



# 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. 909/2019\*, \*\*

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| <i>Communication submitted by:</i>   | Nestor Niño Lizarazo, Katerine Ramírez, David Santiago Niño Ramírez and Jorge Enrique Dulcey Ramírez (not represented by counsel)                                   |
| <i>Alleged victims:</i>              | The complainants and Miguel Angel Niño Ramírez, Mariath Sophie Niño Ramírez and Juan Jose Niño Ramírez  |
| <i>State party:</i>                  | Switzerland   |
| <i>Date of complaint:</i>            | 23 October 2018 (initial submission)  |
| <i>Document references:</i>          | Decision taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on 15 January 2019 (not issued in document form) |
| <i>Date of adoption of decision:</i> | 27 July 2022  |
| <i>Subject matter:</i>               | Deportation to Colombia   |
| <i>Procedural issues:</i>            | Exhaustion of domestic remedies; failure to substantiate claims   |
| <i>Substantive issues:</i>           | Risk of torture or cruel, inhuman or degrading treatment or punishment if deported to country of origin   |
| <i>Article of the Convention:</i>    | 3   |

1.1 The complainants are Nestor Niño Lizarazo, born on 19 September 1961, his wife Katerine Ramírez, born on 7 April 1980, and their children Jorge Enrique Dulcey Ramírez, born on 14 June 1995, and David Santiago Niño Ramírez, born on 3 March 1998, all four of whom are nationals of Colombia. They submit the present complaint on their own behalf and on the behalf of Mr. Niño Lizarazo's and Ms. Ramírez's other children, Miguel Angel Niño Ramírez, born on 31 October 2001, Mariath Sophie Niño Ramírez, born on 10 July 2008, and Juan Jose Niño Ramírez, born on 1 August 2014, who are also nationals of Colombia. Their application for asylum in Switzerland was rejected and they are now facing deportation to Colombia. They claim that their deportation would constitute a violation by the State party of their rights under article 3 of the Convention. The State party made the declaration

\* Adopted by the Committee at its seventy-fourth session (12–29 July 2022).

\*\* The following members of the Committee participated in the examination of the communication: Todd Buchwald, Claude Heller, Erdogan Iscan, Maeda Naoko, Ilvija Pūce, Ana Racu, Abderrazak Rouwane, Sébastien Touzé and Bakhtiyar Tuzmukhamedov.



provided for under article 22 (1) of the Convention on 2 December 1986. The complainants are not represented by counsel.

1.2 On 15 January 2019, pursuant to rule 114 of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party to refrain from deporting the complainants to Colombia while their complaint was being considered. On 18 January 2019, the State party informed the Committee that it had suspended the complainants' deportation to Colombia.

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

2.1 Nestor Niño Lizarazo was a human rights defender and a member of civil society in Piedecuesta, in the Department of Santander, Colombia. Among other roles, he served as the coordinator of the Group of Victims of the Armed Conflict in Piedecuesta;<sup>1</sup> as the regional representative of an association of victims of anti-personnel mines, unexploded ordnance and improvised explosive devices; and as the representative of an association of persons left with disabilities as a result of the armed conflict. He was also an activist for the Polo Democrático Alternativo, a Colombian political party. Because of these different engagements, Mr. Niño Lizarazo and his family have allegedly been the target of threats and attacks by dissident paramilitary groups known as the Águilas Negras and Autodefensas Gaitanistas de Colombia.

2.2 Mr. Niño Lizarazo has an overall degree of disability of 79.42 per cent, having been injured by an anti-personnel mine in 2001, as a result of which he lost both of his hands and the sight in his right eye.<sup>2</sup> Between 2001 and 2017, the complainants received numerous threats and endured several forced displacements. All of those incidents have been confirmed by the Special Administrative Unit for Comprehensive Victim Support and Reparation (Victims Unit).<sup>3</sup> They claim to have been subjected to systematic political and social persecution by paramilitary groups – persecution in which the Colombian authorities were complicit – in the region of Santander owing to the fact that Mr. Niño Lizarazo's work in support of victims of the armed conflict and his political activism were considered to be contrary to economic interests and the interests of the Government. The complainants allege that the aforementioned paramilitary groups made threats against them via pamphlets, telephone calls and emails and surveilled their homes, workplaces and meeting places and accused them of collaborating with dissident factions of the Fuerzas Armadas Revolucionarias de Colombia-Ejército del Pueblo (Revolutionary Armed Forces of Colombia – People's Army) (FARC-EP) and with guerrilla groups. Mr. Niño Lizarazo's sons, David Santiago Niño Ramírez and Jorge Enrique Dulcey Ramírez, who work closely with him on account of his disabilities, also received death threats.

