



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

**Advance unedited version**

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**Committee against Torture**

**Decision adopted by the Committee under article 22 of the  
Convention, concerning communication No. 824/2017\*\*\***

<i>Communication submitted by:</i>	D.B. (represented by counsel, Joëlla Bravo Mougan)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Kingdom of the Netherlands
<i>Date of complaint:</i>	17 May 2017 (initial submission)
<i>Date of present decision</i>	19 November 2021
<i>Subject matter:</i>	Deportation of the complainant from the Kingdom of the Netherlands to Guinea
<i>Procedural issues:</i>	
<i>Substantive issue:</i>	Non-refoulement; risk of torture upon return to country of origin
<i>Article of the Convention:</i>	3

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\* 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.



1.1 The complainant is D.B., a Guinean national born in 1991, whose asylum application was rejected in the Netherlands and she is subject to a deportation order to Guinea. She claims that her deportation would violate article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“the Convention”). The State party made the declaration under article 22 of the Convention on 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, requested the State party not to expel the complainant while the communication 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.

### **The facts as presented 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 man. This relationship was never accepted by her family who then tried to force her to marry another man, 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, based on 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 ground that her fear was not found credible.

2.4 One year after her arrival in the State party, the applicant filed a criminal complaint for trafficking in human beings. 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 (FGM) upon arrival in Guinea. The complainant indicated that, before and during her first asylum application, she always felt that she had undergone FGM. 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 FGM, 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. She explains that her circumcision has always been assumed by her family and the fact that she has not undergone FGM has gone unnoticed because her mother expected the circumcision to take place while the complainant was living with her uncle in Conakry, and her uncle thought she was already 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 FGM until the time of her departure when she was 20 years old, 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

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

complainant should have informed the authorities earlier that she had not been circumcised. The regional court found that girls whose mothers do not want them to be circumcised are not at risk of FGM 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 this judgment to the Administrative Jurisdiction Division. On 9 December 2016, the Division considered the appeal unfounded, on the ground 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.

### The complaint

3.1 The complainant submits that if she is returned to Guinea, she will run a real risk of undergoing FGM, 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 FGM 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 a 2013 UNICEF report<sup>2</sup> shows that 96% of women in Guinea undergo FGM and that being a Peul woman means that the risk of undergoing FGM is even higher, as 99% of Peul girls and women aged 15-49 have undergone FGM in Guinea.

3.4 With regard to the risk of FGM beyond the age of nineteen, the complainant points out that the Committee has already indicated in its decision No. 613/2014, *F.B. vs. the Netherlands*, adopted on 15 December 2015,<sup>3</sup> that even though only 1.2% of FGM is performed on women over the age of nineteen, this does not mean that the risk faced by these women is less, as the vast majority of FGM happen when the victims are under the age of 14 and not yet married.

3.5 The complainant further argues that FGM has not in fact decreased in the country and that the Guinean authorities cannot or will not protect her from FGM. She claims that the lack of protection lies mainly in the fact that FGM is practised by society. The complainant refers to an OHCHR report of April 2016<sup>4</sup> confirming that, despite the efforts of the Guinean authorities to strengthen protection against FGM, the percentage of circumcision remains the same. Finally, the complainant considers that the argument implying that her mother can protect her from FGM is neither fair nor valid, as it does not apply to adult women.

<sup>2</sup> UNICEF: “*Female Genital Mutilation/Cutting: A statistical overview and exploration of the dynamics of change*”, July 2013. Available at [http://data.unicef.org/wp-content/uploads/2015/12/FGMC\\_Lo\\_res\\_Final\\_26.pdf](http://data.unicef.org/wp-content/uploads/2015/12/FGMC_Lo_res_Final_26.pdf)

<sup>3</sup> Decision no. 613/2014, *F.B. vs. the Netherlands*, adopted on 15 December 2015 (CAT/C/56/D/613/2014). The decision indicates “In the present case, the Committee recognizes the efforts made by the State party's authorities to verify the complainant's accounts by carrying out an investigation in Guinea within the first asylum proceedings. Although the complainant has failed to provide elements that refute this investigation's outcome, (...) that concluded that the information provided by her about her and her family' circumstances in Guinea was incorrect, the Committee considers that such inconsistencies are not of a nature as to undermine the reality of the prevalence of female genital mutilation and the fact that, owing to the ineffectiveness of the relevant laws, including the impunity of the perpetrators, victims of female genital mutilation in Guinea do not have access to an effective remedy and to appropriate protection by the authorities”.

