



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

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Committee against Torture

Communication No. 613/2014

**Decision adopted by the Committee at its fifty-fifth session (9 November
- 9 December 2015)**

<i>Submitted by:</i>	F.B. (represented by counsel Joëlla Bravo Mougán)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	The Netherlands
<i>Date of complaint:</i>	12 June 2014 (initial submission)
<i>Date of present decision:</i>	20 November 2015
<i>Subject matter:</i>	Deportation to Guinea
<i>Procedural issues:</i>	-
<i>Substantive issues:</i>	Non-refoulement; Risk of torture upon return to country of origin
<i>Articles of the Convention:</i>	3

[Annex]



Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-sixth session)

concerning

Communication No. 613/2014*

Submitted by: F.B. (represented by counsel Joëlla Bravo Mougán)

Alleged victim: The complainant

State party: The Netherlands

Date of complaint: 12 June 2014 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 20 November 2015,

Having concluded its consideration of complaint No. 613/2014, submitted to the Committee against Torture by F.B. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant is F.B., a Guinea national, born on 28 December 1987, who is currently living in the Netherlands. She claims that her deportation to Guinea by the State party would constitute a violation of her rights under article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. She is represented by counsel.

1.2 On 18 June 2014, pursuant to rule 114, paragraph 1, of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party to refrain from returning the complainant to Guinea while her complaint was being considered by the Committee. On 10 July 2014, the Immigration and Naturalisation Service (IND) informed the complainant that it would refrain from removing her in accordance with the Committee's request.

* The following members of the Committee participated in the consideration of the present communication: Alessio Bruni, Satyabhoosun Gupta Domah, Abdoulaye Gaye, Jens Modvig, Sapana Pradhan-Malla, George Tugushi and Kening Zhang.

Facts as presented by the complainant

2.1 The complainant was born in Monrovia, Liberia. Her father is Guinean and her mother is Liberian. Together with her parents, she moved to Guinea when she was a baby. The complainant belongs to the Peul (Fula or Pular) ethnic group. She speaks and understands French, Pular, Malinke and Soussou. In Guinea, the complainant lived with her paternal step-grandmother, Ms. F.D., her step-grandmother's brother, Mr. M.S.D., and his wife, Ms. M.B. She lived in Simbaya Cosa quarter, in Conakry, Guinea, where she attended primary school. In 2001, she was forced to undergo female genital mutilation (FGM) by her step-grandmother, in poor hygienic conditions, without anaesthesia/painkillers and disinfected scissors. Afterwards, the complainant left the school and was forced to sell water and corn. On 5 August 2003, she was forced to marry her step-grandmother's brother, because his then-wife had not given birth to any children. The complainant claims that her step-grandmother's brother sexually abused her.

2.2 In October 2003, at the age of 16 years, the complainant arrived in the Netherlands with the help of a travel agent. Upon her arrival, she was forced to have sex with the travel agent, but she managed to escape after one week and instantly reported the incident to the police. On 20 October 2003 she filed an application for asylum to the IND, which was rejected on 23 December 2005. Her application for judicial review against the IND's decision was dismissed by the Regional Court of Hertogenbosch on 27 June 2007 as the complainant's accounts were found non credible. Afterwards, on 11 August 2008, she submitted a second application for asylum to the IND that was rejected on 6 January 2009. Her subsequent application for judicial review and appeal were rejected by the Regional Court of Utrecht and the Section of Administrative Law of the Council of State on 27 October 2009 and 28 January 2010, respectively. In both applications for asylum she claimed that she feared to be forced to continue the marriage with her step-grandmother's brother. In addition, in her second application she also submitted that she feared to be subjected to a further FGM.

2.3 In April 2013, the complainant underwent reconstructive genital surgery in the State party.

2.4 On 25 July 2013, the complainant filed a third application for asylum before the IND. She claimed, for the first time, that she was forced to undergo FGM and to marry an old man when she was in Guinea; and that she feared to be forced to undergo FGM again after undergoing a reconstructive genital surgery in the Netherlands. She submitted as documentary evidence a statement of the plastic surgeon that carried out the surgery. In the interview held by the IND on 29 July 2013, she described the FGM she underwent in Guinea and argued that it caused her severe physical damage and anxiety; that she did not like her body and was unable to establish a relationship with a man; that due to this she decided to undergo a reversal surgery in the State party; that she was afraid of her step-grandmother and of her husband if she returned to Guinea, because they would treat her even worse since they would assume that she worked as a prostitute in the Netherlands and that she would be forced to undergo FGM again.