2.3 Mr. Niño Lizarazo was last threatened on 17 December 2017, as he was preparing to attend an event in his capacity as coordinator of the Group of Victims of the Armed Conflict in Piedecuesta. He alleges that an individual attempted to run him down with his vehicle but failed. That individual then allegedly threatened to kill the complainants, describing them as military targets, and told Mr. Niño Lizarazo that he was going to go get his gun and kill him. At that point, Mr. Niño Lizarazo escaped and went on to attend his event. According to eyewitnesses, the individual later returned to the scene with a gun, demanding to know Mr. Niño Lizarazo's whereabouts.

2.4 On 30 March 2018, a group of armed persons allegedly appeared at the complainant's home, threateningly and aggressively demanding to know the whereabouts of Mr. Niño Lizarazo and claiming that they had a score to settle with him regarding complaints that he had helped to file in land restitution cases. Subsequently, pamphlets containing death threats against members of the Group of Victims of the Armed Conflict in Piedecuesta were circulated. The complainants allege that, faced with this latest threat and as the coordinator

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<sup>1</sup> Group formed pursuant to Act No. 1448 of 10 June 2011, which was published in the *Diario Oficial* (the country's official gazette) No. 48.096.

<sup>2</sup> A report of the Institute of Forensic Medicine dated 20 October 2010 is attached to the case file.

<sup>3</sup> The Victims Unit was established pursuant to Act No. 1448 of 10 June 2011 in order to facilitate the provision of care, assistance and full reparations to victims of the internal armed conflict.

of the Group of Victims of the Armed Conflict in Piedecuesta, Mr. Niño Lizarazo had no choice but to leave the country with his family as quickly as possible.

2.5 Mr. Niño Lizarazo claims that he informed the Colombian authorities of the threats made against him. On 23 December 2017, he filed a complaint with the Office of the Municipal Ombudsperson of Piedecuesta regarding the threats made on 17 December 2017. On 2 February 2018, he informed the Victims Unit of his situation and requested protection and relocation to another municipality. In its reply of 24 July 2018, the Victims Unit indicated that the National Protection Unit was the body responsible for granting protective measures.

2.6 Fearing for their lives, especially since a prominent member of civil society had been murdered on 2 April 2018, the complainants decided to leave Piedecuesta and travel to Bogotá on 8 April 2018. As the Colombian authorities took no action to guarantee their safety, the complainants came to view forced displacement abroad as the only way to protect themselves. Consequently, on 11 April 2018, they decided to leave Colombia to seek asylum in Switzerland.

2.7 On 25 June 2018, the State Secretariat for Migration rejected the complainants' applications for asylum in three separate decisions on the ground that there was insufficient evidence that the complainants would be subjected to torture or ill-treatment if returned to Colombia. Without the benefit of free legal assistance, the complainants filed appeals against the decisions of the State Secretariat for Migration with the Federal Administrative Court, which rejected their appeals on 4 September 2018 in three separate rulings. On 17 September 2018, the complainants petitioned the Court for a review of their case and the application of interim measures of non-refoulement, but the Court rejected their request on 16 October 2018.

### **Complaint**

3.1 The complainants allege that their removal to Colombia would violate their rights under article 3 of the Convention, since Mr. Niño Lizarazo has received death threats and he and his family would be at risk of torture and other cruel, inhuman or degrading treatment or punishment because of his work as a prominent member of civil society and defender of the human rights of victims of the armed conflict. The complainants argue that, because the Colombian State offers no protection or guarantees of non-repetition, human rights defenders in Colombia face a situation of extreme risk and vulnerability. The complainants add that the fact that the murders of human rights defenders, of which there were 343 in 2018 and in which the State is complicit, constitutes a serious crisis has been documented in numerous reports by international organizations. The complainants argue that this demonstrates that the Colombian State does not and is not willing to protect human rights defenders or members of the political opposition. They maintain that their fears are not unfounded and that systematic and targeted attacks against human rights defenders in Colombia are a reality and are intended to send a message to the victims of the armed conflict to discourage them from asserting their fundamental rights and denouncing crimes against humanity.

