



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

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## Committee against Torture

### 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, addressing allegations of violation by States parties of article 3 of the Convention, the Committee against Torture, at its fifty-fifth to fifty-eighth sessions, in 2015 and 2016, discussed and agreed to revise its general comment No. 1 (1997), entitled “General comment on the implementation of article 3 of the Convention in the context of article 22”, adopted at its nineteenth session (see A/53/44 and A/53/44/Corr.1, annex IX).

2. At its fifty-ninth session, held from 7 November to 7 December 2016, the Committee began the drafting process for the revised general comment, taking into account the recommendations for the consultation process in the elaboration of general comments made by the Chairs of the human rights treaty bodies at their twenty-seventh meeting, held in San José from 22 to 26 June 2015 (see A/70/302, para. 91).

3. At the 1614th meeting of the Committee, held on 6 December 2017 during its sixty-second session, the Committee decided that its general comment No. 1 would be superseded by the below text, which it adopted on the same date.

4. For the purposes of the present general comment, the term “deportation” includes, but is not limited to, expulsion, extradition, forcible return, forcible transfer, rendition and rejection at the frontier of, and pushback operations (including at sea) involving, a person or group of individuals from a State party to another State.

#### II. General principles

5. Article 3 (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 the person 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 that regard.

\* The present general comment replaces general comment No. 1 (1997) on the implementation of article 3.

<sup>1</sup> Article 3 must be interpreted with reference to the definition of torture set out in article 1 of the Convention; see *G.R.B. v. Sweden* (CAT/C/20/D/83/1997), para. 6.5.



7. Most of the communications received by the Committee refer to alleged violations by States parties of article 3 of the Convention. The present general comment provides guidance to States parties and 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 (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 paragraph 7 of 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 a State party.<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 being subjected to torture in a State to which the person is facing deportation, either as an individual or as a member of a group that 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, 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 from which the person may subsequently face deportation to a third State in which there are substantial grounds for believing that the person would be in danger of being subjected to torture.<sup>10</sup>

<sup>2</sup> See general comment No. 2 (2007) on the implementation of article 2, paras. 3, 6, 19 and 25.

<sup>3</sup> See *Tapia Páez v. Sweden* (CAT/C/18/D/39/1996), para. 14.5; *Núñez Chipana v. Venezuela* (CAT/C/21/D/110/1998), para. 5.6; *Agiza v. Sweden* (CAT/C/34/D/233/2003), para. 13.8; *Singh Sogi v. Canada* (CAT/C/39/D/297/2006), para. 10.2; *Abdussamatov and others v. Kazakhstan* (CAT/C/48/D/444/2010), para. 13.7; and *Nasirov v. Kazakhstan* (CAT/C/52/D/475/2011), para. 11.6.

<sup>4</sup> See also general comment No. 2 (2007), para. 16.

<sup>5</sup> See, for example, *Tapia Páez v. Sweden*, para. 14.5.

<sup>6</sup> See, for example, *Dadar v. Canada* (CAT/C/35/D/258/2004), para. 8.4; *T.A. v. Sweden* (CAT/C/34/D/226/2003), para. 7.2; *N.S. v. Switzerland* (CAT/C/44/D/356/2008), para. 7.3; and *Subakaran R. Thirugnanasampanthar v. Australia* (CAT/C/61/D/614/2014), para. 8.3.

<sup>7</sup> See, for example, *Aemei v. Switzerland* (CAT/C/18/D/34/1995), para. 11.

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

<sup>9</sup> See, for example, 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 combined sixth and seventh periodic reports of Sweden (CAT/C/SWE/CO/6-7), para. 10.