2.5 On 1 August 2013, her third asylum request was denied by the IND, that also imposed on the complainant an entry ban for two years. According to her, the IND stated that her fear to be subjected to FGM again was not a new fact or circumstance as required by article 4:6 of the Common Law for Administrative Law (*Algemene wet Bestuursrecht*), and the case law. The complainant appealed against this decision before the Regional Court of The Hague.

2.6 On 6 September 2013, the Regional Court of the Hague rejected the complainant's appeal. It stated that as found in the Regional Court of Utrecht's ruling of 29 October 2009, the complainant did not make it plausible that she could not have pleaded her fear of FGM

earlier and that this claim, including the medical statement submitted by her, did not constitute a new fact or changed circumstance that required a new examination of the case. Moreover, it found that she had insufficiently made her argument with documentation that she did not belong to the group of 5 % of women who could skip from FGM; and that her allegations were too speculative and uncertain to assume that there was a realistic and foreseeable risk of torture if returned to Guinea. In this regard, it stated that the fact she was victim of FGM was not sufficient to conclude that she would be a victim again since *inter alia* she had not proved that potential perpetrators were aware of the restorative surgery she underwent in the Netherlands. The complainant appealed the Regional Court's ruling before the Council of State.

2.7 On 16 January 2014, the Section of Administrative Law of the Council of State declared her request for higher appeal manifestly ill-founded.

The complaint

3.1 The complainant submits that the Netherlands would violate her rights under article 3 of the Convention by forcibly removing her to Guinea. She claims that the State party's authorities failed to assess adequately the risk she would be subject to if returned. The State party's authorities arbitrarily considered that her fear was speculative and did not take into account that she is a victim of FGM and that FGM is widespread in Guinean society.

3.2 The complainant points out that according to the UNHCR, *"a woman or girl who has already undergone the practice [of FGM] before she seeks asylum, may still have a well-founded fear of future persecution. Depending on the individual circumstances of her case and the particular practices of her community, she may fear that she could be subjected to another form of FGM and/or suffer particularly serious long-term consequences of the initial procedure"*.¹ In her case, she went through the horrific experience of being victim of FGM in Guinea prior to her departure. Furthermore, since she underwent reconstructive genital surgery in the State party, a risk of being re-victimized is even higher.

3.3 The complainant points out that about 96% of women in Guinea have undergone FGM – with a prevalence of 94% or above in 4 out of the 5 regions of the country- and submits that this phenomenon constitutes a consistent pattern of gross, flagrant or mass violations of human right.² The pressure to undergo FGM is not limited to direct family members but is a common feature of Guinean society. In this regard, she highlights that Guinea is a strictly patriarchal society; that a woman is considered immoral if she does not live with her family; that a Guinean man will not marry a woman who is not circumcised and will demand her to be circumcised; and that FGM is considered a requirement for any women role in Guinean society.³ In light of the foregoing, the complainant claims that she runs a real and foreseeable risk of being forced to undergo FGM again and of a treatment contrary to article 3 of the Convention, should she be returned to Guinea.

¹ The complainant refers to UNCHR Guidance note on refugee claims relating to female genital mutilation, (May 2009), paras. 13-15.

² The complainant refers to UNICEF's report « Female Genital Mutilation/Cutting: A statistical overview and exploration of the dynamics of change », (July 2013), p. 26-28.

³ The complainant refers to UNFPA/UNICEF 2012 Annual Report, Joint programme on female genital mutilation/cutting: Accelerating change; and the Human Rights Committee's findings in communication No. 1465/2006, *Kaba v. Canada*, Views adopted on 25 March 2010, para. 10.2.

