



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. 863/2018*, **

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| <i>Communication submitted by:</i> | X (represented by counsel, Igna Oomen) |
| <i>Alleged victim:</i> | The complainant |
| <i>State party:</i> | Netherlands |
| <i>Date of complaint:</i> | 12 January 2018 (initial submission) |
| <i>Document references:</i> | Decision taken pursuant to rule 115 of the Committee's rules of procedure, transmitted to the State party on 19 March 2018 (not issued in document form) |
| <i>Date of adoption of decision:</i> | 5 December 2019 |
| <i>Subject matter:</i> | Deportation to Côte d'Ivoire |
| <i>Procedural issue:</i> | Admissibility – exhaustion of domestic remedies |
| <i>Substantive issues:</i> | Risk to life or risk of torture or inhuman or degrading treatment, if deported to country of origin (non-refoulement); torture |
| <i>Article of the Convention:</i> | 3 |

1.1 The complainant is X, a national of Côte d'Ivoire born on 22 August 1975 and currently residing in the Netherlands. She claims that by removing her to Côte d'Ivoire, the State party would violate her rights under article 3 of the Convention. The State party has made the declaration pursuant to article 22 (1) of the Convention, effective from 21 December 1988. The complainant is represented by counsel.

1.2 On 16 January 2018, the Committee, acting through its Rapporteur on new complaints and interim measures, denied the complainant's request under rule 114 of its rules of procedure for interim measures to request the State party to refrain from removing the complainant to Côte d'Ivoire and to provide adequate housing, medical and social benefits to her while her complaint was being considered by the Committee.

The facts as submitted by the complainant

2.1 The complainant is Muslim and is of Dyula ethnicity. She has four children, including one foster child. She had very little formal education, only attending a few years

* Adopted by the Committee at its sixty-eighth session (11 November–6 December 2019).

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



of elementary school, and never held a formal job. She was forced to marry a very strict man who was at least 15 years older than her. The complainant was a housewife and looked after the couple's children. The family lived in a small house in Abidjan.

2.2 The complainant's husband was politically active and supported Alassane Ouattara. He never spoke to the complainant about his political activities, though he ordered her to help distribute T-shirts during an election campaign.

2.3 In December 2005, several men suddenly entered the complainant's home and attacked her husband, while the complainant and her four young children were in an adjacent room. The complainant ushered the children outside through an open window, sending them to the family's neighbours. The complainant then hid under her bed. She heard the men beating and interrogating her husband in the next room, and heard him scream in pain. Then she heard silence and the sound of an engine, and realized that her husband had been taken away. The remaining men entered the room where the complainant was hiding. She saw that they were wearing military clothes and were armed. They searched the bedroom, broke the complainant's belongings, and found her under the bed.

2.4 The men arrested the complainant and drove her in a truck to a prison in Yopougon. During the journey, they hit the complainant hard on her back with a bat when she tried to move around and ask questions.

2.5 The complainant was dragged to a prison cell and was detained there for four years. She never appeared before a court. The prison cell, which the complainant shared with two other female inmates, measured only 2 x 3 metres. The complainant did not have a bed or bedding, and slept on a woven mat on the concrete floor. The cell was never cleaned and had no sanitary facilities. Across the hall was a prison cell for male inmates. Prisoners received the same food every day: rice with a salty sauce. They did not have access to medical care. The complainant was never permitted to go outside, or to receive visitors or mail.

2.6 In the early days of her detention, the complainant was regularly interrogated about her husband's political activities. When she resisted or asked questions (for example, about her arrest and detention), she was hit hard, sometimes with objects. She was regularly kicked and beaten without cause, including on her head. She was routinely severely wounded and bruised. Two guards took turns brutally raping her, both vaginally and anally, while the other guard held her down. This occurred approximately three times per week during the first phase of her detention. After some time, the interrogations stopped, but the complainant continued to be raped, approximately four times per month. She felt helpless and desperate. She did not speak to her fellow inmates about the abuse. She was very worried about her husband and their children, and had nightmares and panic attacks. She had frequent epileptic fits, which she had never had before her detention.