<sup>4</sup> OHCHR: “*Report on human rights and the practice of female genital mutilation and excision in Guinea*”, April 2016. Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19869&LangID=E>

3.6 The complainant states that she will be forced to undergo FGM on a later age, even at marriage or maternity, and will suffer social exclusion if she does not undergo circumcision.<sup>5</sup>

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

4.1 The State party submitted its observations on the merits only, by note verbale of 16 November 2017.

4.2 In its observations, the State party finds it remarkable that the complainant only sought protection from the threat of FGM 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 FGM. Indeed, given the invasive nature of FGM 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 FGM since a Dutch general practitioner has established it. However, it doubts her claim that she would be forced to undergo FGM on her return to Guinea due to family pressure. First, the State party does not accept the complainant's statement that her family members always assumed she had already undergone the procedure. Second, the alleged pressure does not tie with the fact that her family did not make her undergo FGM, despite it being customary among her ethnic group. Thirdly, the complainant did not specifically and personally substantiate her claim that her family would put pressure on her to undergo FGM – a practice the family has refrained from so 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 FGM, 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 FGM. In addition, as it has not been argued plausibly that the complainant's parents and other family members wanted to have her undergo FGM, 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 the Minister of Foreign Affairs' country report<sup>6</sup> shows that only 1.2 percent of FGM 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>7</sup>. Various sources also report that women and girls who have not undergone FGM are able to live normal lives in Guinea<sup>8</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 chef de quartier, 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 FGM if she entered into a new relationship or remarried, as proved by the fact that she was not put under any pressure by her ex-husband or her ex-boyfriend.

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<sup>5</sup> The extensive report *Socio-Anthropological Analysis of the Determinants of the Perpetuation of FGM in Guinea*, by Alpha Amadou Bano Barry (Sociologist), August 2015 (only available in French).

<sup>6</sup> Minister of Foreign Affairs country report, 20 June 2014.

<sup>7</sup> See also: UN Children's Fund (UNICEF), *Child Notice Guinea*, 2015.

<sup>8</sup> Commissariat Général aux Réfugiés et aux Apatrides (CGRA), (Bruxelles): "Guinée – Les mutilations génitales féminines, 6 May 2014".

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

5.1 On 17 January 2019, the complainant submitted her comments to 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 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 sixteen, when she returned to her uncle in Conakry. For this reason, it is very plausible that the uncle assumed she had already been circumcised when she arrived at the age of sixteen, and that the mother expected the circumcision to take 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 FGM, and this fact has been found credible. Secondly, although it is in the first place the mother who takes responsibility for the circumcision, excision is a matter of the family and the community, and FGM 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 that the author is a Peul woman from Guinea who has not undergone FGM in a country where the prevalence of FGM is 96%. These facts constitute substantial grounds for her to be subjected to FGM. The complainant refers to the Committee's decision of 15 December 2015<sup>9</sup> in which it found that "although [...] the information provided by [the complainant] about her and her family's circumstances in Guinea was incorrect, the Committee considers that such inconsistencies are not of a nature as to undermine the reality of the prevalence of female genital mutilation and the fact that, owing to the ineffectiveness of the relevant laws, including the impunity of the perpetrators, victims of female genital mutilation in Guinea do not have access to an effective remedy and to appropriate protection by the authorities."<sup>10</sup>

5.4 The complainant adds that she will not be able to find protection from FGM 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 FGM.

