



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

Distr.: General  
25 July 2019  
English  
Original: French

## Committee against Torture

### Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 829/2017\*, \*\*, \*\*\*

<i>Communication submitted by:</i>	C.F.T. (represented by counsel, Danielle Mamin of Coordination Asile-Migration Riviera)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	5 June 2017
<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 22 June 2017 (not issued in document form)
<i>Date of decision:</i>	6 May 2019
<i>Subject matter:</i>	Deportation to Benin
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Risk of torture if deported (non-refoulement)
<i>Articles of the Convention:</i>	3 and 22

1.1 The complainant is C.F.T., a Beninese national born in 1979. He claims that his deportation to Benin would constitute a violation of article 3 of the Convention by Switzerland. The complainant is represented by counsel, Danielle Mamin of Coordination Asile-Migration Riviera.

1.2 On 22 June 2017, the Committee, acting through its Rapporteur on new complaints and interim measures, decided not to accede to the complainant's request for interim measures.

1.3 On 12 April 2018, on the basis of additional information from the counsel, dated 9 September 2017, the Committee against Torture, acting through its Rapporteur on new complaints and interim measures, requested the State party to refrain from deporting the complainant to Benin while his complaint was being considered by the Committee. On 19 April 2018, the State party informed the Committee that the complainant's deportation to Benin had been suspended pending the Committee's decision on the complaint.

\* 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: Essadia Belmir, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Honghong Zhang.

\*\*\* The text of the dissenting opinion of Abdelwahab Hani is appended to the present document.



**The facts as submitted by the complainant**

2.1 In 2008, the complainant worked as a storekeeper and courier for the businessman Patrice Talon, his wife's uncle and the current President of the Republic of Benin. On 23 October 2012, an international arrest warrant was issued against Patrice Talon, who was suspected of conspiring with certain individuals in his entourage to poison the then Head of State, Thomas Boni Yayi. As Mr. Talon's courier, the complainant was suspected of having been involved in the case.

2.2 In October 2012, three masked men in civilian clothes, members of the Beninese secret service, entered the complainant's home late at night. The complainant was taken by car to the "Petit Palais", a detention facility in Cotonou, where he was imprisoned for two weeks, naked, in a dark room with only one small slit window high up. He was tortured and interrogated there several times a day to force him to admit that he had conspired with Patrice Talon in the assassination attempt on the Beninese President. He was punched in the face, hit with a machine gun in the back and once on the right brow bone, causing him to lose consciousness. He was forced to do knee bends with weights on his shoulders, while being hit on the knees with a whip that had sharp blades on the end. He still has scars and continues to suffer pain as a result of this. The complainant also claims that he was raped every night by a masked soldier whom he was unable to identify. On one occasion, his torturers injured his penis with pliers, causing an infection. The complainant still bears the scars.

2.3 The complainant was then asked to pay a ransom of around US\$ 4,000 on the orders of the Central Police Superintendent of Cotonou in charge of the poisoning case. His jailers accompanied him to his home so that he could give them the money, ordered him to say nothing about the events that had taken place at the Petit Palais and threatened to kill him or members of his family if he left the country.

2.4 Having returned to his job as a storekeeper, the complainant regularly received calls telling him not to recount his ordeal. In February 2013, when the complainant was on his way home from work, his wife called him, crying, because men in civilian clothes had come to the house and taken away some documents and his computer. At that point, the complainant fled from Cotonou to Mederos Condi, where his mother had a house. The complainant's wife and child went to live with his mother-in-law.

2.5 The complainant stayed with his mother for about eight months. On 8 October 2013, his wife contacted him to say that she had received an anonymous call warning her that people were about to come for him because Patrice Talon had supposedly financed the Red Wednesday campaign, a protest movement against constitutional reform, through him. He then left Mederos Condi and went to another village, where he stayed while arranging his escape.

2.6 On 12 October 2013, the complainant arrived in Switzerland and lodged an asylum application in Vallorbe that same day. By decision of 2 April 2014, the Federal Office for Migration rejected the complainant's asylum application and ordered his deportation from Switzerland. On 24 February 2015, the Federal Supreme Court dismissed the complainant's appeal and upheld the deportation order. On 19 October 2015, the complainant lodged a request for reconsideration with the State Secretariat for Migration, which had replaced the Federal Office for Migration. The State Secretariat for Migration handed down an unfavourable decision on 22 March 2016, arguing that the complainant had submitted his allegations of sexual violence too late. On 22 April 2016, the complainant filed an appeal against this decision with the Federal Administrative Court. His appeal was dismissed on 1 June 2016.

