



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

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 776/2016*, **, ***

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| <i>Communication submitted by:</i> | X and Y (represented by counsel Marcel Zirngast) |
| <i>Alleged victims:</i> | The complainants |
| <i>State party:</i> | Switzerland |
| <i>Date of complaint:</i> | 19 October 2016 (initial submission) |
| <i>Document references:</i> | Decision taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on 25 October 2016 (not issued in document form) |
| <i>Date of adoption of decision:</i> | 23 April 2019 |
| <i>Subject matter:</i> | Deportation to Pakistan |
| <i>Procedural issue:</i> | None |
| <i>Substantive issue:</i> | Risk to life or risk of torture or inhuman or degrading treatment, if deported to country of origin (non-refoulement) |
| <i>Articles of the Convention:</i> | 3 and 22 |

1.1 The complainants are X and Y, nationals of Pakistan born in 1966 and 1973, respectively. Following the rejection of their asylum application in Switzerland, they claim that the State party would violate their rights under article 3 of the Convention if it forcibly removed them to Pakistan. The complainants are represented by counsel, Marcel Zirngast.

1.2 On 26 October 2016, pursuant to rule 114 of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party to refrain from expelling the complainants while their complaint was being considered. On 31 October 2016, the State party reported that the complainants' removal had been suspended in accordance with the Committee's request. On 4 December 2017, the

* Adopted by the Committee at its sixty-sixth session (23 April–17 May 2019).

** The following members of the Committee participated in the examination of the communication: Essadia Belmir, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Honghong Zhang.

*** An individual opinion by Committee member Abdelwahab Hani (dissenting) is annexed to the present decision.



Committee, acting through the same Rapporteur, denied the State party's request to discontinue examination of the communication.¹

The facts as submitted by the complainants

2.1 The complainants are Catholic and are married to each other. In 2006, the male complainant began employment as an office worker in the Swiss Embassy in Islamabad. Beginning in 2010, he started receiving regular telephone calls from individuals offering monetary bribes in exchange for illegally obtained visas.

2.2 In February 2011, individuals confronted the male complainant in the street with the same request. Given that he always refused these requests, the telephone calls he received at work became more threatening. In early March 2011, he received a threatening letter. In the middle of April 2011, in Lahore, the same individuals who had threatened him attacked and violently beat him.

2.3 Approximately two weeks after the attack in Lahore, the male complainant learned that he had been reported to the police for violating the legal prohibition on blasphemy. In order to improve his situation, he ended his employment contract with the Swiss Embassy at the end of June 2011. On 17 July 2011, the complainants flew to Switzerland using the permanent Swiss visas they held.

2.4 In September 2011, the complainants returned to Pakistan, hoping that their situation had improved. After arriving, they discovered that the police had issued a warrant for their arrest. Consequently, they left for Switzerland again in October 2011.

2.5 On 9 October 2011, the complainants applied for asylum in Switzerland. On 4 December 2014, the Federal Office for Migration denied their application. On 19 September 2016, the Federal Administrative Tribunal denied their appeal of that decision.

The complaint

3.1 The complainants assert that the State party would violate their rights by removing them to Pakistan, where they fear for their lives and their bodily integrity because the male complainant is the subject of a criminal complaint for blasphemy and the complainants, due to their Christian faith, are not effectively protected by the Government from anti-Christian violence. The male complainant risks being subjected to torture or other cruel treatment due to the presumption that he has committed blasphemy.

3.2 Although the Federal Office for Migration and Federal Administrative Tribunal both considered that the complainants were not credible, they expressed themselves clearly and in detail during their interviews before the domestic authorities. Although they responded at appeal to the credibility concerns of the Federal Office for Migration, the Federal Administrative Tribunal did not take their responses into account, and merely repeated the Office's findings that the complainants' statements were illogical, contradictory and unrealistic. However, the male complainant mentioned several names and places, and described with precision his encounter on 24 February 2011 in Islamabad with individuals who attempted to force him to illegally provide Swiss visas, as well as his assault on 16 April 2011 by the same individuals in Liberty Park in Lahore.

