



# 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. 824/2017<sup>\*, \*\*</sup>

<i>Communication submitted by:</i>	D.B. (represented by counsel, Joëlla Bravo Mougan)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Netherlands
<i>Date of complaint:</i>	17 May 2017 (initial submission)
<i>Date of adoption of decision:</i>	19 November 2021
<i>Subject matter:</i>	Deportation of the complainant from the Netherlands to Guinea
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Non-refoulement; risk of torture upon return to country of origin
<i>Article of the Convention:</i>	3

1.1 The complainant is D.B., a national of Guinea born in 1991. She claims that the State party would violate her rights under article 3 of the Convention if it removed her to Guinea. The State party has made the declaration pursuant to article 22 (1) of the Convention, effective from 21 December 1988. The complainant is represented by counsel.

1.2 On 19 May 2017, pursuant to rule 114 of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, asked the State party not to expel the complainant while the complaint was being considered by the Committee. The State party implemented the request for interim measures and did not return the complainant, pending consideration of the communication by the Committee.

#### Facts as submitted by the complainant<sup>1</sup>

2.1 The complainant belongs to the Peul ethnic group. Between her birth and 2009, she moved several times between Conakry and the town of Labe in the Middle Guinea region.

2.2 In 2007, she was forcibly married to a man whom she divorced with her parents' consent at the end of 2008. During her marriage, she started a relationship with a Christian

\* Adopted by the Committee at its seventy-second session (8 November–3 December 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, Bakhtiyar Tuzmukhamedov and Peter Vedel Kessing.

<sup>1</sup> As the facts presented by the complainant, in particular those relating to the proceedings, are incomplete, the facts presented in the document are based on the complainant's initial submission and the State party's observations.



man. This relationship was never accepted by her family who then tried to force her to marry another man, who was older than her. Following her refusal of this marriage, the applicant fled Guinea on 29 April 2011, when she was 20 years old.

2.3 The complainant traveled to the Netherlands where she reported to the authorities on 30 April 2011 and submitted an application for a temporary asylum residence permit on 23 June 2011 on the basis of her fear of being forced into marriage in Guinea. On 1 July 2011, the Immigration and Naturalization Department of the Ministry of Justice rejected her application on the grounds that her fear was not found to be credible.

2.4 One year after her arrival in the State party, the applicant filed a criminal complaint in which she claimed to be a victim of trafficking in persons. She reported that for a fortnight after her arrival in the State party, she had been forced to have sex with men. She feared that if she returned to Guinea, she would be trafficked again.

2.5 On 9 March 2016, the complainant filed a second asylum application on the grounds that she would be forced to undergo female genital mutilation upon arrival in Guinea. The complainant indicated that, before and during her first asylum application, she always felt that she had undergone female genital mutilation. In addition, in Guinea, when she was trying to find out why she could not have children, she was examined in hospital by an acquaintance of her mother who told her that she had been circumcised as required. However, after spending years in the State party and hearing other Guinean women talk about their experiences with female genital mutilation, she had doubts about her circumcision. She consulted a general practitioner, for purposes other than her asylum claim, who confirmed in a statement on 3 December 2014 that she was not circumcised at all. The complainant explained that her circumcision had always been assumed by her family and the fact that she had not undergone female genital mutilation had gone unnoticed because her mother expected the circumcision to have taken place while the complainant was living with her uncle in Conakry, and her uncle thought she had already been circumcised when she came to live with him.

2.6 On 11 March 2016, the Immigration and Naturalization Department of the Ministry of Justice rejected her application, arguing that it was not considered credible that her family members had not discussed whether she had undergone female genital mutilation until the time of her departure when she was 20 years old, and concluding that the complainant had not been and would not be pressured by her family to be circumcised. On 12 March 2016, the complainant applied to the District Court of The Hague for judicial review of the decision. On 7 April 2016, the District Court declared the application for judicial review unfounded. It held that the complainant should have informed the authorities earlier that she had not been circumcised. The District Court found that girls whose mothers do not want them to be circumcised are not at risk of female genital mutilation in Guinea, and that if the complainant had not been circumcised before the age of 20, this meant that there was no pressure from her family to do so.

