



# 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. 807/2017\*, \*\*

<i>Communication submitted by:</i>	X and Y (not represented by counsel) <sup>1</sup>
<i>Alleged victims:</i>	The complainants
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	27 September 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 21 February 2017 (not issued in document form)
<i>Date of adoption of decision:</i>	19 July 2021
<i>Subject matter:</i>	Deportation to the Islamic Republic of Iran
<i>Procedural issues:</i>	None
<i>Substantive issue:</i>	Risk of torture or other cruel, inhuman or degrading treatment if deported to country of origin
<i>Article of the Convention:</i>	3

1.1 The complainants are X, an Iranian national born on 21 May 1987, and her father, Y, also an Iranian national, born on 21 March 1950. X and Y arrived in Switzerland on 31 October 2011 and 15 November 2011, respectively, and each applied for asylum on the day of their arrival. Their asylum applications were rejected on 8 August 2014. The complainants then filed an appeal with the Federal Administrative Court, but this appeal was also rejected, on 26 November 2015. Their final appeals were rejected on 7 July 2016. The complainants are thus subject to an order of deportation to the Islamic Republic of Iran and consider that their deportation would constitute a violation by the State party of article 3 of the Convention. The State party made the declaration under article 22 (1) of the Convention on 2 December 1986. The complainants were not represented by counsel at the time of the initial submission but subsequently retained counsel.

1.2 On 21 February 2017, in accordance with 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 deporting the complainants to the Islamic Republic

\* 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, Liu Huawen, Ilvija Pūce, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Peter Vedel Kessing.

<sup>1</sup> The complainants subsequently retained counsel, whose power of attorney was revoked on 19 April 2021.



of Iran while their complaint was under consideration. On 24 February 2017, Switzerland agreed not to take any steps to deport the complainants.

### **Facts as submitted by the complainants**

2.1 X was born in Tehran. Following her parents' divorce, when she was 2 years old, she lived with her father, Y, and had no contact with her mother. Y did not remarry. During a visit to see her aunt in Kermanshah, a town near the border with Iraq, X met her fiancé, Ramin, whose family is Kurdish. Her fiancé's father had been killed following the Islamic Revolution and his mother had left the Kurdish region to live in Kermanshah after receiving constant threats. Because of these events, X's fiancé provided humanitarian aid to the Kurds at the border. Made aware of her fiancé's cause, X visited the area with Y several times in order to donate clothing, money and other goods collected from friends. X took the risk of properly documenting her activities, including with photographs, in order to raise funds from friends and acquaintances.

2.2 During her last visit to Kermanshah, X stayed with her fiancé's mother while he and his friends handed out aid and donations. One evening, while the family was having dinner together, a friend of her fiancé rang the doorbell, and her fiancé went outside to talk to him. While her fiancé was outside, the doorbell rang again. Assuming that it was her fiancé, X opened the door without using the intercom to check who it was. Four or five men and two women whom they did not know entered. When Y asked them who they were, they hit him.

2.3 As soon as they had entered, the aggressors blindfolded and handcuffed all the persons present and beat and insulted them. They then put them in a car and ordered them to crouch down. X was taken to a cell, where, for a period that she estimates as having lasted between 15 and 16 days, she was questioned about delivering weapons to the Kurds in order to overthrow the Iranian State. She was beaten, insulted and repeatedly raped by several men. She was tortured, asphyxiated with a wet bag over her face and locked in a room before being forced to sign a written confession. She was subsequently taken from her place of detention and abandoned in a location unknown to her. A passer-by took her to the house of her fiancé's mother. A few days later, Y was released, after around 20 days in detention.

2.4 When X next saw her fiancé, who had managed to escape after having spotted the men outside the house, he told her that he would have to hide and asked her for her diary and the USB stick containing her reports and the photographs that she had taken during her stays in the Kurdish areas. X was later informed that her fiancé had been arrested, the house of her fiancé's mother had been searched and her USB stick had been seized.

