



# 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. 790/2016\*, \*\*

<i>Communication submitted by:</i>	D.Z. (represented by counsel, Boris Wijkström and Gabriella Tau, of Centre Suisse pour la Défense des Droits des Migrants)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	1 December 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 7 December 2016
<i>Date of adoption of decision:</i>	27 July 2021
<i>Subject matter:</i>	Deportation to China
<i>Procedural issues:</i>	Examination of the same matter under another procedure of international investigation or settlement; exhaustion of domestic remedies
<i>Substantive issue:</i>	Risk of torture, if deported to country of origin (non-refoulement)
<i>Article of the Convention:</i>	3

1.1 The complainant is D.Z., a national of China born in 1973. Her application for asylum in Switzerland has been rejected and she risks deportation to China. She considers that her return would constitute a violation by Switzerland of article 3 of the Convention. The State party made the declaration under article 22 of the Convention on 2 December 1986. The complainant is represented by counsel.

1.2 On 7 December 2016, in application of article 114 (1) of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, asked the State party not to deport the complainant to China while the Committee was examining her complaint.

\* Adopted by the Committee at its seventy-first session (12–30 July 2021).

\*\* The following members of the Committee participated in the examination of the communication: Essadia Belmir, Claude Heller, Erdoğan İşcan, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Peter Vedel Kessing. Pursuant to rule 109, read in conjunction with rule 15, of the Committee's rules of procedure, and paragraph 10 of the guidelines on the independence and impartiality of members of the human rights treaty bodies (the Addis Ababa guidelines), Liu Huawen did not participate in the examination of the communication.



1.3 On 14 December 2018, pursuant to rule 115 (3) of its rules of procedure, the Committee, acting through its Special Rapporteur on new complaints and interim measures, denied the State party's request for the admissibility of the communication to be examined separately from the merits (see also para. 4 below).

#### **Facts as submitted by the complainant**

2.1 In 2010, a doctor treating the complainant's mother for a malignant tumour introduced the complainant to Christianity, the gospel of Jesus and the omnipotence of God. That greatly impressed the complainant, who, together with her mother, decided to accept the gospel of Jesus for the healing of the mother. The operation forming part of that treatment was successful and convinced the complainant that God had saved her mother. She began to participate in meetings on the gospel and to preach, converting several family members. She was baptised in August 2010.

2.2 In June 2014, one of the complainant's sisters in the church, L, was detained for 15 days, during which she was tortured and deprived of sleep and food. Following her release, L wrote to the complainant indicating that her husband blamed the complainant for L's arrest and detention because of their close relation and that he would find her and report her to the police. L was questioned at a police station, but did not provide the complainant's family home address. In June 2014, L's husband took policemen to a residence used as a church in the village of N, which the complainant frequented. The policemen sought to arrest the complainant, but they did not find her. They threatened those present and told them to report the complainant, to whom they referred by her alias, and also told them that the Government reprimanded domestic churches, as well as those who preached, including the complainant. In fear of being arrested, the complainant went to stay with another sister in the church, C, whose residence she did not leave for four months. A brother and sister in the church then procured her a passport and a visa. On 25 March 2015, the complainant arrived in Switzerland on a valid Schengen visa. Three months later, she learned that L's husband had testified that the complainant was a preacher. She also learned that police had visited her mother's residence, where they had found pictures of the complainant and threatened her parents that those who preached the gospel were considered political criminals, that the State did not release them and that it was a crime to harbour criminals.

2.3 On 21 April 2015, the complainant applied for asylum in Switzerland. The State Secretariat for Migration rejected her application on 3 February 2016 on the grounds that her claims were particularly stereotypical, evasive and barely spontaneous, in addition to being contrary to all logic and the general experience.

2.4 The complainant appealed that decision on 7 March 2016, submitting testimony from a sister in the church, W, who confirmed that the son of L's husband had obtained the complainant's address and that the police had subsequently visited the complainant's mother and told her that the complainant should surrender herself as soon as possible. By incidental ruling of 23 March 2016, the Federal Administrative Court rejected the complainant's request for judicial assistance on the grounds that the reasons invoked appeared bound to fail from the outset. The complainant was unable to pay the presumed advance procedural fees of SwF 900. For that reason, the Court declared her appeal inadmissible on 20 April 2016.