3.3 The Swiss authorities ascribed significance to the alleged inconsistencies in the complainants' statements concerning the point at which the male complainant began receiving threatening telephone calls at the Swiss Embassy. However, the complainants explained that initially, they had not perceived those calls to be threatening, and that they had even laughed about them together, noting that the male complainant did not even have the authority to issue visas. The complainants stated that they only began to perceive the

¹ The State party's request to discontinue the communication was based on the information that the complainants had been missing since 2 March 2017. In comments dated 17 November 2017, the complainants informed the Committee that they had never been missing. They had simply declined to reside in the emergency housing offered to them by the canton of Zurich, preferring to stay instead in the private residence of an acquaintance. The complainants maintain that they informed the State party of their location in a letter dated 24 March 2017.

calls as threatening after five individuals had accosted the male complainant on the street. The male complainant also stated that a switchboard operator named M responded to calls at the Embassy and transferred them to him. The level of detail the complainants provided to the Swiss authorities demonstrates that they did in fact experience these events.

3.4 The Swiss authorities also found contradictions in the complainants' statements concerning the arrival of the police at the house of the male complainant's brother. However, both complainants testified that after the threats and attack, they learned that a complaint had been filed against them. While the male complainant was still in Pakistan, individuals went to his brother's house and left a message there in chalk. At that time, the complainants did not know whether these individuals were police officers. It was only after the male complainant arrived in Switzerland that his brother was visited at home by police officers who asked where the male complainant was. It is possible that the male complainant's statements to the Swiss authorities on this point lacked precision, but he was merely confused as to whether the individuals who had previously visited his brother had been police officers or not. This confusion can be explained by the fact that in Pakistan, there is widespread police corruption, and no government protection is given to Christians who face criminal complaints. The complainants had no contact with the brother during their first stay in Switzerland and had not spoken to him about their return to Switzerland.

3.5 While the Swiss authorities considered it illogical and incomprehensible that the complainants had voluntarily returned to Pakistan, it should be noted that the complainants had a comfortable life there. They provided professional references to the Swiss authorities to confirm that they were well-established, professionally and socially. No one would abandon such a situation without a good reason. The male complainant had worked as a photographer there, and his brother had a photography shop in Lahore. Both complainants stated to the Swiss authorities that because the male complainant had resigned from his job at the Swiss Embassy, he hoped that his situation in Pakistan would improve. The complainants initially went to Switzerland to escape from danger after learning of the police complaint filed against them. However, at that stage, they had not abandoned their life in Pakistan. Their statement that they met a fellow Pakistani national in Zurich by chance and were able to reside with him for a while is too specific and atypical to be false. Not wanting to be a burden on their compatriot, they decided to return to Pakistan, where they wished to live. This is why they did not submit a claim for asylum during their first stay in Switzerland.

3.6 During his interview, the male complainant expressly stated that during his first stay in Switzerland, the police in Pakistan went to his brother's house in Lahore to seek the complainants, and that he had only learned about this after his return. This corresponds to the female complainant's statement that it was only after the complainants' return to Switzerland that they learned that the police had visited the male complainant's brother twice to seek the complainants. The male complainant's subsequent signed written statement, in which he asserted that his brother had informed him of the police visits in a telephone call, was based on a misunderstanding. The male complainant wished to state that he did not call his brother due to the cost of the calls and that he did not know exactly when the police officers had gone to his brother's house. The male complainant did not learn of the police visits over the telephone. Given the length of the interview, it is understandable that the male complainant failed to correct this mistake during the retranslation of his written statement. Moreover, the Federal Office for Migration did not interview the complainants until three years after they submitted their asylum application; this also explains a certain lack of precision concerning auxiliary matters that does not impugn the complainants' overall credibility. Even after three years, their statements were detailed and realistic.

3.7 In addition, the Federal Administrative Tribunal failed to properly consider the First Information Report presented by the complainants. Issued on 5 May 2011, the Report contained the statement of an individual who reported to the Lahore police that the male complainant had been preaching about the crusades and had repeatedly criticized the

Prophet Mohamed. According to the Report, several people had witnessed the male complainant engage in those acts.²

3.8 Islamic fundamentalism is increasingly present in Pakistan, and laws prohibiting blasphemy are used to manoeuvre against religious minorities, notably Christians. Christians are often falsely accused of blasphemy and when this occurs, their lives are in danger if they are not under police protection. In March 2011, Shahbaz Bhatti, Minister for Minorities, was assassinated after having made a public statement in favour of revising the law prohibiting blasphemy. Two months earlier, Salman Taseer, governor of Punjab province, had been assassinated after trying to assist a Christian sentenced to death for blasphemy. Most politicians and the majority of the public in Pakistan approved of these murders. The situation has not improved since then, and the complainants' claim that they were accused of blasphemy and are unable to receive State protection is therefore entirely credible.