3.2 The complainants allege that they encountered various obstacles during the asylum process. They did not have access to free legal assistance, and no refugee support organization agreed to defend them on the ground that the decision of the State Secretariat for Migration to reject their applications was categorical. The complainants therefore had to grapple with the asylum procedure alone, with no knowledge of the Swiss legal system and while faced with a language barrier. They claim that the State Secretariat for Migration first informed them that the evidence they had submitted was of no value, but then told them that they had submitted too much evidence and the Secretariat could not possibly accept it all. The complainants argue that they underwent the asylum process while in a state of post-traumatic stress, with no legal training and unprepared for the possibility of revictimization.

3.3 The complainants argue that their request not to be deported to Colombia should be considered irrespective of the State party's decision to reject their application for asylum because returning them to Colombia would put their lives at risk.

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

4.1 On 4 July 2019, the State party submitted its observations on the merits of the complaint, in which it argues that the complainants failed to provide evidence that there were

substantial grounds for fearing that they would face a foreseeable, present, personal and real risk of torture or ill-treatment if returned to Colombia. The State party therefore requests the Committee to find that the deportation of the complainants to Colombia would not constitute a violation of its international obligations under article 3 of the Convention.

4.2 The State party recalls the Committee's general comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, according to which the author of a communication must prove that he or she faces a foreseeable, present, personal and real risk of being subjected to torture in the event of deportation to his or her country of origin, that such a risk must appear to be substantial and that allegations must be based on credible evidence. The State party also refers to the elements that must be taken into account by the Committee in determining whether there is such a risk according to paragraph 49 of the aforementioned general comment.

4.3 Regarding the question of evidence of the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the State concerned, the State party claims that, in accordance with the Committee's jurisprudence, it must be determined whether the complainants would be personally in danger of being subjected to torture, since the existence of a pattern of violations does not constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to the country in question. In relation to the present case, the State party points out that an armed conflict between the armed forces, guerrillas and paramilitary groups has been under way in Colombia for more than 50 years and that all parties involved in the conflict have been accused of serious human rights violations. It also highlights the fact that a peace agreement has been signed by the Colombian State and FARC-EP. Although 110 human rights defenders were murdered in 2018, with more than 90 per cent of the murders having occurred in poor regions over which the State has little control,<sup>4</sup> the State party maintains that the Colombian State is taking steps to establish an institutional framework that protects human rights defenders. The State party highlights the establishment, in November 2018, of a commission to coordinate the different prevention and protection programmes for human rights defenders and the establishment of the United Nations Verification Mission in Colombia, which monitors the implementation of the peace agreement with FARC-EP, as a result of which many initiatives to put an end to the violence against human rights defenders have been developed. The State party argues that, although the human rights situation in Colombia is a cause for concern, particularly in respect to the situation of human rights defenders, the general situation in the country does not, in itself, constitute a sufficient ground for concluding that the complainants would be at risk of torture if returned there.

4.4 Furthermore, the State party maintains that the complainants do not claim to have been subjected to torture or ill-treatment by State actors. Mr. Niño Lizarazo was injured by an anti-personnel mine in 2001 in the context of the armed conflict, as a result of which he lost both of his hands and the sight in one of his eyes, but this is not the subject of the present complaint. The State party observes that the basis of the complainants' arguments lies in the numerous threats made against Mr. Niño Lizarazo by the paramilitary groups known as the Águilas Negras and Autodefensas Gaitanistas de Colombia and the attempted attack against him on 21 December 2017, which they claim were motivated by Mr. Niño Lizarazo's activities in support of the opposition party Polo Democrático Alternativo. The State party emphasizes that, according to the Committee's jurisprudence, the actions of individuals may constitute a risk within the meaning of article 3 of the Convention when the State is unable to provide adequate protection and no area in the country is considered safe for the authors. In the present case, the State party believes that the fact that Mr. Niño Lizarazo has filed several complaints demonstrates that he has access to the protection system established by the Colombian State. Based on the authorities' responses to Mr. Niño Lizarazo's complaints, the State party believes that the Colombian State is willing to respond to the threats described and to provide protection to the complainants. It is also of the view that the complainants could settle elsewhere in Colombia, as they would not be sought throughout the country by the paramilitary groups, given that these groups do not control the entire territory and that Mr. Niño Lizarazo's activities are essentially local and regional in nature. The State party

<sup>4</sup> [A/HRC/40/3/Add.3](#), para. 18.

considers the complainants' explanation as to why they did not seek to settle in another region of Colombia to be illogical and concocted.