#### **Complaint**

3. The complainant affirms that she is unable to return to China, where she would risk being arrested and tortured. She also affirms that the Communist Party of China has intensified its efforts at the national level to arrest members of domestic churches, going door to door and promising rewards to stimulate reporting. She refers to sources indicating an escalation of persecutions of Christians in China.<sup>1</sup> She submits copies of her file under the asylum procedure, medical documents<sup>2</sup> (see also para. 6.5 below) and a letter dated 2

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<sup>1</sup> Dutch Refugee Council, "Update of 20 October 2016"; Australian Broadcasting Corporation, "Chinese Communist Party readies crackdown on Christianity", 8 October 2016; ChinaAid, "ChinaAid 2014 Annual Report indicates rising trend in persecution cases", 21 April 2015.

<sup>2</sup> A medical certificate dated 3 October 2016 confirms that the complainant was hospitalized in Établissements Hospitaliers du Nord Vaudois from 30 September to 3 October 2016. She explained in

November 2016 from the Church of the Almighty God in Switzerland, attesting that she has been a member of the church since 2016 and participates actively in meetings and activities.

#### **State party's observations on admissibility**

4. On 2 February 2017, the State party challenged the admissibility of the communication, noting that the complainant had submitted an application to the European Court of Human Rights on the same matter. On 9 November 2016, the latter rejected the complainant's request for interim measures and declared her application (No. 57382/16) inadmissible because the admissibility conditions set forth in articles 34 and 35 of the Convention for the Protection of Human Rights and Fundamental Freedoms had not been met.<sup>3</sup>

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

5.1 On 18 September 2017, the complainant submitted her comments on the State party's observations on admissibility. She argues that the European Court of Human Rights has not examined the same question, given that it declared her application inadmissible because, in the absence of counsel, she had invoked the wrong convention, namely, the Convention relating to the Status of Refugees.

5.2 On 23 December 2018, the complainant submitted supplementary comments. She refers to social media websites, on which a video of an interview with her and pictures of her participating in activities promoting the respect of human rights in China are posted. In the video on YouTube, under the title, "10<sup>th</sup> Geneva summit spotlights human rights situations in dictatorships", the complainant is identified as a member of the Church of the Almighty God.

5.3 The complainant submits statements from three professors specializing in the Church of the Almighty God. They affirm that participation in, and membership of, *xie jiao* ("heterodox teachings" or "evil cults") is punished with three to seven years' imprisonment in China and that the Church of the Almighty God systematically features on *xie jiao* lists. They also affirm that members of the church would certainly be arrested and detained if sent back to China and would run a serious risk of being tortured and killed on the grounds of their membership in the church alone. They claim that, because of local police corruption, the incomplete implementation of the national police database and a lack of verification, it is possible to procure a passport and leave the country with it.

#### **State party's additional observations on admissibility and observations on the merits**

6.1 On 11 June 2019, the State party submitted its observations on admissibility and the merits. It reiterates that the complaint is inadmissible on the grounds that the European Court of Human Rights has examined the same question. It observes that the complaint is inadmissible on the grounds of article 22 (5) (b) of the Convention, to the extent that the complainant did not invoke her political activities in Switzerland in the domestic procedure. They could have been the object of a second asylum application, which would have generated the right to reside in Switzerland until the end of the procedure, or the extraordinary remedy of a re-examination, in which the State Secretariat for Migration may accord suspensive effect to the deportation order.

6.2 On the merits, the State party underlines the soundness of the decisions of the national authorities and observes, with reference to the Committee's general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, that the complainant has not proven that she runs a foreseeable, personal, present and real risk of being subjected to torture in case of her return to China. In that regard, the State party maintains that there is no

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the letter accompanying the medical certificate that, since the negative decision by the Swiss asylum authorities, her mental health has deteriorated.

