mr. Erdogan Iscan, Mr. Huawen Liu, Ms. Naoko Maeda, Ms. Ilvija Puce, Ms. Ana Racu, Mr. Bakhtiyar Tuzmukhamedov.

of young men, and the Maluku mass grave which was discovered in March 2015. The complainant was personally motivated to carry out this investigation because both her sibling and boyfriend were arrested during protests against President Kabila in January 2015 and have never been found.

2.2 In February 2016, the complainant started to receive threatening phone calls and text messages from unknown numbers in which she was told not to present her reports to the ministry and to “act like other people” or she would be killed. On 20 February 2016, the complainant was leaving her home when she was stopped by three men who forced her into a car where a fourth man was waiting. When the complainant asked the men to identify themselves, one of them showed that he was hiding a firearm under his shirt. The complainant was taken to an unknown location.

2.3 The complainant was taken to a dark room with four men, where she was beaten and threatened. One of the men mentioned that the complainant had been defending the oppressed but would now need to defend herself. The leader of this group of men ordered the others to tie the complainant up and raped her. The complainant was later taken to a cell with eight women and two men. She noted that at least one woman was also a human rights activist and that among the prisoners there were young people interested in politics. The complainant was kept in the cell for five or six days, without adequate amounts of food or access to medical care or sanitation. Three Swahili-speaking guards took turns to beat and rape her and the other women in separate cells. The two men who were in the cell upon her arrival were tortured and eventually killed. The complainant assumes that the group that was holding her captive was linked to the authorities, as they spoke Swahili and used many nicknames and codes in their communication.

2.4 The complainant managed to escape the detention with the help of one of the guards who, at the moment when he was about to rape her, realized that they had the same family name. According to the complainant, the guard decided not to rape his “sister”, but to help her escape. The complainant was returned to the cell, and the guard told her that it is important to know who she is dealing with and that it is very difficult to leave the place she was detained in alive. The guard later returned and led her out of the building, into a car, in which another man was sitting in the driver’s seat. The complainant was requested to lie down on the floor and was covered with a carpet. Subsequently, she was brought to a big, mansion-like building, and was introduced to a human rights activist who advised her to leave the country. The guard that rescued her told her that she was in good hands. The complainant never found out the real identity of this guard, apart from the nickname “B52” that the other men used during her detention.

2.5 On 27 February 2016, the complainant was asked by the activist to accompany him and two other men to the N’djili airport. The complainant voiced her concern about the risks of leaving the country through an airport. The activist arranged a meeting between the complainant and two men, who were dressed as immigration officers. The two men had a conversation with the activist in English, which the complainant did not understand. On 28 February 2016, at around 3:00 am, the complainant was given a French passport and was told to present herself as a French woman from Ivory Coast. She later boarded an aircraft with the passport without a problem and noticed that the activist was on the same airplane. The complainant was told by the activist that the flight was heading to Moscow, Russia, but that the intention was to eventually arrange a trip for her to Canada. The complainant did not feel safe in Russia, travelled from Moscow to Saint Petersburg, and subsequently left for Finland by train.

2.6 The complainant applied for asylum in Finland on 19 March 2016. The Finnish Immigration Service (FIS) interviewed her on two occasions in April 2016. The interviews were relatively short, lasting less than two hours the first time and just a little longer the second time. In May 2017, the FIS arranged new interviews for the complainant, again on two different occasions. During these four interviews, the complainant explained her experiences in detail. During the interviews organized in 2016, the complainant was crying while explaining her experiences. She declared several times that she was suffering from both psychological and physical symptoms. She had a male lawyer appointed *ex officio*, who did not show up during any of her interviews. In May 2016, a lawyer sent a short email to correct some sentences in one of the declarations. In 2017, another male attorney from a public legal

aid office was appointed to handle her case, but it is unclear to the complainant what he did in the case as they spoke only once by phone.

2.7 On 28 June 2017, the FIS rejected the complainant's asylum application and ordered her return to the DRC. The Service accepted the complainant's statements regarding her nationality and place of origin. It noted that it could not find information about the NGO in the available country of origin information but did not exclude the existence of the organization in view of the limited nature of the available sources. The FIS considered that the complainant's statements regarding the NGO she has worked for about two years had been brief, superficial and imprecise, that the complainant did not present any documentary evidence of her employment with the NGO nor information about how organisation works or about her real involvement in the investigation or the organization as such. The Immigration Service did not accept as a fact that the complainant had worked for the NGO. Though it noted that the complainant's account on the threatening messages she had received were coherent, it did not accept this information as a fact, given its previous conclusion about the complainant's work for the NGO. Regarding the complainant's capture and rape, the FIS considered that her statements lacked subjectivity, and were mechanical and repetitive, despite requests for clarification. The FIS did not accept as a fact that the complainant was apprehended, assaulted and raped in the manner that she described. Regarding the complainant's account of her release, the Immigration Service reached a similar conclusion, based on the supposed vagueness of the information provided and the lack of details. It also stated that it was implausible that an unknown person that initially planned to rape her, would have refrained from the act and subsequently released her from prison and helped her escape the country, just because of the fact that they shared a last name. It determined that the complainant's account of her release and the journey arranged for her was not credible. In conclusion, the FIS did not accept the complainant's accounts of her work and the threats related to it, nor the contention that she was captured and raped and determined that the complainant would not face any risk from the authorities if she would be returned to the DRC.