2.5 The mother of X's fiancé insisted that the complainants should leave the country immediately. With the help of a trafficker, X left the Islamic Republic of Iran for Europe, via Turkey, and was reunited with Y in Switzerland a few weeks later. X applied for asylum on 31 October 2011 and was heard by the Federal Office for Migration<sup>2</sup> on 11 November 2011. Y applied for asylum on 15 November 2011 and was heard by the Federal Office for Migration on 13 December 2011.

2.6 X was heard by the Federal Office for Migration for a second time on 3 September 2013. Regrettably, without psychotherapy, which she began with the Swiss Red Cross on 21 November 2013,<sup>3</sup> X was not able, at this second hearing, to mention every aspect of her detention, including her rape. On 8 August 2014, the Federal Office for Migration rejected her asylum application without affording her another opportunity to give evidence, despite a request from her psychiatrist.<sup>4</sup> The Federal Office for Migration submitted that, although it accepted that X had post-traumatic stress disorder, it did not believe that her condition had been caused by the persecution that she had described. Moreover, X's claims were not

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<sup>2</sup> The Federal Office for Migration became the State Secretariat for Migration on 1 January 2015.

<sup>3</sup> X's psychotherapist drew up a detailed medical report, which was submitted to the Federal Office for Migration on 3 July 2014 and in which an explanation was given of the therapeutic process and X's symptoms of post-traumatic stress disorder, which included an impact on her behaviour and sleep, dissociation and an inability to talk about the rape, her fear of men, her antidepressant use and suicide attempts.

<sup>4</sup> On 8 August 2014, the Federal Office for Migration also rejected Y's asylum application.

considered credible; the Federal Office for Migration considered that her description of her travels in the Kurdish region was vague and stereotypical, that her handwritten accounts of the visits were contradictory and that the clarifications she had provided about the events that had occurred prior to her arrest cast doubt on her credibility. Moreover, according to the Federal Office for Migration, X had failed to provide a convincing explanation and description of the conditions of detention and interrogation methods to which she had been subjected.

2.7 In addition, on 10 June and 17 September 2013, the Federal Office for Migration received two anonymous letters in which the complainants were accused of giving the Swiss authorities false identities, namely those of Ms. Ghazal Tarik and Mr. Ebrahim Tarik. It is alleged in these letters that X has a sister in Switzerland (the daughter of Y), that X and Y entered Switzerland on visas in order to visit her and that they then left for France and returned to Switzerland in order to apply for asylum.<sup>5</sup> As the letters are anonymous, the complainants fear that they are the work of the Iranian intelligence agencies.

2.8 On 4 September 2014, following her request for an opportunity to add to her statements, X was again heard by the Federal Office for Migration. At this hearing, she again struggled to recount in detail everything that had happened.

2.9 On 9 September 2014, X's lawyer at the time filed an appeal with the Federal Administrative Court and requested that the questions to which X had yet to reply should be put to her. Regarding the anonymous letters, once it had received the complainants' appeal, the Federal Administrative Court contacted the Embassy of Switzerland in the Islamic Republic of Iran in order to obtain the complete files of the visa applications submitted by the persons mentioned in the letters. In a reply dated 10 December 2014, the Embassy stated that the files for 2011 had been destroyed. The Federal Administrative Court thus contacted the Reusser family, which, according to the letters, had hosted the complainants. The Reusser family said that the persons mentioned in the letters had stayed with another person, Golnaz Tarik.

2.10 After contacting Golnaz Tarik, the Federal Administrative Court noted that her mother had the same first and last names (albeit with different spellings, which, according to the State party, are due to simple differences in transcription) and date of birth as X's mother and the ex-wife of Y. In her response of 10 July 2015, Golnaz Tarik stated that she had hosted her father and sister at her home in 2011 and had accompanied them to the airport. In addition, the Court found that X's responses to the questions about Ghazal Tarik provided strong evidence that she had used this identity when introducing herself to the two persons whom she had met in Switzerland. The complainants dispute the allegations of false identity and offered to undergo DNA tests. However, despite a request from the Federal Administrative Court, Golnaz Tarik refused to undergo a DNA test.

