



# 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. 802/2017\*, \*\*

<i>Communication submitted by:</i>	Z (represented by counsel, John Sweeney)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Australia
<i>Date of complaint:</i>	1 February 2017 (initial submission)
<i>Document reference:</i>	Decision taken pursuant to rule 115 of the Committee's rules of procedure, transmitted to the State party on 6 February 2017 (not issued in document form)
<i>Date of present decision:</i>	21 July 2021
<i>Subject matter:</i>	Deportation to China
<i>Procedural issues:</i>	Admissibility – manifestly ill-founded; admissibility – <i>ratione materiae</i>
<i>Substantive issues:</i>	Non-refoulement; torture
<i>Article of the Convention:</i>	3

1.1 The complainant is Z, a national of China born in the 1970s. She claims that by removing her to China, the State party would violate her rights under article 3 of the Convention. The State party has made the declaration pursuant to article 22 (1) of the Convention, effective from 28 January 1993. The complainant is represented by counsel, John Sweeney.

1.2 On 6 February 2017, the Committee, acting through its Rapporteur on new complaints and interim measures, decided not to issue a request for interim measures under rule 114 of the Committee's rules of procedure.

#### Facts as submitted by the complainant

2.1 In 2006, the complainant began practising Falun Gong. In 2008, three individuals identifying themselves as officials of the Fengman Public Security Bureau came to her home. They performed a search and confiscated material relating to Falun Gong. They then took the complainant to a detention centre in Jilin, where she was questioned by police officers. The

\* 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, Ilvija Pūce, 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.



officers beat her when she was unable to answer their questions satisfactorily. They also deprived her of food and water and threatened to transfer her to a prison. The complainant was released one week later, after her father had paid a bond of 10,000 renminbi.

2.2 The complainant continued to practise Falun Gong, including by distributing leaflets about the movement. In February 2011, fearing for the safety of her son, the complainant sent him to Australia to pursue his studies. Thereafter, on an unspecified date, the complainant's husband also left China for Australia.

2.3 On 10 November 2012, the complainant arrived in Australia on a tourist visa. In February 2013, she applied for a protection visa in Australia, and obtained a temporary visa pending a decision on her application. She continued to practise Falun Gong, and she participated in related protests.

2.4 On 13 November 2013, the Minister for Immigration in Australia rejected the complainant's application for a protection visa. On 15 April 2014, the Refugee Review Tribunal denied the complainant's appeal of the negative ministerial decision. In its decision, the Tribunal emphasized inconsistencies in the statements of the complainant and her husband concerning the complainant's practice of Falun Gong. The Tribunal considered that the complainant's statements on that issue had not been truthful.

2.5 On 15 May 2014, the complainant applied for judicial review of the negative decision of the Tribunal. On 23 February 2016, the Federal Circuit Court dismissed her appeal. On 22 December 2016, the Federal Court dismissed her appeal against the decision of the Federal Circuit Court. When the Federal Court published its decision online, it did not redact the complainant's name or the names of the three Falun Gong practitioners who had testified on her behalf. The publication of the decision therefore violated the Privacy Act and the Migration Act.<sup>1</sup> On 6 April 2017, the High Court dismissed the complainant's request for special leave to appeal the decision of the Federal Court.

2.6 On an unspecified date, the complainant filed a complaint to the Office of the Information Commissioner, which has jurisdiction in matters relating to the Privacy Act. The complainant is also preparing a complaint to the Chief Justice of the Federal Court. However, neither of those measures can eliminate the increased risk of harm that she would face upon removal to China as a result of the error of the Federal Court.

2.7 On 23 January 2017, the Minister for Immigration denied the complainant's request for ministerial intervention under section 417 of the Migration Act. The complainant was requested to leave Australia within one week. She claims to have exhausted all available domestic remedies.