2.8 On 14 January 2019, the Administrative Court of Eastern Finland rejected her appeal and a request for an oral hearing. The complainant was represented by an attorney and provided documents regarding the existence of the NGO as well as a health certificate attesting a severe depressive disorder and post-traumatic stress disorder, dissociative auditory hallucinations, insomnia, anxiety, suicidal thoughts, and somatic symptoms. The Court considered the complainant's statements to be broad and repetitive, including due to the manner in which she presented information about the NGO and her work therein. The Court questioned the documents related to the NGO and did not accept that the complainant worked for it. It also questioned the complainant's account regarding the threats she had received as well as the allegations related to her capture and rape. The Court concluded that the complainant's statements about the threat she faces in her country of origin were implausible in their entirety and stated that she could not be considered as being of interest to the authorities upon her return. The complainant requested leave to appeal and an interim measure to halt the enforcement of the deportation decision to the Supreme Administrative Court. The complainant referred to her medical condition, invoked the fact that the traumatic experiences affected her capacity to explain her case in detail in an asylum interview and referred to the principle of the benefit of the doubt that she should be rewarded. The Court rejected the appeal on 11 April 2019.

2.9 The complainant notes that during these different proceedings of her first asylum application, several procedural shortcomings impacted the decisions of the competent authorities. She argues that the Immigration Service, in spite of the information provided by her, did not ask for evidence related to her health at any stage of the process and failed to recognize her vulnerability as a victim of severe sexual violence and torture and the impact that this could have on her ability to provide a detailed and precise account of her case. Moreover, the complainant was not accompanied by legal counsel at any of the asylum interviews, which were arranged in a way that did not support her ability to provide a clear overview of the reasons for her request for asylum. The complainant highlights that the interviews were organized shortly after her arrival, were rather short, and the interpreter was male. Moreover, the Immigration Service had lost the recording of the first interviews held in 2016, the recording of the interview in 2017 was incomplete and demonstrates that the interpreter did not diligently comply with his task. The complainant stresses that even though

her application had been rejected partly due to credibility matters and although she had mentioned that she was traumatised and suffered from PTSD, the request for an oral hearing was rejected.

2.10 On 3 June 2019, the complainant filed a second asylum application, based on the same grounds, and providing more evidence related to her medical condition, which supported the claim that she had been tortured and traumatised. The FIS did not examine her new application in detail, arguing that it was related to old matters and linked to issues it had already decided on, adding that the complainant had not presented new facts or grounds that could change the assessment that was previously made. It repeated that the complainant cannot be considered as a person of interest to the authorities. On 19 June 2019, the FIS denied the request for an oral hearing and interview and rejected the complainant's application. It ordered the complainant's return to the DRC and imposed a re-entry ban for a period of two years.

2.11 The complainant filed an appeal to the Helsinki Administrative Court, with the representation of the Finnish Refugee Advice Centre and provided additional evidence on the violence she experienced and its effects on her, which was not examined by the Immigration Service. She supplemented the evidence with a medical report from 13 September 2019 and requested an oral hearing, given that her previous application was rejected on credibility grounds. The complainant repeated that traumatic experiences can affect a person's ability to speak about their experiences in different ways and that trauma may also affect a person's memory and ability to recollect the order of events. She complained that even though she had invoked her arrest, torture and health issues at every hearing since the beginning of her first asylum case, the authorities did not ask her to produce a doctor's statement or other evidence concerning her health at any stage of the proceedings. The complainant referred to the Committee's decisions *X and Z v. Finland*¹ and *E.K.W v. Finland*² to argue the importance of medical evidence. She also submitted that she did not have a lawyer during the interviews and that the interpreter was male.

2.12 On 17 April 2020, the Helsinki Administrative Court did not grant the request for an oral hearing and rejected the appeal. It noted that the authorities had considered that a medical examination was not necessary to assess the complainant's application for international protection and added that the assessment by the Immigration Service in June 2019 of the complainant's health was based on the earlier decision of the Administrative Court of Eastern Finland, which ruled that the complainant's state of health may have affected her statements, but considered nonetheless that her statements contained implausible elements. The documentary evidence submitted to the FIS in the new application was not deemed to trigger a different assessment. The Court also declared that the complainant had had the chance to clarify her case in both her asylum interview and during the appeal proceedings, noting that she had a legal counsel during her first asylum proceedings. It stated that it had assessed the complainant's need for international protection based on her statements, including the clarifications submitted in the appeal. The new medical statements submitted showed that the complainant's diagnoses have remained the same. Therefore, the Court did not find it necessary to return the case to the Immigration Service for further review, adding that the fact that applicants state in their asylum interview that they have been subjected to torture or rights violations in their home country does not mean that the authorities have a duty to arrange a medical examination *ex officio*, unless it deems it necessary to assess their application for international protection. It therefore concluded that the complainant's new request for asylum did not contain new grounds that would have an effect on the decision concerning her remaining in Finland.

2.13 The complainant requested leave to appeal from the Supreme Administrative Court and interim measures to stop her deportation. She argued that she is a torture victim whose asylum application has been rejected on credibility matters, ignoring the medical statements she had presented although her vulnerable situation and special needs had been presented in the early stages of the process. The complainant contended that this had left her without the procedural safeguards intended for torture and sexual violence survivors. She added that even

¹ *X and Z v. Finland* (CAT/C/52/D/483/2011 – CAT/C/85/D/485/2011).

² *E.K.W. v. Finland* (CAT/C/54/D/490/2012).

though she had a male lawyer assigned to her, she had been alone in the interviews and did not receive help from her lawyer to submit medical evidence before the first appeal. On 8 May 2020, the Supreme Administrative Court rejected the request for interim measures. However, on 30 June 2020, it issued an interlocutory decision to stop the deportation. Eventually, on 30 November 2020, the Supreme Administrative Court rejected the application for leave to appeal and the order for return became enforceable.