4.5 With regard to Mr. Niño Lizarazo's political activities, the State party does not contest his engagements as a human rights defender but is of the view that the role of human rights defenders is recognized by the Colombian State, which stands ready to grant protection to the complainants in that capacity. The State party also maintains that the complainants would be able to settle in another area of Colombia. It is therefore of the view that the complainants have not demonstrated that Mr. Niño Lizarazo's activities would expose them to a foreseeable and present risk of being subjected to torture in the event of their deportation to Colombia.

4.6 Lastly, with regard to evidence supporting the credibility of the allegations, the State party observes that Mr. Niño Lizarazo was not able to convincingly explain how the fact that two armed men came looking for him at his home constituted a breach of the security protocol. According to the State party, Mr. Niño Lizarazo's claim that he had to inform the Victims Unit and wait for its permission to move to another area of Colombia is illogical and concocted.

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

5.1 On 6 September 2019, the complainants submitted their comments on the State party's observations on the merits, in which they take issue with the fact that the State party cast doubt on the veracity of Mr. Niño Lizarazo's profile and his account of the persecution that he has suffered. Mr. Niño Lizarazo maintains that his duties as a representative of the victims of the armed conflict are defined according to a legal framework and are neither fabricated nor self-proclaimed. The threats that he has personally received by telephone and email are also very real. The complainants argue that the peace agreement between the Colombian State and FARC-EP does not constitute a guarantee that human rights defenders will not be murdered, threatened or displaced because the areas over which FARC-EP has relinquished control have been taken over by dissident factions of paramilitary groups. Furthermore, the complainants argue that they do not have the economic means or social wherewithal to travel to some unknown area of Colombia, which, like all areas of the country, would be under the control of a criminal group, and that their arrival in a new area would worsen their situation and put their lives at risk.

5.2 With regard to the domestic asylum procedure, the complainants allege that the State party has failed to provide them with due process guarantees. They reiterate that they have provided the authorities with all the evidence necessary to confirm the veracity of their claims. The complainants allege that the officials of the State Secretariat for Migration who conducted their initial hearings did not allow them to provide the details necessary to prove the veracity of their story on the ground that allowing them to do so would constitute an excessive workload for the interpreters. During the hearing of Katerine Ramírez, the officials themselves selected the pieces of evidence they considered important, claiming that the other pieces of evidence submitted were of no value to the proceedings. The complainants claim that the officials of the State Secretariat for Migration first refused to accept certain pieces of evidence and then claimed that the complainants had not provided sufficient evidence that they would be at risk of torture if returned to Colombia. They add that the decision not to grant them free legal assistance, which was taken by an organization assigned by the Canton of Aargau for that purpose, represents a breach of due process. A representative of the organization in question allegedly told the complainants that their case was unwinnable, because there was no chance that persons from Latin America would be granted asylum in Switzerland. On 12 November 2018, the complainants informed the Office of the United Nations High Commissioner for Refugees (UNHCR) in Switzerland of this situation and requested that they be provided with free legal aid, but their request was rejected on 15 November 2018.

5.3 With regard to the State party's consideration of the risk that the complainants would be subjected to torture if returned to their country of origin in the light of article 3 (2) of the Convention, the complainants point out that, between 2016 and 2019, numerous human rights reports documented the fact that hundreds of human rights defenders had been killed, thousands had been threatened and millions had been forcibly displaced in Colombia. The recommendations of the Inter-American Commission on Human Rights and the