2.7 On 15 April 2016, the complainant appealed against the judgment to the Administrative Jurisdiction Division. On 9 December 2016, the Division declared the appeal unfounded, on the grounds that the risk of being circumcised had not been established, especially taking into account that girls whose mothers do not want them to be circumcised generally face no real risk. This concluded the second asylum procedure.

### **Complaint**

3.1 The complainant submits that if she is returned to Guinea, she will run a real risk of undergoing female genital mutilation, in violation of article 3 of the Convention.

3.2 The complainant submits that the State party failed to adequately assess the risk she would face upon arrival in Guinea, and merely assessed whether she made credible the fact that her family members would pressure her to be circumcised. She adds that the State party has only assessed any pressure exerted by her family, and has ignored the pressure exerted by Guinean society as a whole, and by her ethnic group, in particular.

3.3 In addition, the claimant stresses that the fact that female genital mutilation is almost universal in Guinea is sufficient to conclude that she runs a real and foreseeable risk of being

circumcised and subjected to treatment contrary to article 3 of the Convention. She adds that according to a 2013 report of the United Nations Children's Fund (UNICEF),<sup>2</sup> 96 per cent of women in Guinea undergo female genital mutilation and that being a Peul woman means that the risk is even higher, as 99 per cent of Peul girls and women aged 15–49 have undergone female genital mutilation in Guinea.

3.4 With regard to the risk of female genital mutilation beyond the age of 19, the complainant points out that the Committee has already indicated in its decision on communication No. 613/2014, *F.B. v. Netherlands*,<sup>3</sup> that even though only 1.2 per cent of female genital mutilation is performed on women over the age of 19, this does not mean that the risk faced by these women is less, as the vast majority of female genital mutilation procedures occur when the victims are under the age of 14 and not yet married.

3.5 The complainant further argues that female genital mutilation has not in fact decreased in the country and that the Guinean authorities cannot or will not protect her from female genital mutilation. She claims that the lack of protection lies mainly in the fact that female genital mutilation is practised by society. The complainant refers to a report issued in April 2016 by the Office of the United Nations High Commissioner for Human Rights (OHCHR),<sup>4</sup> in which it was confirmed that, despite the efforts of the Guinean authorities to strengthen protection against female genital mutilation, the percentage of circumcision remained the same. Finally, the complainant considers that the argument implying that her mother can protect her from female genital mutilation is neither fair nor valid, as it does not apply to adult women.

3.6 The complainant states that she will be forced to undergo female genital mutilation at a later age, perhaps even at the time of marriage or when she becomes a mother, and will suffer social exclusion if she does not undergo circumcision.<sup>5</sup>

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

4.1 In a note verbale dated 16 November 2017, the State party submitted its observations on the merits.

4.2 In its observations, the State party finds it remarkable that the complainant only sought protection from the threat of female genital mutilation after her first asylum procedure had been fully completed, more than four years after she had entered the State party.

4.3 The State party does not accept the complainant's statement, made during her first asylum procedure, that she thought at the time that she had already undergone female genital mutilation. Indeed, given the invasive nature of female genital mutilation and the importance attached to this practice in Guinean society, the State party does not consider it plausible that she thought she had undergone this physical procedure when she had not.

4.4 The State party assumes that the complainant has not undergone female genital mutilation since a Dutch general practitioner has established that she has not. However, it doubts her claim that she would be forced to undergo female genital mutilation on her return to Guinea due to family pressure. First, the State party does not accept the complainant's statement that her family members had always assumed that she had already undergone the

<sup>2</sup> UNICEF, *Female Genital Mutilation/Cutting: A Statistical Overview and Exploration of the Dynamics of Change* (New York, July 2013).

<sup>3</sup> *F.B. v. Netherlands* (CAT/C/56/D/613/2014), para. 8.8. In its decision, the Committee recognized 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 failed to provide elements that refuted the investigation's outcome, which concluded that the information provided by the complainant about her and her family's circumstances in Guinea had been incorrect, the Committee considered that such inconsistencies were not of a nature as to undermine the reality of the prevalence of female genital mutilation and the fact that, owing to the ineffectiveness of the relevant laws, including the impunity of the perpetrators, victims of female genital mutilation in Guinea did not have access to an effective remedy and to appropriate protection by the authorities.