2.14 The complainant argues that the case should be declared admissible as the matter is not being and has not been examined by another procedure of international investigation or settlement and given the fact that she has exhausted all domestic remedies.

2.15 Regarding the human rights situation in DRC, the complainant refers to a report by the UN High Commissioner for Refugees issued in the context of the Universal Periodic Review of the DRC³ according to which the justice system in the DRC suffers considerably from a lack of independence, is faced with problems regarding impartiality and separation of powers and has inadequate human and financial resources to ensure its effective functioning, which deprives victims of avenues to seek justice and obtain remedies for violations. The complainant equally refers to a report of the US State Department of 2017⁴, which notes that the most significant human rights problems in the DRC included unlawful killings; torture and other cruel, inhuman, and degrading treatment and punishment; and sexual and gender-based violence, including rape and abductions.

Complaint

3.1 The complainant contends that her forcible return to the DRC would constitute a violation of article 3 of the Convention, as there are substantial grounds to believe that there is a real, personal and imminent risk that she would be subjected to torture again upon her return to the country.

3.2 The complainant notes that her applications for international protection have been rejected based solely on credibility issues, even though her accounts have been constant, coherent and plausible throughout the process. The complainant adds that as a young, female lawyer and human rights activist, she falls into a category of people that are targeted in the DRC. She iterates that she is a traumatised victim of torture, which is supported by medical documents, which could have affected the way in which she presented the information and recounted her experiences.

3.3 The complainant claims that her statements are further substantiated by the relevant country of origin information, which demonstrates that there is a challenging human rights situation in the DRC, where violence against women, in particular rape and gang rape committed by men with guns and civilians, remains a serious concern, including in areas not affected by armed conflict. The complainant refers to jurisprudence of the Committee⁵, which stated that the Committee was not able to identify a particular area in DRC that could be considered safe for the complainant and stated that violence against women, including rape by national armed groups, security and defence forces is taking place in conflict-affected and rural areas, but is also occurring in other parts of the country.

3.4 The complainant contends that the Finnish authorities have failed to consider and acknowledge her personal situation in the light of the country-of-origin information when assessing her risk. She adds that the assessment was flawed and argues that the burden of proof was determined in an erroneous manner, as it should shift from the applicant to the State when the applicant has previously suffered serious harm of torture prior to the departure from the country of origin.⁶ The complainant stresses that the human rights situation in the DRC has not improved, and human rights violations are continuing. She points out that civil society members are one of the targeted groups and adds that especially women suffer from

³ UN High Commissioner for Refugees (UNHCR), UNHCR Submission on Democratic Republic of the Congo: 33rd UPR Session, May 2019, available at: <https://www.refworld.org/docid/5ccabdd87.html>.

⁴ United States Department of State, 2016 Country reports on Human Rights Practices – Democratic Republic of the Congo, 3 March 2017.

⁵ *E.K.W. v. Finland* (CAT/C/54/D/490/2012); *Balikosa v. Sweden* (CAT/C/44/D/322/2007).

⁶ The Complainant refers to EU Qualification Directive 2004/83/EC, 29 April 2004, article 4 (4).

sexual violence. The complainant notes that according to the Committee's General Comment N. 1., the risk of torture must be assessed on grounds that go beyond mere theory or suspicion, but the risk does not have to meet the test of being highly probable.⁷

3.5 Concluding, the complainant highlights that, considering the torture and detention she was subjected to in her country of origin, the objective medical evidence and the relevant country of origin information that supports her account, there are substantial grounds to believe that she would be subjected to torture and inhuman treatment if returned to the DRC.

State party's observations on admissibility

4.1 On 4 June 2021, the State party presented its comments on the admissibility of the communication. It informs the Committee that it has followed up on the Interim Measure request issued by the Committee, and refrained from returning the author to the DRC while her complaint is under consideration by the Committee. The State party requested the Committee to examine the question of admissibility separately from the merits.

4.2 The State party lists the different proceedings the author submitted in the country. Regarding the identification of the author's particularly vulnerable position, it notes that when recording the author's first application, the police did not tick the data box "asylum seeker in a vulnerable position" in their case management system for immigration matters, while in the author's subsequent asylum application in 2019, it did tick the relevant box and recorded in the report that the author had been subjected to torture, rape or other serious mental, physical or sexual violence. The State party notes that the current instructions of the Immigration Service advise that the interviewers and interpreters in interviews with female asylum seekers must, in principle, be female if the interview deals with themes of gender-based violence and that the interview may be interrupted, if necessary, if a male interpreter has been arranged for a female asylum seeker without any prior knowledge of indications of vulnerability. It adds that in the current practice, a whole day interview is in principle arranged for asylum seekers with some indications of vulnerability, to ensure that there is enough time for inquiring into the matter and half-day interviews are avoided for vulnerable asylum seekers to ensure that possibly traumatised asylum seekers do not have to attend an interview many times. The State party notes that it is obvious from the current, more precise instruction that an asylum interview should have been arranged for inquiring appropriately into indications of the author's particular vulnerability. It adds that as the information provided by the author indicates that she might no longer have any safety network in her home country, there is an additional need to examine this circumstance in more detail, which is another factor that would have supported the holding of an interview.

4.3 The State party notes that the core of the present case is the personal danger of the complainant to be subjected to torture if she were to be returned to her home country. It contends that the complainant has failed to present well-founded arguments to substantiate that she would be in personal danger of being subjected to torture if she would be returned to her home country. It adds that the author has the burden of proof and adds that the account she has presented during the asylum interviews was brief, superficial and imprecise. The State party adds that there was no information in the sources of country information about the DRC about the organisation the complainant allegedly was working for. It notes that even though she worked in the organization for two years and is an almost qualified lawyer by profession, the complainant could not give a more profound account of her work, did not provide any documentary evidence, and remained unspecific in her account about the investigation she was reportedly engaged in. The State party points out that the complainant's statements about her arrest, rape and release, remained unspecific, and did not manage to convince the Immigration Services nor the appellate Court of the subjectivity of her account. The State party notes that therefore, the relevant authorities considered that the account of the alleged violence against the complainant and the reasons for it, i.e., her activity in the organisation, was implausible. The State party states that there was no clear information

⁷ General Comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22.

whether the persons who reportedly arrested and assaulted her were public authorities or private persons.