<sup>10</sup> See, for example, general comment No. 1 (1997) on the implementation of article 3, para. 2; *Avedes Hamayak Korban v. Sweden* (CAT/C/21/D/88/1997), para. 7; and *Z.T. v. Australia*

13. Each case should be examined individually, impartially and independently 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 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 with 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 prolonging them unduly, or cutting funds for assistance programmes for 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 to torture or other cruel, inhuman or degrading treatment or punishment there.<sup>14</sup>

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 the nature of the 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 assessed objectively. 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 and 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 the case examined individually and not collectively and to be fully informed of the reasons why the person is

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(CAT/C/31/D/153/2000), para. 6.4; concluding observations on the combined fifth and sixth periodic reports 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, for example, *Agiza v. Sweden*, para. 13.8.

<sup>12</sup> See, for example, concluding observations on the combined fifth and sixth periodic reports of 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, for example, *Kwami Mopongo and others v. Morocco* (CAT/C/53/D/321/2007), paras. 6.2–6.3 and 11.3–11.4; Human Rights Committee, general comment No. 15 (1986) on the position of aliens under the International Covenant on Civil and Political Rights, para. 10; and International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 22 (1).

<sup>14</sup> See, for example, concluding observations on the combined fifth and sixth periodic reports of Greece (CAT/C/GRC/CO/5-6), para. 19.

<sup>15</sup> See general comment No. 2 (2007), paras. 3 and 6.

<sup>16</sup> Other international provisions directly relevant to the application of the principle of non-refoulement in cases of risk of ill-treatment are listed in paragraph 26 below.

<sup>17</sup> See general comment No. 2 (2007), para. 21.

the subject of a procedure that may lead to a decision of deportation and of the rights legally available to appeal such a decision;<sup>18</sup>

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

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

(d) Referring the person alleging previous torture to an independent medical examination free of charge, in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol);<sup>22</sup>

(e) Ensuring 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 the appeal on the enforcement of the order;<sup>23</sup>

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

(g) Providing effective training for 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>

<sup>18</sup> See, for example, 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 and CAT/C/FIN/CO/7/Corr.1), para. 13; concluding observations on the seventh periodic report of Switzerland (CAT/C/CHE/CO/7), para. 14; and concluding observations on the third periodic report of Belgium (CAT/C/BEL/CO/3), para. 22.

<sup>19</sup> See, for example, concluding observations on the seventh periodic report of Finland (CAT/C/FIN/CO/7 and CAT/C/FIN/CO/7/Corr.1), para. 13.

<sup>20</sup> See, for example, concluding observations on the second periodic report of Serbia (CAT/C/SRB/CO/2), para. 15. See also *Kwami Mopongo and others v. Morocco*, paras. 11.3 and 11.4.

<sup>21</sup> See, for example, concluding observations on the combined third to fifth periodic reports of Latvia (CAT/C/LVA/CO/3-5 and CAT/C/LVA/CO/3-5/Corr.1), para. 17.

<sup>22</sup> See, for example, concluding observations on Cabo Verde in the absence of a report (CAT/C/CPV/CO/1), para. 29; concluding observations on the sixth periodic report of New Zealand (CAT/C/NZL/CO/6), para. 18; and concluding observations on the combined sixth and seventh periodic reports of Denmark (CAT/C/DNK/CO/6-7), para. 23. See also *Ali Fadel v. Switzerland* (CAT/C/53/D/450/2011), paras. 7.6 and 7.8; and *M.B. and others v. Denmark* (CAT/C/59/D/634/2014), para. 9.8.

<sup>23</sup> See, for example, concluding observations on the seventh periodic report of Finland (CAT/C/FIN/CO/7 and CAT/C/FIN/CO/7/Corr.1), 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 concluding observations on the combined fifth and sixth periodic reports of 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>24</sup> See, for example, 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 combined fourth and fifth periodic reports of Bulgaria (CAT/C/BGR/CO/4-5), para. 16.

<sup>25</sup> See, for example, concluding observations on the sixth periodic report of New Zealand (CAT/C/NZL/CO/6), para. 18.