State party's observations on admissibility and merits

4.1 On 8 August 2014, the State party informed the Committee that it did not wish to challenge the admissibility of the complaint.

4.2 On 18 February 2015, the State party provided its observations on the merits. As to the facts of the case, the State party points out that the date on which the complainant entered the Netherlands is unknown, and that on 20 October 2003 she submitted an asylum application pursuant to section 28 of the Aliens Act 2000 (*Vreemdelingenwet* 2000). According to the State party, she based her application for asylum on the forced marriage to her step grandmother's brother. After a first interview, on 20 October 2003 the complainant was informed that the Dutch Ministry of Foreign Affairs would initiate an investigation in Guinea to verify her statements. She had a second interview to give her an opportunity to elaborate on her asylum application. The interviews were carried out in Fula and French languages with the help of an interpreter. The complainant could also make written substantive changes and/or additions to the reports of the interviews.

4.3 On 12 March 2004 a person-specific report (*individueel ambtsbericht*) was issued by the Ministry of Foreign Affairs. Since the complainant stated that she lived near a small restaurant called 'Feu Rouge' in the Petit Simbaya neighborhood of Conakry from the age of three (1990) until her departure, the investigation carried out in Guinea, included this neighborhood, where it was found a restaurant/nightclub called 'Feu Rouge'. However, neighborhood residents did not recognize the complainant from her passport photograph. Likewise, no neighborhood residents or representatives of the local authorities knew the people the complainant claimed were her relatives, i.e. her step grandmother, Ms. F.D, the complainant's husband Mr. M.S.D. and his first wife Ms. M.B. and their adopted child M.B. Furthermore, not a single house was found in the vicinity of restaurant 'Feu Rouge' where the complainant could have lived. The information that the complainant provided about her school turned out to be incorrect as well. She stated that she had attended the Batonga School in the Simbaya Cosa neighborhood from 1994 to 2001. According to the person-specific report, the primary school called Bantonka (not Batonga) in Simbaya Cosa in Conakry closed in 1989. The building that originally housed the school has been used as a police station since then. No one living in that area recognized the complainant from her passport photograph. The State party further notes that the complainant was unable to provide evidence to successfully refute the findings set out in the Ministry of Foreign Affairs' person-specific report. On 22 November 2005, the complainant was notified of the authorities' intent to deny her asylum application, and given an opportunity to provide comments, which she did by letter of 16 December 2005. On 23 December 2005, her asylum application was rejected by the IND since the authorities gave no credence to her assertion that she was forced to marry her step grandmother's brother. Nor did it consider her statements about her family circumstances credible.

4.4 On 17 July 2006, the Hague district court, sitting in 's-Hertogenbosch, stated that decided that the restrictions that had been placed on the complainant's access to the documents on which the person-specific report was based were justified pursuant to section 8:29, subsection 3 of the General Administrative Law Act (*Algemene wet bestuursrecht, AWB*). The State party points out that this decision was made by a different judge from the one who on 27 June 2007 declared unfounded the complainant's application for judicial review. The State party maintains that the complainant did not lodge an appeal against the district court's judgment with the Administrative Jurisdiction Division of the Council of State (*Afdeling bestuursrechtspraak van de Raad van State*).

4.5 On 13 August 2008, the complainant submitted a new asylum application pursuant to section 28 of the Aliens Act 2000, which was finally dismissed by the Administrative Jurisdiction Division of the Council of State on 28 January 2010. The State party points out

that although she was specifically asked about her mutilation in the first asylum procedure, this was the first time that she claimed that she feared to be forced to undergo FGM again.

4.6 On 21 April 2010, the complainant filed a criminal complaint as victim of human trafficking. The criminal complaint was automatically considered an application for a regular residence permit under the B9 arrangement set out in the Aliens Act 2000 Implementation Guidelines (*Vreemdelingencirculaire* 2000). On 28 April 2010, a decision was taken to grant the complainant a temporary residence permit under the B9 arrangement. However, on 7 June 2010, it was decided that the complainant's criminal complaint did not warrant a prosecution and her temporary residence permit was subsequently revoked. The objection, application for review and appeal lodged by the complainant in respect of the revocation decision were declared unfounded.