2.11 The Federal Administrative Court ultimately dismissed the appeal on 26 November 2015, finding that the account given by the complainants was neither credible nor plausible, owing in large part to the lack of details about the torture suffered and the vague nature of the account. X, for her part, alleges that the Federal Administrative Court did not properly examine the anonymous letters and that these letters are not well founded. The Court also overlooked the fact that victims of torture with post-traumatic stress disorder often struggle to recount traumatic events, particularly in the context of a hearing and without psychotherapy. For this reason, X considers that the Swiss authorities and courts have not

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<sup>5</sup> It is explained in the letters that a couple, Mr. and Mrs. Reusser, invited and hosted Ebrahim Tarik and his daughter Ghazal Tarik at their home in Vevey from 24 June 2011. Ms. Reusser had apparently introduced them as her uncle and niece. It is alleged in these letters that these two persons claimed to have returned to the Islamic Republic of Iran but stayed in France for two days before returning to Lutry, Switzerland, where they lived in hiding for five months with Golnaz Tarik, who, according to the second letter, is in fact Ebrahim Tarik's daughter. In addition, it is claimed in these letters that Ghazal Tarik then went to the Vallorbe registration and processing centre, where she filed an asylum application under the name X. Ebrahim Tarik allegedly went to the same centre shortly afterwards to file his asylum application under the name Y. At their hearings on 3 and 4 September 2013, the complainants were asked whether they knew Ebrahim Tarik or Ghazal Tarik, and they replied that they did not.

examined their allegations and the evidence adduced in depth. Nevertheless, the dismissal of the appeal by the Federal Administrative Court upheld the order to deport the complainants.

2.12 In April 2016, a friend of X travelled to the Islamic Republic of Iran and managed to find and bring back X's driver's licence in order to establish and prove her identity. On 7 July 2016, the Federal Administrative Court, to which X had referred the matter, stated that the driver's licence was not proof of X's identity and, moreover, that the question of identity was not the only reason for the rejection of the asylum application.

2.13 On 27 September 2016, the complainants submitted a communication to the Committee in which they requested interim measures, as their deportation to the Islamic Republic of Iran was imminent.

### **Complaint**

3.1 The complainants assert that they would be at risk of torture or cruel, inhuman or degrading treatment if returned to the Islamic Republic of Iran, as they have already been arrested and tortured, in June 2011, for having provided aid to the Kurdish community. They consider that their return would constitute a violation by Switzerland of its obligations under article 3 of the Convention.

3.2 The complainants also fear that they might be arrested and detained again, as the Iranian authorities have access to all the information about X that was seized from her fiancé's house, namely the USB stick and the photographs taken and articles written by her. In addition, they invoke the human rights situation in the Islamic Republic of Iran and the treatment by the Iranian authorities of the Kurds living near the border with Iraq. In this context, the Iranian authorities consider that the humanitarian aid provided by the complainants to the Kurdish community constitutes a political activity.

3.3 Moreover, the complainants consider that the State party did not properly examine X's account of her sexual abuse, which included rape, overlooking the fact that torture victims with post-traumatic stress disorder are often unable to recount traumatic events, and based its decisions on the incorrect information provided in the two anonymous letters of 10 June and 17 September 2013, in which the complainants were accused of giving false names to the Swiss authorities and courts. The complainants claim the right to be fully heard on these points and challenge the proceedings before the Federal Office for Migration – now the State Secretariat for Migration – and the Federal Administrative Court.

### **State party's observations on the merits**

4.1 On 16 August 2017, the State party submitted its observations on the merits, without contesting the admissibility of the complaint.