2.7 The complainant suffers from post-traumatic stress disorder and is going through a moderate to severe depression. He also suffers from sleep disorders and has frequent nightmares, in which he relives the attacks. Furthermore, he has pain flashbacks that cause his memories of the torture to resurface. Currently, he receives psychotherapy on a weekly basis and takes strong psychotropic medication; both of these treatments are necessary in order to maintain his physical integrity. According to the medical certificate of 30 May 2017, he is deemed to be at a high risk of self-harm. The complainant is also being monitored by the University Medical Polyclinic in Lausanne. He claims that he is afraid of

being recognized by the soldiers who tortured him, whose faces he could not see because they were wearing masks. He believes that they are still on active service either in Cotonou or elsewhere in the country.

2.8 On 9 September 2017, the complainant presented a medical certificate dated 19 July 2017, showing that he had been hospitalized for a second time at the psychiatric unit of Vevey clinic between 22 June and 13 July 2017, because he had been at risk of committing suicide. He was diagnosed with recurrent and severe depressive disorder with psychotic symptoms and post-traumatic stress disorder as a victim of torture. The medical report concluded that the complainant currently needs treatment in a secure environment, failing which he would be at significant risk of self-harm. If deported to Benin, there is a danger that he will suffer aggravated traumatic symptoms with a high risk of suicide and that he will not have access to appropriate care. In addition, a medical certificate dated 22 August 2017 from Appartenances, an association that provides psychotherapy for migrants in Lausanne, states that the complainant has been monitored since 20 May 2014; that he suffers from a severe depressive disorder with psychotic symptoms; that close supervision is necessary to avoid any risk of self-harm; and that he takes the following medication: sertraline, Seroquel, quetiapine, zolpidem and Nexium MUPS.

2.9 The complainant claims that he needs very regular check-ups with his psychiatrists and psychologists (weekly psychotherapeutic treatment) and strong psychotropic medication to alleviate his daily suffering, which he would not be able to find in Benin. Furthermore, if he was there, he would live in constant fear of being recognized by his masked torturers. He believes that the situation in Benin is somewhat turbulent under the new President and that his safety cannot be assured.

### **The complaint**

3. The complainant claims that his deportation to Benin would constitute a violation by Switzerland of his rights under article 3 of the Convention, insofar as he would be at risk of torture by the Beninese authorities. He risks being disappeared or killed for having reported the events. He also claims that his deportation would result in a serious and lasting deterioration of his state of health owing to the unavailability of appropriate psychiatric care in his country of origin.

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

4.1 The State party submitted its observations on the merits of the complaint in a note verbale dated 24 November 2017.

4.2 The State party first recalls the facts and the proceedings brought before the Swiss authorities and courts. It then analyses the case in the light of the various elements that must be taken into account to ascertain the existence of a personal, present and serious danger of the complainant being subjected to torture upon deportation to his country of origin: (a) evidence of a consistent pattern of gross, flagrant or mass human rights violations in the country of origin; (b) any claims of torture or ill-treatment in the recent past and independent evidence to support those claims; (c) the political activity of the author within or outside the country of origin; (d) any evidence as to the credibility of the author; and (e) any factual inconsistencies in the author's claims.<sup>1</sup>

4.3 The existence of a consistent pattern of gross, flagrant or mass violations of human rights does not, in itself, constitute sufficient grounds for determining that a particular person will be subjected to torture upon return to his or her country of origin. The Committee must establish whether the complainant is personally at risk of being subjected to torture in the country to which he or she is to be returned.<sup>2</sup> Additional grounds must be adduced in order for the risk of torture to qualify as foreseeable, real and personal for the

<sup>1</sup> General comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22, para. 8.

<sup>2</sup> *K.N. v. Switzerland* (CAT/C/20/D/94/1997), para. 10.2.

purposes of article 3 (1) of the Convention.<sup>3</sup> The risk of torture must be assessed on grounds that go beyond mere theory or suspicion.<sup>4</sup>

4.4 The State party considers Benin to be a stable parliamentary democracy that is free from persecution. If acts of torture or ill-treatment are perpetrated there, such acts can be described as occasional, as noted in a report published by the United States Department of State in 2016. Moreover, the general human rights situation is not sufficient in itself to determine whether the complainant's deportation is compatible with article 3 of the Convention.