## **Complaint**

3.1 The complainant claims that the State party would violate her rights under article 3 of the Convention by removing her to China, where she would be subjected to surveillance, harassment and torture by government officials because of her adherence to Falun Gong. Reports indicate that Falun Gong practitioners in China have been tortured, imprisoned for extended periods, subjected to forced labour, and executed. The complainant provided evidence to that effect to the State party's authorities.<sup>2</sup>

3.2 The national authorities erred in determining that the complainant was not credible. For example, the Refugee Review Tribunal assigned significant weight to the fact that the

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<sup>1</sup> According to the complainant, section 91X of the Migration Act states:

“(1) This section applies to a proceeding before the High Court, the Federal Court or the Federal Circuit Court if the proceeding relates to a person in the person's capacity as: (a) a person who applied for a protection visa; or (b) a person who applied for a protection related bridging visa; (c) a person whose protection visa has been cancelled; or (d) a person whose protection-related bridging visa has been cancelled. (2) The court must not publish (in electronic form or otherwise), in relation to the proceeding, the person's name.”

<sup>2</sup> The complainant refers to a translation of an article entitled “More than a dozen Falun Gong practitioners kidnapped in Shulan City, Jilin Province” (17 October 2016), available at [www.minghui.org](http://www.minghui.org).

complainant's husband was unsure as to whether the complainant had practised Falun Gong after his departure from China. He might have stated that he was unsure simply because he had not been present in China to personally witness the complainant's practice of Falun Gong. However, he clearly stated that in 2006, the complainant had visited her aunt and distributed leaflets on Falun Gong in China.

3.3 The Tribunal also found it implausible that the complainant had been released from detention without having been forced to sign a statement attesting to her transformation through re-education. Nor did the Tribunal believe the complainant's assertion that she had been released from detention after one week, upon payment of a bond by her father. Those elements of doubt were based on dubious suppositions by the Tribunal and should be discounted.

3.4 Citing an article available online,<sup>3</sup> the Tribunal expressed surprise that the complainant had not lost her job because of her involvement in Falun Gong. However, the article cited does not lead to the conclusion that the Tribunal reached. The article states that in some cases, relatives of Falun Gong adherents who have petitioned the Government of China to stop persecuting them have been dismissed from their jobs. The complainant never claimed to have engaged in overt political action to petition the Government of China. Rather, she claimed to have distributed leaflets. Furthermore, according to the article cited by the Tribunal, police officials search and plunder the homes of Falun Gong adherents, and extort money from relatives for early release from detention, or as a fee for detention. That statement clearly supports the complainant's claims, but the Tribunal disregarded it.

3.5 Furthermore, the Tribunal refused to hear oral testimony from three witnesses who had submitted written statements on the complainant's behalf. The Tribunal also found implausible the complainant's explanations regarding her delay in leaving China, despite the complainant's statement that she had been the primary earner in the family. Moreover, by failing to redact the complainant's name in the decision it published online, the Federal Court exposed her to an increased risk of torture and ill-treatment in China. The complainant would be identified as a Falun Gong practitioner if she were removed to China. She fears reprisals for having denounced the treatment to which Falun Gong practitioners are subjected by the Government of China. The complainant submits that the lack of care shown by the Federal Court towards her is outrageous.

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

4.1 In its observations dated 27 July 2017, the State party considers that the complainant's claims regarding a risk of being subjected to surveillance, harassment and detention are inadmissible *ratione materiae*, because the State party's non-refoulement obligations under article 3 of the Convention are limited to circumstances in which there are substantial grounds for believing that the individual facing removal will be subjected to torture. The complainant's claim that her privacy was breached is also inadmissible *ratione materiae*, because it is incompatible with the Convention.

4.2 The complainant's claims are also inadmissible because they are manifestly ill-founded. The country information that the complainant provided regarding the situation of Falun Gong practitioners in China does not relate to her personal circumstances. She does not suggest, or provide any information suggesting that she has a public profile as a Falun Gong practitioner, such that she would be of interest to the authorities in China. The national authorities did not find credible the complainant's claim that she is a Falun Gong practitioner or that she would practise Falun Gong upon her return to China. In November 2012, the complainant was able to leave China as a valid holder of a Chinese passport that had been issued to her in Jilin on 28 July 2011. As noted by the State party's authorities, the fact that the complainant was able to lawfully leave China with a tourist visa indicates that she was not of adverse interest to the Government of China. Country information indicates that perceived dissidents, including Falun Gong adherents, have difficulty obtaining passports and leaving China.

