

Distr.: General  
9 February 2018

Original: English

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**Committee against Torture**

**Sixty-second session**

6 November – 6 December 2017

**General Comment No. 4 (2017) on the implementation of  
article 3 of the Convention in the context of article 22\***

**I. Introduction**

1. On the basis of its experience in considering individual communications under Article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention), addressing allegations of violation by States parties of article 3 of the Convention, the Committee against Torture (hereinafter referred to as the Committee) at its fifty-fifth to fifty-eight sessions in 2015 and 2016 discussed and agreed to revise its General Comment No. 1 entitled “General comment on the implementation of Article 3 of the Convention in the context of Article 22” which had been adopted on 21 November 1997 (A/53/44, Annex IX).

2. At its 59<sup>th</sup> session, in November - December 2016, the Committee began the drafting process of the revised General Comment, taking into account the recommendations for the consultation process in the elaboration of general comments made by the Chairpersons at their twenty-seventh meeting in San José in Costa Rica, from 22 to 26 June 2015 (A/70/302, paragraph 91).

3. The Committee, during its 62<sup>nd</sup> session, at the 1614<sup>th</sup> meeting held on 6 December 2017, decided to replace the text of its initial General Comment No. 1 by the following text which it adopted on the same date.

4. For the purpose of this General Comment, the term "deportation" includes, but is not limited to, expulsion, extradition, forcible return, forcible transfer, rendition, rejection at the frontier, pushback operations (including at sea) of a person or group of individuals from a State party to another State.

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\* The present General Comment replaces General Comment No. 1 (1997): Implementation of Article 3 of the Convention in the context of Article 22 (A/53/44, Annex IX).

## II. General principles

5. Article 3, paragraph 1, of the Convention provides that “No State party shall expel, return (refouler) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”<sup>1</sup>

6. Pursuant to Article 22 of the Convention, the Committee receives and considers communications from or on behalf of individuals subject to a State party’s jurisdiction who claim to be victims of a violation by a State party of the provisions of the Convention in respect of any State party that has declared that it recognizes the Committee’s competence in this regard.

7. Most of the communications received by the Committee refer to alleged violations by States parties of Article 3 of the Convention. This General Comment provides guidance to the States parties, the complainants and their representatives on the scope of Article 3 and on how the Committee assesses the admissibility and the merits of the individual communications submitted to the Committee for its consideration.

8. The Committee recalls that the prohibition of torture, as defined in Article 1 of the Convention, is absolute. Article 2, paragraph 2, of the Convention provides that “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture”. The Committee further recalls that other acts of ill-treatment are equally prohibited, and that the prohibition of ill-treatment is likewise non-derogable.<sup>2</sup>

9. The principle of “non-refoulement” of persons to another State where there are substantial grounds for believing that they would be in danger of being subjected to torture is similarly absolute.<sup>3</sup>

10. Each State party must apply the principle of non-refoulement in any territory under its jurisdiction or any area under its control or authority, or on board a ship or aircraft registered in the State party, to any person, including persons requesting or in need of international protection, without any form of discrimination and regardless of the nationality or statelessness or the legal, administrative or judicial status of the person concerned under ordinary or emergency law. As the Committee noted in its General Comment No. 2, “the concept of ‘any territory under its jurisdiction’... includes any territory or facilities and must be applied to protect any person, citizen or non-citizen without discrimination subject to the *de jure* or *de facto* control of the State party” [para. 7].<sup>4</sup>

11. The non-refoulement obligation in article 3 of the Convention exists whenever there are “substantial grounds”<sup>5</sup> for believing that the person concerned would be in danger of

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<sup>1</sup> Article 3 must be interpreted by reference to the definition of torture set out in article 1 of the Convention - see e.g. communication No. 83/1997, *G.R.B. v. Sweden*, Views adopted on 15 May 1998, para. 6.5.

<sup>2</sup> See General Comment No. 2 (2008): Implementation of article 2 by States parties (CAT/C/GC/2), paras. 3, 6, 19 and 25.

<sup>3</sup> See communications No. 39/1996, *Tapia Paez v. Sweden*, Views adopted on 28 April 1997, para. 14.5; No. 110/1998, *Núñez Chipana v. Venezuela*, Views adopted on 10 November 1998, para. 5.6, No. 233/2003, *Agiza v. Sweden*, decision adopted on 20 May 2005, para. 13.8; No. 297/2006, *Singh Sogi v. Canada*, decision adopted on 16 November 2007, para. 10.2; No. 444/2010, *Abdussamatov et al. v. Kazakhstan*, decision adopted on 1 June 2012, para. 13.7; and No. 475/2011, *Nasirov v. Kazakhstan*, decision adopted on 14 May 2014, para. 11.6.

<sup>4</sup> See General Comment No. 2 (2008): Implementation of article 2 by States parties (CAT/C/GC/2), paras. 7 and 16.

<sup>5</sup> See e.g. *Tapia Paez v. Sweden*, para 14.5, *supra* fn. 3.

being subjected to torture in a State to which he or she is facing deportation, either as an individual or a member of a group which may be at risk of being tortured in the State of destination. The Committee's practice has been to determine that "substantial grounds" exist whenever the risk of torture is "foreseeable, personal, present and real".<sup>6</sup>

12. Any person found to be at risk of torture if deported to a given State should be allowed to remain in the territory under the jurisdiction or control or authority of the State party concerned so long as the risk persists.<sup>7</sup> The person in question should not be detained without proper legal justification and safeguards. Detention should always be an exceptional measure based on an individual assessment<sup>8</sup> and subject to regular review.<sup>9</sup> Furthermore, the person at risk should never be deported to another State where he/she may subsequently face deportation to a third State in which there are substantial grounds for believing that he/she would be in danger of being subjected to torture.<sup>10</sup>

13. Each case should be individually, impartially and independently examined by the State party through competent administrative and/or judicial authorities,<sup>11</sup> in conformity with essential procedural safeguards, notably the guarantee of a prompt and transparent process, a review of the deportation decision and of a suspensive effect of the appeal.<sup>12</sup> In each case, the person concerned should be informed of the intended deportation in a timely manner. Collective deportation,<sup>13</sup> without an objective examination of the individual cases in regard to personal risk, should be considered as a violation of the principle of "non-refoulement".

14. States parties should not adopt dissuasive measures or policies, such as detention in poor conditions for indefinite periods, refusing to process claims for asylum or unduly prolong them, or cutting funds for assistance programs to asylum seekers, which would compel persons in need of protection under Article 3 of the Convention to return to their country of origin in spite of their personal risk of being subjected there to torture and other cruel, inhuman or degrading treatment or punishment.<sup>14</sup>

<sup>6</sup> See e.g. communications No. 258/2004, *Dadar v. Canada*, decision adopted on 23 November 2005, para. 8.4; No. 226/2003, *T.A. v. Sweden*, decision adopted on 6 May 2005, para. 7.2; No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May 2010, para. 7.3; and No. 614/2014, *Subakaran R. Thirugnanasampanthar v. Australia*, decision adopted on 9 August 2017, para. 8.3.