## 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 the person 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 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 recognize that victims of torture or other cruel, inhuman or degrading treatment or punishment suffer physical and psychological harm that may require sustained availability of and access to specialized rehabilitation services. Once such a state of health and the 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 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 time frame 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 that, should a State party encounter such a situation, it inform the Committee about any possible conflict between its obligations under the Convention and those under an extradition treaty from the beginning of the individual complaint procedure in which the State party is involved so that the Committee may 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 recognize that the Committee can give priority to the consideration of and a decision on such a communication only during its sessions.

<sup>26</sup> See *Agiza v. Sweden*, para. 13.4; *Tursunov v. Kazakhstan* (CAT/C/54/D/538/2013), para. 9.10; and *H.Y. v. Switzerland* (CAT/C/61/D/747/2016), para. 10.7. See also 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.

<sup>27</sup> See general comment No. 3 (2012) on the implementation of article 14, para. 2.

25. Furthermore, those States parties to the Convention that 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, 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 the person 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 the person would face the risk of cruel, inhuman or degrading treatment or punishment.<sup>28</sup>

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

27. Article 3 (2) of the Convention provides that for the purpose of determining whether there are 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 treatment or punishment, whether or not it amounts to torture, to which an individual or the individual's family were exposed in their State of origin or would be exposed in the State to which the individual is being deported, constitutes an indication that the person is in danger of being subjected to torture if deported to one of those States. Such an 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 that may constitute an indication of risk of torture, to which they should give consideration in their decisions on the removal of a person from their territory and take into account when applying the principle of "non-refoulement". States parties should consider, in particular:

<sup>28</sup> Examples of other international provisions directly relevant to the application of the principle of "non-refoulement" in cases of risk of torture and other ill-treatment for a person in the country to which the person is being deported may be found by States parties to the Convention that are also parties to other relevant treaties in the following instruments:

- (a) International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (art. 56 (3));
- (b) International Convention for the Protection of All Persons from Enforced Disappearance (art. 16 (1));
- (c) Convention relating to the Status of Refugees (art. 33 (1));
- (d) Charter of Fundamental Rights of the European Union (art. 19 (2));
- (e) Inter-American Convention to Prevent and Punish Torture (final paragraph of article 13);
- (f) American Convention on Human Rights (art. 22 (8) and (9));
- (g) African Charter on Human and Peoples' Rights (art. 12 (3));
- (h) Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (arts. II (3) and V (1)).

<sup>29</sup> See, for example, *G.R.B. v. Sweden*, para. 6.3; *H.M.H.I. v. Australia* (CAT/C/28/D/177/2001), para. 6.5; *S.P.A. v. Canada* (CAT/C/37/D/282/2005), para. 7.1; *T.I. v. Canada* (CAT/C/45/D/333/2007), para. 7.3; *A.M.A. v. Switzerland* (CAT/C/45/D/344/2008), para. 7.2; and *E.K.W. v. Finland* (CAT/C/54/D/490/2012), paras. 9.3 and 9.7.

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

(i) Notification of the reasons of the person's arrest in writing and in a language that the person understands;<sup>31</sup>

(ii) Access to a family member or a person of the concerned individual's choice for informing them of the arrest;<sup>32</sup>

(iii) Access to a lawyer free of charge when necessary and, upon request, access to a lawyer of the person's choice at the person's own expense for the person's defence;<sup>33</sup>

(iv) Access to an independent medical doctor for an examination and treatment of the person's health or, for this purpose, to a medical doctor of the person's choice at the person's own expense;<sup>34</sup>

(v) Access to an independent specialized medical entity to certify the person's allegations of having been subjected to torture;<sup>35</sup>

(vi) Access to a competent and independent judicial institution that is empowered to judge the person's claims for the treatment in detention within the time frame set by 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 on the basis of any form of discrimination in the State of origin or would be exposed to such brutality in the State to which the person is being deported;<sup>37</sup>

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

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

(e) Whether the person concerned has previously been 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

<sup>30</sup> See, for example, *Ali Fadel v. Switzerland*, paras. 7.7 and 7.8.