4.2 The State party considers that, overall, the complainants' allegations lack consistency and credibility, particularly with regard to the activities carried out to help Kurds living in poverty (collecting clothes and money from friends and handing out these donations during trips to the Kurdish region); the arrest; the sexual abuse, including rape, of X during the her detention; X's allegation that she heard her fiancé's mother fall when she was blindfolded; the addition of facts to the medical report that she had not mentioned at the hearings; and issues of identity. With regard to the allegations that the Federal Administrative Court relied largely on anonymous reports that X had a sister living in Switzerland, the State party submits that this fact was never substantiated, as the alleged sister refused to undergo a DNA test. Moreover, the complainants were reportedly unable to prove their identities, as the Swiss authorities did not recognize drivers' licences or school certificates as identity documents.

4.3 The Federal Administrative Court noted that the complainants' behaviour in relation to the presentation of identity documents gave further cause for doubt as to their credibility. At his first hearing, Y stated that the smuggler had taken his identity documents; however, according to his statements at the second hearing, his identity documents were confiscated when he was arrested, and he had given only his birth certificate to the smuggler. In their comments of 1 June 2015, the complainants argued that they would not be able to obtain identity documents in the Islamic Republic of Iran, but, in an annex, they submitted a lengthy email from X's former employer with a recently issued employment certificate attached.

4.4 With regard to X's request to be brought face-to-face with her alleged sister, the Federal Administrative Court considered that this step would not have been able to refute the evidence found. Moreover, at no stage did Golnaz Tarik dispute that she was related to the complainants, even when the Federal Administrative Court asked for her consent to provide a DNA sample. In light of all this evidence, the Federal Administrative Court concluded that the complainants' allegations of a possible risk of torture upon return were not credible.

4.5 On 1 July 2016, the complainants filed an application for review with the Federal Administrative Court. In support of their application, they submitted documents to disprove the allegations that they were in fact Ebrahim Tarik and Ghazal Tarik. On 7 July 2016, the investigating judge rendered an interim decision rejecting the complainants' application for legal aid; the investigating judge considered that the application for review had no chance of success and invited the complainants to pay an advance of 1,600 Swiss francs as surety for procedural costs, failing which the appeal would be inadmissible. The complainants did not pay the advance by the deadline. As a result, the Federal Administrative Court struck the application for review from its list. The State party thus supports the decisions of the national authorities, in the light of article 3 of the Convention and the Committee's jurisprudence and general comments.

4.6 The State party recalls the elements that must be taken into account in order to assess the existence of a "personal, real, present and serious" risk of torture or ill-treatment<sup>6</sup> upon return to the country of origin: any evidence of a consistent pattern of gross, flagrant or mass violations of human rights in the country of origin; any claims of torture or ill-treatment in the recent past and independent evidence to support those allegations; the political activity of the complainants within or outside the country of origin; any evidence as to the credibility of the complainants; and any factual inconsistencies in the complainants' claims.

4.7 The existence of a consistent pattern of gross, flagrant or mass violations of human rights does not, in itself, constitute sufficient grounds for believing that a particular person would be subjected to torture upon return to his or her country of origin. The Committee must establish whether the complainants are "personally" at risk of being subjected to torture in the country to which they would be returned.<sup>7</sup> Additional grounds must be adduced in order for the risk of torture to qualify as "foreseeable, real and personal" for the purposes of article 3 (1) of the Convention.<sup>8</sup> The risk of torture must be assessed on grounds that go beyond mere theory or suspicion.<sup>9</sup>

4.8 The State party considers that, despite the worrying situation in the Islamic Republic of Iran, violence is not currently widespread in the country. Furthermore, the situation in a country of origin cannot, in itself, constitute sufficient grounds for concluding that the complainants would be at risk of torture if returned. According to the State party, the complainants have in any event not demonstrated that they face this risk. In addition, the State party considers that X's claims that she was subjected to acts of torture and ill-treatment and was detained are not credible; her medical report does not yield any evidence of the ill-treatment that she allegedly suffered. Moreover, there is no mention of any political acts by the complainants in the Islamic Republic of Iran, despite all the claims made before the Swiss courts and the Committee regarding humanitarian activities in support of the Kurds, or of any political acts against the Islamic Republic of Iran carried out in Switzerland.