<sup>7</sup> See e.g. communication No. 34/1995, *Aemei v. Switzerland*, decision adopted on 29 May 1997, para. 11.

<sup>8</sup> See e.g. Concluding observations on the fourth periodic report of Turkey (CAT/C/TUR/CO/4), para. 26.

<sup>9</sup> See e.g. Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland (CAT/C/GBR/CO/5), para. 30, and Concluding observations on the sixth and seventh periodic reports of Sweden (CAT/C/SWE/CO/6-7), para. 10.

<sup>10</sup> See e.g. General Comment No. 1 (1997): Implementation of Article 3 of the Convention in the context of Article 22 (A/53/44, Annex IX), para. 2; communications no. 21/1997, *Avedes Hamayak Korban v. Sweden*, decision adopted on 16 November 1998, para. 7; and no. 153/2000, *Z.T. v. Australia*, decision adopted on 11 November 2003, para. 6.4; and Concluding observations on the fifth and sixth periodic report of Greece (CAT/C/GRC/CO/5-6), para. 19, and Concluding observations on the second periodic report of Serbia (CAT/C/SRB/CO/2), para. 15.

<sup>11</sup> See e.g. *Agiza v. Sweden*, para. 13.8., supra fn. 3.

<sup>12</sup> See e.g. Concluding observations on Greece (CAT/C/GRC/CO/5-6), para. 19 and Concluding observations on the combined fifth and sixth periodic reports of Italy (CAT/C/ITA/CO/5-6), para. 21 c).

<sup>13</sup> See e.g. communication No. 321/2007, *Kwami Mopongo et al. v. Morocco*, decision of 7 November 2014, paras. 6.2. - 6.3. and 11.3. - 11.4.; and CCPR, General Comment No. 15: The position of aliens under the Covenant, 11 April 1986, para. 10; and International Convention on the Rights of All Migrant Workers and Members of Their Families, article 22, paragraph 1.

<sup>14</sup> See e.g. Concluding observations on Greece (CAT/C/GRC/CO/5-6), para. 19.

15. Article 16 of the Convention provides for the duty of States parties to prevent acts of cruel, inhuman or degrading treatment or punishment (ill-treatment), which do not amount to torture as defined in Article 1 of the Convention.<sup>15</sup>

16. States parties should consider whether other forms of ill-treatment that a person facing deportation is at risk of experiencing could likely change so as to constitute torture before making an assessment on each case relating to the principle of “non-refoulement”.<sup>16</sup>

17. The Committee considers that severe pain or suffering cannot always be objectively assessed. It depends on the negative physical and/or mental repercussions that the infliction of violent or abusive acts has on each individual, taking into account all relevant circumstances of each case, including the nature of the treatment, the sex, age and state of health and vulnerability of the victim or any other status or factors.<sup>17</sup>

### III. Preventive measures to guarantee the principle of “non refoulement”

18. For the purpose of fully implementing Article 3 of the Convention, States parties should take legislative, administrative, judicial and other preventive measures against possible violations of the principle of “non-refoulement”, including:

(a) Ensuring the right of each person concerned to have his/her case examined individually and not collectively, to be fully informed of the reasons why he/she is the subject of a procedure which may lead to a decision of deportation, and of the rights legally available to appeal such decision;<sup>18</sup>

(b) Providing access of the person concerned to a lawyer,<sup>19</sup> to free legal aid when necessary, and access to representatives of relevant international organizations of protection<sup>20</sup>;

(c) The development of an administrative or judicial procedure concerning the person in question in a language that he/she understands, or with the assistance of interpreters and translators;<sup>21</sup>

(d) The referral of the person alleging previous torture to an independent medical examination free of charge, in accordance with the Manual on the Effective Investigation and

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<sup>15</sup> See General Comment No. 2 (2008): Implementation of article 2 by States parties (CAT/C/GC/2), paras. 3 and 6.

<sup>16</sup> Other international provisions directly relevant to the application of the principle of non-refoulement in cases of a risk of ill-treatment are listed in paragraph 28 below.

<sup>17</sup> See General Comment No. 2 (2008): Implementation of article 2 by States parties (CAT/C/GC/2), para. 21.

<sup>18</sup> See e.g. Concluding observations on the combined fifth and sixth periodic reports of Italy (CAT/C/ITA/CO/5-6), para. 21; Concluding observations on the seventh periodic report of Finland (CAT/C/FIN/CO/7), para. 13; Concluding observations on the seventh periodic report of Switzerland (CAT/C/CHE/CO/7), para. 14; Concluding observations on the third periodic report of Belgium (CAT/C/BE/CO/3), para. 22.

<sup>19</sup> See e.g. Concluding observations on the seventh periodic report of Finland (CAT/C/FIN/CO/7), para. 13.

<sup>20</sup> See e.g. Concluding observations on the second periodic report of Serbia (CAT/C/SRB/CO/2), para. 15. See also *Kwami Mopongo et al. v. Morocco*, paras. 11.3. -11.4, supra fn. 13.

<sup>21</sup> See e.g. Concluding observations on the combined third to fifth periodic reports of Latvia (CAT/C/LVA/CO/3-5), para. 17.

Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol);<sup>22</sup>

(e) The right of appeal by the person concerned against a deportation order to an independent administrative and/or judicial body within a reasonable period of time from the notification of that order and with the suspensive effect of its enforcement;<sup>23</sup>

(f) An effective training of all officials who deal with persons under procedures of deportation about the respect of the provisions of Article 3 of the Convention in order to avoid decisions contrary to the principle of non-refoulement;<sup>24</sup> and

(g) An effective training of medical and other personnel dealing with detainees, migrants and asylum seekers in identifying and documenting signs of torture, taking into account the Istanbul Protocol.<sup>25</sup>

#### IV. Diplomatic assurances

19. The term “diplomatic assurances” as used in the context of the transfer of a person from one State to another, refers to a formal commitment by the receiving State to the effect that the person concerned will be treated in accordance with conditions set by the sending State and in accordance with international human rights standards.

