United Nations CAT/C/66/D/757/2016*

# 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. 757/2016**, ***

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| *Communication submitted by:* | M.J.S. (represented by counsel, G.I. Dijkman) |
| *Alleged victim:* | The complainant |
| *State party:* | The Netherlands |
| *Date of complaint:* | 10 February 2016 (initial submission) |
| *Document references:* | Decision taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on 13 July 2016 (not issued in document form) |
| *Date of present decision:* | 3 May 2019 |
| *Subject matter:* | Risk of torture in the event of deportation to country of origin (non-refoulement); prevention of torture |
| *Substantive issue:* | Deportation of the complainant from the Netherlands to Côte d'Ivoire |
| *Procedural issues:* | None |
| *Articles of the Convention:* | 3 and 22 |

1.1 The complainant is M.J.S., a national of Côte d'Ivoire born in the Netherlands on 31 January 2015. She claims that her deportation to Côte d'Ivoire by the Netherlands would violate her rights under article 3 of the Convention. The complainant is represented by counsel.

1.2 On 13 July 2016, 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 not to expel the complainant while the communication was being considered by the Committee.

### The facts as presented by the complainant

2.1 The complainant's mother unsuccessfully sought asylum in the Netherlands after she was forced to marry a man in Côte d'Ivoire without her consent. When the complainant was

* Reissued for technical reasons on 5 July 2019.

** Adopted by the Committee at its sixty-sixth session (23 April–17 May 2019).

*** The following members of the Committee participated in the examination of the communication: Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Honghong Zhang.

born, the mother applied for asylum on her daughter's behalf since the baby risked being circumcised if returned to Côte d'Ivoire. The complainant's mother had herself been circumcised when she was 19 years old, after her parents had died. Her parents were against female genital mutilation but the rest of the family forced her to undergo circumcision. The complainant's mother belongs to the Malinke tribe, from the north-west of the country. The complainant argues that a very high percentage of women and girls in her tribe undergo female genital mutilation and that her mother cannot protect her from being circumcised.

2.2 The complainant's mother applied for asylum on behalf of her daughter on 24 April 2015. On 3 June 2015, the Immigration and Naturalization Service of the Ministry of Justice and Security denied the application. According to the Service, even though female genital mutilation is still practiced in Côte d'Ivoire, it is usually the mother who decides whether her daughter will undergo the procedure and Ivorian domestic law protects the rights of women. The fact that the complainant's mother was circumcised only after the death of her parents shows that it is the parents who decide on the matter. The Service stated that the mother of the complainant was a grown woman, that her extended family would not have much influence on her decision and that she would be able to protect her minor daughter from female genital mutilation. Furthermore, it stated that the complainant and her mother could resettle in another area of Côte d'Ivoire, thus avoiding social pressure.

2.3 On 9 June 2015, the complainant appealed to The Hague District Court. The Court rejected her appeal on 29 June 2015, stating that the complainant's mother could resettle in another area of the country of origin as she had no contact with her extended family in her home town. On 2 July 2015, the complainant appealed to the Council of State, which rejected her appeal on 21 August 2015.

2.4 The complainant notes that even though female genital mutilation is officially prohibited in Côte d'Ivoire, it is still deeply rooted in sociocultural norms and very few perpetrators are brought to justice. She refers to a guidance note in which it is stated that for various reasons, State authorities may be unwilling or unable to interfere with such traditional customs and practice that are so deeply entrenched and widely followed. Thus, while female genital mutilation may have been legally designated as a crime, in practice it is not treated as such, with the result that there is little or no law enforcement to stop it.[1] In the same document, it is also stated that female genital mutilation can be considered a child-specific form of persecution as it disproportionately affects the girl child. In keeping with the established practice, when assessing a child's claim for asylum (that is, where the child is the principal applicant), it is important to bear in mind that actions or threats that might not qualify as persecution in the case of an adult may do so in the case of a child. In most cases, however, the potential or actual harm caused by female genital mutilation is so serious that it must be considered to qualify as persecution, regardless of the age of the claimant.[2]

2.5 The complainant submits that her mother suffers from severe psychiatric disorders, but that the Immigration and Naturalization Service has not taken into account the medical statements provided by her mother. She was diagnosed with post-traumatic stress disorder and hears voices that instruct her to commit suicide. She has already tried to commit suicide by drinking chlorhexidine and, a day later, Sterillium. When faced with difficulty, she tends to go numb and just cries and sleeps. She has a lot of trouble coping and raising her three children[3] alone and she gets a lot of help from volunteers from the local non-governmental organization (NGO) and church.