<sup>3</sup> The European Court of Human Rights, sitting in a single-judge formation, decided to declare the application inadmissible. Having regard to all the material in its possession and in so far as it had jurisdiction to examine the allegations made, the Court considered that the conditions of admissibility provided for in articles 34 and 35 of the Convention for the Protection of Human Rights and Fundamental Freedoms were not fulfilled.

consistent pattern of gross, flagrant or mass violations of human rights in China, noting that there is no war, civil war or generalized violence on the whole of the territory. Moreover, the complainant does not state that she has been subject to torture or other mistreatment; she affirmed the opposite during the hearing before the State Secretariat for Migration. Furthermore, as for her political activities in Switzerland, the State party does not consider, independently of the non-exhaustion of domestic remedies, that those activities have necessarily attracted the attention of the Chinese authorities.

6.3 The State party refers to the entirety of the domestic decisions and observes that the complainant's affirmations lack credibility and contain factual inconsistencies. It refers to the reasoning in the decisions of the domestic authorities, i.e. that her allegations are not credible and do not lead to the conclusion that there are serious reasons to believe that she would be exposed to torture in China. Specifically, the State party notes that it has not been established that L's arrest happened for religious reasons. It is furthermore not credible that the complainant has been or is being searched for, given that the Chinese authorities are unaware of her real identity and it is not plausible that the police searched for her at the residence of a brother in the church in the village of N without arresting the latter, especially because the police officers were accompanied by L's husband, who knew that L and the complainant often saw each other there. The State party notes that the complainant mentioned only a single policeman who conducted the search before the national authorities, but that there were two policemen according to her complaint.

6.4 The State party observes that it is illogical that, despite the police search, the complainant successfully obtained a passport and visa and left the country by airplane, i.e. through a highly controlled route. She did not offer a plausible explanation in that regard. According to one of the three professors' statements, that is only possible if the person concerned has never had their details checked at a border crossing or has provided an alias during such a check and has profited from a delay in the registration of his or her fingerprints. The State party notes that, during the asylum hearing, the complainant stated that she had obtained her passport through an intermediary named Z, whereas the complaint now states that her brother in the church personally led her to the competent authority and that Z only intervened for the Schengen visa application at the Embassy of Switzerland in China.

6.5 As for the proof submitted to the Committee, the State party notes that the medical documents concern the complainant's illness suffered in the third quarter of 2016, rather than her claim. The attestation from the Church of the Almighty God was drawn up on 2 November 2016, well after the alleged facts, and only establishes that the complainant has participated in activities in Switzerland. She never mentioned her membership in the procedure before the national authorities. The statements on her religious beliefs have remained vague and barely substantiated. W's testimony was prepared after the decision of the State Secretariat for Migration and does not establish that the complainant had problems with the Chinese authorities. In addition, the affirmation in the testimony that the son of L's husband was able to procure the complainant's family home address in China does not correspond to the complainant's declarations that she had presented herself to that family under an alias and that her real identity was therefore unknown. Furthermore, the declarations from the professors contain no information on the individual situation of the complainant, who moreover affirmed that she is not a member of a sect or religious group. The State party concludes that, from the file before it, it cannot be concluded that the complainant is being searched for by the Chinese authorities; her claim relies only on the comments of third parties and, the complainant does not present new elements capable of calling into question the national decisions or rendering credible the existence of a foreseeable, personal, present and real risk of being subjected to torture in case of her return to China.

#### **Complainant's comments on the State party's additional observations on admissibility and observations on the merits**

7.1 On 4 November 2019, the complainant provided her comments on the State party's observations. She reiterates that the European Court of Human Rights has not examined the same question, having declared her application inadmissible because she invoked the wrong convention.

7.2 In response to the State party's assertion of non-exhaustion of domestic remedies, the complainant affirms that the requirement to lodge a new asylum application to argue on the same grounds appears unjustified. She states that the State party may at any moment open a new asylum procedure on its own initiative. She notes that it is inevitable that she submits new proof in a procedure that has lasted almost three years, and that those elements prove her public political engagement for religious freedom in China and are in line with her religious beliefs and activities, which have formed the basis of her claim throughout the procedure. The complainant underlines that she does not argue the existence of a new risk and that acceptance of the State party's arguments on that point would allow States parties to avoid decisions on the merits in a great number of cases. The complainant affirms that she has been and still is exposed to risk because of her activities and position in the religious community. She adds that the Swiss authorities have neglected to examine her claim with the necessary rigor, the Federal Administrative Court, sitting as the sole judge, having declared her appeal inadmissible.