20. The Committee considers that diplomatic assurances from a State party to the Convention to which a person is to be deported should not be used as a loophole to undermine the principle of non-refoulement as set out in Article 3 of the Convention, where there are substantial grounds for believing that he/she would be in danger of being subjected to torture in that State.<sup>26</sup>

#### V. Redress

21. The Committee recalls that it considers the term “redress” in Article 14 of the Convention as encompassing the concepts of “effective remedy” and “reparation”. The

<sup>22</sup> See e.g. Concluding observations of Cape Verde (CAT/C/CPV/CO/1), para. 29; Concluding observations on the sixth periodic report of New Zealand (CAT/C/NZL/CO/6), para. 18; Concluding observations on the combined sixth and seventh periodic reports of Denmark (CAT/C/DNK/CO/6-7), para. 23. See also communications No. 450/2011, *Ali Fadel v. Switzerland*, decision adopted on 14 November 2014, paras.7.6 and 7.8; and No. 634/2014, *M.B. et al. v. Denmark*, decision adopted on 25 November 2016, para. 9.8.

<sup>23</sup> See e.g. Concluding observations on the seventh periodic report of Finland (CAT/C/FIN/CO/7), para. 13; Concluding observations on the third periodic report of Slovenia (CAT/C/SVN/CO/3), para. 17; and Concluding observations on the second periodic report of Tajikistan (CAT/C/TJK/CO/2), para. 18. See also *supra* fn. 12.

<sup>24</sup> See e.g. Concluding observations on the second periodic report of the Plurinational State of Bolivia, (CAT/C/BOL/CO/2), para. 17; and Concluding observations on the fourth and fifth periodic report of Bulgaria (CAT/C/BGR/CO/4-5), para. 16.

<sup>25</sup> See e.g. Concluding observations on the sixth periodic report of New Zealand (CAT/C/NZL/CO/6), *supra* fn. 22.

<sup>26</sup> See e.g. *Agiza v. Sweden*, para. 13.4, *supra* fn. 3; and communications No. 538/2013, *Tursunov v. Kazakhstan*, decision of 8 May 2015, para. 9.10; and No. 747/2016, *H.Y. v. Switzerland*, decision adopted on 9 August 2017, para. 10.7. See also e.g. Concluding observations on the combined third to fifth periodic reports of the United States of America (CAT/C/USA/CO/3-5), para. 16; Concluding observations on the fourth periodic report of Morocco (CAT/C/MAR/CO/4), para. 9; Concluding observations on the fifth periodic report of Germany (CAT/C/DEU/CO/5), para. 25; and Concluding observations on the second periodic report of Albania (CAT/C/ALB/CO/2), para. 19.

comprehensive reparative concept therefore entails restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition and refers to the full scope of measures required to redress violations under the Convention.<sup>27</sup>

22. States parties should take into account that victims of torture and other cruel, inhuman or degrading treatment or punishment suffer physical and psychological harm which may require sustained specialized rehabilitation services. Once their health fragility and need for treatment have been medically certified, they should not be removed to a State where adequate medical services for their rehabilitation are not available or guaranteed.

## **VI. Article 3 of the Convention and extradition treaties**

23. States parties may find that a conflict arises between the obligations they have undertaken under Article 3 of the Convention and the obligations they have undertaken under a multilateral or bilateral extradition treaty, especially when the treaty was concluded before the ratification of the Convention with a State which is not a party to the Convention and, therefore, when not yet bound by the provisions of its Article 3. In this case, the relevant extradition treaty should be applied in accordance with the principle of non-refoulement.

24. The Committee acknowledges that the timeframe for extradition of a person for the purpose of criminal prosecution or serving a sentence, who has submitted a communication under Article 22 of the Convention invoking the principle of “non-refoulement”, is a crucial factor for the respect by the State of its obligations under both the Convention and an extradition treaty to which it is a party. The Committee, therefore, requests a State party in such situation to inform the Committee about any possible conflict between its obligations under the Convention and under an extradition treaty from the beginning of the individual complaint procedure in which the State party is involved so that the Committee would try to give priority to the consideration of that communication before the time limit for the obligatory extradition is reached. The State party concerned, however, should take into account that the Committee can give priority to the consideration of and decision on such communication only during its sessions.

25. Furthermore, those States parties to the Convention which, subsequently, consider the conclusion of or adherence to an extradition treaty should ensure that there is no conflict between the Convention and that treaty and, if there is, they should include in the notification of adherence to the extradition treaty the clause that, in case of conflict, the Convention will prevail.

## **VII. Relationship between Article 3 and Article 16 of the Convention**

26. Article 3 of the Convention, which provides protection against the removal of a person in danger of being subjected to torture in the State to which he/she would be deported, should be without prejudice to Article 16 (2) of the Convention, in particular where a person to be removed would enjoy additional protection, under international instruments or national law, not to be deported to a State where he/she would face a risk of cruel, inhuman or degrading treatment or punishment.<sup>28</sup>

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<sup>27</sup> See General Comment No. 3 (2012): Implementation of article 14 by States parties (CAT/C/GC/3), para. 2.

<sup>28</sup> Examples of other international provisions directly relevant to the application of the principle

## VIII. Duties of States parties to consider specific human rights situations in which the principle of “non-refoulement” applies

27. Article 3, paragraph 2, of the Convention provides that “For the purpose of determining whether there are such grounds (for believing that a person would be in danger of being subjected to torture, if expelled, returned or extradited), the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights”.<sup>29</sup>

28. In this regard, the Committee observes that the infliction of cruel, inhuman or degrading treatments or punishments, whether or not amounting to torture, to which an individual or his/her family were exposed in their State of origin or would be exposed in the State to which he/she is being deported, constitutes an indication that the person is in danger of being subjected to torture if he/she is deported to one of those States. Such indication should be taken into account by States parties as a basic element justifying the application of the principle of “non-refoulement”.

29. In this connection, the Committee wishes to draw the attention of the States parties to some non-exhaustive examples of human rights situations which may constitute an indication of a risk of torture to which they should give consideration in their decisions on removal of a person from their territory and take them into account when applying the principle of “non-refoulement”. States parties should consider, in particular:

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of “non-refoulement” in cases of a risk of torture and other ill-treatment for a person in the country to which he/she is being deported may be found by States parties to the Convention, which are also parties to other relevant treaties, in the following instruments:

- (a) The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (Article 56, paragraph 3);
- (b) The International Convention on the Protection of All Persons from Enforced Disappearances (Article 16, paragraph 1);
- (c) The 1951 Convention relating to the Status of Refugees (Article 33, paragraph 1);
- (d) The Charter of the Fundamental Rights of the European Union (Article 19, paragraph 2);
- (e) The Inter-American Convention to Prevent and Punish Torture (the last paragraph of Article 13);
- (f) The American Convention on Human Rights (Article 22, paragraphs 8 and 9);
- (g) The African Charter on Human and Peoples’ Rights (Article 12, paragraph 3);
- (h) The African Union Convention Governing Specific Aspects of Refugee Problems in Africa (Articles II, paragraph 3, and V, paragraph 1).