2.6 The complainant also argues that the Netherlands has not taken into account the social aspects of the asylum request. The social context plays an important role in the case because the complainant's mother is single with three young children, all born in the Netherlands out of wedlock, and has no social network in Côte d'Ivoire. It would therefore be impossible for her mother to resettle in another part of her country of origin and start a new life. Moreover, should she need to stay with members of her extended family, she

[1] Office of the United Nations High Commissioner for Refugees, *Guidance Note on Refugee Claims Relating to Female Genital Mutilation* (Geneva, May 2009), para. 20.

[2] Ibid., para. 9.

[3] The complainant has two older brothers (ages unknown).

would not be able to protect the complainant from female genital mutilation due to the strong social pressure that exists in that society.

2.7 The complainant refers to article 4 of Directive 2011/95/EU of the European Parliament and of the Council of the European Union, in which it is stated that the fact that an applicant has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, is a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm.[4] Even though this is not strictly applicable to the complainant, she notes that her mother could not protect herself, even as an adult, from female genital mutilation and that the same could happen to her because she depends on her mother. She also refers to the case *F.B. v. Netherlands*, in which the Committee found that the State party had failed to take into due consideration the complainant's allegations regarding the events she had experienced in Guinea, her condition as a single woman in Guinean society and the specific capacity of the authorities in Guinea to provide her with protection so as to guarantee her physical and mental integrity.[5]

**The complaint**

3. The complainant claims that her expulsion to Côte d'Ivoire would put her at risk of female genital mutilation, in violation of article 3 of the Convention.

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

4.1 On 13 January 2017, the State party submitted its observations on the merits of the complaint. The State party provided its own statement of facts, and noted that the complainant's mother first entered the Netherlands on 4 March 2011 and submitted an application for asylum on 18 April 2011. On 23 May 2012, her application for temporary asylum was denied. On 15 June 2012, the complainant's mother submitted an application for a judicial review of the decision. On 21 December 2012, The Hague District Court declared the application for review unfounded. On 24 January 2013, the mother lodged an appeal of that judgment with the Administrative Jurisdiction Division of the Council of State. On 17 June 2013, the appeal was declared unfounded. During her pregnancies, the complainant's mother was permitted to stay on the basis of section 64 of the Aliens Act 2000.[6] On 22 January 2016, the complainant's mother gave notice that she wished to submit a request to stay on the basis of section 64 of the Aliens Act 2000; however, she never followed up on the request, so the procedure was terminated.

4.2 On 24 April 2015, the complainant's mother lodged an application for asylum on behalf of her daughter. By decision of 3 June 2015, the application was denied. It was also decided not to defer the complainant's departure pursuant to section 64 of the Aliens Act 2000. On an unspecified date, an application for judicial review of the contested decision was lodged on behalf of the complainant and interim relief was requested. On 25 June 2015, The Hague District Court declared the application unfounded and also denied the application for interim relief. By judgment of 25 August 2015, the Administrative Jurisdiction Division declared the subsequent appeal manifestly unfounded.

4.3 The State party notes that the complainant's mother was born in 1990 and lived in the city of Ferentella in Côte d'Ivoire until 2008. She belongs to the Malinke ethnic group. She attended secondary school between 2003 and 2008. Because her parents were opposed to female genital mutilation, they did not subject her to it. After her parents died, in January 2009 the complainant's mother moved in with her aunt who lived in the city of Gagnoa. However, her aunt could not afford to feed another family member, so she married the complainant's mother off to a wealthy man in exchange for money. The complainant's

[4] Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

[5] See *F.B. v. Netherlands* (CAT/C/56/D/613/2014), para. 8.8.