4.4 The State party notes that the author did not present evidence of her health status until she filed her subsequent application for international protection and adds that one of the medical statements she presented only came to the attention of the authorities when she appealed to the Administrative Court against the decision on her subsequent application. The State party notes that the complainant had an opportunity to provide evidence of her health status as early as in her first application for international protection. It recognises that victims of torture often have difficulties in describing their experiences in detail, but it considers that the alleged deficiencies in the asylum process do not suffice to explain the superficiality and un-specificity of the author's account. The State party notes that in her submission to the Committee, the complainant does not make her account given in the asylum interview more profound or precise and does not present any new facts. It argues that the communication does not contain any well-founded argument to substantiate the alleged danger threatening the author in her home country, nor the reasons for this danger or its person-specific nature.

4.5 The State party emphasises that the domestic authorities are best placed to judge the credibility of the author and her account. It reiterates that the Committee is not a judicial or appellate body, and that it must give considerable weight to the findings of fact that are made by organs of the State party concerned. The State party notes that it is not the role of the Committee to act as a fourth instance to domestic courts, and it considers that the complainant is attempting to use the Committee as an appellate body to have the factual circumstances of her asylum claim reassessed. The State party concludes that the communication is manifestly ill-founded within the meaning of Rule 113 (b) of the Committee's rules of procedure and should be declared inadmissible pursuant to article 22 (2) of the Convention. The State party adds that it is of the view that the facts of the communication before the Committee do not reveal any breach of article 3 of the Convention.

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

5.1 On 13 September 2021, the complainant submitted comments on the State party's observations on the admissibility. The complainant contends that she has sufficiently detailed the facts and the basis of her claims under article 3 of the Convention and argues that the claims are sufficiently substantiated for the purpose of admissibility. She adds that the State party fails to present any reasons for claiming that the communication would be ill-founded, and notes that the State party's observations reaffirm that the Finnish authorities have failed to identify her particularly vulnerable position and did not consider her individual situation and credibility in a rigorous and proper manner. The complainant notes that even when the authorities recorded her vulnerable position in her asylum application on 3 June 2019, the subsequent proceedings did not take this into account in an appropriate way.

5.2 The complainant argues that the State party's observations confirm that the asylum process has included several shortcomings, which have led to the fact that her case was not fairly and thoroughly examined. She notes that the first asylum interview lasted less than four hours and was spread over two days, while the subsequent interview by the Immigration Service was also spread over two days and lasted less than six hours. The complainant points out that in all her interviews, the interpreter was male. She highlights that the State party observes in its observations that it is obvious from the current, more precise national instructions that an asylum interview should have been arranged for inquiring appropriately into indications of the author's particular vulnerability, including because she currently no longer has any safety network in her home country. However, the Immigration Service did not arrange a new interview when assessing her second application, and the Administrative Court did not arrange an oral hearing.

5.3 The complainant states that the State party initially recognises that there were shortcomings in the proceeding, but later contends that she has failed to present well-founded arguments to substantiate that she would be in a personal danger of being subjected to torture if she were to be returned to her home country. She notes that this is self-contradictory and does not acknowledge that the shortcomings impeded a fair and thorough examination of her case. The complainant adds that she presented information and documents about the NGO in the first appeal stage and highlights that she has provided coherent statements about her

activities and past persecution from the beginning of the procedure. She adds that complete accuracy is seldom to be expected from victims of torture and that the inconsistencies in her presentation of the facts do not raise doubts about the general veracity of her claims, especially since it has been demonstrated that she suffers from post-traumatic stress disorder. The complainant notes that she submitted statements about her health situation during the first appeal stage, even if the Immigration Service had not asked the complainant for a doctor's statement or other evidence concerning her health at any stage of the asylum process. She recalls that the Finnish Aliens Act and asylum procedures directive of the European Union have stated that when applicants have been identified as applicants in need of special procedural guarantees, the authorities have to ensure that the applicants are provided with adequate support, including when such a need becomes apparent at a later stage of the procedure.⁸ The complainant further recalls the problems with the recordings of her interviews and with the performance of the interpreter.

5.4 The complainant refers to the State party's argument that the domestic authorities are best placed to judge her credibility and notes that while the Committee gives considerable weight to the findings of fact that are made by organs of the State party, it is not bound by such finding and instead has the power to carry out a free assessment of the facts based upon the full set of circumstance in every case. She reiterates that the State party fails to fully acknowledge the several shortcomings in the national procedure and especially that the authorities failed to recognise her vulnerability as a victim of severe sexual violence and torture, which affected the entirety of the investigation in her case. The complainant reiterates that the country-of-origin information clearly supports her claims and the contention that she has a real risk of being subjected again to torture in the DRC. She concludes that her deportation to her country of origin would constitute a violation of article 3 of the Convention.

State party's observations on the merits of the communication

6.1 On 4 October 2021, the State party submitted its observations on the merits of the communication. Regarding the first asylum proceeding, the State party restates the facts as presented by the author, and specifies that in its decision of 28 June 2017, the Immigration Service accepted the author's logical account of her citizenship and place of residence as an established fact and examined her application for international protection in the DRC. The Service held that the author had not been subjected to acts considered as persecution and that she would not be at risk of such acts neither. It noted that the complainant is a lawyer by education and an educated woman capable of work and free from illnesses, considered to have a safety network in her home country, which implies that no reasons had appeared for issuing her with a residence permit on a discretionary basis on humanitarian ground. The Service determined that the author could be returned to the DRC.