2.7 On 7 August 2009, the complainant escaped from prison with the help of a guard. The guard gave her a set of military clothes and told her to follow him. He took her outside the prison and instructed her to run. She ran and found the car where her friend was waiting. The friend stated that the complainant's children were safe with her. The friend had finally discovered where the complainant was being held, and had bribed the prison guard to help her escape. The friend took the complainant to see a smuggler, who helped her to leave the country on the same date. While she was at the smuggler's house, the complainant had another epileptic fit. The smuggler obtained strong medication so the complainant would not have another fit during her flight out of the country.

2.8 On 9 August 2009, the complainant arrived in the Netherlands without her children, and was taken to a private home. The smuggler demanded payment, but the complainant did not have any money. The smuggler raped her and told her to sleep with other men to make a living. The complainant escaped the day after her arrival, when the smuggler had left her alone. The complainant approached a stranger to ask for assistance. He took her to a train station and helped her find the Asylum Application Centre in Ter Apel.

2.9 On 23 October 2009, the complainant applied for a temporary asylum residence permit in the Netherlands. At that time, because of the civil war in Côte d'Ivoire, all refugees from that country were receiving temporary residence permits in the Netherlands.

As a result, the complainant's asylum claim was not thoroughly examined. When she applied for her temporary asylum residence permit, the complainant received medical care at the Asylum Centre Medical Facility. Doctors there prescribed medication for her epilepsy. The complainant took that medication, in addition to the medication her smuggler had provided.

2.10 Asylum seekers in the Netherlands typically undergo a medical examination to see whether they are fit to begin the asylum procedure. However, this practice had not yet been initiated at the time when the complainant arrived in the Netherlands. On 26 and 28 October 2009, the immigration authorities interviewed the complainant. During these interviews, she recounted her experiences, but did not mention that she had been raped. She informed the authorities that she was taking medication for epileptic fits. After the interviews, in a letter dated 29 December 2009, the complainant's lawyer informed the immigration authorities that the complainant had been mistreated and raped.

2.11 On 8 February 2010, the Immigration and Naturalization Service issued to the complainant a temporary asylum residence permit, which has a maximum validity of five years, on the basis of the ongoing general violence (civil war) in Côte d'Ivoire. The complainant's permit was valid from August 2009 to August 2013. By 2013, the complainant had regained contact with her children, who were residing in Mali. She applied for family reunification with them.

2.12 On 30 October 2013, the Immigration and Naturalization Service issued a decision announcing its plan to withdraw the complainant's residence permit, because the circumstances on the basis of which the permit had been issued no longer existed. In its decision, the Service stated that the general policy of offering protection to nationals of Côte d'Ivoire would be terminated, because the situation of general violence there had ended on 30 June 2010. The Service also stated that the complainant did not qualify for a residence permit based on individual risk. Her story lacked credibility because she had not provided any identity or travel documents, and she was unable to provide any details about her travel route. The Service indicated that under the "doctrine of positive persuasion", any inconsistency, vagueness or contradiction in an applicant's narrative would result in an adverse credibility finding. Because the complainant's statements about what had happened to her in her country of origin were astonishing, vague, lacking in detail, and inconsistent on numerous points, the complainant was deemed to lack credibility.

2.13 On an unspecified date, the complainant appealed the decision to withdraw her residence permit. In her appeal, she stated that she had been heavily medicated during her interviews with the immigration authorities in October 2009. This explained her inability to recall any details of her travel route, and to clearly recount her past experiences. She also stated that she had been imprisoned and tortured in the past, and emphasized her diagnosis of chronic post-traumatic stress disorder, for which the treatment administered had not been successful.

2.14 On 27 January 2014, the complainant, accompanied by her lawyer, attended an appeal hearing before the Immigration and Naturalization Service. The complainant informed the Service about her previous and ongoing medical issues, and indicated that she was willing to undergo a medical examination, but did not want the Service to postpone its decision on her case. The complainant wished to receive a decision as soon as possible, since she had requested family reunification with her four children. The agents of the Service asked her many questions about her experiences in Côte d'Ivoire, but she provided inconsistent details in her answers. She explained that she was very afraid to return to her country because of the horrible abuse she had endured there. She feared encountering her abusers again, as they had never been charged or convicted for harming her. During the hearing, the complainant had severe and unpleasant palpitations, and started to hyperventilate. An emergency officer was summoned to examine her. After a brief pause, the hearing continued.