<sup>4</sup> OHCHR, "Female genital mutilation in Guinea on the rise – Zeid", 25 April 2016.

<sup>5</sup> Alpha Amadou Bano Barry, "Analyse socio-anthropologique des déterminants de la perpétuation des MGF/E en Guinée", August 2015.

procedure. Second, the alleged pressure faced by the complainant is inconsistent with the fact that her family did not make her undergo female genital mutilation, despite it being customary among her ethnic group. Third, the complainant did not specifically and personally substantiate her claim that her family would put pressure on her to undergo female genital mutilation – a practice the family has refrained from thus far. The State party also considered it implausible that the mother assumed that the complainant’s uncle would have taken care of the procedure, since in Guinea it is the mother who is primarily responsible for the excision. It would also have been logical for the complainant’s family to have ascertained whether she had been circumcised before she married.

4.5 The State party also considers that the complainant has not established satisfactorily that upon her return she will be forced by the community to undergo female genital mutilation, and considers that it cannot be concluded from the complainant’s statements that prior to her departure she was under any pressure from her ethnic group or the wider community to undergo the procedure. In addition, as it has not been argued plausibly that the complainant’s parents and other family members wanted to have her undergo female genital mutilation, the State party considers that they would be able to protect her from possible pressure from outside her family.

4.6 The State party points out that in a country report of the Minister of Foreign Affairs of the Netherlands, issued on 20 June 2014, it is indicated that only 1.2 per cent of female genital mutilation procedures are carried out on women over the age of 19. According to the same report, young adult women may decide themselves whether or not to undergo genital cutting.<sup>6</sup> Various sources also report that women and girls who have not undergone female genital mutilation are able to live normal lives in Guinea.<sup>7</sup>

4.7 Moreover, the State party considers that the complainant has the option of settling elsewhere in the city and that, with or without assistance of the neighbourhood leader, she can build a life for herself without her family having to know that she is back in Guinea.

4.8 The State party also notes that it is not plausible that the complainant would be forced to undergo female genital mutilation if she entered into a new relationship or remarried, as proven by the fact that she was not put under any pressure by her ex-husband or her ex-boyfriend.

#### **Complainant’s comments on the State party’s observations on the merits**

5.1 On 17 January 2019, the complainant submitted her comments on the State party’s observations on the merits of the complaint. She states that, in her first asylum application, it was considered credible that at a young age – the age at which girls are usually circumcised – she had moved several times between Labe and Conakry. She was born in Conakry and moved to Labe when she was about four years old. She lived in Labe until she was about 16, at which time she returned to live with her uncle in Conakry. For this reason, it is very plausible that the uncle assumed that she had already been circumcised when she came to live with him, and that the mother expected the circumcision to have taken place while the complainant was living with her uncle in Conakry.

5.2 Concerning the State party’s consideration that it is not plausible that the complainant’s family put pressure on her to undergo an excision, the complainant states that her sister has undergone female genital mutilation, and this fact has been found credible. Secondly, although it is primarily the mother who takes responsibility for the circumcision, excision is a matter of the family and the community, and female genital mutilation is also carried out by other female family members, such as aunts and grandmothers.

5.3 The author adds that the fact that certain statements were not deemed credible cannot alter the following credible facts: the author is a Peul woman from Guinea who has not undergone female genital mutilation in a country where the prevalence of the procedure is 96 per cent. These facts constitute substantial grounds for her to be subjected to female genital

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<sup>6</sup> See also UNICEF, *Child Notice Guinea*, 2015.

<sup>7</sup> Office of the Commissioner-General for Refugees and Stateless Persons, “Guinée – les mutilations génitales féminines”, 6 May 2014.

mutilation. The complainant refers to the Committee's decision, in which the Committee found that although the information provided by the complainant about her and her family's circumstances in Guinea had been incorrect, it considered that such inconsistencies were not of a nature as to undermine the reality of the prevalence of female genital mutilation and the fact that, owing to the ineffectiveness of the relevant laws, including the impunity of the perpetrators, victims of female genital mutilation in Guinea did not have access to an effective remedy and to appropriate protection by the authorities.<sup>8</sup>

5.4 The complainant adds that she will not be able to find protection from female genital mutilation by moving elsewhere. Due to the patriarchal society that prevails in Guinea, women are essentially dependent on men. Country-specific information confirms that only women who are economically independent and highly educated or whose partner respects their choice not to be mutilated are more likely to avoid female genital mutilation.