3.9 The Federal Office for Migration and the Federal Administrative Tribunal considered the First Information Report to have limited probative value because it was a copy, not an original, and because similar reports could easily be obtained illegally. However, First Information Reports are standard documents used to record criminal complaints; it is impossible to obtain the original, which remains with the police. The complainants provide a letter from Shazad Ahmed, a lawyer in Zurich, stating that a First Information Report is a written document prepared by the police in Pakistan in response to a criminal complaint, and that the originals may not be provided officially or unofficially.

3.10 During his interview before the Federal Office for Migration on 4 November 2014, the male complainant stated that the police had given his brother a copy of the First Information Report. He was then asked to produce the report, and asked his brother to obtain it. It is true that it is easy to obtain falsified documents in Pakistan. However, this is not the case for Christians and minorities. As a Christian, requesting a falsified document from the authorities represents a risk to one's life. Thus, the Swiss authorities are incorrect to consider the report presented by the male complainant as lacking in probative value on the basis of pervasive corruption in Pakistan. Moreover, the authorities acted arbitrarily by requesting the male complainant to provide the Report and then asserting that it lacked probative value. On its own, the Report suffices to demonstrate that the male complainant runs a risk of being exposed to treatment contrary to article 3 of the Convention in Pakistan.

3.11 The Swiss authorities also wrongly rejected the other pieces of evidence presented by the male complainant, in particular letters from church leaders. The authorities did not examine their contents and merely deemed them to be letters of convenience lacking in probative value. However, the church leaders specified in the letters how they knew the male complainant and stated that they knew he faced threats.

3.12 The Swiss authorities erroneously considered it absurd that the male complainant, who had worked at the Swiss Embassy in Islamabad for many years, stated that he was initially unaware of the possibility of applying for asylum in Switzerland. While this assertion may sound strange, the complainant stated to the authorities that he had knowledge of asylum law, but that initially, he had not thought about applying for it himself. This statement proves that the complainants initially wished to continue living in Pakistan. They only decided to apply for asylum during their second stay in Switzerland, after the female complainant had lost her handbag and the complainants' passports in Basel. Distressed, the complainants contacted the individual who had hosted them during their first stay in Switzerland. He encouraged them to contact the authorities. While they were perhaps naive in failing to contemplate applying for asylum during their first stay in Switzerland, or at the beginning of their second stay there, this was by no means absurd. Moreover, they described in great detail the circumstances of their second arrival in Switzerland; this demonstrates that their narrative was not fictional.

3.13 While the Swiss authorities considered it illogical that the male complainant had not informed the Swiss Embassy of the threatening telephone calls, he clearly stated that the switchboard operator was aware of those calls and had warned the male complainant not to

² The complainants provide a copy of the First Information Report.

get involved in illegal activity. Because the male complainant's situation was sensitive, it is understandable that he did not inform his supervisors about the threatening calls, or about the ensuing incidents. He would have expected the police to become involved, and, given the widespread police corruption and pervasive anti-Christian environment in Pakistan, he had every reason to fear the police.

3.14 The Swiss authorities also considered that the threatening letter the complainants provided was inauthentic because it was partially written in English. However, the letter only contains a few English-language terms, and does not reflect a high level of education that would contradict the presumed village origins of the individuals who wrote the threatening letter. Furthermore, the vast majority of Pakistanis have knowledge of English. The objections of the Swiss authorities to the authenticity of the letter are thus unfounded.

State party's observations on the merits

4.1 In its observations dated 25 April 2017, the State party added to the factual background of the communication with elements the complainants had raised during domestic proceedings. The male complainant alleges that he started receiving the threatening telephone calls at the end of 2010, and that in February 2011, the same individuals who called him accosted him in the street and offered him a bribe in exchange for his assistance in procuring visas. After he refused, he began receiving threatening calls almost every day. On 3 March 2011, he also received a threatening letter. On 16 April 2011, the individuals who had been calling him threatened and beat him in Lahore. According to the male complainant, approximately two weeks later, a pastor called him to inform him that his persecutors had filed a criminal complaint against him for having insulted the Prophet Mohamed. On 30 June 2011, he resigned from his job at the Swiss Embassy, fearing both his persecutors and the police. The female complainant claims to have started working for the Swiss Embassy in 2007, as the housemaid of the Chief of the Visa Section. The individuals who threatened her husband also threatened to harm her. However, she never had contact with them.