2.15 On 17 March 2014, the Immigration and Naturalization Service denied the complainant's appeal and decided to withdraw her temporary asylum residence permit. In its decision, the Service maintained that the complainant still had not provided any identity or travel documents, that her statements during the hearing had been inconsistent with the

statements she had made in 2009 about her experiences in Côte d'Ivoire, that there were no medical reports to corroborate her claim that inconsistencies in her accounts resulted from physical or mental health problems, and that her allegations that she had been imprisoned, tortured and raped were not credible.

2.16 On 14 April 2014, the complainant applied to the District Court of The Hague for judicial review of the decision of the Immigration and Naturalization Service. The Institute for Human Rights and Medical Assessment conducted a medical examination of the complainant and presented its report to the District Court. In the report, the Institute stated that the complainant's psychological condition was typical for the type of trauma she had endured, and that her injuries were consistent with the nature of the harm inflicted. The Institute also stated that the complainant could not be expected to provide a full and consistent account of every detail of her experiences.

2.17 On 8 January 2016, the District Court declared the complainant's application for judicial review well-founded. In its decision, it referred to the findings of the Institute for Human Rights and Medical Assessment, according to which the complainant's psychological symptoms were typical for the type of trauma she had experienced. The District Court considered that the report of the Institute represented an expert opinion on the matter. The District Court considered that the Immigration and Naturalization Service had not given enough weight to the complainant's medical situation and its effect on her statements.

2.18 On 12 February 2016, the Minister for Migration appealed against the decision of the District Court before the Administrative Jurisdiction Division of the Council of State. On 21 September 2016, the Division granted the Minister's appeal, considering that the complainant's story lacked "positive persuasion", since it was inconsistent with respect to the core of her narrative and certain details. The Division reversed the decision of the District Court, and declared the complainant's application for judicial review unfounded.

2.19 In separate, parallel proceedings, on 23 October 2014, the complainant applied to the Immigration and Naturalization Service for prolongation of her residence permit, arguing that she had demonstrated compelling reasons to be permitted to remain in the Netherlands, because she was too damaged to return to the country where she had been abused and tortured for a prolonged period. Under domestic law, residence permits may be granted for compelling reasons. However, on 21 October 2016, the Service denied the complainant's application, on the ground that she did not meet the legal requirements for renewal of her residence permit. On 16 June 2017, the District Court of the Hague rejected the complainant's application for judicial review of the decision of the Service. The District Court considered that during proceedings before lower instances, the complainant should have presented her argument that the denial of social benefits constituted cruel and inhuman treatment. On 6 July 2017, the complainant filed an appeal against the decision of the District Court before the Administrative Jurisdiction Division. On 21 July 2017, the Division rejected the appeal without stating the basis for its decision.

2.20 The complainant states that she has exhausted all domestic remedies and has not submitted the same matter to another international body for examination.

The complaint

3.1 The complainant asserts that the State party would violate her rights under article 3 of the Convention by removing her to Côte d'Ivoire, where she suffered severe trauma, torture and cruel and inhuman treatment. State agents arbitrarily arrested the complainant, applied excessive force when transporting her to prison, arbitrarily imprisoned her, forced her to endure inhuman conditions of detention for four years, and repeatedly raped her in prison. The complainant is traumatized by the mere idea of returning to her country of origin.

3.2 In addition, the complainant fears that she will be raped again if she is returned to Côte d'Ivoire. She might run into the individuals who assaulted her, and while such an encounter might not be foreseeable, her fear of having to confront them is overwhelming. The complainant might also encounter places, situations and smells that will retraumatize her.

3.3 Sexual violence in Côte d'Ivoire is rarely prosecuted and punished. When prosecution of rape occurs, offenders usually face the lesser charge of sexual assault. Hardly anyone has been tried and convicted for human rights abuses committed before or during the civil war, with the exception of abuses that occurred in the context of post-election violence in 2010 and 2011. Because of the mental and physical health problems the complainant experiences as a result of the harm she endured, it would not be reasonable or humane to expect her to request protection from the authorities in Côte d'Ivoire.

3.4 The complainant resides unlawfully in the Netherlands, and has no employment, home, income, or medical insurance. Apart from emergency treatment, she is not entitled to medical care. She needs a safe place to stay, proper medical care and a stable situation. She should be freed from the constant fear of being removed to Côte d'Ivoire.