<sup>31</sup> See, for example, *Sylvie Bakatu-Bia v. Sweden* (CAT/C/46/D/379/2009), paras. 2.2 and 10.5; and *Ali Fadel v. Switzerland*, para. 7.7.

<sup>32</sup> See, for example, *Ramiro Ramírez Martínez and others v. Mexico* (CAT/C/55/D/500/2012), para. 17.5; and *Patrice Gahungu v. Burundi* (CAT/C/55/D/522/2012), para. 7.6.

<sup>33</sup> See, for example, *Tony Chahin v. Sweden* (CAT/C/46/D/310/2007), para. 9.4; and *Nasirov v. Kazakhstan*, paras. 2.2, 11.6 and 11.9.

<sup>34</sup> See, for example, *Ramiro Ramírez Martínez and others v. Mexico*, para. 17.5; *Patrice Gahungu v. Burundi*, para. 7.7; and *X. v. Burundi* (CAT/C/55/D/553/2013), para. 7.5.

<sup>35</sup> See, for example, *Combey Brice Magloire Gbadjavi v. Switzerland* (CAT/C/48/D/396/2009), paras. 2.1 and 7.5–7.8; and *Ali Fadel v. Switzerland*, paras. 2.4 and 7.6–7.8.

<sup>36</sup> See, for example, *Ramiro Ramírez Martínez and others v. Mexico*, paras. 17.5 and 17.6; *Patrice Gahungu v. Burundi*, para. 7.7; and *X. v. Burundi*, 7.5 and 7.6.

<sup>37</sup> See, for example, *F.K. v. Denmark* (CAT/C/56/D/580/2014), paras. 7.5 and 7.6.

<sup>38</sup> See, for example, *Sylvie Bakatu-Bia v. Sweden*, paras. 10.5–10.7.

<sup>39</sup> See, for example, *Agiza v. Sweden*, para. 13.4; and *Ali Fadel v. Switzerland*, para. 7.8.

<sup>40</sup> See, for example, *Tony Chahin v. Sweden*, para. 9.5; and *Tursunov v. Kazakhstan*, para. 9.8.

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 that 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 of 12 August 1949 and the Additional Protocols thereto where there are allegations or evidence of its violation of common article 3 of the four Geneva Conventions of 12 August 1949 and/or article 4 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),<sup>43</sup> and, in particular, of: (i) article 3 (1) (a) of the four Geneva Conventions;<sup>44</sup> and (ii) article 4 (1) and (2) of Protocol II;<sup>45</sup>

(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 Geneva Convention relative to the Treatment of Prisoners of War (Third Geneva Convention);<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 Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention);<sup>47</sup> or article 75 (2) of the Protocol additional to the Geneva Conventions of 12

<sup>41</sup> See, for example, *Rouba Alhaj Ali v. Morocco* (CAT/C/58/D/682/2015), paras. 8.5–8.8.

<sup>42</sup> See, for example, 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 the Additional Protocols thereto, the Committee has referred in its jurisprudence to situations covered by those provisions, among others, in the concluding observations on the fourth periodic report of Turkey (CAT/C/TUR/CO/4, paras. 12 and 23–26); and the 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 (1) (a) of the four Geneva Conventions stipulates that in the case of armed conflict not of an international character, 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, for example, 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 (1) of Protocol II, adopted on 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 referred to in article 2 of the Geneva Conventions and article 1 of the Additional Protocols thereto), whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. Article 4 (2) of the Protocol stipulates that the following acts against the persons referred to in article 4 (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) 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, for example, 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 Convention and after the Detaining Power has satisfied itself of the willingness and ability of such transferee Power to apply the Convention. See, for example, 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 Convention and after the Detaining Power has satisfied itself of the willingness and ability of such transferee Power to apply the Convention.