[6] Section 64 reads: "An alien shall not be expelled as long as his health or that of any of the members of his family would make it inadvisable for him to travel."

mother rejected the forced marriage and reported it to the police. The police returned her to her aunt, who then locked the complainant's mother in her house. It was then, at the age of 19, that she underwent female genital mutilation. In December 2009, the complainant's mother was again married against her will to a wealthy man. She was raped by him on multiple occasions. In January 2010, she started a relationship with another man and became pregnant. Suspecting that the child was not his, her husband demanded that the complainant's mother have an abortion, as did her aunt. The complainant's mother tried to go to the police and twice fled to her aunt's house, but both times she was returned to her husband, who at one point locked her in his house for three months. After that, she had an abortion. In addition, however, her husband did not believe that she had undergone a proper female genital mutilation and demanded a more extensive procedure (re-cutting). In response to that demand, the complainant's mother fled, leaving Côte d'Ivoire on 27 February 2011. The State party notes that the complainant's identity, ethnicity, nationality and origin are deemed credible. However, the grounds on which she based her asylum application were not found to be credible.

4.4 The State party notes that the United Nations Children's Fund (UNICEF) classifies Côte d'Ivoire as a moderately low-prevalence country, in other words as a country where a relatively small percentage of women (26–50 per cent) have undergone female genital mutilation.[7] In 1998, the procedure became illegal in Côte d'Ivoire.[8] Despite this statutory ban, female genital mutilation is still common in the country. Around 36 per cent of women and girls have undergone the procedure, especially in the north (88 per cent), north-west (88 per cent), west (73 per cent), centre-north (59 per cent) and north-east (53 per cent). Female genital mutilation is practiced by many of the country's ethnic groups. It is most common in Muslim communities (such as the Malinke community) and among groups practicing traditional (animist) faiths. The practice is based on long-standing beliefs and traditions and is considered a chiefly cultural phenomenon. It is more prevalent among women and girls who have not had access to education. In general, daughters of women with a higher level of education are less likely to undergo female genital mutilation.

4.5 According to the State party, girls returning to Côte d'Ivoire risk being subjected to female genital mutilation if they belong to a family that goes back to its village. Even families who live in Abidjan but return to their village of origin during the school holidays may be advised by members of the local community to have their daughters cut during the summer holidays. According to NGOs working to combat female genital mutilation, it is not common for Ivorians to seek protection from the police or the gendarmerie. If parents do not want their daughters cut, the family usually leaves the village before female genital mutilation can take place. To compensate for the lack of protection from the authorities, a number of NGOs have set up local committees in various communities. These committees alert NGO staff if a girl is at risk of female genital mutilation. Family members, the girl herself or a third party can also contact one of the locally active NGOs directly to ask for protection. An NGO representative then mediates and/or calls on the local authorities to intervene. Mediation often involves providing people with reading material about the damaging effects of female genital mutilation and making them aware that the practice is illegal. The State party submits that in 2014 there were 454 committees and NGOs working with the Ministry of Solidarity, the Family, Women and Children of Côte d'Ivoire to monitor and combat female genital mutilation as part of their primary objective to promote women's and children's rights. Because the NGOs are located in different regions, the entire country is covered. The Ministry of Solidarity, the Family, Women and Children has declared that it will carry out an awareness campaign, to be accompanied by sanctions against those practicing female genital mutilation, and that between January and September 2013 the Government of Côte d'Ivoire intervened in initiation ceremonies on 10 occasions, including in Touba, the region where the complainant's mother is from.

[7] UNICEF, *Female Genital Mutilation/Cutting: A Statistical Overview and Exploration of the Dynamics of Change* (New York, July 2013), p. 27.

[8] See Law No. 98/757 of 23 December 1998. The penalty for performing female genital mutilation is up to five years in prison and fines up to the equivalent of 3,000 euros. For medical personnel performing female genital mutilation, the penalties are doubled.

4.6 The State party submits that, in terms of policy, its assessment of asylum applications by Ivorian nationals is based partly on the special country report on the situation in Côte d'Ivoire issued by the Ministry of Foreign Affairs in September 2011.[9] Subsequent country reports have not led to a change in policy. The Immigration and Naturalization Service uses statements made by asylum seekers to determine whether they are eligible for a temporary asylum residence permit because they face a real risk of being subjected to female genital mutilation. The Service also takes into consideration general information about female genital mutilation in the country of origin. If there is a well-founded fear of female genital mutilation, the Service issues a temporary asylum residence permit exclusively to girls, including those who were born in the Netherlands, who run a real risk of being subjected to female genital mutilation upon return to their country of origin and to their parent or parents.