State party's observations on admissibility and the merits

4.1 In its observations dated 19 September 2018, the State party does not contest the admissibility of the complainant's claim under article 3 of the Convention. It considers that to the extent that the complainant raises a claim under article 16 of the Convention, this implied claim is inadmissible because it is unsubstantiated and because the complainant did not exhaust domestic remedies. Insofar as the complainant argues that she cannot return to Côte d'Ivoire because of her medical condition, she never requested application of section 64 of the Aliens Act 2000. When this type of request is made, the authorities assess whether the alien is medically fit to travel, or whether there is a real risk that the alien's rights under article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) would be violated due to the alien's medical situation.

4.2 The communication is without merit. During the complainant's asylum procedure, due care was taken to consider article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainant had the opportunity to demonstrate the veracity of her account through oral statements, as she was unable to produce documents for this purpose. The complainant was interviewed several times during her asylum application procedures, with the assistance of an interpreter. She was questioned on the facts and circumstances of her departure from Côte d'Ivoire. A legal representative and a staff member of the Dutch Council for Refugees were present during those interviews. The complainant also had the opportunity to submit corrections and additions to the reports of these interviews, and to respond to the notifications of intent to deny her asylum applications. The asylum procedure, with the necessary safeguards, thus offered the complainant sufficient opportunities to satisfactorily establish the veracity of her account. The District Court and the Administrative Jurisdiction Division carefully assessed her claims.

4.3 Although the human rights situation in Côte d'Ivoire is a cause for concern, it does not establish that the complainant faces a personal and present risk of harm there. Moreover, the situation there has drastically improved since the complainant left in 2009. At that time, Laurent Gbagbo was in power. In 2011, he was arrested and was transferred to the International Criminal Court in The Hague. In 2011, Mr. Ouattara became President of Côte d'Ivoire, and he remains in power. Thus, while the complainant claims to have experienced problems as a result of her husband's activities on behalf of Mr. Ouattara's party, it does not stand to reason that she would continue to face such problems if she returned to the country.

4.4 The complainant's account is not credible. She has not submitted any documents to establish her nationality, identity or travel route, or to demonstrate the veracity of her account. She did not provide detailed, coherent and verifiable statements regarding her journey. For example, she did not specify the airline she flew with from Côte d'Ivoire, or the airport and country in which she arrived. It is reasonable to expect her to be able to provide this basic information. Moreover, on a large number of points relating to the essence of her account, she has provided odd, vague, cursory and contradictory statements. For example, during her second interview, on 28 October 2009, the complainant was unable to provide any information about the party that her husband served, or the activities he performed for the party, except for her statement that he organized meetings and handed out

T-shirts. The complainant did not know whether the party was banned. It is reasonable to expect the complainant to be able to provide more specific information about the party and her husband's activities for the party, particularly since she had been married for a long time and had helped her husband hand out T-shirts at meetings on several occasions.

4.5 The statements that the complainant made to the Institute for Human Rights and Medical Assessment and to the Committee contradict her statements to the Immigration and Naturalization Service. The complainant told the Service that when the soldiers searched her house they could not find her, and that she stayed with her neighbours after the search. She told the Service that two days after the search, she returned to her house to collect items for the children, and was arrested by the soldiers at that point. The complainant provided no explanation for her contradictory statements, which concern the essence of her account.

4.6 The complainant also gave cursory, contradictory and implausible statements concerning her detention and escape. For instance, she was unable to describe the prison where she claims to have been detained for almost four years. Nor could she say why her cellmates, with whom she was imprisoned for years, were detained. She could not state whether the guards at the prison were armed. She provided little information about how her friend had been able to arrange her escape. As the complainant remained in contact with her friend, it is unclear why she did not ask about this. It is implausible that a guard would be willing to take the significant risk of helping the complainant escape, especially since she had been imprisoned for nearly four years. Given the inconsistencies and gaps in her account, it cannot be assumed that the complainant was a victim of rape in the past. The complainant has not alleged any circumstances to support the conclusion that she would run a personal risk of being subjected to such treatment upon return to Côte d'Ivoire.