7.3 As for the credibility of her claim, the complainant argues that the State party in its observations does not question her religious beliefs or her membership of the Church of the Almighty God. She asserts that the Swiss authorities should have examined whether her claim is capable of establishing a prohibition of refoulement. According to the complainant, the State party's declaration that L's arrest did not happen for religious reasons is not substantiated. In addition, her explanations on that point during the hearing were clear and detailed. The complainant submits that her response during the hearing does not exclude that the Chinese authorities are aware of her identity and her religious convictions or that there are at least suspicions in that regard. L's husband knows her personally and could therefore identify her without knowing her real identity. Her statement that "there was no evidence against me. They were not very sure whether I was Christian or not, because, in China, the Christian religion is practised discretely", was to explain why the police did not arrest her brother in the church while they were looking for the complainant.

7.4 As to the State party's observations on her passport and visa, the complainant notes that the exit of Chinese nationals from China is regulated by article 12 of the Administrative Law on Entry and Exit and that none of the conditions in that law applied to her when she left China. The Chinese authorities could therefore not have prevented her exit from the country. The complainant adds that she did not take the steps necessary to obtain the passport and visa herself. The minor contradictions raised by the Swiss authorities in that regard are of little importance. She submits that it cannot be excluded that the Chinese authorities became aware of her identity, religious beliefs and her membership of a domestic church when she went into hiding.

7.5 Concerning the proof submitted, the complainant refutes the State party's observation that she did not mention her membership of the Church of the Almighty God in the domestic procedure; she did so in her appeal to the Federal Administrative Court. She asserts that the fact that the Court did not acknowledge her membership in its incidental decision of 23 March 2016 shows the superficial character of its examination. She asserts that W's testimony confirms her membership of the domestic church in China, that it does not contradict her own statements and that it cannot be excluded that W's family learned of her real identity and communicated it to the police. She contests the State party's refusal to consider the statements from the three professors on the grounds that she stated during the hearing that she was not a member of a sect or religious group, noting that that only reflected her own perception. She asserts that the statements are relevant to the examination of her individual situation in the light of her claim.

7.6 With regard to the State party's observation that there is no consistent pattern of gross, flagrant or mass violations of human rights in China, the complainant states that it is irrelevant that there is no war, civil war or generalized violence in China, because she never invoked such a risk. However, the State party does not pronounce itself on the situation of domestic churches in China, while the violations of their members' human rights are systematic, grave, flagrant and massive, and she has submitted ample information in that regard. Religious freedom is highly limited in China, and the Chinese authorities use measures of constraint and sanctions against unregistered religious groups. Numerous Christian groups are prohibited by law, and their members are exposed to detention and

torture.<sup>4</sup>In 2018, the hostile attitude of the Communist Party of China to religion further increased, conditions for religious freedom worsened and the persecution of groups classified as *xie jiao* increased, with their members being exposed to torture in detention and inexplicable disappearances.<sup>5</sup>The complainant refers to the case of a member of the Church of the Almighty God who had applied for asylum in Switzerland, was detained after her return to China and currently remains in detention.<sup>6</sup>

7.7 The complainant argues that the State party has not considered the information submitted on the situation of the Church of the Almighty God in China, nor has it examined the risk that the complainant faces in case of return. The complainant refers to two decisions of the State Secretariat for Migration of 27 September 2019 concerning the return to China of members of a domestic church.<sup>7</sup>The Federal Administrative Court subsequently referred the cases back to the State Secretariat for Migration, notably because the latter had not established whether the appellants risked being exposed to serious harm on the grounds of having applied for asylum in Switzerland and of possessing an expired Schengen visa, or whether the possibility of the awareness of the appellants' religious beliefs by the Chinese authorities increased such a risk. The complainant submits that those questions are also relevant to her own case, because she applied for asylum in Switzerland, her visa has expired and the Chinese authorities are certainly aware of her religious and political beliefs. She concludes that the Swiss authorities have failed to sufficiently examine her case.