4.7 As to the third application for asylum lodged by the complainant, the State party maintains that during the interviews, she upheld that when she was three years old, her father took her to his stepmother in Guinea. She was raised by this step grandmother and she never saw her parents again. When the complainant was approximately thirteen years old, her step grandmother forced her to undergo FMG. Two weeks before fleeing Guinea, the complainant was forced to marry her step grandmother's brother. She tried to persuade them not to marry her, without success. She then appealed to the district leader, but he said that she should resign herself to accepting tradition. She also claimed that she was sexually abused by her step grandmother's brother. Against this background, she decided to flee and left Guinea in September 2003.

4.8 The State party provides a detailed description of the asylum procedure. An alien may file an application for judicial review to The Hague district court against an IND's denial of asylum. In principle, the applicant may await the result of the application for review in the Netherlands. Afterwards, the person can appeal the district court's judgment to the Administrative Jurisdiction Division of the Council of State. However, an alien who lodge this appeal may not, in principle, await the decision in the Netherlands.

4.9 The State party points out that according to its Ministry of Foreign Affairs' country-specific asylum policy for Guinea, discrimination and violence against women are widespread, despite the Guinean government's condemnation of these practices. A victim of violence, domestic or otherwise, can report the violence to the police, but in practice the police hardly ever take action. Most victims of rape do not report the crime to the police because of the social stigma associated with rape. It also states "Genital mutilation is practiced by all religious and ethnic groups and in every region. It is prohibited by law, but the social pressure to submit to it is very high, and it is virtually impossible for women in rural areas to escape genital cutting. However, in the cities there are potentially ways to avoid it. Women who are economically independent, highly educated or have a partner who respects their choice not to allow their body to be mutilated have a better chance of avoiding it. If a woman has not undergone genital cutting and cannot avoid it in her country of origin, there might be a real risk of a violation of article 3 of the European Convention on Human Rights (ECHR). In that case, a temporary asylum residence permit might be issued pursuant to the Aliens Act 2000. The individual concerned needed not have sought the protection of the authorities."⁴

4.10 The State party also highlights that its country-specific asylum policy for Guinea also states that when a woman demonstrates that she has a credible fear of violence or FGM, there is not a reasonable case for assuming she can rely on the protection of the

⁴ The State party points out that at the moment its observations were submitted the most recent country report on Guinea was of 20 June 2014.

authorities. According to various public sources FGM is widespread in Guinea, affecting 96.9% of all girls and women in Guinea, despite the fact that the practice is prohibited by law.⁵ It occurs across all religious and ethnic groups and geographical areas. The percentage of women who have been cut is highest among the Peul, the ethnic group to which the complainant belongs. At the same time, the Guinean authorities are working to eradicate this practice through information and prevention campaigns in cooperation with international organizations, such as UNICEF and WHO. Some of the campaigns have led to positive – albeit modest – developments. The State party points out that the incidence of FGM is falling in urban areas and – although to a lesser extent – in rural areas. According to the population survey of 2012, genital mutilation had been carried out on 14% of girls aged 0–4 at the time, 51% of girls aged 5–9 and 80% of girls aged 10–14 (75% in urban areas and 82% in rural areas). There were differences between the Kissi (64%) and Peul (91%) ethnic groups, between uneducated (81%) and educated (74%) women and between poor (92%) and rich (68%) women. It is highly unlikely that the oldest girls in the 10–14 age group who have not been cut will ever be subjected to genital mutilation. There is no age limit, but figures show that only 2.4% of women are subjected to genital mutilation while aged 15 or older. Among the 15 to 19 year olds surveyed, 1.2% were subjected to genital mutilation while in this age category.

4.11 Furthermore, according to public sources girls who are 14 years old or older can avoid FGM, especially those who live in cities, where there is less social control than in the villages. Today, more and more parents, especially those who live in cities and those who are well educated, do not want their daughters to be cut and so they protect them until they are grown. Once grown, the young woman can decide for herself whether she wishes to undergo genital cutting. According to the sources consulted for the country report issued on 20 June 2014, the situation for girls and women in Guinea who have not been cut and wish to avoid genital mutilation has improved somewhat since the country report of March 2013. Many girls who wish to avoid the social pressure of village life move in with relatives in the city. A girl who goes to the city but has no family there is directed to the *chef de quartier*. He finds her a community in the city and they take her in (even if only temporarily) and help her to find a job.