4.7 The report by the Institute for Human Rights and Medical Assessment does not lend credibility to the complainant's account. During asylum procedures, the Immigration and Naturalization Service regularly encounters asylum seekers suffering from psychological and/or other medical problems. When deciding upon the complainant's case, the Immigration and Naturalization Service relied upon Work Instruction 2008/6, which had been prepared to provide the Service with optimal information about how to interact with individuals affected by mental health problems. The Work Instruction had been drafted in consultation with the Dutch Council for Refugees, the Legal Aid Council, Pharos (the national knowledge and advisory centre that specializes in health-care issues relating to refugees, asylum seekers and other newcomers), the Central Agency for the Reception of Asylum Seekers, and the reporting centre for asylum seekers with psychological problems.

4.8 The Work Instruction stated, as did the applicable policy at the time, that depending on an individual's mental health condition and bearing in mind the effects of possible post-traumatic stress disorder, it may not always be possible for asylum seekers to provide consistent statements. When the complainant was interviewed and a decision was made on her asylum application, the staff members of the Immigration and Naturalization Service were aware of this fact. They had sufficient tools to help them deal with such situations.

4.9 Before her first and second interviews, on 26 and 28 October 2009, the complainant did not submit any medical documents, nor did she provide any notification indicating that she was unfit to be interviewed. During her first interview, she did not state that she was unfit to be interviewed. Nor did the staff member of the Dutch Council for Refugees who was present during the interview make a statement to this effect. During that interview, the complainant merely stated that she sometimes lost consciousness (as a result of epileptic seizures). She reported no medical or other problems that would preclude her being interviewed. Before the second interview, she was explicitly asked whether there were any medical reasons for which the interview could not take place. She replied in the negative, and indicated that she was able to proceed with the interview and that if any questions were problematic or if she needed a break, she would say so. A break was held during the interview. The complainant stated at the conclusion of the interview that she was satisfied with how it had been conducted. The report on the interview does not mention any occurrence that could have led the staff of the Immigration and Naturalization Service to conclude that the complainant was unable to make consistent and detailed statements during the interview. Moreover, because the complainant did not ask the Immigration and

Naturalization Service to order a medical examination, there was no reason to initiate such a process during the first procedure. Furthermore, the decision to grant the complainant's request for protection was based on the automatic protection offered at that time to nationals of Côte d'Ivoire. The complainant was granted a residence permit on that basis.

4.10 It was only in December 2013, after the complainant had been informed of the intention to revoke her residence permit, that she reported that she had been unfit to be interviewed. She submitted a copy of her medical records indicating that she suffered from epileptic fits and stress-related ailments. The records also indicated that she had told the medical service of the asylum seekers' centre that she had been traumatized.

4.11 On 27 January 2014, the complainant was interviewed for a third time, this time in connection with the intention to revoke her residence permit. During the interview, she was very emotional and said she had a headache and felt dizzy. She was also short of breath and clutched her head. In consultation with the complainant and her authorized representative, the interview continued. On 11 September 2014, the complainant submitted the report by the Institute for Human Rights and Medical Assessment stating that she suffered from post-traumatic stress disorder and depression. Although the report could explain why the complainant had been unable to give consistent statements about certain details of her account during her second interview in October 2009, it does not explain why she made odd, vague, cursory and contradictory statements concerning the essence of her account. The State party refers to the Committee's findings in *M.O. v. Denmark*,¹ in which the Committee saw no reason, in the light of corroborating medical evidence, to assume that the complainant's statements were true, or to find that Denmark had erroneously failed to further investigate. There was no reason to conduct a further medical examination or other investigation, either when the complainant's asylum application was assessed (since there was no question of returning her to her country of origin at that time), or when her residence permit was revoked (since political conditions in her country of origin had drastically improved by that time).

4.12 The scar on the complainant's shoulder is described by the Institute for Human Rights and Medical Assessment as being consistent with a stab wound. According to section 187 of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), this description means that many other causes are possible. The lesion on her lower left arm, allegedly caused by hard beatings by the prison guards, could also be a birthmark, or could have been caused by grazes or deep bruises. The report also describes varicose veins, which may have several non-traumatic causes. The small, discoloured, atrophied area on the right back of the lower right leg, described by the complainant as an open wound resulting from mistreatment during her detention, is consistent with a healed cut or a tear that has healed secondarily without stitches. Causes other than mistreatment cannot be ruled out. The vaginal prolapse described in the report happened recently, and it is therefore unlikely that there is a clear causal relationship with the sexual violence the complainant claims to have endured. Given that her scars could have had several other causes, and that it was concluded that the lesion on her left arm and the varicose veins likely had other causes, it cannot be concluded that these marks resulted from mistreatment during her detention. The epileptic seizures could also have had other causes. The scars and symptoms therefore do not constitute sufficient evidence to support the complainant's claims that she was subjected to torture. Moreover, the Institute for Human Rights and Medical Assessment based its conclusions on the complainant's statements, presuming them to be true. Aliens provide false statements to the Institute in order to improve their position. The State party did not have a duty to conduct a medical examination because: (a) further investigation into the complainant's scars would be of no use, as they would lead to the conclusion that they could have resulted from causes other than those alleged by the complainant; (b) the complainant did not ask for a medical examination to be conducted at an early stage in the proceedings; and (c) the situation in Côte d'Ivoire has now changed, such that the complainant should not fear experiencing ill-treatment if returned there.