<sup>3</sup> The Tribunal provided the following citation: [www.faluninfo.net/topic/34/](http://www.faluninfo.net/topic/34/).

4.3 The national authorities also considered that the complainant's allegation of having been detained in 2008 was not credible. The complainant was unable to plausibly explain how the Chinese authorities learned of her involvement in Falun Gong, or how they knew that she possessed Falun Gong materials in her home. She failed to explain why the authorities had targeted her in 2008, whereas she had been involved with Falun Gong since 2006. When the complainant was presented with those concerns, she replied that she did not know.

4.4 The national authorities also considered information pertaining to a register of individuals in China who had been released from prison, detention and re-education centres. In view of the information relating to this register, the national authorities considered that it was implausible that the Government of China had not noticed that the complainant had visited her aunt after her release from detention. The national authorities also considered it implausible that the complainant was able to maintain her employment after her arrest.

4.5 The complainant's claims were thoroughly examined by the national authorities during six robust procedures. The complainant was assisted by an interpreter during the interview concerning her protection visa application, and during the hearing before the Refugee Review Tribunal. The complainant's claims have been assessed under the complementary protection provisions established in paragraph 36 (2) (aa) of the Migration Act, which incorporates the State party's non-refoulement obligations under both the Convention and the International Covenant on Civil and Political Rights. Material considered by the national authorities included country information published by Amnesty International, Human Rights Watch, the Home Office of the United Kingdom of Great Britain and Northern Ireland, the Department of State of the United States of America, and the State party's Department of Foreign Affairs and Trade. The State party takes its non-refoulement obligations seriously, and implements them in good faith. The State party acknowledges that complete accuracy is seldom to be expected from victims of torture, and assures the Committee that the national authorities take this into account when examining cases. However, in the present case, neither the complainant's allegations of her involvement in Falun Gong nor her allegations of torture were deemed credible.

4.6 The decision maker who examined the complainant's application for a protection visa considered that she had either embellished or entirely fabricated her material claims, and that she had not been truthful. The decision maker described several inconsistencies in her testimony, and concluded that she had not experienced any interference with her employment or her right to freedom of movement. For example, the decision maker observed that the complainant had remained in China after her release from detention in 2008. The complainant could have left China in 2011 with a student guardian visa, but chose to remain in China at that time. Instead, she sent her husband to Australia, despite the fact that he was not of adverse interest to the Government of China. The complainant did not leave China until 2012, despite having had the means to do so before. Although the complainant's tourist visa for Australia was issued on 23 October 2012, she left China 18 days later, on 10 November 2012. The decision maker reasoned that those facts were not consistent with the behaviour of an individual who feared imminent arrest and torture by officials of the Government of China.

4.7 The Refugee Review Tribunal accepted that the complainant had participated in a number of Falun Gong activities in Australia and had attended Falun Gong classes. However, the Tribunal considered that she had only done so in order to strengthen her claim for asylum. The Tribunal determined that she was not credible, and that her testimony had been inconsistent and unpersuasive. When the Tribunal raised the issue of her delay in leaving China, the complainant responded that she had not known that she could practise Falun Gong abroad. At that time, the complainant did not raise the claim that she has presented in her communication, namely, that she delayed leaving China because she was the primary earner in the family, and because her initial application for a visa had been denied.