4.9 The State party is of the view that the complainants have not made plausible allegations of persecution in the Islamic Republic of Iran. It notes that the Swiss authorities have assessed in depth all the arguments made regarding a risk of persecution in the Islamic Republic of Iran. It should be stressed that the complainants' communication does not contain any new evidence. In considering the present communication, the Committee is thus dealing with a case that has already been subject to a full legal examination by the Swiss authorities, which are specialists in this field. The State party also recalls the Committee's practice that it is within the purview of the courts of the States parties to the Convention to assess the facts

<sup>6</sup> Committee against Torture, general comment No. 4 (2017), paras. 26 and 28.

<sup>7</sup> *K.N. v. Switzerland* (CAT/C/20/D/94/1997), para. 10.2.

<sup>8</sup> *Ibid.*, para. 10.5, and *J.U.A. v. Switzerland* (CAT/C/21/D/100/1997), paras. 6.3 and 6.5.

<sup>9</sup> Committee against Torture, general comment No. 1 (1997), para. 6, which was replaced by general comment No. 4 on 6 December 2017.

and evidence in a case. In particular, the Committee must assess the facts and evidence in a given case once it has been ascertained that the manner in which the evidence was evaluated was clearly arbitrary or amounted to a denial of justice.<sup>10</sup> However, in the case under consideration, the evidence presented by the complainants does not show that the State party's examination was marred by any such irregularities. This last finding applies in particular to the allegation that the Federal Administrative Court relied largely on two anonymous letters claiming that X has a sister living in Switzerland: the authors of these letters are known to the Swiss authorities, but, for obvious reasons, their identities have not been disclosed to the complainants; these letters prompted additional investigations by the Federal Administrative Court with a view to clarifying the facts; the complainants had access to the case file and were able to submit their comments to the Court; and, more importantly, the complainants' asylum applications were rejected for reasons other than their identity.

4.10 In conclusion, according to the State party, there is nothing to indicate the existence of substantial grounds for fearing that the complainants would face a specific and personal risk of being tortured if returned to the Islamic Republic of Iran. Their allegations and the evidence provided do not warrant a finding that their return would expose them to a real, present and personal risk of torture. The State party therefore finds that the return of the complainants to the Islamic Republic of Iran would not constitute a violation of its obligations under article 3 of the Convention.

### **Complainants' comments on the State party's observations**

5.1 On 31 August 2018, the complainants submitted comments on the State party's observations.

5.2 On the merits, the complainants submit that the State party attaches central importance to X's second hearing and claims that her explanations contain few details and are illogical and even contradictory. They note that the second hearing lasted for an entire day and was conducted through a Persian-language interpreter. The Federal Office for Migration received the first anonymous letter accusing X<sup>11</sup> and Y of using false identities in June 2013, which meant that X's second hearing with the Federal Office, on 3 September 2013, took place in an atmosphere of distrust. Although X's memory may at times have failed her, particularly when it came to the recollection of painful events, as is often the case for victims with post-traumatic stress disorder, she maintains that she tried to respond in good faith to the nearly 200 questions that the employee of the Federal Office for Migration put to her and that, if it had been necessary, she would have provided more detailed information. The complainants note that the employee had seemed to take little interest in X's replies, apart from her replies to the last two questions, which concerned the anonymous letters. From this point, the employee suddenly seemed very interested, although very dissatisfied with X's replies.

5.3 In addition, the second letter sent was an almost word-for-word reproduction of the first. Although the Federal Office for Migration claims that its decision was not based solely on these letters but on the basis of the evidence as a whole, the complainants note that the arrival of these letters nevertheless represented a turning point in the proceedings.