Special Rapporteur on the situation of human rights defenders have been ignored by the current Government. The complainants also refer to Ruling No. T-590/98 of 20 October 1998 of the Constitutional Court of Colombia, in which the Court declared that the existing state of affairs with regard to the protection of human rights defenders in the country was unconstitutional. The complainants allege that, in their case, the risk of being subjected to torture in the event of deportation to their country of origin is foreseeable, present, personal and real, especially since they have been subjected to such treatment in the past. In addition to being threatened and forcibly displaced, Mr. Niño Lizarazo claims that he was taken hostage by a paramilitary group known as Los Botalones y el Bloque Central Bolívar de las Autodefensas Unidas de Colombia, which inflicted physical and mental harm upon him. The Public Prosecution Service reportedly rejected his complaint regarding these events on the ground that the paramilitary groups had supposedly been demobilized. Nonetheless, Mr. Niño Lizarazo's claims in this regard were confirmed by the Victims Unit. The complainants argue that the latest threats made by armed persons at their home demonstrate that the persecution of Mr. Niño Lizarazo is real, personal and foreseeable, given the situation in Colombia, where the targeted murder of human rights defenders is systematic and widespread. With regard to the State party's argument that the complainants did not provide proof of the most recent threats and events, the complainants point out that, during the hearings with the State Secretariat for Migration, they were not permitted to detail the various violent acts to which they had been subjected and were forced to answer only the questions asked of them. Moreover, they were unable to obtain a document attesting to their claims from the Victims Unit because they had been forbidden from contacting the authorities of their country of origin while the Swiss asylum process was under way.

5.4 With regard to the State party's claims that there are protection mechanisms in place in Colombia and that the State has shown a willingness to respond to threats, the complainants argue that the systematic killing of human rights defenders, with 734 defenders killed in 2019, demonstrates the opposite. Although the complainants reported the death threats that they had received to the Colombian authorities, the latter never provided them with protection. The complainants argue that the police were not in a position to offer them protection, since they themselves had received threats and were putting themselves at risk by traveling to Piedecuesta to patrol. As for the National Protection Unit, which is supposed to protect human rights defenders, the complainants argue that the Unit's bodyguards are all former agents of the National Security Directorate and reinstated paramilitary fighters whose presence would not mitigate the risk of attacks against them.

5.5 In response to the State party's claim that the complainants could move to another region of Colombia, since they would not be sought out by paramilitary groups throughout the country, the complainants presented a map produced by the Office of the Ombudsperson showing that human rights defenders have been murdered in every region of the country. The complainants cite the report of the Special Rapporteur on the situation of human rights defenders on his visit to Colombia in 2018, in which he stated that crimes against human rights defenders were systematic in terms of their circumstances, the profile of the victims and their modus operandi. The report also pointed to the responsibility of the authorities for these crimes, insofar as the latter stigmatized human rights defenders, sometimes denied that killings had taken place and had relinquished control over some parts of the country.<sup>5</sup>

5.6 Regarding the alleged lack of credibility of their claims, the complainants reiterate that the Victims Unit is required to conduct an analytical study of their security situation before relocating them in accordance with Regulatory Decree No. 4800 of 2011 on the implementation of Act No. 1448 of 10 June 2011. They argue that relocation to another area must be conducted according to an established protocol and that their account of the facts in this regard was therefore neither illogical nor concocted. The complainants also note that the Victims Unit took five months to respond to their relocation request.

<sup>5</sup> See [A/HRC/43/51/Add.1](#).

## Issues and proceedings before the Committee

### *Consideration of admissibility*

6.1 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.

6.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. This rule does not apply where it has been established that the application of those remedies has been unreasonably prolonged or is unlikely to bring effective relief.<sup>6</sup>

6.3 The Committee observes that the State party has made no observations on the admissibility of the present complaint. However, it has nonetheless ascertained that the complainants have exhausted all available domestic remedies and therefore finds the communication admissible under article 22 of the Convention and proceeds to its consideration on the merits, since, moreover, the complainants' claims under article 3 of the Convention are sufficiently substantiated for the purpose of admissibility.

6.4 As the Committee finds no other obstacles to admissibility, it declares the complaint admissible under article 3 of the Convention and proceeds to its consideration of the merits.

### *Consideration of the merits*

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

7.2 The issue before the Committee is whether the expulsion of the complainants to Colombia would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or return ("*refouler*") a person to another State where there are grounds for believing that he or she would be in danger of being subjected to torture or other cruel, inhuman or degrading treatment or punishment. The Committee recalls that the prohibition of torture is absolute and non-derogable and that no exceptional circumstances whatsoever may be invoked by a State party to justify acts of torture.<sup>7</sup>

7.3 The Committee must evaluate whether there are substantial grounds for believing that the complainants would be personally in danger of being subjected to torture if returned to Colombia. 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 is to establish whether the complainants would be personally at a foreseeable and real risk of being subjected to torture in the country to which they 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 the complainants would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that they would be personally at risk.<sup>8</sup> Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.<sup>9</sup>

7.4 In the present case, the Committee takes note of the complainants' argument that their removal to Colombia would constitute a violation by the State party of their rights under

<sup>6</sup> See, for example, *E.Y. v. Canada* (CAT/C/43/D/307/2006/Rev.1), para. 9.2; see also Committee against Torture, general comment No. 4 (2017), para. 34.