4.8 The complainant has not substantiated her broad allegation that the findings of the national authorities were outrageous. The complainant specifically contests the finding of the Refugee Review Tribunal that the official document that she had presented to attest to her detention in China was inauthentic. However, the Tribunal's concerns regarding the genuineness of this document were valid. The document, entitled "Public Security Detention Centre of Jilin City Public Security Bureau Certificate to Conclude Detention" stated that the

complainant had been detained by the Fengman Public Security Bureau from 8 to 15 July 2008 as a result of her involvement in Falun Gong. It was undated and unsigned. Country information indicates that in China, fraudulent documents are widely available, easily obtained and commonly used in visa applications. The Tribunal therefore questioned the complainant about the document. The complainant stated that the document was authentic, but the Tribunal did not find her response to be convincing. The State party considers that it is not the role of national authorities to authenticate such documents. Rather, the onus is on the complainant to establish a prima facie case to support her claims, with verifiable corroborating evidence.

4.9 The complainant also claims that the Refugee Review Tribunal failed to question witnesses who could have attested to the complainant's participation in Falun Gong activities. However, the Federal Circuit Court evaluated that issue and noted in its decision that according to the transcript of the proceedings, the Tribunal had asked complainant's counsel about the oral testimony that counsel had sought to offer. In response, counsel had confirmed that the witnesses' oral testimony would not depart from their written statements. The Circuit Court also noted that the complainant had had a fair opportunity to advance her claims, and that the Tribunal had observed several inconsistencies in the complainant's statements.

4.10 The Federal Court of Australia considered that the Tribunal had given genuine consideration to the complainant's request to hear oral testimony from the witnesses, and that the Tribunal's decision was not unreasonable as a matter of law. The complainant filed four requests for ministerial intervention, on 19 January, 12 February, 10 March and 8 May 2017. Those requests were denied on the ground that the complainant had not met the requirements for ministerial intervention. In her request dated 12 February 2017, the complainant raised several claims that she did not repeat in her communication to the Committee. For example, she claimed that on 3 January 2017, two policemen, accompanied by members of the "local residential committee" had come to her mother's house. The complainant claimed that these individuals had stated that they knew that the complainant had applied for asylum, and that she was practising Falun Gong in Australia. The individuals characterized this as treason and as a subversion of State power. They asked the complainant's mother to request the complainant to return to China for an investigation into the matter. They stated that if the complainant did not return to China, they would take further action. They also told the neighbours of the complainant's mother to avoid her. The Department of Foreign Affairs and Trade considered those claims, and determined that they were not supported by evidence. The Department also considered it implausible that the authorities in China were looking for the complainant and were aware that her name had been published in the decision of the Federal Court. The Department further considered that the Government of China had not had an adverse interest in the complainant before her departure, given that they had permitted her to exit the country under her own passport.

4.11 To trigger a State party's non-refoulement obligations under article 3 of the Convention, individuals must demonstrate that there are substantial grounds for believing that they would be in danger of being personally at risk of being subjected to torture. In the present case, the complainant has not established substantial grounds for believing that she would face such a risk in China.

4.12 With respect to the publication of the complainant's name in the decision of the Federal Court, the State party acknowledges that the disclosure, which occurred as described by the complainant, constituted a breach of section 91X of the Privacy Act. However, on 4 January 2017 – less than two weeks after the decision was published on 22 December 2016 – lawyers for the State party notified the Department of Foreign Affairs and Trade of the error, and the Court immediately removed the decision from its website and from the websites of third parties. On 6 January 2017, the Court replaced the decision with a properly redacted version. The error was temporary and inadvertent. Moreover, the Refugee Review Tribunal determined that even if the complainant had been identified and recognized by the authorities in China, there would be no significant, real risk of harm to her upon return. The Tribunal took note of country information stating that the authorities in China consider that it is common for individuals overstaying their visas in Australia to file applications for protection visas. The Tribunal therefore considered it highly likely that the authorities in China were aware that asylum applicants engaged in various activities for the purpose of obtaining

asylum there. The Tribunal also considered that given the complainant's limited involvement in Falun Gong in Australia, and her likely behaviour upon return to China, it was improbable that she would be of adverse interest to the authorities upon return to China. Although the State party considers that there may be a risk of harm, including torture, for Falun Gong practitioners in China, it determined that the complainant was not a genuine Falun Gong practitioner. The complainant has not demonstrated that, as a result of the temporary and inadvertent publication of her name and claims for protection in the unredacted decision of the Federal Court, she faced a real, personal and foreseeable risk of torture by the authorities of the Government of China. Moreover, the complainant has not identified any error of fact or law in the decisions of the national authorities. For the above-mentioned reasons, the State party considers that the communication lacks merit.