¹ CAT/C/31/D/209/2002.

Complainant's comments on admissibility and the merits

5.1 In comments dated 21 November 2018, the complainant reiterates her arguments, and emphasizes that during domestic proceedings, the State party's authorities never contested the contents of the report of the Institute for Human Rights and Medical Assessment. Rather, the Council of State based its assessment on the finding that the complainant's account was wholly lacking in credibility. The State party's attempt to discount the Institute's findings, by asserting that the inconsistencies in the complainant's narrative related not to mere details but to the "essence" of her account, is an academic discussion.

5.2 Until 2010, the Aliens Act provided that a temporary asylum residence permit could be issued due to compelling humanitarian concerns connected to the reasons for leaving the country of origin. On 1 January 2014, this policy was abolished because the provision was rarely used (it accounted for only 4 per cent of asylum residence permits.) Any victims of torture or cruel treatment could receive international protection under the revised law (art. 29), which offers protection to aliens who have been confronted with traumatic experiences in their country of origin. The rationale of this policy is that aliens should not have to confront individuals who have violated their human rights with impunity. The complainant should be granted international protection under this provision. The State party's authorities are aware of her fears, but have refused to grant her protection. The fear and anxiety that she experiences at the prospect of leaving the Netherlands aggravate her existing mental health issues, which resulted from torture. Thus, the State party's insistence that the complainant leave its territory constitutes a violation of article 3 of the Convention.

5.3 The complainant reiterates that she has exhausted all available domestic remedies. Regarding the State party's argument that the complainant could have applied for a stay of removal under section 64 of the Aliens Act 2000, the complainant asserts that she does not meet the eligibility criteria for doing so. Section 64 requires that a medical emergency situation arise within three months after deportation. Severe psychological problems, anxiety and grief would not be considered in this analysis. However, the complainant is receiving medical treatment from a psychologist and psychiatrist due to post-traumatic stress disorder.

5.4 While the human rights situation in Côte d'Ivoire has improved, perpetrators of previous human rights violations have gone unpunished. Although the State party argues that the complainant did not provide any identity or travel documents, the State party's authorities appear to have accepted that she is a national of Côte d'Ivoire, because they granted her a temporary residence permit on the basis of her Ivorian nationality. A victim of torture cannot be expected to make consistent statements, and cannot be blamed for inconsistencies caused by trauma and mental health problems.

State party's further observations on admissibility and the merits

6.1 In further observations dated 22 January 2019, the State party reiterates its argument regarding non-exhaustion of domestic remedies with respect to the complainant's claim of inability to return to Côte d'Ivoire due to her medical condition. Section 64 of the Aliens Act 2000 allows for non-removal in special cases where individuals are advised against travelling due to the health effects of trauma. Thus, this remedy is not ineffective, contrary to the complainant's claims.

6.2 The State party reiterates its claims regarding the absence of a need to conduct a medical examination of the complainant at various stages of domestic proceedings. Moreover, during the interview on 27 January 2014 and in her letter dated 13 February 2014, the complainant expressly stated that she wanted the Government to take a decision on the withdrawal of her residence permit as soon as possible, without waiting for the Institute for Human Rights and Medical Assessment to issue its report. The State party finds it remarkable that the complainant is now criticizing its authorities for not having waited for the issuance of the report when it decided to withdraw her residence permit. The State party reiterates its arguments concerning the content of the report, and concerning the complainant's contradictory statements regarding essential elements of her account.