4.2 On 17 July 2011, the complainants arrived in Switzerland for the first time, and returned to Lahore in September 2011. On 2 October 2011, they arrived in Switzerland again, and subsequently lost their passports in Basel. On 9 November 2011, they applied for asylum. On 17 November 2011, the Federal Office for Migration (known since 1 January 2015 as the State Secretariat for Migration) interviewed them.³ On 21 March 2013, the Office requested information on the complainants' case from the Swiss Embassy in Islamabad. On 4 November 2014, the Office interviewed the complainants again. Their asylum application and the related appeal were denied on 4 December 2014 and 19 September 2016, respectively, on the ground that their statements were not credible.

4.3 The State party considers that the communication is without merit, as the complainants' allegations are implausible and there is nothing to indicate that they would face a concrete and personal risk of being subjected to torture in Pakistan. The Swiss authorities rejected their claims after thorough and careful consideration. Their communication does not present any new elements that could lead the Committee to a different conclusion.

4.4 The general situation in Pakistan alone does not suffice to demonstrate that the complainants risk being subjected to torture there.⁴ While credible reports indicate that religious minorities in Pakistan are at an elevated risk of reprisals and face discrimination,⁵ given the large number of Christians living in Pakistan, the number of acts of violence against them does not indicate that they are collectively persecuted.⁶ Moreover, the Government of Pakistan has announced a national plan of action to combat terrorism,

³ The State party provides the German-language interview report dated 17 November 2011.

⁴ The State party cites European Court of Human Rights, *Samina v. Sweden* (application No. 55463/09), judgment of 20 October 2011, para. 50.

⁵ The State party cites, inter alia, the chapter on Pakistan in Human Rights Watch, *World Report 2017* (New York, 2017).

⁶ The State party cites United Kingdom Home Office, "Country information and guidance – Pakistan: Christians and Christian converts," May 2016, p. 6.

including the clear objective of combating sectarian hate speech, and the prosecution of those accusing others of being infidels. On several occasions, police intervention has prevented mobs from killing Christians. However, reports indicate that the police have frequently failed to protect religious minorities from attacks, and that internal displacement is not an option for Christians accused of blasphemy.⁷ Nevertheless, appeal tribunals have annulled lower court decisions convicting individuals of blasphemy.⁸

4.5 While past acts of torture should be considered when evaluating the risk of refoulement for the purposes of article 3 of the Convention, the complainants do not allege that they have suffered torture or ill-treatment in the past. They maintain that the male complainant was beaten by five men in Lahore, but do not claim that the attackers were State agents or individuals acting with express or tacit State approval.

4.6 While political activities should also be considered when evaluating the risk posed by refoulement, the complainants do not allege that they have engaged in political activities. Merely belonging to the Christian minority does not suffice to establish that the complainants would be subjected to torture upon their return to Pakistan.

4.7 The complainants' claims during domestic proceedings were inconsistent in several significant aspects. While the male complainant stated that the threatening telephone calls began at the end of 2010 and that he had informed his wife about them from the beginning, the female complainant stated that he had only informed her about the calls in January 2011. Moreover, while the male complainant stated that during the first telephone call in 2010, the callers demanded to meet him, the female complainant stated that it was only in February 2011 that the callers first demanded to meet. The telephone calls played a decisive role in the complainants' decision to leave Pakistan. Thus, it is difficult to reconcile their inconsistent statements on this issue.

4.8 In addition, the complainants provided inconsistent dates as to when the male complainant became wanted by the police. The male complainant stated that the police sought him twice at his brother's home: once before he left for Switzerland, and again while he was in Switzerland. In contrast, the female complainant stated that these two incidents both took place while the complainants were in Switzerland, and that they were informed about them only when they returned to Pakistan. Given that the hunt for the male complainant is an important factor in their narrative, especially with regard to their return to Pakistan, it is surprising that their statements on this issue differ. The complainants' attempt in their communication to explain this inconsistency is not convincing.