August 1949, and relating to the protection of victims of international armed conflicts (Additional Protocol I);<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 that are not considered by the deporting State party as the most serious crimes;<sup>51</sup>

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

(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 on death row<sup>53</sup> could amount to torture or 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 the person, members of the person’s family or witnesses of the person’s 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 the person was subjected to or would run the risk of being subjected to slavery and forced labour<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 the person’s fundamental child rights were previously violated

<sup>48</sup> Article 75 (2) of 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, for example, concluding observations on the initial report of Chad (CAT/C/TCD/CO/1), para. 34.

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

<sup>50</sup> See, for example, *Rouba Alhaj Ali v. Morocco*, paras. 8.5–8.8.

<sup>51</sup> See, for example, *X. v. Switzerland* (CAT/C/53/D/470/2011), para. 7.8; and *Asghar Tahmuresi v. Switzerland* (CAT/C/53/D/489/2012), para. 7.5.

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

<sup>53</sup> See 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, for example, 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, for example, *Hussein Khademi and others v. Switzerland* (CAT/C/53/D/473/2011), paras. 7.4–7.6; *Nasirov v. Kazakhstan*, para. 11.9; and *N.A.A. v. Switzerland* (CAT/C/60/D/639/2014), paras. 7.7–7.11.

<sup>56</sup> See, for example, *Tony Chahin v. Sweden*, para. 9.5.

and/or would be violated, creating irreparable harm, such as the person's 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 that 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 or whose impunity it is unable to counter.<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 the 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 that it is relevant for consideration under article 22 of the Convention and that it fulfils 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 article 22, 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 (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 (5) (b) of the Convention, the complainant must have exhausted all available domestic remedies, provided for in law and in practice, that bring effective relief.<sup>61</sup> Article 22 (5) (b) further provides that this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief

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

<sup>58</sup> See, for example, *S.S. Elmi v. Australia* (CAT/C/22/D/120/1998), paras. 6.8 and 6.9; and *M.K.M. v. Australia* (CAT/C/60/D/681/2015), para. 8.9.

<sup>59</sup> See, for example, *N.Z. v. Kazakhstan* (CAT/C/53/D/495/2012), para. 12.3.

<sup>60</sup> See, for example, *A.A. v. Azerbaijan* (CAT/C/35/D/247/2004), para. 6.8; *E.E. v. the Russian Federation* (CAT/C/50/D/479/2011), para. 8.4; *N.B. v. the Russian Federation* (CAT/C/56/D/577/2013), para. 8.2; *M.T. v. Sweden* (CAT/C/55/D/642/2014), para. 8.3; and *Mr. U. v. Sweden* (CAT/C/56/D/643/2014), para. 6.4.

<sup>61</sup> See, for example, *Mr. Y. v. Canada* (CAT/C/55/D/512/2012), para. 7.2; and *Olga Shestakova v. the Russian Federation* (CAT/C/62/D/712/2015), para. 6.4.

to the person who is the victim of the 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 that are directly related to the risk of being subjected to torture in the country to which the person 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 the complainant 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.

## B. Interim measures of protection

36. When the Committee, or members designated by it, requests 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 an 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 serious damage and an obstacle to the effectiveness of the Committee’s deliberations and would cast serious doubt on the willingness of the State party to implement article 22 of the Convention in good faith.<sup>65</sup> The Committee has therefore determined that the non-compliance with its request for interim measures constitutes a breach of article 22.<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, the burden of proof is upon the author of the communication, who must present an arguable case,<sup>67</sup> that is, submit substantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real. However, when complainants are in a situation where they cannot elaborate on their case, such as when they have demonstrated that they have no possibility of obtaining documentation relating to their allegation of torture or have been deprived of their liberty, the burden of proof is reversed<sup>68</sup> and the State party concerned must 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

<sup>62</sup> See, for example, *A.E. v. Switzerland* (CAT/C/14/D/24/1995), para. 4; *Eyloev v. Kazakhstan* (CAT/C/51/D/441/2010), para. 8.6; and *W.G.D. v. Canada* (CAT/C/53/D/520/2012), para. 7.4.

<sup>63</sup> See, for example, *W.G.D. v. Canada*, para. 7.4.