7.8 The complainant submits that the State party's observation that she did not claim having been subject to torture or other mistreatment is irrelevant, given that she argues only that there is a risk of being exposed to torture or ill-treatment in case of her return to China.

7.9 According to the complainant, the State party's statement that her political activities in Switzerland have not necessarily attracted the attention of the Chinese authorities contradicts its statement that she has not exhausted domestic remedies on that point, given that the State party admits that it is relevant to consider the activities and admits that it cannot be excluded that the Chinese authorities know of her political activities. Given the intensity of the surveillance by the Chinese authorities of its nationals, notably in connection with religious activities, the complainant's activities have certainly attracted their attention.<sup>8</sup>

7.10 On 20 December 2019, the complainant submitted supplementary comments, referring to the judgment of the European Court of Human Rights in *A.A. v. Switzerland*, concerning an Afghani applicant whose conversion to Christianity the Federal Administrative Court had deemed credible.<sup>9</sup>The complainant notes parallels between that case and her own case, because the State party has not questioned her religious beliefs but has still neglected to examine the risks she would face upon return. It also neglected to consider information on the situation of members of domestic churches in China, notably the Church of the Almighty God, despite the systematic, grave, flagrant and massive violations of the human rights of members of those groups. The State party therefore implicitly requires the complainant to behave discreetly in terms of her beliefs and membership of the church.

7.11 The complainant also refers to a judgment of the Federal Administrative Court of 12 November 2019, in which it recognized that a different Chinese appellant had potentially been identified as a member of the Church of the Almighty God during the tenth Geneva

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<sup>4</sup> The complainant refers to the following reports: United States Commission on International Religious Freedom, "Annual report 2015: country reports: tier 1 CPCs designated by the State Department and recommended by USCIRF: China", 30 April 2015; Freedom House, "Freedom in the World 2016: China", 7 March 2016; and Department of State of the United States of America, "2014 Report on International Religious Freedom: China", 14 October 2015.

<sup>5</sup> United States Commission on International Religious Freedom, "Annual report 2019 – tier 1 CPCs designated by the State Department and recommended by USCIRF: China", April 2019.

<sup>6</sup> Human Rights Without Frontiers, "Deported to China by Switzerland, Wang Xiumei is now in prison", 16 November 2018.

<sup>7</sup> Switzerland, State Secretariat for Migration, *A. v. SEM* (E-6533/2017), judgment of 27 September 2019; and *A. v. SEM* (E-6525/2017), judgment of 27 September 2019.

<sup>8</sup> United States Commission on International Religious Freedom, "Annual Report 2015".

<sup>9</sup> European Court of Human Rights, *A.A. v. Switzerland* (application No. 32218/17), judgment of 5 November 2019.

summit for human rights and democracy, in which he had participated as a member of that church. The Court considered that the summit was a public and important event, offering a platform for human rights activists and opponents of the Chinese State, which sends observers to it. Even if he did not have the role of a speaker, the Court considered that the fact that the other appellant might have been identified as a member of the church meant that he likely faced a risk of being persecuted if he was returned to China. The complainant argues that it has been proven that she participated in the same conference and that she was presented in the YouTube video as member of the church. She submits that the State party's lack of consideration of that point contravenes the jurisprudence of the Court.

### **State party's further observations**

8. On 14 January 2020, the State party submitted a reply indicating that the complainant's comments did not contain new elements and that it maintained the conclusions formulated in its prior observations.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

9.1 Before considering any claim submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee notes that the State party contests the admissibility of the complaint, with reference to article 22 (5) (a) of the Convention, on the grounds that the same question has been examined by the European Court of Human Rights, by way of inadmissibility decision of 9 November 2016. It also notes that the complainant does not contradict the assertion that her application before the Court concerned the same question, but that she submits that the Court did not examine it, given that it declared it inadmissible because she had invoked the wrong convention. The Committee notes that, although the decision refers to articles 34 and 35 of the Convention for the Protection of Human Rights and Fundamental Freedoms, it does not provide specific reasons to justify the conclusion of inadmissibility. The decision therefore does not permit the Committee to evaluate the extent to which the Court examined the question, in particular whether it conducted an in-depth analysis of the merits of the case. The Committee considers that article 22 (5) (b) of the Convention does not preclude it from examining the present case.