4.7 The State party maintains that, although the human rights situation for women and girls in Côte d'Ivoire gives cause for concern, the information made available by various public sources indicates that there is no reason to conclude that the expulsion of women and girls to that country would, in itself, involve a risk of treatment contrary to article 3 of the Convention. The Government notes that the complainant's interpretation of the country report issued by the Ministry of Foreign Affairs – that 88 per cent of Malinke women in Côte d'Ivoire have undergone female genital mutilation – is incorrect, or in any case requires qualification. That percentage refers to women living in specific regions, i.e. in northern and north-western Côte d'Ivoire. The Government also notes that it cannot be concluded, on the basis of the country report, that the prevalence of female genital mutilation among Malinke women and the social pressure they are under to undergo the procedure would apply to the complainant and her mother should they go to live in a region where it is less common. The State party further notes that the complainant's grandparents were able to protect her mother during their lifetime despite the fact that they were living in a region where female genital mutilation was prevalent. There is also no evidence that the complainant's family was subjected to social exclusion because her mother had not undergone such mutilation.

4.8 In the Government's view, the complainant would be able to return with her mother and brothers to the area where her mother spent most of her life and with which she is familiar. The risk of female genital mutilation being carried out will mainly depend on the attitude of the family and, most particularly, that of her mother. Her mother is opposed to female genital mutilation and may be expected to do all she can to protect her daughter and simply not give in to pressure from others.[10] The State party does not see why the complainant's mother would not be able to protect her daughter from female genital mutilation, like her parents protected her. The State party considers that the fact that she is a single parent does not alter this, as she is more highly educated that the average Ivorian woman, she was able to avoid her own re-cutting, leave her family and community and flee to Europe. In the Netherlands she learned Dutch by reading books.

4.9 The State party further submits that the complainant's mother is free to go and live in a part of Côte d'Ivoire where female genital mutilation is less common, especially since contact with family members in Côte d'Ivoire has been severed. It does not consider this to be a relocation in the sense of article 8 of Directive 2011/95/EU since the complainant does not run a real risk of treatment contrary to article 3 of the Convention in her mother's area of origin. The Government believes that, even if social pressure to undergo female genital

[9] Available from www.rijksoverheid.nl/documenten/ambtsberichten/2011/10/03/ivoorkust-2011-09-29-thematisch-ambtsbericht-politieke-ontwikkelingen-en-veiligheidssituatie.

[10] European Court of Human Rights, *R.B.A.B. and Others v. the Netherlands* (application No. 7211/06), judgment of 7 June 2016. In paragraph 56 of the judgment, the Court found, in relation to another African State where female genital mutilation is practiced, that in general there is no real risk of a girl or woman being subjected to female genital mutilation at the instigation of persons who are not family members. In the case of an unmarried woman, the risk of such mutilation being practised will depend on the attitude of her family, most particularly her parents but also her extended family, and, if a woman's parents are opposed to female genital mutilation, they will normally be in a position to ensure that she does not marry a man who (or whose family) is in favour of it, regardless of the attitude of other relatives of the woman concerned.

mutilation were too great in the area of origin, the complainant's mother could be expected to go and live elsewhere in Côte d'Ivoire since in large parts of the country such mutilation is not a standard practice. In those areas there is little pressure from the community to make a woman undergo female genital mutilation.

4.10 The State party notes that the present case differs from *F.B. v. Netherlands*, which was raised by the complainant, because F.B. was from Guinea, which has a higher prevalence of female genital mutilation than Côte d'Ivoire, and she had already been subjected to such mutilation with severe consequences to her physical and psychological integrity. However, following reconstructive surgery, she feared being forced to undergo female genital mutilation a second time. Those specific circumstances are absent in the present case.

4.11 With regard to the complainant's mother's psychological problems, the State party notes that these problems were not brought to light until the judicial review proceedings. During the second interview, the complainant's mother said that she had provided all the information that could be relevant to the assessment of the application. During the review phase, The Hague District Court was presented with a printout of her entire medical records, which showed that she had apparently attempted suicide after receiving the decision denying her daughter's asylum application. There is no evidence in her medical records that the complainant's mother had ever been treated for psychological issues prior to receiving notification of the Government's intention to deny her daughter's asylum application, or that she was currently receiving treatment. At no point did she cite this in her own asylum procedure either.