4.12 As to the complainant's case, the State party points out that the authorities conducted an investigation in her country of origin to confirm her statements, thereby alleviating the burden of proof placed upon her to establish the veracity of her accounts. In this connection, she was interviewed several times during her asylum application procedures and questioned on the facts and circumstances of her departure from Guinea. She was also given 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 procedures thus offered her sufficient opportunities to satisfactorily establish the veracity of her accounts. Those accounts were carefully assessed by the IND and reviewed by an independent court as well as by the Administrative Jurisdiction Division. Although the human rights situation in Guinea gives cause for concern, in view of information from various public sources,⁶ the State party maintains that

⁵ The State party refers to the Committee Concluding observations on the state report of Guinea on implementation of the Convention against Torture, 20 June 2014, para. 17; US Department of State, Country Report on Human Rights Practices for 2013 – Guinea, 27 February 2014; and its Minister of Foreign Affairs' Country Report, 20 June 2014.

⁶ Country report of the Minister of Foreign Affairs of 20 June 2014. (<http://www.rijksoverheid.nl/documenten--en--publicaties/ambtsberichten/2014/06/23/guinee--2014-06--20.html>), US Department of State: Country Report on Human Rights Practices for 2013 – Guinea, 27 February 2014.

there is no reason to conclude that the complainant's expulsion to Guinea would in itself involve a risk of contravention of article 3 of the Convention.

4.13 The State party refers to the investigation conducted by its Ministry of Foreign Affairs as reflected in the person-specific report of 12 March 2004, and maintains that due to the incorrect information provided by the complainant to the authorities, her allegations that she was victim of forced marriage to her step grandmother's brother and her accounts about her family circumstances are not credible. It also did not allow its authorities to investigate various aspect of her alleged fear of being forced to undergo FGM again.

4.14 The State party also submits that the complainant is unlikely to be subjected to FGM again upon returning to Guinea. It maintains that it has no reason to doubt that the complainant was forced to undergo FGM when she was 13 years old, as stated during her second asylum application. Nor does it dispute that she had a corrective surgery in the Netherlands. However, since she has already been subjected to FGM in accordance with her country's tradition, it is unlikely that she would be subjected to it again as an adult because she has already undergone the procedure and repeat procedures are extremely rare in Guinea. There is no evidence to suggest that upon returning to Guinea she would be forced to submit to an examination that would reveal that she has had corrective surgery; or that her step grandmother's brother or any other relative or member of her ethnic group would force her to undergo FGM again. As alternative she can settle elsewhere in a city. With or without the assistance of the *chef de quartier*, she can build a life for herself without her family having to know that she is back in Guinea. Furthermore, a long time has passed since the complainant left Guinea and there is no reason to believe that her step grandmother and husband would still be actively looking for her. As to the complainant's allegations about the risk to be forced to undergo FGM due to social pressure, the State party maintains that only 1.2% of genital mutilation procedures are carried out on women over the age of nineteen. This information implies that young adult women may decide themselves whether or not to undergo genital mutilation.

4.15 In conclusion, the State party notes that the fact alone that the complainant was a victim of FGM in the past, like 96.9% of girls and women in Guinea, does not mean that her return would be contrary to article 3 of the Convention. She has provided no convincing arguments to support her claim that she would be subjected to genital mutilation again. Furthermore, there is no reason to believe that she could not settle in a different area than where she lived when she underwent the procedure and where she might encounter those who cut her.