<sup>29</sup> See e.g. *G.R.B v. Sweden*, para. 6.3., supra fn. 1; and communications No. 177/2001, *H.M.H.I. v. Australia*, decision adopted on 1 May 2002, para. 6.5; No. 282/2005, *S.P.A. v. Canada*, decision adopted on 7 November 2006, para. 7.1; No. 333/2007, *T.I. v. Canada*, decision adopted on 15 November 2010, para. 7.3; No. 344/2008, *A.M.A. v. Switzerland*, decision adopted on 12 November 2010, para. 7.2, and No. 490/2012, *E.K.W. v. Finland*, decision adopted on 4 May 2015, paras. 9.3 and 9.7.

(a) Whether the person concerned had been previously arbitrarily arrested in his/her State of origin without a warrant and/or he/she has been denied fundamental guarantees for a detainee in police custody, such as<sup>30</sup>:

(i) the notification of the reasons of his/her arrest in writing and in a language that he/she understands;<sup>31</sup>

(ii) access to a family member or a person of his/her choice for informing them of his/her arrest;<sup>32</sup>

(iii) access to a lawyer free of charge when necessary and, at his/her request, access to a lawyer of his/her choice at his/her own expenses, for his/her defense;<sup>33</sup>

(iv) access to an independent medical doctor for an examination and treatment of his/her health or, for this purpose, to a medical doctor of his/her choice, at his/her own expenses;<sup>34</sup>

(v) access to an independent specialized medical entity to certify his/her allegations of having been subjected to torture;<sup>35</sup>

(vi) access to a competent and independent judicial institution which is empowered to judge his/her claims for the treatment in detention within the timeframe set by the law or within a reasonable time frame to be assessed for each particular case.<sup>36</sup>

(b) Whether the person has been a victim of brutality or excessive use of force by public officials based on any form of discrimination in the State of origin or would be exposed to such brutality in the State to which he/she is being deported;<sup>37</sup>

(c) Whether, in the State of origin or in the State to which he/she is being deported, the person has been or would be victim of violence including gender based/sexual violence, in public or in private, or gender-based persecution, genital mutilation, amounting to torture without intervention of the competent authorities of the State concerned for the protection of the victim;<sup>38</sup>

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<sup>30</sup> See e.g. *Ali Fadel v. Switzerland*, paras. 7.7 - 7.8, supra fn. 22.

<sup>31</sup> See e.g. communications No. 379/2009, *Sylvie Bakatu-Bia v. Sweden*, decision adopted on 3 June 2011, paras. 2.2 and 10.5; *Ali Fadel v. Switzerland*, supra fn. 22, para. 7.7.

<sup>32</sup> See e.g. communications No. 500/2015, *Ramírez and others v. Mexico*, decision adopted on 4 August 2015, para. 17.5.; and No. 522/2012, *Patrice Gahungu v. Burundi*, decision adopted on 10 August 2015, para. 7.6.

<sup>33</sup> See e.g. communications No. 310/2007, *Tony Chahin v. Sweden*, decision adopted on 30 May 2011, para. 9.4; No. 475/2011, *Nasirov v. Kazakhstan*, decision adopted on 14 May 2014, paras. 2.2, 11.6 and 11.9.

<sup>34</sup> See e.g. *Ramírez and others v. Mexico*, para. 17.5., supra fn. 32; No. 522/2012, *Patrice Gahungu v. Burundi*, decision adopted on 10 August 2015, para. 7.7.; No. 553/2013, *X. v. Burundi*, decision adopted on 10 August 2015, para. 7.5.

<sup>35</sup> See e.g. communication No. 396/2009, *Combey Brice Magloire Gbadjavi v. Switzerland*, decision adopted on 1 June 2012, paras. 2.1, 7.5 - 7.8; and *Ali Fadel v. Switzerland*, paras. 2.4 and 7.6. - 7.8., supra fn. 22.

<sup>36</sup> See e.g. *Ramírez and others v. Mexico*, paras. 17.5-17.6, supra fn. 32; No. 522/2012, *Patrice Gahungu v. Burundi*, para. 7.7., supra fn. 34; No. 553/2013, *X v. Burundi*, decision adopted on 10 August 2015, paras. 7.5 - 7.6.

<sup>37</sup> See e.g. communication No. 580/2014, *F.K. v. Denmark*, decision adopted on 23 November 2015, paras. 7.5 - 7.6.

<sup>38</sup> See e.g. *Sylvie Bakatu-Bia v. Sweden*, paras. 10.5 - 10.7., supra fn. 31.



(d) Whether the person has been judged in the State of origin or would be judged in the State to which he/she is being deported by a judicial system which does not guarantee the right to a fair trial;<sup>39</sup>

(e) Whether the person concerned has been previously detained or imprisoned in the State of origin or would be detained or imprisoned, if deported to a State, in conditions amounting to torture or cruel, inhuman or degrading treatment or punishment;<sup>40</sup>

(f) Whether the person concerned would be exposed to sentences of corporal punishment if deported to a State, in which, although corporal punishment is permitted by national law, that punishment would amount to torture or cruel, inhuman or degrading treatment or punishment according to customary international law and the jurisprudence of the Committee and of other recognized international and regional mechanisms for the protection of human rights;<sup>41</sup>

(g) Whether the person concerned would be deported to a State in which there are credible allegations or evidence of crimes of genocide, crimes against humanity or war crimes within the meaning of Articles 6, 7 and 8 of the Rome Statute of the International Criminal Court which have been submitted to the Court for its consideration;<sup>42</sup>

(h) Whether the person concerned would be deported to a State party to the Geneva Conventions and their Protocols where there are allegations or evidence of its violation of common Articles 3 of the four Geneva Conventions of 12 August 1949 and/or Article 4 of the additional Second Protocol to the Geneva Conventions of 1977<sup>43</sup> and, in particular, of: (i) Article 3, paragraph 1 (a) of the four Geneva Conventions;<sup>44</sup> and (ii) Article 4, paragraphs 1 and 2, of Protocol II to the Geneva Conventions.<sup>45</sup>

<sup>39</sup> See e.g. *Agiza v. Sweden*, para.13.4., supra fn. 3; and *Ali Fadel v. Switzerland*, para. 7.8, supra fn. 22.

<sup>40</sup> See e.g. *Tony Chahin v. Sweden*, para. 9.5., supra fn. 33; and communication No. 538/2013, *Tursunov v. Kazakhstan*, decision adopted on 8 May 2015, para. 9.8.

<sup>41</sup> See e.g. communication No. 682/2015, *Rouba Alhaj Ali v. Morocco*, decision adopted on 3 August 2016, paras. 8.5 - 8.8.

<sup>42</sup> See e.g. Concluding observations on the combined fourth and fifth periodic reports of Croatia (CAT/C/HRV/CO/4-5), para. 11; and Concluding observations on the third periodic report of the former Yugoslav Republic of Macedonia (CAT/C/MKD/CO/3), para. 16.