4.12 The Government further notes that although the complainant's mother's medical records were submitted, no assessment was made or explanation given by a medical practitioner. According to the complainant's mother, she suffers from chronic depression or post-traumatic stress disorder, for which she is being treated. However, the Government is unable to accept this claim on the basis of the medical records alone. In the Government's view, merely submitting medical records is not sufficient for satisfactorily establishing that she is unable to return to Côte d'Ivoire or to protect her daughter from female genital mutilation due to psychological problems. In the Government's opinion, the complainant's mother has provided insufficient evidence to demonstrate that she is incapable of looking after her children and protecting her daughter from female genital mutilation. In so far as the complainant's mother argues that she and her children would find themselves in a deplorable position if they were expelled to Côte d'Ivoire because she suffers from post-traumatic stress disorder and they would lack a social network, the Government refers to the case *S.J. v. Belgium* and submits that the circumstances on which the present communication is based do not fall within the scope of article 3 of the Convention.[11]

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

5.1 On 3 July 2018, the complainant submitted her comments to the State party's observations on the merits of the complaint. With regard to her mother not submitting a request to stay under section 64 of the Aliens Act 2000 in her own asylum case, the complainant submits that by the time the request had to be made her own complaint had already been submitted to the Committee and the request for interim measures had been granted, so there was no need for her mother to follow up on the procedure. She notes that, since the State party had already agreed not to send her family back to Côte d'Ivoire, her mother's application would not have been taken into consideration by the authorities of the Netherlands.

5.2 With regard to the situation of women in Côte d'Ivoire and female genital mutilation, the complainant notes that the Government and NGOs primarily work on promoting women's and children's rights. Moreover, the fact that the Government has intervened in only 10 initiation rites over 10 months shows that it has not made the fight against female genital mutilation a priority.

[11] European Court of Human Rights, *S.J. v. Belgium* (application No. 70055/10), judgment of 27 February 2014.

5.3 The complainant notes that the State party recognizes that many women are not sufficiently independent to avoid female genital mutilation. The best example is the complainant's mother, who was not able to avoid the procedure even at the age of 19. This shows that the risk of being subjected to female genital mutilation comes not just from parents but also from the extended family. The complainant further notes that the State party does not provide any information on possible ways to make a living, in particular on opportunities for making a living in Abidjan, in cases where parents decide to leave their home town to protect their daughter from becoming a victim of female genital mutilation and especially in cases where it is not two parents who are involved but a single mother, like in the complainant's case. The fact that the complainant's mother also suffers from mental problems makes it even more difficult for her to care for and protect her daughter from female genital mutilation.

5.4 The complainant rejects the State party's assessment that the present case is different from *F.B. v. Netherlands*. She notes that several relevant factors need to be taken into consideration in assessing the risks of female genital mutilation, including the status of a single mother and how well the authorities can protect a woman in a country where such mutilation is prevalent.

5.5 As to the complainant's mother's suicide attempts, the complainant submits that the State party was well aware of them, as one of them happened at the application centre right after the negative decision was handed down in her asylum case. She considers that she has met the burden of proof by providing to the court all the medical information regarding her mother's health. The State party, however, has refused to take this information into consideration.

**Further observations by the State party**

6.1 On 25 October 2018, the State party submitted its further observations on the merits of the complaint. The State party notes that since the Government submitted its observations in 2017, the NGO 28 Too Many has published a report that provides an overview of the most recent data, developments and information concerning the practice and prevalence of female genital mutilation in Côte d'Ivoire, disaggregated by region, age and ethnic group.[12] The report cites a 2013 demographic study carried out by the National Institute of Statistics of Côte d'Ivoire and ICF International.[13] The report, together with the study and the report's other underlying sources, provides the following information that is relevant to the present case:

(a) The prevalence of female genital mutilation in women aged 15–49 is 38.2 per cent. The north-west (79.5 per cent of women aged 15–49) and north (73.7 per cent) of Côte d'Ivoire have the highest prevalence of female genital mutilation, while the centre (12.2 per cent) and centre-east (15.5 per cent) have the lowest prevalence. Women aged 15–49 who live in rural areas are slightly more likely to undergo female genital mutilation (38.8 per cent) than women who live in urban areas (37.7 per cent). Prevalence in the capital Abidjan is 36.1 per cent;

(b) Female genital mutilation is practised in Côte d'Ivoire by people of all religions and ethnic groups. The ethnic group with the highest prevalence among women aged 15–49 is the Mandé, which in the north record a prevalence of 66.8 per cent and in the south a prevalence of 51 per cent;

(c) Breaking down the most recent data by age group shows that the prevalence for women aged 45–49 is 46.9 per cent, while for the age group 15–19 it is 31.3 per cent;

(d) Despite the fact that a small proportion of women may be cut after the age of 15, this data demonstrates a trend towards lower prevalence among younger women.