The complainant's comments on the State party's observations on admissibility and merits

5.1 On 9 June 2015, the complainant provides her comments on the State party's observations. She claims that the assessment of her credibility carried out in the proceedings concerning her first and second asylum requests, including the person specific report, are not relevant in the light of the corrective surgery she underwent in the State party, as it should be considered a new fact. She claims that she has refuted the findings on the credibility of her account in the first asylum application; and that she has provided many details, which have been partly confirmed. In particular, it is not challenged that she is a woman from Guinea who belongs to the Peul ethnic group; that 95 % of women in Guinea are subjected to FGM; that she was forced to undergo FGM; and that she underwent a reconstructive surgery. These facts are sufficient to conclude that there are substantial grounds to be subjected to FGM, if returned to Guinea.

5.2 The complainant reiterates her allegations and points out that according to the plastic surgeon that practiced the reconstructive surgery, she can be perceived as a woman who did not undergo any form of FGM before. Hence, her fear of FGM is the same as that of a

person who would undergo it for the first time. She further argues that her situation is very exceptional and that, therefore, the State party's observations that refer to information concerning the practice of further or repeat FGM in Guinea is not relevant to her case. The fact that the complainant already underwent FGM is an important indication that it will be very likely that she will be forced to undergo FGM again.⁷

5.3 The complainant submits that the State party's observations regarding the low possibility that girls or women over 14 years are forced to undergo FGM and alternative relocation rely on its country report information about FGM in Guinea. Although the country information is of paramount importance, it lacks substantiation, since it does not indicate the sources of this information. The State party's argument should be supported by objective and verifiable sources.

5.4 The fact that the applicant's relatives may not be aware of the reconstructive surgery or that they would not submit her to a medical examination upon return is not sufficient to conclude that she would not be at risk since she fears of FGM by any member of the Guinean society.

5.5 The information on the percentage of FGM performed on women above the age of 14 years corresponds with the undisputed fact that the prevalence of FGM in Guinea is over 95% and that it is practiced to girls before they turn 14 years old. Furthermore, the high percentage of women who were victim of FGM does not correspond with the State party's argument that the complainant may relocate in other part of Guinea and avoid FGM.

State party's further observations

6.1- On 24 July 2015, the State party provided further observations. It reiterates its previous observations and maintains that the information, to which it referred in its previous observations on admissibility and merits, is derived from the country report issued by its Ministry of Foreign Affairs. A country report is drafted on the basis of multiple sources, including reports by international organizations, including UNHCR's reports, other States and well-known NGOs with presence in the field.

6.2 The State party points out that the complainant's situation is not similar to those of women and girls that were never subjected to FGM. She already underwent FGM and there is no evidence to suggest that upon return she would be subjected to a medical examination that would reveal this surgery. Furthermore, no individual circumstances have been brought forward by her to indicate that in her situation there is a real risk of this occurrence. Although FGM is widespread in Guinea, this does not change the fact the FGM is usually instigated by parents –mostly mother- of the girl. If the mother does not wish to have her daughter circumcised, it may happen that other female relatives instigate it. This however in no way supports the complainant's allegation that she would be at risk from any other member of the Guinea's society.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has

⁷ The complainant refers to Committee's General Comment No 1, para 8; and article 4.4 of Directive 2011/95/EU of the European Parliament and the Council of 13 December 2011 *on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.*

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 notes that, in the present case, the State party has not objected the admissibility of the complaint and considers that all the admissibility criteria have been met. Accordingly, the Committee declares the communication admissible and proceeds to its examination on the merits.

Consideration of the merits

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

8.2 In the present case, the issue before the Committee is whether the return of the complainant to Guinea would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return ("refouler") a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

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

8.4 The Committee recalls its general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being "highly probable" (para. 6), the Committee recalls that the burden of proof generally falls on the complainant, who must present an arguable case that he faces a "foreseeable, real and personal" risk.⁸ Although, under the terms of its general comment No. 1, the Committee is free to assess the facts on the basis of the full set of circumstances in every case, considerable weight is given to the findings of fact that are made by organs of the State party concerned (para. 9).⁹

8.5 In the present case, the Committee takes note of the complainant's allegations that should she be returned to Guinea she would be subjected to female genital mutilation (FGM) by her relatives or any other member of the Guinea society. In support of her claims, the complainant points out that it is not refuted that she belongs to the Peul ethnic

⁸ See also, complaint No. 203/2002, *A. R. v. the Netherlands*, decision adopted on 14 November 2003, para. 7.3.