<sup>7</sup> Committee against Torture, general comment No. 2 (2007), para. 5.

<sup>8</sup> *R.A.Y. v. Morocco* (CAT/C/52/D/525/2012), para. 7.2; *Alhaj Ali v. Morocco* (CAT/C/58/D/682/2015), para. 8.3; *L.M. v. Canada* (CAT/C/63/D/488/2012), para. 11.3; and *K.M. v. Switzerland* (CAT/C/71/D/865/2018), para. 7.3.

<sup>9</sup> *Kalinichenko v. Morocco* (CAT/C/47/D/428/2010), para. 15.3, and *K.M. v. Switzerland*, para. 7.3.

article 3 of the Convention. It also takes note of Mr. Niño Lizarazo's argument that, since he was a human rights defender, a representative of the victims of the armed conflict in Piedecuesta and a political activist for a party in opposition to the Government, he and his family are likely to be subjected to ill-treatment if returned to their country of origin. In this regard, the Committee also takes note of the fact that the State party does not contest the veracity of Mr. Niño Lizarazo's description of his role as a human rights defender.

7.5 The Committee recalls that it must ascertain whether the complainants would currently run the risk of being subjected to torture if returned to Colombia. It takes note of the fact that the complainants had the opportunity to provide supporting evidence and more details about their claims at the national level to the State Secretariat for Migration and the Federal Administrative Court but that the evidence provided did not lead the national authorities to conclude that they would be at risk of being subjected to torture or cruel, inhuman or degrading treatment upon their return to Colombia. The Committee also takes note of the complainants' claims regarding the lack of fundamental safeguards during the national proceedings and, specifically, that the officials of the State Secretariat for Migration refused to accept evidence brought by the complainants and did not allow the complainants to elaborate on their stories and explanations during the hearings. It also notes that the complainants did not have access to free legal assistance during the appeal proceedings before the Federal Administrative Court, which they had to undergo in a state of post-traumatic stress and with no legal knowledge. The Committee recalls that paragraphs 18 (b) and 40 of its general comment No. 4 (2017) refer to fundamental safeguards, which include the adoption of measures to provide complainants with free legal aid in order to ensure the full implementation of article 3 of the Convention. The Committee observes that it appears from the *procès-verbaux* of the complainants' hearings that their accounts of the facts and explanations were not fully understood by the officials of the State Secretariat for Migration and that the latter did not agree to consider evidence and annexes that the complainants wished to present.<sup>10</sup> The Committee also takes note of the fact that the State party has provided no explanation in response to the complainants' claims in this regard. Therefore, in the present case, on the basis of the information available to it, the Committee concludes that the complainants, who, as asylum-seekers, found themselves in a particularly vulnerable situation, were not afforded all the fundamental guarantees required by article 3 of the Convention.

7.6 With regard to the existence of a pattern of gross, flagrant or mass violations of human rights in the country of return, the Committee takes note of the complainants' claims regarding the systematic and targeted persecution of human rights defenders throughout Colombia. It also takes note of the State party's arguments that, although the human rights situation and, in particular, the situation of human rights defenders, in Colombia is a cause for concern, the Colombian State is working to establish an institutional framework for their protection and that this framework is accessible to the complainants. However, the Committee notes that, according to the report of the United Nations High Commissioner for Human Rights on the situation in Colombia, the Office of the United Nations High Commissioner for Human Rights (OHCHR) received 202 allegations of murders of human rights defenders and 1,116 allegations of threats and attacks against individuals working to defend human rights in 2021.<sup>11</sup> The Committee takes note of the fact that, according to the same report, the majority of these murders, threats and attacks are carried out by non-State armed groups and criminal organizations that target defenders of land and territorial rights, the rights of Indigenous Peoples, the environment, the victims of the armed conflict and the implementation of the peace agreement between the Colombian State and FARC-EP. The Committee also observes that this occurs throughout the country, as OHCHR has documented attacks on and murders of human rights defenders in 28 of the country's 32 departments.<sup>12</sup> In his report on his visit to Colombia from 20 November to 3 December 2018, the Special Rapporteur on the situation of human rights defenders highlighted the fact that Colombia was the country in Latin America with the highest number of homicides of human rights defenders

<sup>10</sup> Hearing of 28 May 2018 before the State Secretariat for Migration, annex VI of the State party's submission, pp. 8 and 12.