<sup>64</sup> See, for example, *W.G.D. v. Canada*, para. 7.4; and *J.K. v. Canada* (CAT/C/56/D/562/2013), para. 9.2.

<sup>65</sup> See *Kalinichenko v. Morocco* (CAT/C/47/D/428/2010), paras. 13.1, 13.2 and 16; *Tursunov v. Kazakhstan*, para. 10; *X. v. the Russian Federation* (CAT/C/54/D/542/2013), paras. 9.2 and 12; and *D.I.S. v. Hungary* (CAT/C/56/D/671/2015), paras. 9.1–9.3.

<sup>66</sup> See, for example, *S.T. v. Australia* (CAT/C/61/D/614/2014), paras. 9 and 10; and *X. v. the Russian Federation*, para. 12.

<sup>67</sup> See *Sivagnanaratnam v. Denmark* (CAT/C/51/D/429/2010), paras. 10.5 and 10.6; *Mr. A.R. v. Netherlands* (CAT/C/31/D/203/2002), para. 7.3; *Arthur Kasombola Kalonzo v. Canada* (CAT/C/48/D/343/2008), para. 9.3; *X. v. Denmark* (CAT/C/53/D/458/2011), para. 9.3; *W.G.D. v. Canada*, para. 8.4; and *T.Z. v. Switzerland* (CAT/C/62/D/688/2015), para. 8.4.

<sup>68</sup> For comparison, see *S.P.A. v. Canada*, para. 7.5; and *J.K. v. Canada*, para. 10.4.

believing that the complainant faces a foreseeable, present, personal and real risk of being subjected to torture in the State to which the complainant 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 has been deprived of the person's liberty or is in a particularly vulnerable situation, such as the situation of an asylum 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 recourse against a decision of deportation within a reasonable time frame, for a person in a precarious and stressful situation and with a suspensive effect on 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 the complainant has suffered, should always be ensured, regardless of the authorities' assessment of 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. Victims of torture and other vulnerable persons frequently suffer from post-traumatic stress disorder, 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. With regard to potential factual contradictions and inconsistencies in the author's allegations, 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 as 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 (2) of the Convention. Such violations include, but 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>

44. The Committee's assessment will be based primarily on the information provided by or on behalf of the complainant and by the State party concerned. The Committee will also consult United Nations sources of information, as well as any other sources that it considers

<sup>69</sup> See, for example, 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 and 14.

<sup>70</sup> See, for example, *M.B. and others v. Denmark*, para. 9.8.

<sup>71</sup> See also footnotes 23–30 above.

<sup>72</sup> See, for example, *Alan v. Switzerland* (CAT/C/16/D/21/1995), para. 11.3; *Kisoki v. Sweden* (CAT/C/16/D/41/1996), para. 9.3; *Haydin v. Sweden* (CAT/C/21/D/101/1997), paras. 6.6 and 6.7; and *C.T. and K.M. v. Sweden* (CAT/C/37/D/279/2005), para. 7.6; *E.K.W. v. Finland*, para. 9.6; and *M.B. and others v. Denmark*, para. 9.6.

<sup>73</sup> See, for example, *X. v. Kazakhstan* (CAT/C/55/D/554/2013), para. 12.7.

<sup>74</sup> See, for example, *P.S.B. and T.K. v. Canada* (CAT/C/55/D/505/2012), para. 8.3.

<sup>75</sup> See, for example, *Subakaran R. Thiruganasampanthar v. Australia*, para. 8.7.

<sup>76</sup> See, for example, concluding observations on the initial report of Iraq (CAT/C/IRQ/CO/1 and CAT/C/IRQ/CO/1/Corr.1), paras. 11 and 12.

<sup>77</sup> See, for example, *J.K. v. Canada*, paras. 10.5 and 10.6.

<sup>78</sup> See, for example, *Abed Azizi v. Switzerland* (CAT/C/53/D/492/2012), paras. 8.5–8.8.