6.2 Referring to the decision of the Eastern Finland Administrative Court, the State party observes that in her appeal, the author had invoked her traumatisation, which had affected her answers in the interview and her ability to remember details. It acknowledges that the author enclosed two patient records and a medical statement according to which she had been diagnosed with PTSD and medium-level depression, stating that she suffered from fears, panic attacks and problems with memory and concentration. The patient records showed that the complainant had been treated in a ward twice because of severe depression and suicidality. The State party notes that in its decision of 14 January 2019, the Court repeated that the considered the complainant's account implausible, as the documents presented related to the NGO had a low level of plausibility and confirmed that the author's account of her detention, the time in prison and the release remained superficial and impersonal and showed many implausible features. It concluded that the author would not be of any particular interest to the authorities in her home country and could not be granted asylum. The Court held that the PTSD could be treated in mental health service in the DRC and took into consideration that the author had a safety network, including her siblings and other relatives, which implied that denying her a residence permit would not be manifestly unreasonable. It decided that it was justiciable for the Immigration Service to reject the complainant's

⁸ EU Qualification Directive 2004/83/EC, 29 April 2004, article 24.

application for international protection. The State party notes that on 11 April 2019, the Supreme Administrative Court denied the complainant's leave to appeal.

6.3 The State party explains that in her new application for international protection on 3 June 2019, the complainant invoked the same grounds as before, and presented health reasons as new grounds, including two medical statements to supplement her earlier account and to document the traumatic impacts of the acts of violence against her. The State party notes that the complainant explained that she could not present the documents in support of the application earlier, because she only received them gradually during a long period of time. The State party notes that on 19 June 2019, the Immigration Service declared the complainant's application inadmissible, and considered that the grounds presented by the author had already been examined in connection with her first asylum procedure. The Service held that there were no new circumstances or grounds influencing the decision substantially increasing the probability that she should be considered in need of international protection and noted that the author's additional claim about her health situation did not present any circumstance that would warrant changing the denial by the Administrative Court of the request for a residence permit and considered that the complainant could be returned to the DRC.

6.4 Regarding the complainant's appeal to the Helsinki Administrative Court, the State party notes that she contended that the complainant argued that the Service could not invoke the earlier decision of the Administrative Court to justify neglecting its obligation to acquire evidence, as the decision only commented on the documents provided to the Court at the time of the earlier decision. According to the State party, the complainant alleged that the Service had failed to identify her vulnerable position, which had affected the whole investigation of the matter, as the Service had failed to consider the impact of her traumatic background on her ability to present evidence in the matter. The State party notes that according to the decision of the Helsinki Administrative Court of 20 April 2020, the author had suggested that the Immigration Service should have arranged a medical examination for her *ex officio* and that the Service had failed to comply with its obligation to acquire evidence to assess her health states. The Court noted however, that the Immigration Service had concluded that a medical examination was not necessary and noted that this decision was based on a previous decision of the Eastern Finland Administrative Court, which had concluded that the author's health status could have affected her account, but that the account had also showed implausible features. The Helsinki Administrative Court held that the documentary evidence presented later to the Immigration Service, including the statements on injuries resulting from torture, did not warrant a different conclusion. The Court concluded that the author's application had to be considered as a subsequent application, which did not contain any new grounds that would influence the ruling on the matter.

6.5 The State party elaborates on the complainant's arguments related to the medical certificates and her health situation, and recalls that before the first asylum decision, the author was not requested to present a medical certificate, and she was not specifically informed about her opportunity to provide additional evidence herself. It notes that the author's health issues were discussed during the interviews on 15 April 2016, 21 April 2016, 4 May 2017 and 23 May 2017. The State party clarifies that the officials who examined the complainant's first asylum application held that there was no need to request a medical statement because they considered the complainant's account implausible. It emphasized that medical statements are not requested categorically from all asylum seekers who have experienced torture, though it can be relevant in assessing the plausibility of the asylum seeker's account. The current instructions advise that if the Immigration Service does not request a medical examination of an asylum seeker, the person must be informed that he or she can have a medical examination conducted at his or her own expense. The State party recognizes that because the author's account was considered implausible as a whole, a medical statement would have had real relevance in the matter, and it would probably have influenced the general conclusion on the author's account and plausibility in the decision. The State party states that, taking into account the author's grounds for seeking asylum and her account about the health problems and serious violations of her rights, a medical statement should have been requested in the first asylum process before making the decision.

6.6 Referring to the assessment of the complainant's vulnerability, the State party observes that when examining the complainant's first asylum application, the Asylum Unit of the Immigration service was aware of the factors indicating her vulnerable position, i.e., her gender, the reported physical and sexual violence, and her health problems discussed during the interview. It notes that in the absence of a medical statement, the assessment of her vulnerable position remained deficient when the first decision was made, as it assessed the complainant's education background and safety network but could not take into account her real health status. The State party notes that in the subsequent application process, the Immigration Service based its decision on the earlier conclusion of the Eastern Finland Administrative Court that the complainant's health status did not make her vulnerable in such a manner that she could be issued with a residence permit. It recalls that in the absence of a medical statement, the Immigration Service could not identify the complainant's traumatisation before making the first asylum decision and assess its impact on her account, which resulted in the decision that the Service considered the author's account as implausible in its entirety. The State party emphasizes that the current instructions of the Immigrations Service advise that the interviewers and interpreters in interviews with female asylum seekers must be female if the interview deals with themes of gender based violence, and that a whole day interview is in principle arranged for asylum seekers with some indications of vulnerability. It further highlights that nowadays, the Immigration Service takes into account that asylum seekers are often unaware that indications of vulnerability resulting from gender-based violence have relevance in the asylum process, and notes that in recent years, the Service has provided a lot of training dealing with vulnerability.