<sup>11</sup> [A/HRC/49/19](#), paras. 39–40.

<sup>12</sup> *Ibid.*, para. 44.

and that there was a high level of impunity for these crimes. The Committee takes note of the Special Rapporteur's conclusion that the majority of human rights defenders in Colombia were unable to work in a safe and supportive environment and that they were not effectively protected by the State, particularly as a result of the demobilization of FARC-EP and the recovery of territorial control by illegal armed groups and criminal groups that resulted from the total absence of the State in some territories.<sup>13</sup> The Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the Committee on Enforced Disappearances all welcomed the establishment of the National Protection Unit but expressed concern about the lack of resources allocated to it and about attacks on human rights defenders in the country.<sup>14</sup> The Committee against Torture itself has previously expressed its concern about attacks on human rights defenders and about the fact that the investigations into such acts had not produced any results.<sup>15</sup> Lastly, the Committee observes that, in the context of the universal periodic review, among the many recommendations received on the subject of human rights defenders, it was recommended that Colombia take further measures to prevent systematic violence against local leaders and human rights defenders, improve individual and collective protection of those at risk and focus on investigating and prosecuting the persons responsible for threats and killings.<sup>16</sup> The Committee therefore concludes that torture and other cruel, inhuman and degrading treatment or punishment of human rights defenders is widespread in Colombia and that this situation is covered by article 3 of the Convention.

7.7 However, additional grounds must be adduced to show that the individuals concerned would face a real and personal risk of being subjected to torture or other cruel, inhuman or degrading treatment or punishment<sup>17</sup> in their specific circumstances.<sup>18</sup> In the present case, the Committee must also therefore determine whether the complainants would be personally at risk of being subjected to torture or other cruel, inhuman or degrading treatment or punishment if returned to Colombia. 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 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's practice in this context has been to determine that "substantial grounds" exist whenever the risk of torture is "foreseeable, personal, present and real".<sup>19</sup> Indications of personal risk may include, in particular, the political affiliation or political activities of the complainant or members of his or her family, or the existence of an arrest warrant without a guarantee of fair treatment and trial.<sup>20</sup> The Committee notes that the burden of proof is borne by the complainant, who must present an arguable case – that is, submit substantiated arguments showing that the danger of being subjected to torture is foreseeable, personal, present and real. However, when complainants are in a situation where they cannot elaborate on their case, the burden of proof is reversed and the State party concerned must investigate the allegations and verify the information on which the communication is based.<sup>21</sup> The Committee also notes 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 and will make a free assessment of the information available to it in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to each case.<sup>22</sup>

7.8 The Committee recalls that paragraph 28 of its general comment No. 4 (2017) refers to torture and cruel, inhuman or degrading treatment or punishment to which "an individual or the individual's family were exposed". The Committee takes note of the complainants' argument that the risk of being subjected to torture in the event of deportation to their country

<sup>13</sup> See [A/HRC/43/51/Add.1](#).

<sup>14</sup> See, respectively, [CCPR/C/COL/CO/7](#), [E/C.12/COL/CO/6](#) and [CED/C/COL/OAI/1](#).

<sup>15</sup> [CAT/C/COL/CO/5](#), para. 26.

<sup>16</sup> [A/HRC/39/6](#), para. 120.72.

<sup>17</sup> *R.A.Y. v. Morocco*, para. 7.2; *Alhaj Ali v. Morocco*, para. 8.3; and *L.M. v. Canada*, para. 11.3.

<sup>18</sup> *Kalinichenko v. Morocco*, para. 15.3.

<sup>19</sup> Committee against Torture, general comment No. 4 (2017), para. 11.

<sup>20</sup> *Ibid.*, para. 45.

<sup>21</sup> *Ibid.*, para. 38.

<sup>22</sup> *Ibid.*, para. 50.

of origin would be foreseeable, present, personal and real, in particular because Mr. Niño Lizarazo has endured several forced displacements, has been taken hostage by and has suffered injuries at the hands of paramilitary groups and has personally received death threats from armed individuals. It takes note of Mr. Niño Lizarazo's argument that his fears are well founded and that the risk of torture in his case is foreseeable and real, as the threats against him have been confirmed by the Victims Unit and as human rights defenders, such as himself, who take up the cause of victims of the armed conflict continue to be killed on a regular basis throughout the country. Lastly, the Committee takes note of the complainants' argument that the Colombian State is unwilling and unable to offer them protection, as demonstrated by the lack of action by the authorities following their request for resettlement.