5.4 Moreover, throughout the process, the complainants made repeated attempts to cooperate. On several occasions, X asked who had sent the letters so that she could better respond to them. She offered to undergo a DNA test to help to establish her identity and to prove that she was not related to the person alleged to be her sister, who had refused to take such a test. X nevertheless insisted and tried to convince this person to take the test by contacting her directly. The Swiss authorities' finding that the complainants' allegations were not credible and their refusal to grant them asylum were based on a biased examination of her case.

5.5 With regard to the plausibility of their account, the complainants state that there is a coherent explanation for all the possible contradictions and inaccuracies identified by the authorities. As is often the case with victims of post-traumatic stress disorder, X noted that

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<sup>10</sup> *J.A.M.O. et al. v. Canada* (CAT/C/40/D/293/2006), para. 10.5; and *Ktiti v. Morocco* (CAT/C/46/D/419/2010), para. 8.7.

<sup>11</sup> X is alleged to be Ghazal Tarik.

she could not recall the exact number of trips that she had made to the Kurdish region. When asked by the employee of the Federal Office for Migration to specify how many trips she had made, X replied that she had made four or five.

5.6 With regard to her arrest, X believes that she was misunderstood. The house was under constant surveillance. X did not claim that her fiancé had escaped, but rather that he had gone out before the officers arrived, for a different reason. This is plausible, as the house had been under surveillance for several days, and the officers had not got out of their vehicle immediately. X had simply made an inference based on her assessment of the facts.

5.7 Furthermore, it is entirely possible that, when blindfolded, X was able to hear her fiancé's mother fall, as a blindfolded person can hear and recognize the voice of a falling person. The complainants maintain that this fact is not absurd.

5.8 X's diary was also the subject of controversy. As X stated several times, she wrote her diary by hand, in the first person, and printed out photographs to accompany her account, including photographs of herself and her father from which they could be identified. She had been scanning the diary to her USB stick, which her fiancé had then taken. In fact, he had the USB stick with him when he was arrested. Furthermore, X did not ask for news of her fiancé while she was in Switzerland in order to protect him. She notes that this is very common behaviour among asylum seekers. The only person of whom she asked for news was her father.

5.9 Moreover, the various medical reports submitted by X confirm that she experienced ill-treatment in the Islamic Republic of Iran. As X had never been able to establish a relationship of trust with her first therapist and had experienced suboptimal care, she had not been able to express herself during her hearings as well as she might have because of post-traumatic stress disorder, which continues to affect her. Consequently, X attempted suicide after her second hearing. With regard to the State party's claim that the causes of X's post-traumatic stress disorder are different from those that she herself put forward, even though the symptoms of the disorder have been established, X stresses that the State party has not explained the sources of information on which this finding is based. She maintains that the Swiss authorities clearly did not carry out a proper assessment of the facts relating to the complainants, which led to the rejection of their asylum application.

5.10 Lastly, concerning the issue of political activities, or rather political opinion, the Swiss authorities, including the Federal Office for Migration, considered that the complainants' deliveries of aid to the Kurds were not born of a political commitment. The complainants state that, even though the support that they provided did not result from a political ideal, such support, even when not motivated by a political opinion, is nonetheless considered by the Government to be so motivated. In view of the ever-increasing tensions between the Islamic Republic of Iran and the Kurdish minorities, any aid to the Kurds, even if it is neutral, humanitarian and philanthropic, is perceived by the Iranian Government as a betrayal of the homeland and, therefore, as a political activity as well as grounds for persecution, which justifies the granting of refugee status in accordance with contemporary interpretations of international law. The complainants therefore conclude that the Swiss authorities misjudged the facts, which led to a breach of the law.

5.11 On 3 October 2018, the complainants' counsel, on behalf of the Swiss Red Cross Outpatient Clinic for Victims of Torture and War, in Bern, expressed concern about the planned closure of the sheltered accommodation facility for refugees, where the complainants would be living until the end of October 2018. Their counsel requested that the complainants should not be relocated to alternative sheltered housing, as this would seriously aggravate their medical and psychiatric problems, namely complex trauma and dementia (copies of medical reports were attached). The complainants consider as reasonable and appropriate the suggestion that they be housed in an apartment for persons with disabilities.