4.5 The State party notes that the complainant claimed to both the national authorities and the Committee that he had been tortured during his detention. The State party also notes that, in its decision of 22 March 2016, the State Secretariat for Migration found that his allegations of sexual violence had been submitted late. In this regard, the complainant refers to a medical certificate dated 30 March 2015, which had not been brought to the attention of the Swiss authorities; the certificate states that victims of torture cannot recount their experiences unless an atmosphere of security and trust has been created and that this can be very difficult to achieve in the presence of persons linked to the authorities. According to that document, the explanation that the complainant gave to the doctor at the Medical Treatment of Violence Unit of Lausanne University Hospital, with whom he had established a relationship of trust, was consistent with the signs of injuries to his private parts. It is clear from the Federal Administrative Court judgment of 1 June 2016 that the complainant's multiple sequelae were not contested. The Court found, however, that the two medical certificates of 15 July and 28 September 2015 submitted to the national authorities did not establish the origin of those sequelae and therefore did not confirm the complainant's claims that they were the result of injuries inflicted on him by persons in the pay of former President Thomas Boni Yayi's Government on account of his indirect involvement in the attempted coup attributed to the current President of Benin. The Court thus concluded that the certificates did not contain any fresh evidence that might influence its assessment of the credibility of the complainant's account as far as the risk of persecution was concerned.

4.6 The State party adds that the complainant did not profess, either to the national authorities or to the Committee, to have taken part in political activities.

4.7 The State party notes that Patrice Talon, whom the complainant claims is linked to the activities for which he was arrested, is the current President of the Republic of Benin. It also notes that, according to the complainant, Patrice Talon is his wife's uncle. Furthermore, Patrice Talon and all those involved in the attempted coup were pardoned by the former President of Benin in May 2014. Thus the political environment has fundamentally changed since the complainant left the country.

4.8 The complainant has never explained why he still fears that he would be persecuted if he were to return to Benin and that he would not be protected by his country's authorities. Moreover, it appears from the case file that the complainant's wife, Patrice Talon's niece, has never been subjected to any harassment, despite the accusations allegedly levelled at her husband.

4.9 For the most part the State party draws attention to the decisions of the national authorities, which note the absence of evidence as well as numerous contradictions and implausible claims in the complainant's account of the persecution and ill-treatment that he allegedly suffered in his country.

4.10 With regard to the complainant's mental health, the State party takes note of the medical certificates provided but contests the claim that the complainant would not have access to appropriate psychiatric care in his country. The national authorities thoroughly examined the complainant's state of health. As the Federal Administrative Court noted, there are several specialist centres in Cotonou where the complainant could receive appropriate care.

---

<sup>3</sup> *Ibid.*, para. 10.5; and *J.U.A. v. Switzerland* (CAT/C/21/D/100/1997), paras. 6.3 and 6.5.

<sup>4</sup> General comment No. 1, para. 6.

4.11 Consequently, the State party considers that the complainant has not established a credible claim that he faces a real and serious risk of being subjected to treatment that is contrary to the Convention in his country of origin.

4.12 On 19 April 2018, the State party submitted further observations with regard to the additional medical documents presented by the complainant (medical certificates dated 19 July 2017 and 22 August 2017, a faxed notification of discharge dated 13 July 2017 and a medical report dated 21 July 2017). These documents describe changes in the complainant's state of health, but they do not contain any new information on the possibility of his obtaining medical care in Benin.

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

5.1 The complainant submitted his comments on the State party's observations on 30 May 2018.

5.2 The State party's main arguments against the complainant concern the implausibility and inconsistency of his testimony, the lack of evidence of torture and of the risks that he would face if he returned to Benin, and his claim that it would be impossible to obtain medical care in Benin.

5.3 The complainant claims that he fled Benin after having been repeatedly raped, tortured and threatened with death. He was interrogated by two women while he was in a serious psychological state, paralysed by fear and trauma. The complainant notes that, given the sexual nature of the violence suffered, it is possible that an interrogation conducted by a person of the opposite sex might have led to inaccuracies and inconsistencies in his testimony.

5.4 The request for reconsideration of 19 October 2015 responds to the grounds given for the refusal of asylum by the State Secretariat for Migration. In it, the Service d'Aide Juridique aux Exilé-e-s (Legal Aid Service for Exiles) describes in detail the events, accusations and threats that prompted the complainant to flee Benin for Togo, and then for Switzerland, when his wife was pregnant and he was already the father of a little boy.