7.9 The Committee takes note of the State party's argument that the Colombian State's protection system is accessible to the complainants and that the State is willing to respond to threats and offer them protection, given that the activities of human rights defenders are recognized in Colombia. The Committee also takes note of the State party's arguments that the complainants are free to move to another region of Colombia, since, it claims, the paramilitary groups would not seek them out throughout the country and do not control the entire territory, and that Mr. Niño Lizarazo's notoriety is essentially local and regional. The Committee also takes note of the State party's arguments that the complainants' explanations of the fact that they were required to inform the Victims Unit before relocating to another region and of the reasons for the termination of Mr. Niño Lizarazo's security protocol were illogical and concocted.

7.10 However, the Committee is of the view that Mr. Niño Lizarazo's profile as a human rights defender and the coordinator of a group of victims of the armed conflict, the repeated violent acts and personal threats that he has endured as a result of his activities and the context of the systematic persecution of human rights defenders in Colombia are, when considered together, sufficient evidence that the complainants would face a personal, foreseeable and real risk of being subjected to torture or other cruel, inhuman or degrading treatment or punishment if returned to Colombia.

7.11 In view of the arguments made by the complainants in paragraph 5.5 above, the Committee also considers it necessary to recall that States parties should also refrain from deporting individuals to another State where there are substantial grounds for believing that they would be in danger of being subjected to torture or other ill-treatment at the hands of non-State entities.<sup>23</sup> Moreover, ill-treatment inflicted by private individuals that Colombia is unable to stop, acquiesces to or allows by failing to intervene is conduct for which Colombia, by providing its tacit consent, bears responsibility.<sup>24</sup> Impunity for such acts leads to the recurrence of violence. The Committee has made clear, as stated in paragraph 18 of general comment No. 2 (2007) on the implementation of article 2 of the Convention, that where State authorities know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent the commission of such acts, to undertake investigations and to prosecute such non-State officials or private actors, the State bears responsibility, and its officials should be considered as authors, complicit or otherwise responsible for consenting or acquiescing to such impermissible acts. Since the failure of the State to exercise due diligence to intervene in order to put a stop to torture, to punish the guilty parties and to provide remedies to the victims has the effect of facilitating and enabling non-State actors to commit acts impermissible under the Convention with impunity, the State's indifference or inaction constitutes a form of encouragement and/or de facto permission.

7.12 The Committee observes that the principle of the benefit of the doubt, as a preventive measure against irreparable harm, must also be taken into account in adopting decisions on individual communications,<sup>25</sup> given that the spirit of the Convention is to prevent torture, not

<sup>23</sup> Ibid., para. 30. *Elmi v. Australia* (CAT/C/22/D/120/1998), paras. 6.8 and 6.9; *M.K.M. v. Australia* (CAT/C/60/D/681/2015), para. 8.9; and *Calfunao Paillalef v. Switzerland* (CAT/C/68/D/882/2018), para. 8.9.

<sup>24</sup> *Dzemajl et al. v. Yugoslavia* (CAT/C/29/D/161/2000), para. 9.2, and *Calfunao Paillalef v. Switzerland*, para. 8.9.

<sup>25</sup> Committee against Torture, general comment No. 4 (2017), para. 51.

to redress it once it has occurred.<sup>26</sup> The Committee also reiterates that the deportation of a person or a victim of torture to an area of a State where the person would not be exposed to torture, unlike in other areas of the same State, is not reliable or effective.<sup>27</sup>

8. In the light of the information available to it, the Committee, acting under article 22 (7) of the Convention, concludes that the deportation of the complainants to Colombia would constitute a violation of article 3 of the Convention by the State party.

9. The Committee is of the view that the State party is required by article 3 of the Convention to reconsider the complainants' asylum application in the light of its obligations under the Convention and the present decision. The State party is also requested to refrain from deporting the complainants while their application for asylum is being considered.

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

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<sup>26</sup> *Alan v. Switzerland* (CAT/C/16/D/21/1995), para. 11.5.

<sup>27</sup> Committee against Torture, general comment No. 4 (2017), para. 47.