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

5.1 In her comments dated 24 October 2018, the complainant reiterates her prior arguments, and maintains that the disclosure of her name and claim for protection falls squarely within the scope of the Convention, because it increased the risk that she would be tortured upon return to China. This negligent, dangerous and illegal act demonstrates that the procedures before the national authorities were hardly robust, as the State party claims they were. Contrary to the State party's assertion, the complainant has provided substantial grounds for the Committee to believe that she would be tortured if she were returned to China. Beginning with surveillance, the process of persecution would escalate and would result in the complainant's torture or death. Reports indicate that Falun Gong practitioners have been tortured in China.<sup>4</sup> The complainant was truthful in her statements to the State party's authorities regarding her practice of Falun Gong.

5.2 The national authorities erred in their understanding of the practices of the Government of China with regard to exit control. The complainant was targeted by local public security officers, and there is no available information regarding the extent to which different branches of the Government of China communicate with each other. Thus, it is not clear whether the complainant's problems in Jilin would have caused the national authorities in China to prevent her from exiting the country. Moreover, in the past, the Government of China has actively sought to exile dissidents. The complainant cites the following passage of a report issued by Human Rights Watch in 1995:

“Prominent among those listed are a number of former political prisoners who, in response to sustained diplomatic pressure from the United States government over the question of China's Most Favored Nation (MFN) status, were finally granted passports or exit permits and allowed to leave China for temporary study or medical purposes in the U.S. Prior to August 1991, when the majority of the banning orders were issued, China, for the most part, had prevented such people or their relatives from leaving the country. The banning orders, coming as public debate in the United States over China's MFN status was increasing, indicated a policy shift that enabled the Chinese government to achieve two objectives at once. The authorities allowed dissidents to leave, thereby appearing to appease human rights critics in the U.S., while at the same time, they secretly pursued a policy of sending former political prisoners and other dissidents into involuntary exile abroad.”<sup>5</sup>

In the light of this passage, the fact that the complainant was able to lawfully leave China does not undermine her assertion that she was arrested for practising Falun Gong.

5.3 The State party draws attention to the fact that the complainant, when asked by the national authorities why she had been targeted in 2008, did not know why. However, the complainant cannot be expected to understand the motivations of the Public Security Bureau in China. The State party also argues that the complainant does not have a high public profile.

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<sup>4</sup> The complainant cites the following links: <http://en.minghui.org/html/articles/2017/6/16/164291.html>; and [www.thesun.co.uk/news/1799086/former-prisoners-reveal-horrific-torture-taking-place-in-chinese-prisons/](http://www.thesun.co.uk/news/1799086/former-prisoners-reveal-horrific-torture-taking-place-in-chinese-prisons/).

<sup>5</sup> Human Rights Watch, “China – enforced exile of dissidents: government ‘re-entry blacklist’ revealed”, 1 January 1995.

However, the complainant never claimed to have had such a profile in China. Falun Gong practitioners lacking a high public profile are also subject to a risk of torture. In any case, as a result of the disclosure of her name by the Federal Court, the complainant has now acquired a public profile.

5.4 The national authorities also erred in their determination that the complainant's continued employment after her arrest was implausible. The complainant was employed by a private printing factory, and private employers in China have the freedom to choose their employees. The complainant cites reports indicating that dissidents working in the private sector may have less difficulty finding employment than those in the public sector.<sup>6</sup>

5.5 Regarding the reason why she remained in China after the departures of her son and her husband, the complainant informed the Refugee Review Tribunal that at that time, she had not known that the practice of Falun Gong was permitted outside of China. After arriving in Australia, the complainant's husband informed her that Falun Gong could be practised lawfully in Australia. This information prompted the complainant to apply for a passport to travel to Australia. In March 2012, her application for an Australian tourist visa was rejected. The complainant's migration agent in China advised her to wait six months before reapplying. After having reapplied in September 2012, the complainant obtained a visa for Australia in October 2012, and left China the next month.