<sup>43</sup> While not quoting directly the provisions of the Geneva Conventions and their Additional Protocols, the Committee has referred in its jurisprudence to situations covered by those provisions, among others, in the following concluding observations: Concluding observations on the fourth periodic report of Turkey (CAT/C/TUR/CO/4), para. 12, and paras. 23 – 26; and Concluding observations on the combined fifth and sixth periodic reports of Italy (CAT/C/ITA/CO/5-6), paras. 20 – 23.

<sup>44</sup> Article 3, paragraph 1 (a) of the four Geneva Conventions stipulates that in the case of armed conflict not of an international character [omissis] violence to life and person, in particular, murder of all kinds, mutilation, cruel treatment and torture are and shall remain prohibited with respect to persons taking no active part in the hostilities. See e.g. Concluding observations on the fourth periodic report of the Russian Federation (CAT/C/RUS/CO/4), para. 24; and Concluding observations on the sixth periodic report of Ukraine (CAT/C/UKR/CO/6), para. 11.

<sup>45</sup> Article 4, paragraph 1, of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), of 8 June 1977, stipulates that all persons who do not take a direct part or who have ceased to take part in hostilities (with reference to armed conflicts listed in Article 2 of the Geneva Conventions and Article 1 of Protocols I and II to those Conventions), whether or not their liberty has been restricted, are entitled to respect of their person, honour and convictions and religious practices. Article 4, paragraph 2, of the Protocol stipulates that the following acts against the persons referred to in paragraph 1 are and shall remain prohibited at any time and in any place whatsoever: (a) violence to the life, health and physical or mental well-being of persons, in particular, murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment; (b) collective punishments; (c) taking of hostages; (d)

(i) Whether the person concerned would be deported to a State where there are allegations or evidence of its violation of Article 12 of the third Geneva Convention of 12 August 1949 relating to the treatment of prisoners of war;<sup>46</sup>

(j) Whether the person concerned would be deported to a State where there are allegations or evidence of its violation of Articles 32 or 45 of the fourth Geneva Convention relating to the protection of civilian persons in times of war;<sup>47</sup> or Article 75, paragraph 2, of Protocol I additional to the Geneva Conventions relating to the Protection of Victims of International Armed Conflicts;<sup>48</sup>

(k) Whether the person concerned would be deported to a State where the inherent right to life is denied, including the exposure of the person to extrajudicial killings or enforced disappearance, or where the death penalty is in force<sup>49</sup> and considered as a form of torture or cruel, inhuman or degrading treatment or punishment by the deporting State party, in particular:

(i) if the latter has abolished the death penalty or established a moratorium on its execution,<sup>50</sup>

(ii) where the death penalty would be imposed for crimes which are not considered by the deporting State party as the most serious crimes<sup>51</sup> or

(iii) where the death penalty is carried out for crimes committed by persons below the age of 18,<sup>52</sup> or on pregnant women or nursing mothers or persons who have a severe mental disability.

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acts of terrorism; (e) outrages upon personal dignity, in particular, humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault; (f) slavery and the slave trade in all their forms; (g) pillage and (h) threats to commit any of the foregoing acts. See e.g. Concluding observations on the initial report of Lebanon (CAT/C/LBN/CO/1), para. 11; and Concluding observations on the fourth periodic report of Turkey (CAT/C/TUR/CO/4), para. 12.

<sup>46</sup> Article 12 of the third Geneva Convention provides, inter alia, that “prisoners of war may only be transferred by the Detaining Power to a Power which is a party to the (Geneva) Convention and after the Detaining Power has satisfied it-self of the willingness and ability of such transferee Power to apply the Convention”. See e.g. Concluding observations on the initial report of Chad (CAT/C/TCD/CO/1), para. 17.

<sup>47</sup> Article 45 of the fourth Geneva Convention provides, inter alia, that “protected persons may be transferred by the Detaining Power only to a Power which is a party to the present Convention and after the Detaining Power has satisfied itself of the willingness and ability of such transferee Power to apply the present Convention”.

<sup>48</sup> Article 75, paragraph 2, of the Additional Protocol I stipulates that the following acts are and shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents: (a) violence to the life, health, or physical or mental well-being of persons, in particular: (i) murder; (ii) torture of all kinds, whether physical or mental; (iii) corporal punishment; and (iv) mutilation; (b) outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault; (c) the taking of hostages; (d) collective punishments; and (e) threats to commit any of the foregoing acts. See e.g. Concluding observations on the initial report of Chad (CAT/C/TCD/CO/1), para. 34.

<sup>49</sup> See e.g. Concluding observations on the second periodic report of Belgium (CAT/C/BEL/CO/2), para. 10.

<sup>50</sup> See e.g. *Rouba Alhaj Ali v. Morocco*, paras. 8.5 - 8.8., supra fn. 41.

<sup>51</sup> See e.g. communication No. 470/2011, *X. v. Switzerland*, decision adopted on 24 November 2014, para. 7.8; and No. 489/2012, *Asghar Tahmuresi v. Switzerland*, decision adopted on 26 November 2014, para. 7.5.

<sup>52</sup> See e.g. the Concluding observations on the second periodic report of Afghanistan (CAT/C/AFG/CO/2), para. 34 c).

(l) The State party concerned should also evaluate whether the circumstances and the methods of execution of the death penalty and the prolonged period and conditions of the person sentenced to death in death row detention<sup>53</sup> could amount to torture or a cruel, inhuman or degrading treatment or punishment for the purpose of applying the principle of “non-refoulement”;<sup>54</sup>

(m) Whether the person concerned would be deported to a State where reprisals amounting to torture have been or would be committed against him/her, members of the family or witnesses of his/her arrest and detention, such as violent and terrorist acts against them, the disappearance of those family members or witnesses, their killings or their torture;<sup>55</sup>

(n) Whether the person concerned would be deported to a State where he/she was subjected or would run the risk of being subjected to slavery and forced labor<sup>56</sup> or trafficking in human beings;

(o) Whether the person concerned is below the age of 18 years and would be deported to a State where his fundamental child rights were previously violated and/or would be violated creating irreparable harm, such as his/her recruitment as a combatant participating directly or indirectly in hostilities<sup>57</sup> or for providing sexual services.