6.3 Only in very exceptional circumstances does a removal per se constitute cruel, inhuman or degrading treatment. The complainant has not demonstrated such circumstances.² The complainant herself has indicated that no medical emergency is likely to occur within three months of her removal. Moreover, it cannot be concluded from the information provided by the complainant that appropriate treatment is unavailable in her country of origin.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 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.

7.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it 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 challenged the admissibility of the complainant's claim under article 3 of the Convention. While the State party challenges the admissibility of any claim under article 16 of the Convention, the Committee notes that the complainant has not invoked this provision. Consequently, the Committee finds no obstacle to admissibility and declares the communication admissible.

Consideration of the merits

8.1 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.

8.2 The issue before the Committee is whether the forced removal of the complainant to Côte d'Ivoire 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 the person would risk being subjected to torture.

8.3 In the present case, the Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally at risk of being subjected to torture upon return to Côte d'Ivoire. 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.³ However, the Committee recalls that the aim of the 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.⁴ 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.⁵ 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.⁶

8.4 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

² The State party cites the European Court of Human Rights, *Paposhvili v. Belgium* (application No. 41738/10), judgment of 13 December 2016, para. 183.

³ See, inter alia, *X and Y v. Switzerland* (CAT/C/66/D/776/2016), para. 7.3.

⁴ *E.T. v. Netherlands* (CAT/C/65/D/801/2017), para. 7.3.

⁵ *Y.G. v. Switzerland* (CAT/C/65/D/822/2017), para. 7.2.

⁶ *Ibid.*, para. 7.3.

deportation, either as an individual or a member of a group which may be at risk of being tortured in the State of destination. The Committee recalls that “substantial grounds” exist whenever the risk of torture is “foreseeable, personal, present and real”.⁷ Indications of personal risk may include, but are not limited to: (a) the complainant’s ethnic background and religious affiliation; (b) previous torture; (c) incommunicado detention or other form of arbitrary and illegal detention in the country of origin; (d) political affiliation or political activities of the complainant; (e) arrest and/or detention without guarantee of a fair trial and treatment; (f) violations of the right to freedom of thought, conscience and religion; and (g) clandestine escape from the country of origin for threats of torture (para. 45).⁸

8.5 The Committee also recalls that the burden of proof is on the complainant, who must present an arguable case, that is, must submit substantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real (para. 38).⁹ However, when the complainant cannot elaborate on his or her case, for instance when the complainant has demonstrated an inability to obtain documentation substantiating allegations 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.¹⁰ The Committee further 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 will freely assess 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).¹¹

8.6 In assessing the risk of torture as relates to the present communication, the Committee notes the complainant’s claims that she was arrested in 2005, and that prison guards raped her several times a month during her imprisonment from 2005 to 2009 in Côte d’Ivoire. The Committee notes the complainant’s assertion that she fears being subjected to rape again if she is returned to Côte d’Ivoire, and is traumatized by the mere idea of returning. The Committee also notes her assertions that she could be retraumatized if she encountered the individuals who raped her, or specific places, situations and smells. The Committee also notes the complainant’s claim that perpetrators of sexual violence in the country are rarely punished.

8.7 The Committee observes that the State party’s authorities considered that the complainant was not credible because she provided inconsistent and vague statements concerning essential elements of her account. The Committee notes the State party’s observation that during asylum proceedings, the complainant, who was represented by legal counsel, did not ask the Immigration and Naturalization Service to order a medical examination. It also notes the State party’s position that the report issued by the Institute for Human Rights and Medical Assessment does not prove that the complainant was subjected to torture, because the scars it describes could have had other causes.

8.8 The Committee recalls that it must ascertain whether the complainant would currently face a risk of being subjected to torture in Côte d’Ivoire.¹² The Committee notes that the complainant had the opportunity to provide additional details and supporting evidence of her claims to the domestic authorities, and that the authorities considered the complainant’s oral statements in the absence of documentation establishing her nationality, identity or travel route. The Committee also notes that the inconsistencies and gaps in the complainant’s oral statements led the domestic authorities to conclude that she had not demonstrated that she would face a foreseeable, present, personal and real risk of torture if returned to Côte d’Ivoire. The Committee notes, in particular, that the complainant initially informed the State party’s immigration authorities that when her husband was arrested, the complainant fled the family home with her children and stayed with neighbours for two

⁷ See the Committee’s general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, para. 11.

⁸ *Ibid.*, para. 45.