5.6 The complainant remained in China after her arrest because she was the primary wage earner in her family. The complainant never claimed to the State party's authorities that she faced an imminent threat of danger in China. Rather, she claimed to fear that officials of the Public Security Bureau would arrest her again. She asserted before the State party's authorities that she had left China because its Government was persecuting Falun Gong practitioners. It was implied that the complainant would be affected by that general persecution. The notion that she claimed to face an "imminent threat" was introduced by the State party's authorities, not by the complainant herself. An individual who has been arrested and tortured is likely to believe that those acts will be repeated at some point, though not necessarily within one or two days. Thus, the absence of imminent fear does not necessarily mean that the complainant's fear was baseless. The fact that she was tortured in the past is a reasonable indicator that she risks being tortured again.

5.7 By stating that the complainant bears the burden for proving the authenticity of the document attesting to her detention in China, the State party appears to indicate that it would reject as inauthentic any official document issued in China. This is an extraordinary position to take.

5.8 The Refugee Review Tribunal was inconsistent in its determination that the complainant's delay in leaving China was illogical. Specifically, the Tribunal alternately stated that the complainant's husband could have stayed in China because he had not encountered problems with the police or other authorities, and that if the complainant were at risk in China, her husband and son would have been at risk as well. The Tribunal is thus contradicting itself.

5.9 Regarding the refusal of the Tribunal to consider the oral testimony of the three witnesses, the complainant states that the Falun Gong credentials of these witnesses were unassailable. The Tribunal could have asked them whether the complainant's adherence to Falun Gong beliefs was genuine, or what the complainant had told them about her experiences in China. Instead, the Tribunal refused to hear the witnesses, and discounted their written statements without explaining its reasons.

5.10 In a separate matter concerning a breach of privacy committed by the Department of Immigration, which had published online the personal details of almost 10,000 immigration detainees, the High Court issued a decision on 31 January 2014. In its decision, the High Court stated that the assumption made in the International Treaty Obligations Assessment process that their personal information might have been accessed by authorities in Bangladesh and China had removed from the scope of factual inquiry any question of

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<sup>6</sup> The complainant cites, inter alia, United States Department of State, *U.S. Department of State Country Report on Human Rights Practices 2001 – China (Includes Hong Kong and Macau)*, 4 March 2002.

precisely who accessed their personal information as a result of the data breach. The assumption was sensible because the true extent of access to the personal information of each affected applicant must in practical terms have been unknowable. Once downloaded from the Department's website, the document containing the personal information of the 9,258 visa applicants could have been forwarded to and interrogated by anyone, anywhere and at any time. Attempting to make a finding about precisely who had obtained access to the personal information of any one of them, and when, might be expected to have been a hopeless endeavour.<sup>7</sup> The complainant maintains that the same reasoning applies in the present case. It is logical to presume that the Government of China possesses the unedited version of the publication of the Federal Court. It is not possible to claim that no damage was done. It is irrelevant that the Federal Court did not intend to cause harm.

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

6. In its additional observations dated 2 April 2019, the State party maintains its position regarding the admissibility and merits of the communication. It submits that the media clips referred to by the complainant do not establish that she is a Falun Gong practitioner. Nor do they establish that she would practise Falun Gong upon her return to China, or that she would be of adverse interest to the Government of China. Although the complainant claims that the national authorities disregarded the active efforts by the Government of China to exile dissidents, this does not compromise the authorities' findings regarding the complainant's credibility. In addition, although the complainant claims that the national authorities did not consider the fact that she worked for a private company in China, and that private companies have greater freedom to employ dissidents, the Refugee Review Tribunal explicitly stated that the complainant worked for a private company, not a State-owned enterprise.

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

7.1 In her comments dated 5 April 2019, the complainant refers to the State party's observation that her employment by a private rather than a publicly owned company was considered by the Refugee Review Tribunal. According to the complainant, what is relevant is that the Tribunal failed to consider the difference in employment practices between private and State-owned companies in China.