## IX. Non-State actors

30. Equally, States parties should refrain from deporting individuals to another State where there are substantial grounds for believing that they would be in danger of being subjected to torture or other ill-treatment at the hands of non-State entities, including groups which are unlawfully exercising actions that inflict severe pain or suffering for purposes prohibited by the Convention, and over which the receiving State has no or only partial de facto control or whose acts it is unable to prevent nor to counter their impunity.<sup>58</sup>

## X. Specific requirements for the submission of individual communications under Article 22 of the Convention and interim measures of protection

### A. Admissibility

31. The Committee considers that it is the responsibility of the author of a communication to provide exhaustive arguments for his/her complaint of alleged violation of Article 3 of the Convention in such a way that, from the first impression (*prima facie*) or from subsequent submissions, if necessary, the Committee finds it relevant for consideration under article 22

<sup>53</sup> Concluding observations on the combined third to fifth periodic reports of the Republic of Korea (CAT/C/KOR/CO/3-5), para. 30 b).

<sup>54</sup> See e.g. the Concluding observations on the second periodic report of Afghanistan (CAT/C/AFG/CO/2), para. 34; and Concluding observations on the second periodic report of Mongolia (CAT/C/MNG/CO/2), para. 22.

<sup>55</sup> See e.g. communications No. 473/2011, *Hussein Khademi et al. v. Switzerland*, decision adopted on 14 November 2014, paras. 7.4. - 7.6; *Nasirov v. Kazakhstan*, para. 11.9, *supra* fn. 33; and No. 639/2014, *N.A.A. v. Switzerland*, decision adopted on 2 May 2017, paras. 7.7 - 7.11.

<sup>56</sup> See e.g. *Tony Chahin v. Sweden*, para. 9.5, *supra* fn. 33.

<sup>57</sup> See e.g. Concluding observations on the initial report of Chad (CAT/C/TCD/CO/1), para. 34.

<sup>58</sup> See e.g. communications No. 120/1998, *S.S. Elmi v. Australia*, decision adopted on 14 May 1999, paras. 6.8 - 6.9; and No. 681/2015, *M.K.M. v. Australia*, decision adopted on 10 May 2017, para. 8.9.

of the Convention and fulfilling each of the requirements established under Rule 113 of the Committee's rules of procedure.

32. A State party's obligations under the Convention apply from the date of the entry into force of the Convention for that State party. However, the Committee will consider communications on alleged violations of the Convention which occurred before a State party's recognition of the Committee's competence under Article 22 of the Convention through the declaration provided for in that Article, if the effects of those alleged violations continued after the State party's declaration, and if such effects may constitute in themselves a violation of the Convention.<sup>59</sup>

33. With reference to Article 22, paragraph 5 (a), of the Convention, which requires that the Committee shall not consider any individual communication under that article unless it has ascertained that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement, the Committee considers that "the same matter" should be understood as relating to the same parties, the same facts and the same substantive rights.<sup>60</sup>

34. According to Article 22, paragraph 5 (b), the complainant must have "exhausted all available domestic remedies", provided for in law and in practice, which would be effective.<sup>61</sup> "This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of violation of the Convention."<sup>62</sup> In the context of Article 3 of the Convention, the Committee considers that exhaustion of domestic remedies means that the complainant has applied for remedies which are directly related to his/her risk of torture in the country to which he/she would be deported, not for remedies that might allow the complainant to remain in the sending State party for other reasons.<sup>63</sup>

35. The Committee further considers that an effective remedy in the implementation of the principle of "non-refoulement" should be a recourse able to preclude, in practice, the deportation of the complainant where there are substantial grounds for believing that he/she would personally be in danger of being subjected to torture if deported to another country. The recourse should be a legally based right and not an "ex gratia" concession given by the authorities concerned<sup>64</sup> and should be accessible in practice without obstacles of any nature.

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<sup>59</sup> See e.g. communication No. 495/2012, *N.Z. v. Kazakhstan*, decision adopted on 28 November 2014, para. 12.3

<sup>60</sup> See e.g. communications No. 247/2004, *A.A. v. Azerbaijan*, decision of inadmissibility adopted on 25 November 2005, para. 6.8; No. 479/2011, *E.E. v. the Russian Federation*, decision of inadmissibility adopted on 24 May 2013, para. 8.4; No. 577/2013, *N.B. v. the Russian Federation*, decision of inadmissibility adopted on 25 November 2015, para. 8.2; No. 642/2014, *M.T. v. Sweden*, decision of inadmissibility adopted on 7 August 2015, para. 8.3; and No. 643/2014, *U. v. Sweden*, decision of inadmissibility adopted on 23 November 2015, para. 6.4.

<sup>61</sup> See e.g. communications No. 512/2012, *Y v. Canada*, decision of inadmissibility adopted on 28 July 2015, para. 7.2.; and No. 712/2015, *Olga Shestakova v. the Russian Federation*, decision of inadmissibility adopted on 28 November 2017, para. 6.4.

<sup>62</sup> See e.g. communications No. 024/1995, *A.E. v. Switzerland*, decision adopted on 2 May 1995, para. 4; No. 441/2010, *Evloev v. Kazakhstan*, decision adopted on 5 November 2013, para. 8.6; and No. 520/2012, *W.G.D. v. Canada*, decision adopted on 26 November 2014, para. 7.4.

<sup>63</sup> See e.g. *W.G.D. v. Canada*, para. 7.4, supra fn. 62.

<sup>64</sup> See e.g. *W.G.D. v. Canada*, para. 7.4, supra fn. 62; and communication No. 562/2013, *J.K. v. Canada*, decision adopted on 23 November 2015, para. 9.2.

## B. Interim measures of protection

36. When the Committee, or members designated by it, request the State party concerned, for its urgent consideration, to take such interim measures, once the decision on deportation by the domestic authorities has become enforceable according to the information available, that the Committee considers necessary to avoid irreparable damage to the victim or victims of alleged violation of Article 3 of the Convention, in accordance with Rule 114 of the Committee's rules of procedure, the State party should comply with the Committee's request in good faith.

37. Non-compliance by the State party with the Committee's request would constitute a serious damage and obstacle to the effectiveness of the Committee's deliberations and would cast a serious doubt on the willingness of the State party to implement Article 22 of the Convention in good faith.<sup>65</sup> This has resulted in the Committee's determination that the non-compliance with its request for interim measures constitutes a breach of Article 22 of the Convention.<sup>66</sup>

## C. Merits

38. With respect to the application of Article 3 of the Convention to the merits of a communication submitted under Article 22 of the Convention, the burden of proof is upon the author of the communication who has to present an arguable case<sup>67</sup> – i.e. to submit circumstantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real. However, when the complainant is in a situation where he/she cannot elaborate on his/her case, for instance, when the complainant has demonstrated that he/she has no possibility of obtaining documentation relating to his/her allegation of torture or is deprived of his/her liberty, the burden of proof is reversed<sup>68</sup> and it is up to the State party concerned to investigate the allegations and verify the information on which the communication is based.

39. It is the responsibility of the State party, at the national level, to assess, through administrative and/or judicial procedures, whether there are substantial grounds for believing that the complainant faces a foreseeable, present, personal and real risk of being subjected to torture in the State where he/she would be deported.