9.2 The Committee notes that the State party submits that the complaint is inadmissible to the extent that the complainant has not invoked her political activities in Switzerland before the domestic authorities. It also notes that the complainant contests that that is a new element, arguing that her activities in Switzerland prove her public political engagement for religious freedom in China and are in line with her religious beliefs and activities. The Committee notes that the complainant does not contest that she has not raised her political engagement before the domestic asylum authorities. The Committee considers that she does not refute that such a remedy would have been effective; her reference to the judgment of the Federal Administrative Court of 12 November 2019 shows that such activities may be invoked in the domestic procedure and provides no grounds to consider that the procedure is unlikely to bring effective relief. Accordingly, and in the absence of any other information or explanation of pertinence on file, the Committee considers that the complainant has failed to exhaust all available domestic remedies in respect of her political activities in Switzerland and declares that part of the complaint inadmissible under article 22 (5) (b) of the Convention.

9.3 The Committee notes that the State party observes that the complainant did not invoke her membership of the Church of the Almighty God in the domestic procedure. It also notes that the complainant disputes that observation and refers to her appeal before the Federal Administrative Court, in which she mentioned her membership. The Committee notes, however, that the supposed proof of her membership has not been submitted in the domestic procedure.

9.4 The Committee recalls its jurisprudence according to which the State party must have the opportunity to examine new evidence covered by article 3 before it is considered by the

Committee as a communication under article 22 of the Convention.<sup>10</sup> Noting the observation of the State party that a second asylum application would have generated the right to remain in Switzerland until the end of the procedure, the Committee considers that the complainant has not effectively justified that she could not have raised the supposed proof in a separate, second, asylum application or that that remedy would otherwise be ineffective. The Committee therefore notes that article 22 (5) (b) of the Convention precludes it from examining the supposed proof. In the absence of proof presented to the domestic authorities, and noting that the complainant stated in the hearing before the State Secretariat for Migration that she did not belong to a sect or religious group, the Committee concludes that the complainant's claimed membership of the Church of the Almighty God is manifestly unfounded in the sense of article 113 (b) of its rules of procedure, and that that element of the communication is consequently inadmissible.

9.5 The Committee sees no other obstacle to the admissibility of the remaining elements of the complaint, which were brought before the State party's authorities and courts, and proceeds with its consideration of the merits.

#### *Consideration of the merits*

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

10.2 In the present case, the issue before the Committee is whether the forced return of the complainant to China would constitute a violation of the State party's obligations under article 3 (1) of the Convention not to expel or return (*refouler*) an individual to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

10.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to China. In making that assessment, 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.<sup>11</sup> However, the Committee recalls that aim of such an analysis is to determine whether the complainant would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be extradited.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup>

10.4 The Committee takes note of the conclusion of the State party that the complainant's statements are not credible and do not permit the conclusion that there are serious reasons to think that she would be exposed to torture in case of her return to China. Despite the complainant's argument that the State party does not question her religious beliefs, the Committee notes that the State party refers to the domestic decisions, in which the State Secretariat for Migration found that her statements, in particular those concerning her religious beliefs practised since 2010, L's arrest, the actions of L's husband and the authorities' pursuit, were particularly stereotypical, evasive and barely spontaneous, as well as contrary to all logic and the general experience. The State Secretariat for Migration also found that no evidence had been presented in support of those statements. The Committee notes that, in her appeal to the Federal Administrative Court, the complainant disputed that evaluation and claimed having responded coherently and clearly and having described in

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<sup>10</sup> *F.M.-M. v. Switzerland* (CAT/C/46/D/399/2009), para. 6.5.

<sup>11</sup> *Kalinichenko v. Morocco* (CAT/C/47/D/428/2010), para. 15.3; *T.M. v. Sweden* (CAT/C/68/D/860/2018), para. 12.3; and *I.A. v. Sweden* (CAT/C/66/D/729/2016), para. 9.3.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

detail the course and modes of the meetings with the sisters and brothers in the church, as well as the meaning of the faith for her. By contrast, the Committee notes that neither the decision of the State Secretariat for Migration nor the State party's observations refer to any specific elements in the complainant's answers that allegedly affected the credibility of her religious beliefs. The Committee also notes that the testimony of W affirms that the complainant is a Christian. Given the circumstances, the Committee is satisfied that the complainant has sufficiently substantiated her account of her adherence to Christianity.