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

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 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 the complainant’s deportation. Indications of personal risk may include, but are not limited to the complainant’s: (a) ethnic background;<sup>81</sup> (b) political affiliation or political activities of the complainant and/or the complainant’s family members;<sup>82</sup> (c) arrest and/or detention 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 national armed forces 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 following 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 that 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 a State as a whole and not of a particular area of it. The State party is responsible for any territory under its jurisdiction, 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”, that is, the deportation of a person or a victim of torture to an area of a State where the person 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, 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 impunity for acts of torture, violence and 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>

<sup>80</sup> See rule 118 of the Committee’s rules of procedure.

<sup>81</sup> See, for example, *Z. v. Denmark* (CAT/C/55/D/555/2013), paras. 5.2 and 7.8; and *M.B. and others v. Denmark*, paras. 2.1, 2.2 and 9.7.

<sup>82</sup> See, for example, *T.D. v. Switzerland* (CAT/C/46/D/375/2009), para. 7.8.

<sup>83</sup> See, for example, *Nasirov v. Kazakhstan*, paras. 7.6 and 11.9.

<sup>84</sup> See, for example, *Agiza v. Sweden*, para. 13.4; and *Ali Fadel v. Switzerland*, para. 7.8.

<sup>85</sup> See, for example, *Uttam Mondal v. Sweden* (CAT/C/46/D/338/2008), para. 7.7.

<sup>86</sup> See, for example, *Dadar v. Canada*, para. 8.5.

<sup>87</sup> See, for example, *Abdussamatov and others v. Kazakhstan*, para. 13.8.

<sup>88</sup> See, for example, *Abed Azizi v. Switzerland*, paras. 3.2 and 8.8.

<sup>89</sup> See, for example, general comment No. 1 (1997) on the implementation of article 3, para. 2; *Avedes Hamayak Korban v. Sweden* (CAT/C/21/D/88/1997), para. 7; and *Z.T. v. Australia* (CAT/C/31/D/153/2000), para. 6.4; concluding observations on the combined fifth and sixth periodic reports 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>90</sup> See, for example, *E.K.W. v. Finland*, paras. 9.6 and 9.7.

<sup>91</sup> See, for example, *Uttam Mondal v. Sweden*, para. 7.4.

<sup>92</sup> See, for example, *M.K.M. v. Australia*, para. 8.9.

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

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

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

(b) Whether the complainant has been tortured or ill-treated by, 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, and, if so, whether this was in the recent past;

(c) Whether there is medical, psychological or other independent evidence to support a claim by the complainant that the complainant has been tortured or ill-treated in the past, and whether the torture had after-effects;

(d) Whether the State party has ensured that the complainant facing deportation from the territory under its jurisdiction, 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 claims that the complainant has previously suffered torture or ill-treatment in the complainant's country of origin;

(e) Whether there is 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 or other cruel, inhuman or degrading treatment or punishment in connection with the communication submitted to the Committee;

(f) Whether the complainant has engaged in political or other activities within or outside the State concerned that would appear to make the complainant vulnerable to the risk of being subjected to torture were the complainant to be expelled, returned or extradited to the State in question;

(g) If returned to the State to which the complainant is being deported, whether the complainant is at risk of further deportation to another State where the complainant 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 and victims of torture or sexual violence, which is conducive to some inconsistencies and/or lapses of memory in their submissions, whether there is any evidence concerning the credibility of the complainant;

(i) Taking into account some inconsistencies that may exist in the presentation of the facts, whether the complainant has demonstrated the general veracity of the 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 the Committee will 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.<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>94</sup> See, for example, *S.P.A. v. Canada*, para. 7.5.

<sup>95</sup> See, for example, *T.D. v. Switzerland*, para. 7.7; and *Alp v. Denmark* (CAT/C/52/D/466/2011), para. 8.3.

<sup>96</sup> See, for example, *I.E. v. Switzerland* (CAT/C/62/D/683/2015), para. 7.4.