4.9 While the complainants claim to have been informed of the criminal complaint by a pastor, they do not explain how the pastor could have learned about the complaint, and the complainant was unable to explain this when asked about it. This indicates that the claim regarding the police hunt for the male complainant is not credible. Even if it were credible, according to the Committee's jurisprudence, article 3 of the Convention does not offer protection to individuals merely claiming to fear arrest in their country of origin.⁹

4.10 Furthermore, the complainants' claims are illogical and incomprehensible. According to the male complainant, while he was in Switzerland, his brother informed him that the police were looking for him in Pakistan. Thus, he was aware that the situation in Pakistan had worsened, and yet chose to return there in September 2011. If the complainants had felt threatened, one could expect them to have consulted their family before returning. However, they did not do so. It is also implausible that the male complainant received threatening telephone calls almost every day, but did not inform his supervisors about them, and that only one employee of the Swiss Embassy was aware of these calls.

⁷ The State party cites, inter alia, United States Department of State, "Country reports on human rights practices for 2016: Pakistan", p. 12; and United Kingdom Home Office, "Country information and guidance – Pakistan: Christians and Christian converts," p. 9.

⁸ The State party cites, inter alia, United States Department of State, "Country reports on human rights practices for 2016: Pakistan," pp. 17–18.

⁹ The State party cites *M.A.H. and F.H. v. Switzerland* (CAT/C/51/D/438/2010), para. 7.5.

4.11 In addition, the female complainant responded evasively to questions concerning the couple's return to Pakistan. The plane tickets they purchased for their departure to Pakistan on 31 August 2011 were round-trip, and included their return journey to Switzerland on 1 October 2011.¹⁰ Although the male complainant stated that when purchasing the ticket, his acquaintance had included a return trip in order to secure a lower price, it is not credible that the planned date of their departure, scheduled months in advance, happened to coincide with the date on which they in fact urgently departed.

4.12 Several other inconsistencies render the complainants' claims implausible: (a) it is illogical that the complainants waited until the appeal procedure before the Federal Administrative Tribunal to submit the First Information Report, given that the male complainant's brother had allegedly received the Report the first time the police visited his home; (b) the First Information Report bears an English-language stamp, which is implausible since the rest of the document is in Urdu; and (c) the complainants have not substantiated their claim that it is difficult for Christians to obtain falsified documents in Pakistan.

4.13 Moreover, there are several unclear aspects of the complainants' claims regarding their passports. The male complainant alleged to have left the passports in the female complainant's handbag, which also contained their other possessions with an estimated value of €1,200, at the house of their host. Once they realized they had accidentally left the handbag at the house, they immediately returned to the house, but the handbag was no longer there. This occurred on 7 November 2011, two days before they applied for asylum. However, the female complainant asserts that she left the handbag on some steps when the complainants were taking a walk along a river. According to her, the complainants then went to their host's house and searched it before returning to the same spot along the river, but they could not find the handbag. They then called their host, who told them that they could no longer stay with him, and that they should go to the police to report the lost handbag. Given the high value of their valuables, it is surprising that the female complainant left it along the riverbank. It is also surprising that the complainant's identity cards, which are also important documents, were not in the lost handbag.

4.14 The letters from the pastors and church leaders that the complainants submitted to the domestic authorities lack probative value as letters of convenience. It is also surprising that the male complainant informed the pastors of the alleged threats, but not his supervisors at the Swiss Embassy.

4.15 In view of the foregoing, there are no grounds for concluding that removing the complainants to Pakistan would constitute a violation of the State party's obligations under article 3 of the Convention.

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

5.1 In their comments dated 17 November 2017, the complainants maintain that the State party merely reiterates the arguments invoked by the Federal Office for Migration and the Federal Administrative Tribunal, and does not respond to the explanations the complainants provided in their communication. The complainants explained in detail their reasons for fleeing Pakistan. Explanations of flight from a country can often seem illogical or implausible to persons living in a safe country, as these journeys are complex and can be misunderstood.

5.2 The State party criticizes the male complainant for waiting until the appeal procedure to present the First Information Report as evidence. However, as already explained, during their interview on 4 November 2014, the State party required the complainants to provide the Report as soon as possible. They complied with this request as quickly as possible, and received the Report a few weeks later, on 8 December 2014. In the meantime, the Federal Office for Migration had already rejected the complainants' asylum application four days earlier. The complainants were not in a position to provide the Report prior to the issuance of this decision. The rapidity with which their asylum application was rejected, despite the authorities' request that they provide the Report, calls into question the

¹⁰ The State party provides a copy of the complainants' e-tickets.

State party's willingness to objectively and impartially evaluate the risk faced by the complainants.