[12] 28 Too Many, "Côte d'Ivoire: the law and FGM" (August 2018).

[13] National Institute of Statistics and ICF International, *Enquête Démographique et de Santé et à Indicateurs Multiples de Côte d'Ivoire 2011–2012* (Calverton, Maryland, 2012).

6.2 The State party refers to the above-mentioned demographic study, according to which the prevalence among girls under 15 years of age is even lower, as only one out of nine girls (11 per cent) has undergone female genital mutilation.[14] It also refers to a study published by the French Office for the Protection of Refugees and Stateless Persons, in which it is written that the power of money has inverted certain traditional hierarchies and that the economic power of the younger generations thus represents a strong opposition to the authority of their elders.[15] The successful prosecutions by the Government of Côte d'Ivoire in some female genital mutilation cases in 2017 may also have played a role in the decline.[16] The State party concludes that although the prevalence of female genital mutilation is high among the ethnic group to which the mother of the complainant belongs,[17] the percentage of women who have undergone such mutilation is in fact falling. Moreover, the majority of the population is opposed to continuing this tradition. The report published by 28 Too Many shows that girls and women who say they fear being subjected to female genital mutilation have public opinion on their side: 81.5 per cent of women and 82.1 per cent of men aged 15–49 believe that female genital mutilation should be stopped.[18]

6.3 With regard to the complainant's assertion regarding her mother's decision not to submit an application to defer departure on medical grounds on the basis of section 64 of the Aliens Act 2000, the State party notes that if an alien who does not hold a residence permit submits an application on the basis of section 64 of the Aliens Act 2000, the application is taken into consideration and assessed on its merits. In connection with such an application, a medical adviser at the Immigration and Naturalization Service assesses, on the basis of the medical information about the state of health of the alien or one of his or her family members provided by the attending physician, whether it would be inadvisable for him or her to travel, in which case expulsion should not take place. If the right conditions are met, the application is granted and the alien acquires right of residence. An alien who has held right of residence on those grounds for one year can then submit an application for a regular residence permit subject to restrictions on temporary humanitarian grounds and the need for medical treatment. The State party submits that the complainant's mother has repeatedly been asked to provide medical information to support the complaints she has submitted, which shows that the Government takes medical issues seriously and that it was and remains prepared to assess the merits of an application. However, the complainant's mother has failed to respond to the Government's request and has not presented the medical information requested.

6.4 With regard to the complainant's mother's suicide attempts, the State party notes that it is aware of two such attempts, both of which took place in the summer of 2015. On the first occasion, the mother swallowed the contents of a bottle of disinfectant hand gel and on the second occasion she took three sleeping pills. On both occasions medical assistance was called for and on both occasions an ambulance left after the paramedics had examined the mother at the scene. Since 2015, no further incidents have been reported.

**Issues and proceedings before the Committee**

*Consideration of admissibility*

7.1 Before considering any complaint submitted in a communication, the Committee must decide whether the communication 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.

[14] Ibid., p. 333.

[15] France, Office for the Protection of Refugees and Stateless Persons, "Les mutilations génitales féminines (MGF) en Côte d'Ivoire" (21 February 2017), p. 9.

[16] United States of America, Department of State, "Country reports on human rights practices for 2017 – Côte d'Ivoire", p. 18.

[17] The Malinke are one of the ethnic groups belonging to the larger linguistic family of the Mandé peoples.

[18] 28 Too Many, "Côte d'Ivoire: the law and FGM" (August 2018).

7.2 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. 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 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.

8.2 In the present case, the issue before the Committee is whether the forced removal of the complainant to Côte d'Ivoire 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. This includes torture or other ill-treatment at the hands of non-State entities, including groups that are unlawfully exercising actions that inflict severe pain or suffering for purposes prohibited by the Convention, and over which the receiving State has no or only partial de facto control, or whose acts it is unable to prevent or whose impunity it is unable to counter.[19]

8.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Côte d'Ivoire. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.[20]

8.4 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 Committee will assess "substantial grounds" and consider the risk of torture as foreseeable, personal, present and real when the existence of credible facts relating to the risk by itself, at the time of its decision, would affect the rights of the complainant under the Convention in case of his or her deportation (para. 45).