5.5 It was only after one and a half years in Switzerland that the complainant was finally able to admit to his psychiatrist, whom he saw once a week, that he had been raped and that he had suffered injuries to his penis caused by pliers, as well as other forms of torture. The State Secretariat for Migration did not take sufficient account of the evidence submitted, especially the Nant Foundation's medical report, which concedes that victims of sexual abuse may need time before they are able to talk about the abuse and that they may suffer from memory problems and give an inconsistent account of the events.<sup>5</sup>

5.6 The complainant claims that all the medical certificates he submitted concerning his physical and psychological condition (from the Nant Foundation, the University Medical Polyclinic in Lausanne, the Appartenances association and the Medical Treatment of Violence Unit at Lausanne University Hospital), accompanied by photos of the scars on his body, including his private parts, are indicative of injuries and traumas that persist to this day. These sequelae are consistent with the complainant's account of torture and ill-treatment. Although it is impossible to prove that they were caused by acts of that kind, it seems fair to give due weight to the congruence of the facts presented, and inconceivable that the complainant could have mutilated himself in this way.

5.7 The complainant was raped and then threatened with death if he revealed what had happened, by masked soldiers, which explains his fear of returning to Benin. In addition, the complainant claims that, after his departure, his wife received telephone threats and a police summons. It is therefore highly likely that he will be arrested if he returns to Benin, especially since the individuals who raped and tortured him are still in active service and know that the complainant revealed the facts after he fled.

<sup>5</sup> See Swiss Refugee Council (OSAR), *Manuel de la procédure d'asile et de renvoi* (Manual on asylum and removal procedures), 2nd ed. (Bern, Haupt Verlag, 2009), chap. XII, point 5.3: "Difficultés spécifiques en matière de vraisemblance" (Particular problems with regard to plausibility).

5.8 With regard to medical care in Benin, the complainant refers to reports<sup>6</sup> on the problematic health-care situation in the country and points to the shortcomings of the mental health system in particular. Moreover, the therapeutic rapport that the complainant has built with his psychiatrist will make it harder to develop another relationship with one in Benin. The complainant also fears that the comments he makes in a medical context might be used by the police. This fear even extends to his family relationships, as he has not yet dared to speak clearly to his wife about what he has been through.

5.9 As for his family ties with Patrice Talon, the fact that the complainant is married to the niece of the current President does not necessarily mean that they were close at the time of the events, before he was elected. The complainant's departure could be interpreted as a lack of loyalty to his country and therefore to his wife's uncle, putting him at risk of further abuses.

5.10 The complainant hoped to find protection in the State party and thus be relieved of the anxieties and nightmares that led to his hospitalization in 2017. He is now receiving therapy, which appears to be the only way for him to overcome these problems, although his suffering persists. There have been multiple physical consequences of the two weeks of imprisonment and torture that he endured. For example, he was forced to lift weights several times a day while being struck with rifle butts and cut with sharp blades, which has left him with severe knee and back pain that significantly impairs his mobility and requires him to undergo intensive physiotherapy sessions.

5.11 In conclusion, all these elements lead the complainant to maintain that his deportation to Benin would constitute a violation of article 3 of the Convention.

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

### *Consideration of admissibility*

6.1 Before considering any claims contained in a complaint, 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 complaint from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. It notes that, in this case, the State party does not contest the exhaustion of all available domestic remedies by the complainant or the admissibility of the complaint.

6.3 As the Committee finds no further obstacles to admissibility, it declares the complaint admissible under article 3 of the Convention and proceeds with 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 removal of the complainant to Benin would constitute a violation of the State party's obligation under article 3 (1) of the Convention not to expel or return 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 or other cruel, inhuman or degrading treatment or punishment. The Committee recalls that the

---

<sup>6</sup> See World Health Organization, *Mental Health Atlas 2011, Country Profile: Benin*. Available at [www.who.int/mental\\_health/evidence/atlas/profiles/ben\\_mh\\_profile.pdf?ua=1](http://www.who.int/mental_health/evidence/atlas/profiles/ben_mh_profile.pdf?ua=1). See also Canada, Immigration and Refugee Board of Canada, *Benin: Treatment of people with mental illness, including schizophrenics, by society and the authorities (2009-May 2013)*, 10 June 2013, BEN104449.F. Available at: <https://irb-cisr.gc.ca/en/country-information/rir/Pages/index.aspx?doc=454613&pls=1>.