⁹ See, inter alia, *E.T. v. Netherlands*, para. 7.5.

¹⁰ See the Committee’s general comment No. 4, para. 38.

¹¹ *Ibid.*, para. 50.

¹² See, inter alia, *G.B.M. v. Sweden* (CAT/C/49/D/435/2010), para. 7.7.

days. The complainant stated that she had been arrested thereafter, when she had returned home to collect items for her children. In contrast, the Committee observes that in her communication, the complainant states that she was hiding under a bed in an adjacent room in her home when her husband was arrested, and was discovered and arrested as soon as her husband was taken from the home. The Committee also notes that before the domestic authorities, the complainant was unable to adequately describe the prison where she claimed to have been held for four years, did not know whether the guards at the prison were armed, and was unable to explain how her friend knew where the complainant was being held and how the friend managed to arrange for the complainant's escape from prison. The Committee recalls that complete accuracy is seldom to be expected from victims of torture,¹³ and observes that the complainant has provided documentation indicating that she was suffering from post-traumatic stress disorder and depression in 2014. However, while observing that the complainant's state of mental health may account for some contradictions and insufficiencies in her account to the asylum authorities, the Committee considers that it does not provide a satisfactory explanation for the aforementioned gaps and inconsistencies, which concern core elements of her account.

8.9 Furthermore, taking into account the report issued by the Institute for Human Rights and Medical Assessment, which indicated that the complainant's scars were consistent with her account, the Committee observes that even if it were to disregard the inconsistencies in the complainant's account of her past experiences in Côte d'Ivoire and accept her statements as true, the complainant has not provided any information credibly indicating that she would presently be of interest to the Ivorian authorities.¹⁴ In this regard, the Committee observes that the complainant claims to have been arbitrarily arrested in 2005 due to her husband's association with the party of Mr. Ouattara, who has been the President of Côte d'Ivoire since 2010. The information made available to the Committee does not indicate that nine years after the alleged events occurred, the complainant would be at risk of being subjected to torture if returned to her country of origin.

8.10 With respect to the complainant's allegations that she should not be returned to her country of origin because of the high incidence of sexual violence there, the Committee is seriously concerned by reports indicating that impunity for rape persists in Côte d'Ivoire.¹⁵ The Committee further recalls its jurisprudence in which it found that rape by State officials constituted torture.¹⁶ However, the Committee notes that although past events may be of relevance, the principal question before the Committee is whether the complainant currently runs a risk of torture if returned to Côte d'Ivoire.¹⁷ The Committee considers that the incidence of general sexual violence in Côte d'Ivoire does not demonstrate that the complainant would incur a personal risk of being subjected to sexual violence if returned there at present.

8.11 The Committee recalls that the burden of proof is upon the complainant, 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, unless the complainant is in a situation where he or she cannot elaborate on his or her case.¹⁸ The Committee notes the State party's observations that the information supplied by the complainant was vague, imprecise and contradictory concerning key elements of her claims. In the light of the above considerations and on the basis of all the information submitted by the complainant and the State party, including on the general situation of human rights in Côte d'Ivoire, the Committee considers that the complainant has not provided sufficient evidence to enable it to conclude that her forcible removal to Côte d'Ivoire would expose her to a foreseeable, present, personal and real risk of torture within the meaning of article 3 of the Convention. Moreover, her claims do not establish that the evaluation of her asylum application by the

¹³ See *G.E. v. Australia* (CAT/C/61/D/725/2016), para. 7.6.

¹⁴ See *H.R.E.S. v. Switzerland* (CAT/C/64/D/783/2016), para. 8.9.

¹⁵ CEDAW/C/CIV/CO/4, para. 9 (a).

¹⁶ See, inter alia, *C.T. and K.M. v. Sweden* (CAT/C/37/D/279/2005), para. 7.5; and *V.L. v. Switzerland* (CAT/C/37/D/262/2005), para. 8.10.

¹⁷ *G.E. v. Australia* (CAT/C/61/D/725/2016), para. 7.8.

¹⁸ See the Committee's general comment No. 4, para. 38.

State party's authorities failed to comply with the standards of review required by the Convention.

9. The Committee, acting under article 22 (7) of the Convention, decides that the complainant's removal by the State party to Côte d'Ivoire would not constitute a violation of article 3 of the Convention.