40. In its procedure of assessment, the State party should provide the person concerned with fundamental guarantees and safeguards, especially if the person is deprived of his/her liberty or the person is in a particularly vulnerable situation such as the situation of an asylum

<sup>65</sup> See communications No. 428/2010, *Kalinichenko v. Morocco*, decision adopted on 25 November 2011, paras. 13.1, 13.2 and 16; *Tursunov v. Kazakhstan*, para. 10, supra fn. 40; No. 542/2013, *X v. the Russian Federation*, decision adopted on 8 May 2015, paras. 9.2 and 12; and No. 671/2015, *D.I.S. v. Hungary*, decision adopted on 8 December 2015, paras. 9.1 - 9.3.

<sup>66</sup> See e.g. communications No. 614/2014, *S.T. v. Australia*, decision adopted on 9 August 2017, paras. 9 and 10; and *X v. the Russian Federation*, supra fn. 65, para. 12.

<sup>67</sup> See communications No. 429/2010, *Sivagnanaratnam v. Denmark*, decision adopted on 11 November 2013, paras. 10.5 - 10.6; No. 203/2002, *A. R. v. Netherlands*, decision adopted on 14 November 2003, para. 7.3; No. 343/2008, *Arthur Kasombola Kalonzo v. Canada*, decision adopted on 18 May 2012, para. 9.3; No. 458/2011, *X v. Denmark*, decision adopted on 28 November 2014, para. 9.3.; and *W.G.D. v. Canada*, para. 8.4., supra fn. 62; and No. 688/2015, *T.Z. v. Switzerland*, decision adopted on 22 November 2017, para. 8.4.

<sup>68</sup> For comparison, see communications No. 282/2005, *S.P.A. v. Canada*, decision of 7 November 2006, para. 7.5; and No. 562/2013, *J.K. v. Canada*, decision adopted on 23 November 2015, para. 10.4.

seeker, an unaccompanied minor, a woman who has been subjected to violence or a person with disabilities (measures of protection).<sup>69</sup>

41. Guarantees and safeguards should include linguistic, legal, medical, social and, when necessary, financial assistance as well as the right to a recourse against a decision of deportation within a reasonable timeframe for a person in a precarious and stressful situation and with the suspensive effect of the enforcement of the deportation order. In particular, an examination by a qualified medical doctor, including as requested by the complainant to prove the torture that he/she has suffered, should always be ensured, regardless of the authorities' assessment on the credibility of the allegation,<sup>70</sup> so that the authorities deciding on a given case of deportation are able to complete the assessment of the risk of torture on the basis of the result of the medical and psychological examinations, without any reasonable doubt.<sup>71</sup>

42. Torture victims and other vulnerable persons frequently suffer from Post-Traumatic Stress Disorder (PTSD) which can result in a broad range of symptoms, including involuntary avoidance and dissociation. These symptoms may affect the ability of the person to disclose all relevant details or to relay a consistent story throughout the proceedings. In order to ensure that victims of torture or other vulnerable persons are afforded an effective remedy, States parties should refrain from following a standardized credibility assessment process to determine the validity of a non-refoulement claim. As regards potential factual contradictions and inconsistencies in the author's allegations, the States parties should appreciate that complete accuracy can seldom be expected from victims of torture.<sup>72</sup>

43. To determine whether there are substantial grounds for believing that a person would be in danger of being subjected to torture if deported, the Committee considers crucial the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights referred to in Article 3, paragraph 2, of the Convention. These violations include, but they are not limited to: (a) widespread use of torture<sup>73</sup> and impunity of its perpetrators;<sup>74</sup> (b) harassment and violence against minority groups;<sup>75</sup> (c) situations conducive to genocide;<sup>76</sup> (d) widespread gender-based violence;<sup>77</sup> (e) widespread use of sentencing and imprisonment of persons exercising fundamental freedoms;<sup>78</sup> and (f) situations of international and non-international armed conflicts<sup>79</sup>.

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<sup>69</sup> See e.g. Concluding observations on the fourth periodic report of the Netherlands (CAT/C/NET/CO/4), para. 7; and Concluding observations on the fourth periodic report of Cyprus (CAT/C/CYP/CO/4), paras. 13 - 14.

<sup>70</sup> See e.g. *M.B. et al. v. Denmark*, para. 9.8, supra fn. 22.

<sup>71</sup> See also supra fn. 18 - 25.

<sup>72</sup> See e.g. communications No. 21/1995, *Alan v. Switzerland*, para. 11.3.; No. 41/1996, *Kioski v. Sweden*, decision adopted on 12 February 1996, para. 9.3; No. 101/1997, *Haydin v. Sweden*, decision adopted on 16 December 1998, paras. 6.6 and 6.7; No. 279/2005, *C.T. and K.M. v. Sweden*, decision adopted on 17 November 2006, para. 7.6; *E.K.W. v. Finland*, supra fn. 29, para. 9.6; and *M.B. et al. v. Denmark*, para. 9.6, supra fn. 22.

<sup>73</sup> See e.g. communication No. 554/2013, *X. v. Kazakhstan*, decision adopted on 3 August 2015, para. 12.7.

<sup>74</sup> See e.g. communication No. 505/2012, *P.S.B. and T.K. v. Canada*, decision adopted on 13 August 2015, para 8.3.

<sup>75</sup> See e.g. *Subakaran R. Thirugnanasampanthar v. Australia*, para. 8.7., supra fn. 6.

<sup>76</sup> See e.g. Concluding observations on the initial report of Iraq (CAT/C/IRQ/CO/1), paras. 11 - 12;

<sup>77</sup> See e.g. communication No. 562/2013, *J.K. v. Canada*, decision adopted on 23 November 2015, paras. 10.5 - 10.6.

<sup>78</sup> See e.g. communication No. 492/2012, *Abed Azizi v. Switzerland*, decision adopted on 27 November 2014, paras. 8.5 - 8.8.

<sup>79</sup> See e.g. Concluding observations on the initial report of Chad (CAT/C/TCD/CO/1), para. 22.

44. The Committee's assessment will be primarily based on the information provided by or on behalf of the complainant and by the State party concerned. It will also consult United Nations sources of information as well as any other sources that the Committee considers reliable.<sup>80</sup> In addition, the Committee will take into account any of the indications listed in paragraph 29 above as constituting substantial grounds for believing that a person would be in danger of being subjected to torture if deported.