5.5 The complainant concludes that the undisputed facts that: (a) she is a woman of the Peul ethnic group in Guinea where the prevalence of FGM amounts to 96 per cent, (b) she has never undergone any form of FGM, and (c) she is unmarried and economically dependent, are sufficient to conclude that there are substantial grounds for believing that she will be subjected to treatment contrary to article 3 of the Convention.

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

6.1 By note verbale of 23 May 2019, the State party provided additional submissions reiterating most of its previous observations.

6.2 The State party points out that it is not disputed that FGM is still a widespread practice in Guinea and remains deeply rooted in society. The State party in its submission refers to the US Department of State Country report published on 13 March 2019, mentioning data collected by UNICEF, according to which 96 percent of Guinean women and girls aged 15-49 have undergone the procedure, which is still practiced 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 FGM and consider it to be an essential step in the initiation rites that give the circumcised

<sup>9</sup> CAT decision adopted on 15 December 2015, *F.B. vs. The Netherlands* (CAT/C/56/D/613/2014).

<sup>10</sup> See Committee's concluding observations on Guinea (CAT/C/GIN/CO/1), para. 17. See also Committee on the Elimination of Discrimination against Women, concluding observations on the combined seventh and eighth periodic reports of Guinea (CEDAW/C/GIN/CO/7-8), paras. 28 and 30.

girl the status of an honoured person, the State party does not see how they would have failed to ensure that the complainant was 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 FGM 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 FGM, 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 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.

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

8.2 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 commensurate with a risk of torture upon return to Guinea. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of 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>11</sup>

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 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

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<sup>11</sup> See, for example, *S.K. and others v. Sweden* (CAT/C/54/D/550/2013), para. 7.3.

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>12</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 and instead has the power, by virtue of article 22 (4) of the Convention, of free assessment of the facts based upon the full set of circumstances in every 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 FGM 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 FGM, given the invasive nature of FGM 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 FGM on her return to Guinea due to family and societal pressure as: (a) the State party did not find credible that her family members always assumed she had already undergone the procedure; (b) the alleged pressure to undergo FGM does not reconcile with the fact that her family did not force her to undergo circumcision during the 20 years that she lived in Guinea; (c) the complainant's family did not ascertain whether she had been circumcised before she married; and (d) she has never been under any pressure from her ethnic group or the wider community to undergo FGM. The Committee also notes the State party's argument that only 1.2 per cent of FGM 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>13</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>14</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>15</sup>

8.10 The Committee notes that the complainant refers to the case no. 613/2014, *F.B. vs. The Netherlands*, adopted on 15 December 2015, 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 considers that such inconsistencies are not of a nature as to undermine the reality of the prevalence of female genital mutilation [...] and the fact that [...] victims of female genital mutilation in Guinea do not have access to [...] appropriate protection by the authorities.<sup>16</sup> The Committee considers, however, that

<sup>12</sup> General comment No. 4, para. 11.

<sup>13</sup> CAT decision adopted on 15 December 2015, *F.B. vs. The Netherlands* (CAT/C/56/D/613/2014).

<sup>14</sup> 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.

<sup>15</sup> See the Committee's general comment No. 4, para. 47.

<sup>16</sup> See Committee's concluding observations on Guinea (CAT/C/GIN/CO/1), para. 17. See also Committee on the Elimination of Discrimination against Women, concluding observations on the combined seventh and eighth periodic reports of Guinea (CEDAW/C/GIN/CO/7-8), paras. 28 and 30.

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 FGM 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: (a) the applicant states on the one hand that she thought she had been circumcised, and on the other hand she stated 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>17</sup>; (b) she states that her family is in favour of circumcision but has not succeeded in circumcising her during the 20 years she lived in Guinea and during which she has already been married once; (c) she explains that she could be forced by family members to undergo FGM, while stating that her family members think she is already circumcised; and (d) she only expressed her fears of being subjected to FGM 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 the 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 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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<sup>17</sup> Interview of 9 March 2016 with the Immigration and Naturalization Department of the Ministry of Justice.