6.7 The State party notes that the complainant's public legal aid attorneys were male and were not present during the asylum interviews in 2016 and 2017. It adds that after the first decision of the Supreme Administrative Court, the complainant's counsel was replaced by a female lawyer from the Finnish Refugee Advice Centre. The State party equally recognizes that the recording of the interviews held on 15 and 21 April 2016 were missing, and that the recording of the interviews of 4 May 2017 was incomplete. The State party notes that at that time, there were problems with the recording of data in the Immigration Service. Regarding the deficiencies in the quality of the interpretations, the State party observes that the interpreter in question interprets Arabic, English and French, and notes that while the quality of the person's interpretation of French has not been controlled, his Arabic interpretations were deemed as excellent and good. The State party states that during the asylum interview, the interpreter and the author said that they understood each other's speech.

6.8 The State party recalls that the author filed a new asylum application on 3 June 2019 and provided a number of statements and patient records as additional evidence. It informs that a legislative amendment concerning the inadmissibility of subsequent applications entered into force on 1 June 2019, but had not been transposed into a policy on the interpretation of the new legislative provisions, meaning that at the time, the Service applied old instructions that did not pay particular attention to considering an asylum seeker's vulnerable position and to ensuring procedural safeguards. The State party observes that the new instructions of the Immigration Service on admissibility of subsequent applications are supplemented by a checklist, prepared later in 2019. It determines that the examination must take into account whether possible indications of particular vulnerability have been examined appropriately, including traumatic experiences such as rape and torture and possible health problems ensuing from the experience. The State party adds that the current instructions advise to examine preliminarily whether the asylum seeker can be considered as vulnerable, and that the preliminary investigation must assess whether the asylum seeker's vulnerable position has been taken into account appropriately in assessing the plausibility of the person's account. It adds that the instructions advise to take into account whether the necessary medical examinations have been arranged for the applicant to examine factors related to earlier persecution or serious harm. The State party considers that, based on the current, more precise instructions, an asylum interview should have been arranged for inquiring appropriately into indications of the author's particular vulnerability. It adds that the evidence indicates that the complainant might no longer have any safety network in her home country, which is another factor that would have supported the holding of an interview.

6.9 The State party refers to the jurisprudence of the Committee, related to the absolute nature of the non-refoulement obligation, and it contends that the Committee has stated that

if the risk of torture stems from a non-governmental entity and occurs without the consent or acquiescence of the government, the issue falls outside of the scope of the Convention. The State party recalls that the Committee has held that there have to be substantial grounds for believing that the applicant is facing a foreseeable, personal, present and real risk of being subjected to torture, that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not constitute a sufficient reason for determining that a person would be at risk and that the burden of proof falls on the complainant, who must present an arguable case. The State party further refers to the practice of the Human Rights Committee and to the practice of the European Court of Human Rights.

6.10 Concluding, the State party reiterates that the complainant has failed to present well-founded arguments to substantiate that she would be in personal danger of being subjected to torture if she were returned to her home country. It stresses that the complainant has the burden of proof and that the alleged deficiencies in the asylum process do not suffice to explain the superficiality and un-specificity of her account. The State party contends that the communication is manifestly unfounded and should be declared inadmissible pursuant to article 22(2) of the Convention and adds that the facts of the present communication before the Committee do not reveal any breach of article 3 of the Convention.

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

7.1 On 19 October 2022, the complainant provided comments on the State party's observations on the merits of the communication. She contends that the State party clearly reaffirms in its observations that the complainant's asylum procedure has included several shortcomings and that it failed to identify her particularly vulnerable position as a severely traumatized victim of torture. She contends that this has caused that her vulnerability and special needs have not been examined and considered appropriately during the proceedings. The complainant adds that the authorities have neglected their obligation to investigate all relevant facts of the case and did not organise a new asylum interview nor oral hearing in the Courts, despite the evidence presented by her about the torture she had experienced. She adds that PTSD does not only limit the ability to talk about torture or sexual violence, but has an overall impact on the victim, which often is unable to give detailed accounts of the grounds for asylum.

7.2 The complainant highlights that the State party admits that a medical statement should have been requested in the first asylum process before making the decision, as this would have probably influenced the general conclusions on the author's account and the plausibility thereof. She adds that the State party admits that in the absence of this medical statement, her real health status could not be taken into account and the assessment of her vulnerable position remained deficient. The complainant contends that in practice, the Finnish authorities have failed in the credibility and risk assessment, which was based on serious shortcomings in the asylum process. She further recalls that in all the interviews, the interpreter and lawyers were male and notes that the State party's reference to new instructions, which were not followed in her case, implies that the State party admits the shortcomings. The complainant notes that the State party recognises that the recording of her asylum interviews was lost and adds that she felt like the lack of clear understanding between her and the interpreter during the interviews made it even more difficult for her to provide more details about her account in the interviews. She states that the refusal of the Finnish authorities to hear her in the appeal procedure and to arrange an oral hearing, implies that the overall credibility of her account should not have been disputed in the way it has been done by the State party in its observations sent to the Committee. The complainant further highlights that the State party acknowledges that based on the current more precise instructions of the Immigration Service, an asylum interview should have been arranged for inquiring appropriately into indications of her particular vulnerability.