5.5 The complainant highlights the following undisputed facts: she is a woman of the Peul ethnic group in Guinea where the prevalence of female genital mutilation is 96 per cent; she has never undergone any form of female genital mutilation; and she is unmarried and economically dependent. On the basis of those facts, she concludes that there are substantial grounds for believing that she will be subjected to treatment contrary to article 3 of the Convention if returned to Guinea.

### **State party's additional submissions**

6.1 In a note verbale dated 23 May 2019, the State party submitted additional information, reiterating most of its previous observations.

6.2 The State party points out that it is not disputed that female genital mutilation is still a widespread practice in Guinea and remains deeply rooted in society. The State party in its submission refers to the country report published on 13 March 2019 by the United States Department of State, in which reference was made to data collected by UNICEF. According to UNICEF, 96 per cent of Guinean women and girls aged 15–49 had undergone the procedure, which was still practised throughout the country and among all religious and ethnic groups.

6.3 The State party adds that if the complainant's mother and uncle are indeed in favour of female genital mutilation and consider it to be an essential step in the initiation rites that give the circumcised girl the status of an honoured person, the State party does not see how they would have failed to ensure that the complainant had been subjected to the procedure.

6.4 Since the complainant was not able to satisfactorily explain why, unlike most other Guinean women, she was not circumcised, the Government considers her to be among the group of women whose parents decided not to subject their daughter to female genital mutilation and created the necessary conditions to protect her from social pressure. Since it is not apparent that the complainant's ex-husband or her partner forced her to undergo female genital mutilation, the State party disagrees with the claim that her future husband would require her to be circumcised.

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

#### *Consideration of admissibility*

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

7.2 In accordance with article 22 (5) (b) of the Convention, the Committee is not to consider any communication from an individual unless it has ascertained that the individual

<sup>8</sup> *F.B. vs. Netherlands* (CAT/C/56/D/613/2014), para. 8.8. See also CAT/C/GIN/CO/1, para. 17; and CEDAW/C/GIN/CO/7-8, paras. 28 and 30.

has exhausted all available domestic remedies. The Committee notes that, in the present case, the State party has not challenged the admissibility of the complaint on this ground.

7.3 Not having found any other obstacle to admissibility, the Committee declares the communication admissible and proceeds with its consideration of the merits.

*Consideration of the merits*

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

8.2 The issue before the Committee is whether the forced removal 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 or other cruel, inhuman or degrading treatment 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 the evaluation is to establish whether the complainant would be personally at a foreseeable and real risk of being subjected to torture in the country to which 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.<sup>9</sup>

8.4 The Committee recalls its general comment No. 4 (2017), 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 removal, either as an individual or a member of a group that may be at risk of being tortured in the State of destination. The Committee also recalls that "substantial grounds" exist whenever the risk of torture is "foreseeable, personal, present and real".<sup>10</sup>

8.5 The Committee gives considerable weight to findings of fact that are made by organs of the State party concerned, while at the same time it is not bound by such findings, as it can 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 in each case.

8.6 The Committee notes the complainant's allegation that she would be at risk of being subjected to female genital mutilation by members of her family and community upon her return to Guinea. The Committee further notes the complainant's argument that, as female genital mutilation is almost universal in Guinea, it is sufficient to conclude that she runs a real and foreseeable risk of being circumcised.

8.7 The Committee takes note of the State party's arguments that it does not find credible the complainant's statement that she thought, at the time of her first asylum application, that she had already undergone female genital mutilation, given the invasive nature of female genital mutilation and the importance attached to this practice in Guinean society. The Committee notes that the State party doubts that she would be forced to undergo female genital mutilation on her return to Guinea due to family and societal pressure as: the State party did not find credible that her family members always assumed she had already undergone the procedure; the alleged pressure to undergo female genital mutilation is inconsistent with the fact that her family did not force her to undergo circumcision during the 20 years that she lived in Guinea; the complainant's family did not ascertain whether she had

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<sup>9</sup> See, for example, *S.K. and others v. Sweden* (CAT/C/54/D/550/2013), para. 7.3.