⁹ See, inter alia, complaint No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May 2010, para. 7.3.

group; that FGM is widespread in Guinea, in particular among this ethnic group; that she was forced to undergo FGM in Guinea when she was 13 years old; and that in 2013 she had a genital reconstructive surgery while living in the State party. She also argues that due to this genital reconstructive surgery she can be perceived as a woman who had never undergone FGM now; and that the pressure to undergo FGM is not limited to direct relatives but is a common feature of Guinean patriarchal society.

8.6 The Committee also takes note of the State party's arguments that its authorities have thoroughly examined the complainant's allegations when examining her three asylum requests, finding that her accounts were not credible; that the fact she was a victim of FGM and that she underwent a genital reconstructive surgery are not sufficient to conclude that she is at risk of being subjected to this practice again; that there is no evidence that she may be subjected to examination upon return to Guinea that would reveal the reconstructive surgery; that its Ministry of Foreign Affairs country report indicates that FGM is mainly practiced to girls before they turn 14 years old; and that only 1.2% of women above 19 years old are subjected to FGM.

8.7 The Committee observes that although FGM is forbidden by law in Guinea, it is still widespread in the country, with a prevalence of approximately 95% in girls and women and 91% of members of the Peul ethnic group. The State party maintains that only 1.2% of FGM are carried out on women over the age of nineteen. This figure, however, could be explained by the fact that the vast majority of FGMS happen when the victims are under the age of fourteen and not yet married. It does not reduce the risk faced by unmarried women over 19 perceived not to have been subjected to it during their childhood or adolescence. In this connection, the Committee notes that FGM causes permanent physical harm and severe psychological pain to the victims which may last for the rest of their lives, and considers that the practice of subjecting a woman to FGM is contrary to the obligations enshrined in the Convention.

8.8 In the present case, the Committee recognizes the efforts made by the State party's authorities to verify the complainant's accounts by carrying out an investigation in Guinea within the first asylum proceedings. Although the complainant has failed to provide elements that refute this investigation's outcome, as reflected in the person specific report of 12 March 2004 (see para. 4.3 above), that concluded that the information provided by her about her and her family's circumstances in Guinea was incorrect, the Committee considers that such inconsistencies are not of a nature as to undermine the reality of the prevalence of female genital mutilation and the fact that, due to the ineffectiveness of the relevant laws, including the impunity of the perpetrators, victims of FGM in Guinea do not have access to an effective remedy and to appropriate protection by the authorities.¹⁰ In the complainant's case, she has already been subjected to it on one occasion, with severe consequences to her physical and psychological integrity. She undertook a reconstructive plastic surgery since she did not like her body and was unable to establish a relationship with a man (see para. 2.4). Against the background of the situation faced by girls and women in Guinea, as reflected in reports provided by the parties, the Committee is of the view that in assessing the risk that the complainant would face if returned to her country of origin, the State party has failed to take into due consideration the complainant's allegations regarding the events she experienced in Guinea, her condition as single woman within the Guinea society, the specific capacity of the authorities in Guinea to provide her with protection so as to guarantee her physical and mental integrity, and the severe anxiety that her return to Guinea may cause her within this context. Accordingly, the Committee finds

¹⁰ See Committee's Concluding Observations on Guinea, CAT/C/GIN/CO/1 (20 June 2014), para. 17. See also CEDAW's Concluding Observations on Guinea, CEDAW/C/GIN/CO/7-8 (14 November 2014), para. 28 and 30.

that, taking into account all the factors and in the particular circumstances of this case, substantial grounds exist for believing that the complainant will be in danger of treatment contrary to article 1 of the Convention if returned to Guinea.

9. In the light of the above, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the complainants' removal to Guinea by the State party would constitute a breach of article 3 of the Convention.

10. The Committee is of the view that the State party has an obligation, in accordance with article 3 of the Convention, to refrain from forcibly returning the complainant to Guinea or to any other country where she runs a real risk of being expelled or returned to Guinea. Pursuant to rule 118, paragraph 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 this decision, of the steps it has taken in accordance with the above observations.