7.3 The complainant argues that the case law invoked by the State party supports the complainant's position instead of the State party's claims and refers to the fact that the Committee has recalled that complete accuracy is seldom to be expected from victims of torture and that inconsistencies in the complainant's presentation of the facts do not raise

doubts about the general veracity of her claim, especially since it has been demonstrated that she suffers from PTSD.

7.4 The complainant repeats that the credibility assessment has not been made in a proper way by the State party since it did not appropriately consider her status as a victim of torture when assessing her account and her future risk. She states that the burden of proof shifts from the applicant to the State when the applicant has already suffered serious harm or torture prior to his or her flight.⁹ The complainant reiterates that she has a real risk of being subjected again to torture if she were to be returned to the DRC and adds that as a young female lawyer and human rights activist, she falls into a category of people who are targeted in the country.

Issues and proceedings before the Committee

Consideration of admissibility

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

8.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it should not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. It notes that, in the present case, the State party has not contested that the complainant has exhausted all available domestic remedies. The Committee therefore finds that it is not precluded from considering the communication under article 22 (5) (b) of the Convention.

8.3 The State party submits that the communication is inadmissible as it is manifestly ill-founded. The Committee considers, however, that the arguments put forward by the complainant raise substantive issues, which should be dealt with on the merits. Accordingly, the Committee declares the communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

9.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22 (4) of the Convention.

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

9.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to the DRC. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at foreseeable and real risk of being subjected to torture in the country to which he or 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 reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a

⁹ The complainant refers to: EU Qualification Directive 2004/83/EC, 29 April 2004, article 4 (4).; European Court of Human Rights, *R.C. v. Sweden* (application No. 41827/07), judgment of 9 March 2010.

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.¹⁰

9.4 The Committee recalls its general comment No. 4 (2017), in particular paragraph 45, according to which the Committee will assess “substantial grounds” and consider the risk of torture as foreseeable, personal, present and real when the existence of credible facts relating to the risk by itself, at the time of its decision, would affect the rights of the complainant under the Convention in the case of the complainant’s deportation. Indications of personal risk may include, but are not limited to: (a) the political affiliation or political activities of the complainant or his or her family members; (b) arrest or detention without guarantee of fair treatment and trial; (c) previous torture; (d) incommunicado detention or other form of arbitrary and illegal detention in the country of origin and (e) violence against women, including rape.¹¹ With respect to the application of article 3 of the Convention to the merits of a communication submitted under article 22, the burden of proof is upon the author of the communication, who must present an arguable case, that is, submit substantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real.¹² The Committee also recalls that it gives considerable weight to findings of fact made by organs of the State party concerned. However, it is not bound by such findings, as it can make a free assessment of the information available to it in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to each case.¹³

9.5 The Committee takes note of the complainant’s claim that upon return to the DRC, she would face a foreseeable, personal, present and real risk of being subjected again to torture or other ill-treatment. The Committee equally takes note of the complainant’s contention that as a young, female lawyer and human rights activist, she falls into a category of people that are targeted in the DRC. The Committee takes note of the complainant’s claim that the Finnish authorities have failed to consider her personal situation and her vulnerability as a victim of severe sexual violence and torture as well as the fact that she is suffering from PTSD. The Committee notes that the complainant argues that this has led to shortcomings in the proceedings, including the lack of the necessary procedural safeguards, such as the need for a re-assessment of her claim, the lack of presence and assistance of a female lawyer and the granting of an oral hearing, which has impacted the assessment of the plausibility of her account and the credibility of her story as well as the ensuing risk assessment. The Committee takes note of the complainant’s contention that the State party has recognised some of these shortcomings in its communication to the Committee, but contends that she failed to present well-founded arguments to substantiate her claim.

9.6 The Committee takes note of the State party’s argument that the complainant has failed to present well-founded arguments to substantiate that she would be in personal danger of being subjected to torture if she would be returned to her home country, and that while the complainant has the burden of proof and that the alleged deficiencies in the asylum process do not suffice to explain the superficiality and un-specificity of her account. The Committee equally notes that the State party emphasises that the domestic authorities are best placed to judge the credibility of the complainant and of her account. The Committee notes that the State party informs that the officials which examined the complainant’s first asylum application held that there was no need to request a medical statement because they considered the complainant’s account implausible. The Committee takes note however, of the fact that the State party recognises that a medical statement would have had real relevance in the matter, and would probably have influenced the general conclusion on the author’s account and plausibility in the decision and that taking into account the author’s grounds for seeking asylum and her account about the health problems and serious violations of her rights, a medical statement should have been requested in the first asylum process before

¹⁰ See, for example: *Y.B.F., S.A.Q. and Y.Y. v. Switzerland* (CAT/C/50/D/467/2011), para. 7.2; *R.S.M. v. Canada* (CAT/C/50/D/392/2009), para. 7.3; and *E.J.V.M. v. Sweden* (CAT/C/31/D/213/2002), para. 8.3.

¹¹ General Comment No. 4 (2017), on the implementation of article 3 on the Convention in the context of article 22, CAT/C/GC/4, 4 September 2018, para. 45.

¹² *Idem*, para. 38.

¹³ General Comment No. 4 (2017), on the implementation of article 3 on the Convention in the context of article 22, CAT/C/GC/4, 4 September 2018, para. 50.

making the decision. The Committee also takes note that the State party recognises that in the absence of a medical statement, the assessment of her vulnerable position remained deficient when the first decision was made, as it assessed the complainant's education background and safety network, but could not take into account her real health status. The Committee further notes that the State party confirms that based on the current, more precise instructions, an asylum interview should have been arranged for inquiring appropriately into indications of the author's particular vulnerability.