<sup>10</sup> Committee against Torture, general comment No. 4 (2017), para. 11.

been circumcised before she married; and she has never been under any pressure from her ethnic group or the wider community to undergo female genital mutilation. The Committee also notes the State party's argument that only 1.2 per cent of female genital mutilation procedures are carried out on women over the age of 19 and that the complainant has the option of settling elsewhere in the city.

8.8 The Committee observes that, although female genital mutilation is forbidden by law in Guinea, it is still widespread in the country, with a prevalence of approximately 95 per cent among girls and women and 91 per cent among members of the Peul ethnic group.<sup>11</sup> The State party maintains that only 1.2 per cent of female genital mutilations are carried out on women over the age of 19. This figure, however, could be explained by the fact that the vast majority of mutilations happen when the victims are under the age of 14 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.

8.9 The Committee recalls that female genital mutilation 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 female genital mutilation is contrary to the obligations enshrined in the Convention.<sup>12</sup> The Committee also recalls that the option of settling elsewhere in the city, as suggested by the State party, is not always a reliable or effective remedy.<sup>13</sup>

8.10 The Committee notes that the complainant refers to communication No. 613/2014, *F.B. v. Netherlands*, in which the Committee stated that, although the information provided by the complainant about her and her family's circumstances in Guinea was incorrect, the Committee considered that such inconsistencies were not of a nature as to undermine the reality of the prevalence of female genital mutilation and the fact that victims of female genital mutilation in Guinea did not have access to appropriate protection by the authorities.<sup>14</sup> The Committee considers, however, that in the present case, the author has not only been inconsistent in describing her situation, but has provided contradictory and implausible statements on the very essence of her application for asylum, namely the circumstances that establish that she would be at risk of female genital mutilation if returned. The Committee notes, in particular, the following contradictions and discrepancies in the author's statements, most of them having already been noted by national authorities: the applicant states on the one hand that she thought she had been circumcised, and on the other that, when she was a child, her mother told her that she wanted to wait until she was a little older to circumcise her;<sup>15</sup> she states that her family is in favour of circumcision but did not succeed in circumcising her during the 20 years she lived in Guinea and during which she had already been married once; she explains that she could be forced by family members to undergo female genital mutilation, while stating that her family members think she is already circumcised; and she only expressed her fears of being subjected to female genital mutilation four years after her arrival in the State party, and after the rejection of her first two applications for residency, which were based on other allegations, namely that she feared being subjected to forced marriage upon her return and that she had been trafficked.

8.11 As regards the possibility of being circumcised at a later age, the Committee notes that, in the present case, the complainant was able to marry and enter into a relationship without being circumcised and without being pressured to do so by either her family or Guinean society.

8.12 The Committee therefore concludes that, due to the contradictory and implausible statements on the very essence of her application, as assessed by national authorities, the

<sup>11</sup> *F.B. v. Netherlands* (CAT/C/56/D/613/2014), para. 8.7.

<sup>12</sup> See *R.O. v. Sweden* (CAT/C/59/D/644/2014), para. 8.7, and *F.B. v. Netherlands* (CAT/C/56/D/613/2014), para. 8.7. See also CAT/C/BFA/CO/1, para. 21; CAT/C/GIN/CO/1, para. 17; and CAT/C/SLE/CO/1, para. 15.

<sup>13</sup> Committee against Torture, general comment No. 4, para. 47.

<sup>14</sup> *F.B. v. Netherlands* (CAT/C/56/D/613/2014), para. 8.8. See also CAT/C/GIN/CO/1, para. 17; and CEDAW/C/GIN/CO/7-8, paras. 28 and 30.

<sup>15</sup> Interview of 9 March 2016 with the Immigration and Naturalization Department of the Ministry of Justice.

complainant has not adduced sufficient grounds for it to believe that she would run a real, foreseeable and personal risk of being subjected to torture upon returning to Guinea.

8.13 The Committee, acting under article 22 (7) of the Convention, concludes that the complainant's removal to Guinea by the State party would not constitute a breach of article 3 of the Convention.

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