10.5 The Committee takes note of the State party's argument that it is not plausible that the police would have searched for the complainant at a residence of a brother in the church, which was used as a church, in the village of N without arresting him, even though they were accompanied by L's husband, who knew that L and the complainant often met at that home. The Committee notes that, in the transcript of the hearing before the State Secretariat for Migration, the complainant stated that the Chinese authorities did not arrest the brother in the church, owing to lack of proof against him. The complainant also stated that the Chinese authorities had no proof against her either and that they were unaware of her real identity. The Committee considers that the complainant has not effectively justified the existence of the abovementioned risk in the absence of proof against her at that point in time.

10.6 However, the Committee notes that, on appeal, the complainant submitted testimony from W, according to which the son of L's husband obtained the complainant's family home address, upon which he took the police there, where the complainant's mother was told by the police that the complainant should surrender herself as soon as possible. The complainant adds that the police found pictures of her at the residence and stated that those who preached the gospel were regarded as criminals. From that testimony, it can be concluded that the police were looking for the complainant, therefore the Committee cannot agree with the State party's observation that the testimony provides no basis for concluding that she had problems with the authorities. Taking note of the State party's observation that the testimony is inconsistent with the complainant's statement that she presented herself to the family under an alias, the Committee finds that the State party has not explained in what way the use of an alias means that L's family could not have found out about the complainant's address, in particular given that, according to the transcript of the hearing before the State Secretariat for Migration, the complainant visited their residence often and had introduced herself to L's husband, who was therefore aware of her appearance. In the absence of further doubts concerning the trustworthiness of W's testimony raised by the State party, the Committee finds that due weight should be given to the complainant's account of the police search, visit to the residence and threat to her mother relating to the complainant's religious activities and preaching.

10.7 The Committee takes note that the State party argues that it is illogical that the complainant would have been able to obtain a passport and use it to freely leave China if she was wanted by the Chinese authorities. The Committee also takes note of the complainant's argument that the Chinese authorities had no basis in domestic law for preventing her departure from the country. It further takes note of the State party's reference to one of the submitted professors' statements, according to which procuring a passport is possible if the person concerned has never had their details checked at a border crossing or has provided an alias during a check and profited from a delay in the registration of his or her fingerprints. The cited professor also points out that there is a high level of corruption among Chinese officials, which facilitates the procurement of passports, and that airport officials rarely check names and never check fingerprints. The Committee notes that the complainant states having availed herself of an alias and that she received help from third parties in procuring the documents, which is consistent with the abovementioned information. The Committee considers that the inconsistencies observed by the State party about the exact role of Z do not necessarily lead to the conclusion that the complainant's account of the procurement of a passport is not credible. The Committee therefore finds that due weight should be given to the complainant's statement.

10.8 The Committee notes that the State party has not disputed the increasing incidence of persecution of Christians in China, as noted by the complainant. The Committee recalls its concern about the consistent reports that members of various groups, including religious minority groups, continue to be charged, or threatened to be charged, with broadly defined

offences as a form of intimidation.<sup>15</sup> Given that the complainant has duly substantiated her account of the police search, visit to her family residence and threat made to her mother concerning the complainant's religious activity, the Committee finds that, in the light of particular circumstances of the present case, the facts as submitted and the complainant's personal and family situation, it is reasonable to assume that the complainant's removal to China would put her at risk of torture or other cruel, inhuman or degrading treatment or punishment.

11. The Committee, acting under article 22 (7) of the Convention, concludes that the deportation of the complainant to China, without affording her exhaustive access to the State party's remedies, would constitute a breach of article 3 of the Convention by the State party. The State party is requested to refrain from deporting the complainant while her application for asylum is being reviewed.

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

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<sup>15</sup> CAT/C/CHN/CO/5, para. 36.