9.7 Having taken account of the arguments presented by the parties, the Committee considers that the complainant has submitted sufficient elements to suggest that she would be at risk of being subjected to treatment that violates article 1 of the Convention if she were returned to the DRC. This is based primarily on the claim that the complainant was subjected to sexual violence, torture, arbitrary detention and harassment due to her work for a human rights organisation. The Committee recalls that victims of Post Traumatic Stress Disorder can suffer from various symptoms, which may affect their ability to disclose all relevant details or to relay a consistent story throughout the proceedings.¹⁴ The Committee observes that the complainant's credibility was questioned based on inconsistencies in the complainant's statements during the asylum interviews, and recalls that complete accuracy can seldom be expected from victims of torture and that in order to provide victims of torture with an effective remedy, State parties should refrain from following a standard credibility assessment process to determine the validity of a non-refoulement claim.¹⁵ The Committee recalls that the inconsistencies in the complainant's presentation of the facts do not raise doubts about the general veracity of her claims, especially since it has been demonstrated that she suffers from post-traumatic stress disorder.¹⁶ The Committee recalls that the State party should provide the person concerned with fundamental guarantees and safeguards, especially if the person has been deprived of the person's liberty or is in a particularly vulnerable situation, such as a woman who has been subjected to violence.¹⁷ The Committee has stated that these safeguards should include linguistic, legal and medical assistance and that an examination by a qualified medical doctor, including as requested by the complainant to prove the torture that the complainant has suffered, should always be ensured, regardless of the authorities' assessment of the credibility of the allegation.¹⁸ The Committee takes note of the fact that the State party has acknowledged that certain shortcomings in the proceedings could have had an impact on the risk assessment and the determination of the credibility of the complainant's account, and suggests that under the current legislative framework and instructions of the Finnish Immigration Service, the assessment of the complainant's case possibly would have had a different outcome. Accordingly, the Committee considers that while the State party has raised concerns about the credibility and plausibility of the complainant's account, it drew an adverse conclusion concerning credibility without exploring a fundamental aspect of the complainant's claim.¹⁹

9.8 The Committee has previously voiced its concern about reports that the practice of rape in custody is endemic, particularly where women have been detained on account of their participation, direct or indirect, in some form of political opposition or human rights defence activities.²⁰ The Committee equally takes note that the ongoing sexual violence against women has been documented by several UN mechanisms and entities.²¹ The Committee is of

¹⁴ General Comment No. 4 (2017), para. 42.

¹⁵ *Idem*.

¹⁶ *E.K.W. v. Finland* (CAT/C/54/D/490/2012), para. 9.6.

¹⁷ General Comment No. 4 (2017), on the implementation of article 3 on the Convention in the context of article 22, CAT/C/GC/4, 4 September 2018, para. 40.

¹⁸ *Idem*, para. 41.

¹⁹ *M.B. et al v. Denmark* (CAT/C/59/D/634/2014), par. 9.6.

²⁰ CAT/C/COD/CO/2, par. 32.

²¹ See for example: Office of the UN High Commissioner for Human Rights, Democratic Republic of the Congo: High Commissioner Update, 30 March 2023, available at: <https://www.ohchr.org/en/statements-and-speeches/2023/03/democratic-republic-congo-high-commissioner-update>. ; BNUDH, Rapport sur la torture et autres peines ou traitement cruels, inhumains ou dégradants en République démocratique du Congo, October 2022, para. 56. ; A/HRC/48/47, 15 July 2021; OHCHR, "Bachelet says new Government has 'window of opportunity' after peaceful political

the view that the challenging context in the country and the particularly vulnerable situation of the complainant, a young female lawyer working on human rights who was priorly subjected to rape and detention for reasons linked to her work and is suffering from PTSD, should have caught the attention of the State party and constitute sufficient grounds for investigating the alleged risks more thoroughly.²²

9.9 On the basis of all the information submitted to it, and taking into account the human rights situation in the country, including the widespread violence against women and the endemic practice of rape in custody, the Committee is of the view that the complainant has provided sufficient evidence and an arguable case for it to consider that a possible foreseeable consequence of her forced return to the DRC would be that she would be exposed to a foreseeable, personal, present and real risk of being subjected to torture within the meaning of article 3 of the Convention. The Committee considers that the State party has not sufficiently considered the particularly vulnerable situation of the complainant, did not provide her with the necessary safeguards, and did not adequately assess the medical statements related to the torture she was submitted to and failed to sufficiently investigate whether there are substantial grounds for believing that she would be in danger of being subjected to torture if returned to her country of origin.²³

10. The Committee, acting under article 22 (7) of the Convention, considers that the return of H.U. to the DRC would constitute a breach of article 3 of the Convention by the State party.

11. The Committee is of the view that the State party is required by article 3 of the Convention to re-asses the complainant's asylum application, taking into account her particularly vulnerable situation and providing her with the necessary safeguards, in the light of its obligations under the Convention and the present findings. The State party is also requested to refrain from expelling the complainant while her asylum application is being re-assessed.

12. Pursuant to rule 118 (5) of its rules of procedure, the Committee invites the State party to inform it, within 90 days of the date of transmittal of the present decision, of the steps it has taken to respond to the above observations.

transition", 29 January 2020, available at: <https://www.ohchr.org/en/press-releases/2020/01/dr-congo-bachelet-says-new-government-has-window-opportunity-after-peaceful> . See also: Report of the team of international experts on the Democratic Republic of the Congo, A/HRC/51/60, 18 August 2022.

²² See: *Nijimbere v. Sweden* (CAT/C/75/D/984/2020), para. 7.8.

²³ See *M.B. et al v. Denmark* (CAT/C/59/D/634/2014), par. 9.8.