8.5 The Committee notes the complainant's claim that her expulsion to Côte d'Ivoire will put her at risk of female genital mutilation, in violation of article 3 of the Convention. In support of her claim, the complainant points out that her mother belongs to the Malinke tribe from the north-west of the country and that a very high percentage of women of that tribe have undergone female genital mutilation; that even though female genital mutilation is officially prohibited in Côte d'Ivoire, it is still practiced and very few perpetrators are brought to justice; and that her mother was circumcised by her extended family when she was 19 years old, after her parents had died. The complainant also argues that her mother will not be able to protect her from female genital mutilation because she suffers from severe psychiatric disorders and does not have the kind of social network in Côte d'Ivoire that would allow her to live independently with three children.

[19] See the Committee's general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, para. 30.

[20] See *M.S. v. Denmark* (CAT/C/55/D/571/2013), para. 7.3.

8.6 The Committee also takes note of the State party's arguments that the complainant would be able to return with her mother and brothers to the area where her mother spent most of her life and with which she is familiar because the risk of female genital mutilation being carried out depends mainly on the attitude of the family and, most particularly, on the attitude of the mother, and that the complainant's mother could be expected to go and live elsewhere in Côte d'Ivoire since in large parts of the country female genital mutilation is disapproved of and is not practiced widely. The State party considers that the complainant's mother can live independently and care for her children; the fact that she is a single parent does not alter this, as she is more highly educated than the average Ivorian woman and she was able to avoid her own re-cutting, leave her family and community and flee to Europe. The Committee also notes the State party's argument that the complainant's mother never raised her psychological issues in her own asylum application, that she has not submitted her medical information under section 64 of the Aliens Act 2000 even though she was repeatedly asked to provide that information by the State party and that her medical issues and suicide attempts took place only after the complainant's asylum application was denied.

8.7 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.[21] The Committee also recalls that the so-called "internal flight alternative", as suggested by the State party, is not always a reliable or effective remedy.[22]

8.8 While assessing whether "substantial grounds" exist for believing that a person would be in danger of being subjected to torture if deported,[23] the Committee observes that it is not disputed that the complainant belongs to the Malinke ethnic group, as does her mother, who lived in Côte d'Ivoire until 2011 and who was herself made to undergo female genital mutilation at the age of 19, nor is it disputed that, despite legislation punishing female genital mutilation, it is practised throughout Côte d'Ivoire by various ethnic groups, and its prevalence is especially high among certain ethnic groups in the north and north-west of the country. The complainant submits that the State party's authorities have failed to take duly into account the risk she would face if removed to Côte d'Ivoire, since the local authorities there will not be able to provide her with protection. She supports her claim by referring to the fact that there have been only 10 instances when the authorities were able to intervene in initiation rites over 10 months in 2013. The Committee also notes that according to the 2013 and 2017 reports submitted by the State party, the percentage of women who have undergone female genital mutilation in Côte d'Ivoire is falling and that over 80 per cent of the population is opposed to continuing that tradition. For example, if the prevalence of female genital mutilation among women aged 45–49 is 46.9 per cent, among 15–19-year-olds it has fallen to 31.3 per cent and among girls under 15 years of age it is 11 per cent. The State party also refers to the successful prosecution by the Government of Côte d'Ivoire in some female genital mutilation cases in 2017. Against that background, the Committee observes that the complainant has failed to show that someone in her family specifically will pressure her mother, who is clearly against female genital mutilation, into practicing the procedure, which will put her at real and personal risk of being subjected to such mutilation.

9. The Committee refers to paragraph 38 of its general comment No. 4, according to which the burden of presenting an arguable case lies with the complainant. In the Committee's opinion, the complainant has not discharged that burden of proof in the present case.

10. The Committee therefore concludes that the complainant has not adduced sufficient grounds for it to believe that she would run a real, foreseeable, personal and present risk of being subjected to torture upon returning to Côte d'Ivoire.

[21] See *R.O. v. Sweden* (CAT/C/59/D/644/2014), para. 8.7, and *F.B. v. Netherlands*, 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.

[22] See the Committee's general comment No. 4, para. 47.

[23] Ibid., para. 48.

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