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 In assessing whether there are substantial grounds for believing that the alleged victim would be in danger of being subjected to torture, the Committee recalls that, under article 3 (2) of the Convention, States parties must take into account all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the country to which he or she would be returned. In this case, however, the Committee must determine whether the complainant runs a personal risk of being subjected to torture if he is returned to Benin. The existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that the complainant 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.<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 The Committee recalls its general comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, according to which the non-refoulement obligation exists whenever there are “substantial grounds” for believing that the person concerned would be in danger of being subjected to torture in a State to which he or she is facing deportation, either as an individual or as a member of a group that may be at risk of being tortured in the State of destination. The Committee’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>10</sup> Indications of personal risk may include, but are not limited to, 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>11</sup> The Committee recalls that the burden of proof is upon the complainant, who must present an arguable case, that is, submit circumstantiated 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 complaint is based.<sup>12</sup> The Committee also recalls that it gives considerable weight to findings of fact made by organs of the State party concerned; however, it is not bound by such findings 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>13</sup>

7.5 In the present case, the Committee notes the complainant’s argument that, if he were to be returned to Benin, he would be at risk of being arrested and recognized by the masked persons (soldiers) who tortured and raped him during his detention because of his indirect involvement in the attempted coup attributed to the current President of Benin, and who, according to the complainant, are still on active service. The Committee also notes that the complainant fears he would not have access to appropriate psychiatric care in his country of origin.

7.6 The Committee recalls that it must ascertain whether the complainant currently runs a risk of being subjected to torture if returned to Benin. It notes that the complainant had ample opportunity to provide supporting evidence and more details about his 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 he would be at risk of being subjected to torture or cruel, inhuman or degrading treatment

<sup>7</sup> General comment No. 2 (2007) on the implementation of article 2 by States parties, para. 5.

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

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

<sup>10</sup> General comment No. 4, para. 11.

<sup>11</sup> *Ibid.*, para. 45.

<sup>12</sup> *Ibid.*, para. 38.

<sup>13</sup> *Ibid.*, para. 50.

upon his return. The Committee notes the State party's finding that acts of torture or ill-treatment can be described as an occasional occurrence in Benin. It also notes the State party's conclusion that there is nothing to indicate the existence of substantial grounds for believing that the complainant would face a specific and personal risk of being tortured on his return to Benin, in view of the new political context in the country and in particular the complainant's family ties to Patrice Talon, who was pardoned in 2014 and has been the President of the country since 6 April 2016. The Committee observes that the political context in Benin has changed since the alleged facts and that the complainant does not profess to have taken part in political activities.

7.7 The Committee notes that the State party contests the complainant's allegations of sexual violence, finding them to be implausible and to have been reported late. In this regard, the Committee notes that the complainant's sequelae were not contested by the national authorities but that the Federal Administrative Court held that the medical certificates dated 15 July and 28 September 2015 did not establish the origin of those sequelae and therefore did not confirm the allegations of torture, and found that the certificates did not contain any fresh evidence that might influence its assessment of the credibility of the complainant's account as far as the risk of persecution was concerned.

7.8 The Committee also notes the complainant's arguments that: (a) he would not be able to receive appropriate psychiatric treatment in his country of origin; (b) the therapeutic rapport he has established with his current psychiatrist could make it harder to develop another relationship with one in Benin; and (c) the comments he makes in a medical context in Benin might be used by the police. The Committee observes, however, that the complainant's state of health has been thoroughly examined by the Swiss authorities, that he is no longer hospitalized and that treatment can be provided in Benin, as there are several specialist centres in Cotonou where the complainant could receive appropriate care.

7.9. In the light of the above, the Committee considers that the information submitted by the complainant is insufficient to substantiate his claim that he would be at a foreseeable, real and personal risk of torture if he were returned to Benin.

8. The Committee, acting under article 22 (7) of the Convention, concludes that the return of the complainant to Benin would not constitute a breach of article 3 of the Convention by the State party.



## Annex

### Individual opinion (dissenting) of Abdelwahab Hani

1. The complainant suffers from post-traumatic stress disorder. Currently, he receives psychotherapy on a weekly basis and takes strong psychotropic medication; both of these treatments are necessary in order to maintain his physical integrity. The medical certificates that he submitted to support his case show that he is at a high risk of self-harm. He has been diagnosed with recurrent and severe depressive disorder with psychotic symptoms, as a victim of torture. He currently needs treatment in a secure environment, failing which he would be at significant risk of self-harm. The complainant states that, if he were to return to Benin, he would live in constant fear of being recognized by his torturers. He explains the political implications of his case and notes that the situation in Benin is somewhat turbulent under the new President and that his safety cannot be assured.