Issues and proceedings before the Committee

Consideration of admissibility

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

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

6.3 As the Committee finds no further obstacles to admissibility, it declares the communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

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

7.2 In the present case, the issue before the Committee is whether the forced removal of the complainants to Pakistan would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return ("refouler") a person to another State where there are substantial grounds for believing that he or she would risk being subjected to torture. This includes torture or other ill-treatment at the hands of non-State entities, including groups unlawfully inflicting severe pain or suffering for purposes prohibited by the Convention, and over which the receiving State has either no control or only partial de facto control, or whose acts it is unable to prevent, nor to counter their impunity.¹¹

7.3 The Committee must evaluate whether there are substantial grounds for believing that the complainants would be personally at risk of being subjected to torture upon return to Pakistan. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.¹²

7.4 The Committee recalls its general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, according to which the non-refoulement obligation exists whenever there are "substantial grounds" for believing that the person concerned would be in danger of 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

¹¹ Committee against Torture, general comment No. 4 (2017), para. 30; *S. v. Sweden* (CAT/C/65/D/691/2015), para. 9.2.

¹² E.g., *E.T. v. Netherlands* (CAT/C/65/D/801/2017), para. 7.3.

tortured in the State of destination. The Committee recalls that “substantial grounds” exist whenever the risk of torture is “foreseeable, personal, present and real” (para. 11). Indications of personal risk may include, but are not limited to: (a) the complainant’s ethnic background and religious affiliation; (b) the political affiliation or political activities of the complainant; (c) arrest or detention without guarantee of a fair trial and treatment; (d) sentence in absentia; and (e) previous torture (para. 45).

7.5 With respect 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 must present an arguable case, that is, submit substantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real (para. 38). However, when the complainant is in a situation where he or she cannot elaborate on his or her case, for instance when the complainant has demonstrated that he or she has no possibility of obtaining documentation relating to his or her allegation of torture, or is deprived of his or her liberty, the burden of proof is reversed and it is up to the State party concerned to investigate the allegations and verify the information on which the complaint is based (para. 38). The Committee also recalls that it gives considerable weight to findings of fact made by organs of the State party concerned, however it is not bound by such findings and it can make a free assessment of the information available to it in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to each case (para. 50).¹³

7.6 The Committee notes the complainants’ claim that they fear for their lives and bodily integrity in Pakistan because they are Christian and are subject to an arrest warrant. The Committee notes the male complainant’s allegations that, while working at the Swiss Embassy in Islamabad, he received frequent telephone calls in 2010 and 2011 from individuals offering him bribes in exchange for visas. The male complainant alleges to have been attacked by the callers in Lahore, to have received an anonymous threatening letter, and to have discovered that a criminal complaint had been filed against him for blasphemy. The Committee notes the complainants’ claims that they left Pakistan as a result of these incidents; that the police subsequently visited the male complainant’s brother twice in search of the male complainant; that they returned to Pakistan because they had hoped the situation there had improved; and that they again left Pakistan after learning that a First Information Report had been registered against the male complainant. The Committee notes the complainants’ allegation that on the basis of the Report, which states that a criminal complaint had been filed against the male complainant for blasphemy under sections 295-A and 295-C of the Pakistan Penal Code, the State party should refrain from removing them to Pakistan. The Committee notes their claims that the credibility determination of the Swiss asylum authorities was erroneous and arbitrary, and that in Pakistan, Christians are subject to widespread persecution, and do not benefit from State protection.

7.7 The Committee also notes the State party’s position that the complainants’ claims lack credibility and are materially inconsistent on significant points. In this regard, the Committee notes in particular the State party’s argument that the complainants’ voluntary return to Pakistan indicates they did not fear being harmed there. The Committee also notes the State party’s position that it is implausible that the male complainant did not inform his superiors at the Swiss Embassy in Islamabad that he was receiving threatening telephone calls at work on an almost daily basis. The Committee notes the State party’s observation that the complainants, when returning to Pakistan, booked a return journey to Switzerland. It also notes the State party’s findings that the First Information Report and anonymous threatening letter provided by the complainants were inauthentic, in part because they contained English-language wording. The Committee further notes that according to the State party, the general situation in Pakistan does not in and of itself suffice to establish that the complainants would face a risk of torture upon return, and that conditions for Christians have improved there.

7.8 The Committee recalls that it must ascertain whether the complainants would currently face a risk of being subjected to torture in Pakistan.¹⁴ The Committee notes that,

¹³ Ibid., para. 7.5.