7.2 The complainant did not claim before the domestic authorities that her husband faced a risk of harm in China because at the relevant time, he was not a Falun Gong practitioner. Her failure to file an application for a protection visa for him only reflects her failure to understand all of the implications of applying for protection.

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

##### *Consideration of admissibility*

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

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

8.3 The Committee notes the State party's position that the complainant's claims relating to her risk of being subjected to harassment, detention and surveillance in China are inadmissible *ratione materiae*. The Committee notes the complainant's response that her

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<sup>7</sup> High Court of Australia, *Minister for Immigration and Border Protection et al. v. Szssj et al.*, 27 July 2016.



persecution in China would begin with harassment and surveillance, and would escalate to torture and death. The Committee considers that the complainant has not provided sufficient elements to allow it to conclude that either the level of harassment and surveillance, or the conditions of detention to which she risks being subjected would constitute torture within the meaning of article 1 of the Convention, so as to engage the State party's non-refoulement obligations under article 3 of the Convention. The Committee therefore considers that this part of the communication is manifestly ill-founded, and is therefore inadmissible.

8.4 The Committee takes note of the State party's position that the remainder of the communication is also inadmissible because it is manifestly ill-founded. Noting the detailed arguments advanced by the complainant to contest the specific findings of the national authorities concerning the credibility of her allegations, the Committee considers that for purposes of admissibility, the complainant has sufficiently substantiated her claim that she would be subjected to torture if she were removed to China. As the Committee finds no further obstacles to admissibility, it declares this part of the communication submitted under article 3 of the Convention admissible and proceeds with its consideration of the merits.

#### *Consideration of the merits*

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

9.2 In the present case, the issue before the Committee is whether the forced removal of the complainant to China 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 that person would be in danger of being subjected to torture.

9.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally at risk of being subjected to torture upon return to China. 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.<sup>8</sup> However, the Committee recalls that the aim of the determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned.<sup>9</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. 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>10</sup>

9.4 The Committee recalls its general comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, according to which the non-refoulement obligation exists whenever there are "substantial grounds" for believing that the person concerned would be in danger of being subjected to torture in a State to which he or she is facing deportation, either as an individual or as a member of a group that may be at risk of being tortured in the State of destination. The Committee recalls that "substantial grounds" exist whenever the risk of torture is "foreseeable, personal, present and real".<sup>11</sup> Indications of personal risk may include, but are not limited to: (a) ethnic background and religious affiliation; (b) previous torture; (c) incommunicado detention or other form of arbitrary and illegal detention in the country of origin; and (d) political affiliation or political activities of the complainant.<sup>12</sup>

<sup>8</sup> See, for example, *X v. Switzerland* (CAT/C/67/D/775/2016), para. 8.3.

<sup>9</sup> See, for example, *E.T. v. Netherlands* (CAT/C/65/D/801/2017), para. 7.3.

<sup>10</sup> *Y.G. v. Switzerland* (CAT/C/65/D/822/2017), para. 7.3.

<sup>11</sup> Committee against Torture, general comment No. 4 (2017), para. 11.

<sup>12</sup> *Ibid.*, para. 45.

9.5 The Committee also recalls that the burden of proof is on complainants, who must present an arguable case – that is, submit substantiated arguments showing that the danger that they will be subjected to torture is foreseeable, present, personal and real.<sup>13</sup> However, when complainants are unable to elaborate on their case, such as when they have demonstrated that they are unable to obtain documentation relating to their allegations of torture or have been deprived of their liberty, the burden of proof is reversed and the State party concerned must investigate the allegations and verify the information on which the complaint is based.<sup>14</sup> The Committee further recalls that it gives considerable weight to findings of fact made by organs of the State party concerned; however, it is not bound by such findings. It follows that the Committee will make a free assessment of the information available to it in accordance with article 22 (4) of the Convention, taking into account all of the circumstances relevant to each case.<sup>15</sup>