2. The State party considers that the allegations of sexual violence were submitted late, in that they were submitted one and a half years after the complainant's arrival in Switzerland, without taking into account the fact that victims of sexual abuse may need time before they are able to talk about the abuse and that they may suffer from memory problems and give an inconsistent account of the events.<sup>1</sup>

3. At the same time, the State party acknowledges that such experiences cannot be recounted unless an atmosphere of security and trust has been created and that this can be very difficult to achieve in the presence of persons linked to the authorities. It also acknowledges that the explanation given by the complainant to the doctor at the Medical Treatment of Violence Unit of Lausanne University Hospital, with whom he had established a relationship of trust, was consistent with the signs of injuries to his private parts. However, the Federal Administrative Court held that the two medical certificates dated 15 July and 28 September 2015 did not establish the origin of these sequelae and therefore did not confirm the complainant's allegations. The authorities of the State party do not explain why they did not order an adversarial medical examination in order to determine the origin of the sequelae. According to the Committee's jurisprudence, an examination by a qualified medical doctor, including as requested by the complainant to prove the torture that the complainant has suffered, should always be ensured, regardless of the authorities' assessment of the credibility of the allegation,<sup>2</sup> so that the authorities deciding on a given case are able to complete the assessment of the risk of torture on the basis of the result of the medical and psychological examinations, beyond any reasonable doubt.<sup>3</sup>

4. The State party also draws attention to numerous contradictions and implausible claims in the complainant's account of the persecution and ill-treatment that he allegedly suffered in his country. Yet complete accuracy can seldom be expected from victims of torture.<sup>4</sup>

5. The State party provides no explanation in response to the complainant's allegations that he was interrogated by two women while he was in a serious psychological state, paralysed by fear and trauma, having been repeatedly raped. It is possible that an interrogation conducted by a person of the opposite sex might have led to inaccuracies and

<sup>1</sup> See Swiss Refugee Council (OSAR), *Manuel de la procédure d'asile et de renvoi* (Manual on asylum and removal procedures), 2nd ed. (Bern, Haupt Verlag, 2009), chap. XII, point 5.3: "Difficultés spécifiques en matière de vraisemblance" (Particular problems with regard to plausibility).

<sup>2</sup> *M.B. et al. v. Denmark* (CAT/C/59/D/634/2014), para. 9.8.

<sup>3</sup> General comment No. 4, para. 41.

<sup>4</sup> *Ibid.*, para. 42; *Alan v. Switzerland* (CAT/C/16/D/21/1995), para. 11.3; *Kisoki v. Sweden* (CAT/C/16/D/41/1996), para. 9.3; *Haydin v. Sweden* (CAT/C/21/D/101/1997), paras. 6.6–6.7; *C.T. and K.M. v. Sweden* (CAT/C/37/D/279/2005), para. 7.6; *E.K.W. v. Finland* (CAT/C/54/D/490/2012), para. 9.6; and *M.B. et al. v. Denmark*, para. 9.6.

inconsistencies in his testimony. This is a question of a fundamental safeguard for the complainant, who claims to have been the victim of sexual torture and repeated rapes.

6. As for the assessment of the general situation in the country to which the complainant would be returned, although the State party considers that Benin is a stable parliamentary democracy that is free from persecution and that, if acts of torture or ill-treatment are perpetrated there, such acts can be described as occasional, this assessment does not exclude the possibility of persecution occurring in specific circumstances, as the Committee has already pointed out.<sup>5</sup> Likewise, 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>6</sup>

7. The purpose of the absolute principle of non-refoulement is to prevent irreparable harm, not to redress such harm once it has occurred.<sup>7</sup>

8. The Committee should have applied the principle of the benefit of the doubt, as a preventive measure against irreparable harm.<sup>8</sup> Given the specific circumstances of the present complaint, the Committee should have concluded that the return of the complainant to Benin would constitute a breach of article 3 of the Convention.

---

<sup>5</sup> CAT/C/BEN/CO/3, paras. 34–35.

<sup>6</sup> *Kalinichenko v. Morocco*, para. 15.3.

<sup>7</sup> *Alan v. Switzerland*, para. 11.5.

<sup>8</sup> General comment No. 4, para. 51.