#### **Additional information from the complainants**

6. On 3 May 2021, the complainants submitted a request for information regarding the date on which a final decision would be made and provided an update on their state of health.

**State party's additional observations**

7. On 5 May 2021, the State party indicated that it had no further observations.

**Issues and proceedings before the Committee***Consideration of admissibility*

8.1 Before considering any complaint contained 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.

8.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it cannot consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. This rule does not apply where it has been established that the application of the remedies has been unreasonably prolonged, or that it is unlikely, after a fair trial, to bring effective relief to the alleged victim.<sup>12</sup> It notes that, in the present case, the State party has not contested that the complainants have exhausted all available domestic remedies or any other criteria for the admissibility of the complaint.

8.3 In the absence of any question as to the admissibility of the complaint, the Committee declares it admissible, given that it raises questions under article 3 of the Convention and that the facts and basis of the complainants' claims have been duly substantiated,<sup>13</sup> and proceeds with the consideration on the merits.

*Consideration of the merits*

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

9.2 In the present case, the Committee must determine whether, by returning the complainants to the Islamic Republic of Iran, the State party would be in breach of its obligation under article 3 of the Convention not to expel or return an individual to another State where there are grounds to believe that he or she would be in danger of being subjected to torture or other cruel, inhuman or degrading treatment or punishment.

9.3 The Committee must evaluate whether there are substantial grounds for believing that the complainants would be personally in danger of being subjected to torture if returned to the Islamic Republic of Iran. In assessing this risk, the Committee must, pursuant to article 3 (2) of the Convention, take into account all relevant considerations, including the possible existence of a consistent pattern of gross, flagrant or mass violations of human rights.<sup>14</sup> However, the Committee recalls that the aim of this assessment is to establish whether the individual concerned would personally be at a foreseeable and real risk of being subjected to torture in the country to which he or she is to be expelled. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not, as such, constitute sufficient grounds 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. Moreover, the Committee notes that, since the Islamic Republic of Iran is not a party to the Convention, in

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<sup>12</sup> Committee against Torture, general comment No. 4, para. 34.

<sup>13</sup> *K.A. et al. v. Sweden* (CAT/C/39/D/308/2006), para. 7.2.

<sup>14</sup> Committee against Torture, general comment No. 4, para. 43.

the event of a violation of the complainants' Convention rights in that country, they would be deprived of the legal option of recourse to the Committee for protection of any kind.<sup>15</sup>

9.4 The Committee recalls its general comment No. 4 (2017), which states, first, that 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 the State to which he or she is facing deportation, either as an individual or as a member of a group which may be at risk of being tortured in the State of destination and, second, that the Committee's practice has been to determine that "substantial grounds" exist whenever the risk is "foreseeable, personal, present and real".<sup>16</sup> The Committee further recalls that 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, personal, present and real. However, when the complainant is in a situation where he or she cannot elaborate on his or her case, the burden of proof is reversed and the State party concerned must investigate the allegations and verify the information on which the communication is based.<sup>17</sup> The Committee gives considerable weight to the findings of fact of the organs of the State party concerned; however, it is not bound by such findings and will make a free assessment of the information available to it in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to each case.<sup>18</sup>

9.5 In the present case, the Committee takes note of the complainants' argument that, if deported to the Islamic Republic of Iran, they would be considered as traitors for having provided humanitarian aid to Kurdish communities in the Islamic Republic of Iran and would therefore once again face a risk of torture or cruel, inhuman or degrading treatment. It also notes the complainants' fear that the documents detailing their activities and found by the Iranian authorities might aggravate their situation and that the aid that they provided could be perceived by the Iranian Government as a political activity. The Committee also notes the complainants' belief that the State party did not properly consider X's account of her sexual abuse, overlooking the fact that torture victims with post-traumatic stress disorder often struggle to recount traumatic events, and based its decisions on the incorrect information contained in two anonymous letters of 10 June and 17 September 2013, in which the complainants were accused of using false identities.