9.6 The Committee notes the complainant's claim that she fears being tortured in China because she has been involved with Falun Gong in both China and Australia, and because her name was published online by the Federal Court of Australia in relation to her application for a protection visa. The Committee notes that it is uncontested that the complainant's full name and allegations against the Government of China were stated in the Federal Court decision that was published online. The Committee notes the complainant's claim that as a result of this disclosure, the Government of China is aware of her accusations against it and will punish her for them. The Committee also notes that the complainant contests the decisions of the domestic authorities on her application for a protection visa, and disputes in particular their findings concerning the complainant's credibility. The Committee further takes note of the article cited by the complainant concerning the alleged abduction of several Falun Gong practitioners by police officials in China in October 2016.

9.7 The Committee also notes the State party's position that the complainant would not face a risk of torture upon return to China because she is not a genuine Falun Gong practitioner, as her testimony concerning her persecution was not credible and was deemed to have been fabricated. The Committee notes that according to the State party, the complainant would not be likely to practise Falun Gong if she returned to China. The Committee also notes the State party's argument that the complainant's four-year delay in leaving China after her release from detention in 2008 is inconsistent with her claim that she feared being harmed by the authorities in China. The Committee further notes the State party's assertion that the publication of the complainant's name in the decision of the Federal Court was inadvertent and temporary, as the unredacted decision was taken down within two weeks, immediately after the discovery of the error by the State party's authorities.

9.8 The Committee recalls that it must ascertain whether the complainant would currently face a risk of being subjected to torture in China.<sup>16</sup> The Committee observes that the complainant's account contains gaps relating to central aspects of her claims. The Committee notes that the complainant has not described her initial practice of Falun Gong and has not provided elements that could explain why she might have drawn the scrutiny of the three public security officers who allegedly came to search her house in 2008. The Committee observes that the complainant provided few details concerning her allegations that she was beaten while in detention, and did not indicate whether she sustained injuries as a result of that ill-treatment. The Committee observes that the complainant did not describe the questions asked by the police officers who interrogated her, and considers that the reasons for which she was allegedly detained for one week and beaten are therefore unclear. The Committee notes the complainant's statement that after her release from detention, she resumed practising Falun Gong and distributed related leaflets without incident until her departure from China in 2012. The Committee notes that the complainant did not claim to fear being detained again and tortured by the authorities as a result of that activity. The Committee observes that the complainant was able to obtain a valid passport in 2011 and leave China lawfully and safely. The Committee notes the finding of the domestic authorities that the undated, unsigned document that the complainant provided to attest to her detention

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<sup>13</sup> See, for example, *E.T. v. the Netherlands* (CAT/C/65/D/801/2017), para. 7.5.

<sup>14</sup> Committee against Torture, general comment No. 4 (2017), para. 38.

<sup>15</sup> *Ibid.*, para. 50.

<sup>16</sup> See, for example, *X v. Switzerland* (CAT/C/67/DR/775/2016), para. 8.8.

in Jilin was inauthentic, and that the complainant's statement regarding its authenticity was not convincing. The Committee also notes that the complainant has not provided details regarding the Falun Gong-related protest activities in which she allegedly participated in Australia.

9.9 While noting the complainant's claim that the online publication of her name and claim for protection in the decision of the Federal Court have exposed her to a risk of harm because the Government of China has had the opportunity to identify her as a Falun Gong practitioner, the Committee notes that the decision also contained a determination that the complainant was not a genuine Falun Gong practitioner. The Committee considers that the information set forth by the complainant does not establish error in the finding of the domestic authorities that the Government of China would not identify her as a genuine Falun Gong practitioner.

9.10 On the basis of the information above, the Committee considers that the complainant has not provided sufficient evidence to enable it to conclude that her forcible removal to China would expose her to a foreseeable, real, present and personal risk of torture within the meaning of article 3 of the Convention. Moreover, her claims do not establish that the evaluation of her asylum application by the State party's authorities failed to comply with the standards of review required by the Convention.

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

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