¹⁴ E.g., *G.B.M. v. Sweden* (CAT/C/49/D/435/2010), para. 7.7.

while the male complainant alleges to have been violently attacked and beaten on 16 April 2011 by the individuals who had been threatening him through telephone calls, he does not claim to have needed or sought medical treatment following this incident, and does not provide documentation indicating that he was attacked or subjected to torture. The Committee also notes that the complainants do not provide any further details about the incident or its aftermath in the communication, and do not explain why they believe that the attackers were also responsible for the telephone calls. The Committee further notes that, while the male complainant contests the determination of the Swiss authorities that the threatening letter he received in March 2011 was inauthentic because it was written partially in English, he has not described the contents of this letter and has not provided it to the Committee. The Committee notes that he has not furnished any other documentation to support his claims that he received threatening telephone calls on an almost daily basis while working for the Swiss Embassy in Islamabad. The Committee observes that after the threatening telephone calls, letter and attack, the complainants did not inform the Swiss Embassy, and chose to return to Pakistan in September 2011 after a two-month stay in Switzerland, with the intention of remaining in Pakistan. The Committee notes that, even though the complainants learned, two months before leaving Pakistan, that the criminal complaint for blasphemy had been filed, they voluntarily returned to the country a few months later. The Committee considers that in these circumstances, the fact of the complainants' return to Pakistan does not support their claim that they feared for their lives due to the alleged threats, attack and criminal complaint. The Committee also notes that the alleged threats and attack occurred eight to nine years ago on account of the complainant's former employment position, which he left in 2011, and that it does not necessarily follow that either complainant would be at risk of being tortured if returned to Pakistan today.

7.9 The Committee further notes that, while the complainants claim to have left Pakistan for the second time in an emergency on 1 October 2011 after having discovered that they were subject to an arrest warrant, they had already planned to return to Switzerland on the same date, by purchasing a round-trip air travel ticket. The Committee observes that, while the complainants assert that an arrest warrant was issued against both of them, they do not provide details or documentation to support that claim, and do not indicate why the female complainant would be subject to an arrest warrant when the criminal complaint and First Information Report concerned only the male complainant. The Committee also observes that the complainants do not allege to have had personal contact with the police or with other individuals accusing them of blasphemy, and do not claim to have encountered problems when leaving Pakistan in October 2011, despite the alleged arrest warrant. The Committee further notes that the communication does not contain substantiated information on any persecution faced by the female complainant. The Committee observes that the complainants had two opportunities to be heard by the Federal Office for Migration, during interviews in 2011 and 2014. The Committee considers that, while the complainants contest the determination that the First Information Report and anonymous letters are inauthentic, the arguments they raise do not demonstrate that the assessment of the documents by the Swiss asylum authorities was clearly arbitrary or erroneous, or amounted to a denial of justice. The Committee also notes that, while the complainants contest the authorities' determination that the letters from church officials were merely letters of convenience, they have not provided those letters to the Committee.

7.10 The Committee expresses concern that, under section 295-C of the Pakistan Penal Code, blasphemy carries a mandatory death sentence, although the State has never executed anyone for the offence.¹⁵ The Committee is also deeply concerned by reports that it is not uncommon in Pakistan for community members to falsely accuse individuals of blasphemy and violently attack them in mobs, without effective prevention or intervention efforts by the State.¹⁶ In this regard, the Committee refers to its concluding observations issued in

¹⁵ See, e.g., the chapter on Pakistan in Human Rights Watch, *World Report 2018* (New York, 2018).

¹⁶ E.g., United Nations High Commissioner for Refugees (UNHCR), *Eligibility Guidelines for Assessing the International Protection Needs of Members of Religious Minorities from Pakistan*, document HCR/EG/PAK/17/01, January 2017, pp. 39–40; Human Rights Commission of Pakistan, *State of Human Rights in 2017* (Lahore, 2018), pp. 3–4; United States Commission on International Religious Freedom, *2018 Annual Report* (Pakistan chapter) (Washington, D.C., 2018).