45. 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 case of his/her deportation. Indications of personal risk may include, but they are not limited to: (a) the complainant's ethnic background;<sup>81</sup> (b) political affiliation or political activities of the complainant and/or his family members;<sup>82</sup> (c) arrest warrant without guarantee of a fair treatment and trial;<sup>83</sup> (d) sentence in absentia;<sup>84</sup> (e) sexual orientation and gender identity;<sup>85</sup> (f) desertion from the army or armed groups; (g) previous torture;<sup>86</sup> (h) incommunicado detention or other form of arbitrary and illegal detention in the country of origin; (i) clandestine escape from the country of origin for threats of torture; (j) religious affiliation;<sup>87</sup> (k) violations of the right to freedom of thought, conscience and religion, including violations related to the prohibition of conversion to a religion which is different from the religion proclaimed as State religion and where such a conversion is prohibited and punished in law and in practice;<sup>88</sup> (l) risk of expulsion to a third country where the person may be in danger of being subjected to torture<sup>89</sup> and (m) violence against women, including rape.<sup>90</sup>

46. When assessing whether "substantial grounds" exist, the Committee will take into account the human rights situation of that State as a whole and not of a particular area of it. The State party is responsible for any territory under its jurisdiction, or control or authority. The notion of "local danger" does not provide for measurable criteria and is not sufficient to dissipate totally the personal danger of being tortured.<sup>91</sup>

47. The Committee considers that the so called "internal flight alternative", i.e. the deportation of a person or a victim of torture to an area of a State where he/she would not be exposed to torture unlike in other areas of the same State, is not reliable or effective.<sup>92</sup>

48. When assessing whether "substantial grounds" exist, the Committee considers that a receiving State should have demonstrated certain essential measures to prevent and prohibit torture throughout the entire territory under its jurisdiction, or control or authority, such as clear legislative provisions on the absolute prohibition of torture and its punishment with adequate penalties, measures to put an end to the impunity for acts of torture, violence and

<sup>80</sup> Rule 118 of the Committee's rules of procedure.

<sup>81</sup> See e.g. communication No. 555/2013, *Z. v. Denmark*, decision adopted on 10 August 2015, paras. 5.2 and 7.8; and *M.B. et al. v. Denmark*, paras. 2.1 – 2.2, and 9.7, supra fn. 22.

<sup>82</sup> See e.g. communication No. 375/2009, *T.D. v. Switzerland*, decision adopted on 26 May 2011, para. 7.8.

<sup>83</sup> See e.g. *Nasirov v. Kazakhstan*, paras. 7.6 and 11.9., supra fn. 33.

<sup>84</sup> See e.g. *Agiza v. Sweden*, para. 13.4, supra fn. 3; and *Ali Fadel v. Switzerland*, para. 7.8., supra fn. 22.

<sup>85</sup> See e.g. communication No. 338/2008, *Uttam Mondal v. Sweden*, decision adopted on 23 May 2011, para. 7.7.

<sup>86</sup> See e.g. *Dadar v. Canada*, decision adopted on 23 November 2005, para. 8.5.

<sup>87</sup> See e.g. *Abdussamatov et al. v. Kazakhstan*, decision of 1 June 2012, para. 13.8.

<sup>88</sup> See e.g. *Abed Azizi v. Switzerland*, paras. 3.2 and 8.8, supra fn. 78.

<sup>89</sup> See supra fn. 10.

<sup>90</sup> See e.g. *E.K.W. v. Finland*, supra fn. 29, paras. 9.6 – 9.7.

<sup>91</sup> See e.g. *Uttam Mondal v. Sweden*, para. 7.4., supra fn. 85.

<sup>92</sup> See e.g. *M.K.M. v. Australia*, supra fn. 58, para. 8.9.

other illegal practices committed by public officials, the prosecution of public officials allegedly responsible for acts of torture and other ill-treatment and their punishment commensurate with the gravity of the crime committed when they are found guilty.<sup>93</sup>

49. All pertinent information may be introduced by both parties to explain the relevance of their submissions under Article 22 to the provisions of Article 3 of the Convention. The following information, while not exhaustive, would be pertinent:

(a) Is the State concerned one in which there is evidence of a consistent pattern of gross, flagrant or mass violations of human rights?

(b) Has the complainant been tortured or ill-treated by or at the instigation of or with the consent or the acquiescence (tacit agreement) of a public official or other person acting in an official capacity in the past? If so, was this a recent past?

(c) Is there medical or psychological or other independent evidence to support a claim by the complainant that he/she has been tortured or ill-treated in the past? Has the torture had after-effects?

(d) Has the State party ensured that the complainant facing deportation from the territory under its jurisdiction or control or authority, has had access to all legal and/or administrative guarantees and safeguards provided by law and, in particular, to an independent medical examination to assess his/her claims that he/she has previously suffered torture or ill-treatment in his/her country of origin?

(e) Is there any credible allegation or evidence that the complainant and/or other person's next of kin have been or will be threatened or exposed to reprisals or other forms of sanctions amounting to torture, cruel, inhuman or degrading treatment or punishment in connection with the communication submitted to the Committee?

(f) Has the author engaged in political or other activities within or outside the State concerned which would appear to make him/her vulnerable to the risk of being subjected to torture were he/she to be expelled, returned or extradited to the State in question?

(g) If returned to the State to which he/she is being deported, is the complainant at risk of further deportation to another State where he/she would face the risk of being subjected to torture?

(h) Bearing in mind the status of physical and psychological fragility encountered by the majority of complainants such as asylum seekers, former detainees, victims of torture or sexual violence etc., which is conducive to some inconsistencies and/or lapses of memory in their submissions, is there any evidence as to the credibility of the complainant?

(i) Taking into account some inconsistencies that may exist in the presentation of the facts, has the complainant demonstrated a general veracity of his/her claims?<sup>94</sup>

## **XI. Independence of assessment of the Committee**

50. The Committee gives considerable weight to findings of fact made by organs of the State party concerned;<sup>95</sup> however, it is not bound by such findings. It follows that it will make

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<sup>93</sup> See e.g. Concluding observations on the combined fifth and sixth periodic report of Argentina (CAT/C/ARG/CO/5-6), paras. 9-10, 11-12 and 30; and Concluding observations on the sixth periodic report of Bulgaria (CAT/C/BGR/CO/6), paras. 7-8 and 11-12.

<sup>94</sup> See e.g. *S.P.A. v. Canada*, decision of 7 November 2006, para. 7.5.

<sup>95</sup> See e.g. *T.D. v. Switzerland*, decision adopted on 26 May 2011, para. 7.7; and communication No. 466/2011, *Alp v. Denmark*, decision adopted on 14 May 2014, para. 8.3.



a free assessment of the information available to it in accordance with Article 22, paragraph 4, of the Convention, taking into account all the circumstances relevant to each case.<sup>96</sup>

51. The principle of the benefit of the doubt, as a preventive measure against irreparable harm, will also be taken into account by the Committee in adopting decisions on individual communications, where the principle is relevant.

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<sup>96</sup> See e.g. communication No. 683/2015, *I.E. v. Switzerland*, decision adopted on 14 November 2017, para. 7.4.