9.6 The Committee notes that the Swiss authorities considered that the descriptions of handing out goods and the number of the complainants' trips to the Kurdish region were vague. For example, X was unable to say with certainty how many times her father had accompanied her. In addition, the Committee notes that the Federal Office for Migration also found X's statements about the aid provided to the Kurds, her arrest and sexual abuse and her description of the conditions of detention to be inconsistent and superficial, partly illogical and limited to what is "generally known". The Committee further notes the State party's assessment that: (a) during her interviews, X did not give any specific details about her detention but cried and recounted the ill-treatment and acts of torture that she claimed to have suffered; (b) X's statements about her diary were vague and contradictory and the Iranian authorities would have no way of knowing to whom the diary belonged, as X's name was not explicitly mentioned in it; (c) X added facts to the medical report that she had not mentioned at the hearings; (d) the medical reports stating that X had post-traumatic stress disorder were irrelevant because it could not be said that her condition resulted from the acts of persecution that she claimed to have experienced; (e) the statements made by Y regarding the humanitarian aid and his arrest and detention were implausible; (f) there was no mention of political acts carried out by the complainants in the Islamic Republic of Iran and political acts carried out against the Islamic Republic of Iran in Switzerland; (g) the complainants' allegations that the Swiss authorities relied largely on anonymous reports that X had a sister living in Switzerland were never substantiated, as the alleged sister refused to undergo a DNA test; (h) Golnaz Tarik never disputed that she was related to the complainants; (i) the complainants were apparently unable to prove their identity; and (j) doubts also remained

<sup>15</sup> *Tahmuresi v. Switzerland* (CAT/C/53/D/489/2012), para. 7.7; and *D.R. v. Switzerland* (CAT/C/63/D/673/2015), para. 7.2.

<sup>16</sup> Committee against Torture, general comment No. 4, para. 11.

<sup>17</sup> *Ibid.*, para. 38.

<sup>18</sup> *Ibid.*, para. 50.

about the complainants' credibility in view of their behaviour in relation to the presentation of identity documents.

9.7 The Committee recalls that it must ascertain whether the complainants are currently at risk of torture or ill-treatment if returned to the Islamic Republic of Iran. It notes that the complainants had many opportunities to substantiate and provide more details about their claims before the Federal Office for Migration – now the State Secretariat for Migration – and the Federal Administrative Court, but that the evidence provided did not allow the national authorities to conclude that the humanitarian aid provided by the complainants to the Kurdish communities, their alleged opinions or the detention and ill-treatment to which they were allegedly subjected put them at a current risk of torture or cruel, inhuman or degrading treatment if returned.<sup>19</sup> Furthermore, the Committee recalls that the existence of human rights violations in the country of origin does not in itself constitute sufficient grounds for concluding that a complainant is personally at risk of torture. The Committee notes that the complainants dispute in particular the assessment of the facts and evidence by the State party, particularly X's account of the sexual abuse that she allegedly suffered and the information contained in the two anonymous letters of 10 June and 17 September 2013.

9.8 On the basis of the information available to it, the Committee considers that the complainants have failed to provide evidence that the Iranian authorities would seek them out or that their activities are of sufficient importance to attract the interest of the Iranian authorities at the current time and have not established that the State party's examination was manifestly arbitrary or amounted to a denial of justice.<sup>20</sup> The Committee concludes that the information submitted by the complainants is insufficient to establish that they would personally face a foreseeable and real risk of torture or cruel, inhuman or degrading treatment if returned to the Islamic Republic of Iran.

10. The Committee, acting under article 22 (7) of the Convention, concludes that the return of the complainants to the Islamic Republic of Iran would not constitute a violation of article 3 of the Convention by the State party.

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<sup>19</sup> *Y.G. v. Switzerland* (CAT/C/65/D/822/2017), para. 7.8.

<sup>20</sup> *S. v. Sweden* (CAT/C/65/D/691/2015), para. 10.