2017 on the initial report of Pakistan, in which it expressed concern about reportedly inadequate efforts by government authorities to protect vulnerable individuals, including members of Christian communities and individuals accused of blasphemy, from violence by non-State actors (CAT/C/PAK/CO/1, para. 36). The Committee recalls that according to its general comment No. 2 (2007) on the implementation of article 2, the failure of States parties to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity (para. 18). However, the Committee also recalls that the occurrence in the country of return of human rights violations, whether by State or non-State actors, is not in and of itself sufficient for it to conclude that a complainant is personally at risk of being tortured.¹⁷ The Committee refers to its findings in paragraphs 7.8 and 7.9 above, and considers that in the present case, the complainants have not demonstrated that the State party failed to properly assess their claims that the male complainant was sought by the police in connection with blasphemy allegations and was threatened and violently attacked by individuals who had asked him to illegally provide them with Swiss visas. For the reasons stated above, the Committee considers that the information submitted by the complainants is insufficient to establish substantial grounds for believing that if returned to Pakistan, they would face a foreseeable, personal, present and real risk of being tortured, either by State officials or by uncontrolled non-State agents.

8. On the basis of the above, and in the light of the material before it, the Committee considers that the complainants have not provided sufficient evidence to enable it to conclude that their forcible removal to Pakistan would expose them to a foreseeable, real and personal risk of torture within the meaning of article 3 of the Convention.

9. The Committee, acting under article 22 (7) of the Convention, decides that the complainants' removal to Pakistan by the State party would not constitute a violation of article 3 of the Convention.¹⁸

¹⁷ E.g., *I.E. v. Switzerland* (CAT/C/62/D/683/2015), para. 7.8.

¹⁸ The Committee nevertheless expresses concern at the complainants' uncontested claim that although the State party requested to discontinue the present communication on 25 April 2017 on the ground that the complainants had disappeared, they had already informed the Swiss authorities of their move from government-provided housing to a private residence in Switzerland in a letter dated 24 March 2017.

Annex

[Original: French]

Individual dissenting opinion of Abdelwahab Hani

1. The Committee should have drawn attention to the fact that approximately three years elapsed between the two interviews of the complainants with the State Secretariat for Migration. This delay may explain some of the minor factual inconsistencies in the complainants' statements to the authorities regarding peripheral issues that are not central to their asylum claim,¹ such as the exact date of the police visits to the home of the male complainant's brother, and the place where the complainants lost their passports. The State party does not contest the complainants' identities, or the fact that they are Christian, or that the male complainant worked for the Swiss Embassy in Islamabad. The male complainant has given the Swiss authorities logical explanations for many of his statements. For example, while the authorities considered it illogical that the male complainant had not reported the threatening phone calls to his supervisors at the Embassy, he explains that he was afraid the police would be biased against him on account of his Christian faith. In view of the credible reports that the police in Pakistan have often failed to provide effective protection to religious minorities, including Christians, this is a reasonable explanation.²

2. The reasons put forward by the State party in determining that the first information report lacked probative value are unconvincing. Although the report was a copy, it is plausible that the police kept the original. The State party considered that the document was a forgery because the stamp bore the words in English "Police Station – Lahore – Liaqatabad". But Pakistan was formerly a British colony, and the State party apparently did not check whether English was still commonly used in official documents. Regarding the late submission of the report, the complainants stated that they had provided the document within a few weeks of the date on which the State party's authorities requested it. Nonetheless, the Swiss authorities failed to properly examine the report. Similarly, the mere presence of some English wording in the anonymous letter to the complainant, who was working in a foreign Embassy, is not necessarily enough to call the letter's probative value into question.

3. Furthermore, although the male complainant has not provided any evidence to support his claim that an arrest warrant was issued against him in 2011, according to some reports the Penal Code does not require evidence to be provided following allegations of blasphemy. Credible reports also indicate that the requirement that senior officials must investigate blasphemy reports before they are registered with the courts is rarely implemented.³ While the State party considered that the complainants' claims of fearing return to Pakistan were not credible because they had returned to the country voluntarily, the complainants asserted that they learned of the first information report only after their return to Pakistan, whereupon they promptly fled the country. The introductory report contains an accusation of blasphemy against the male complainant, and current conditions indicate substantial grounds for believing that individuals accused of blasphemy face a personal risk of being killed in Pakistan and cannot depend on effective protection from the authorities.

4. In light of the foregoing, the Committee should have concluded that the complainants' removal to Pakistan would constitute a violation of article 3 of the Convention.

¹ See Office of the United Nations High Commissioner for Refugees (UNHCR), *Beyond Proof: Credibility Assessment in EU Asylum Systems* (Brussels, May 2013), p. 42 (English only).

² See, inter alia, United Nations High Commissioner for Refugees (UNHCR), *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Members of Religious Minorities from Pakistan*, HCR/EG/PAK/17/01, January 2017, p. 39.

³ Ibid.