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Committee against Torture**Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 1077/2021*^{*} ****

<i>Communication submitted by:</i>	C and D
<i>Alleged victims:</i>	The complainants and their two minor children, E and F
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	4 June 2021 (initial submission)
<i>Document reference:</i>	Decision taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on 9 June 2021 (not issued in document form)
<i>Date of present decision:</i>	21 April 2023
<i>Subject matter:</i>	Deportation to Colombia with an alleged risk of persecution by non-state actors
<i>Procedural issues:</i>	Admissibility – manifestly ill-founded; admissibility – <i>ratione materiae</i>
<i>Substantive issues:</i>	Cruel, inhuman or degrading treatment or punishment; non-refoulement; torture; refugee
<i>Articles of the Convention:</i>	3 and 16

1.1 The complainants are C and D, nationals of Colombia born in 1971 and 1979, respectively. They submit the complaint in their own names and on behalf of their children, E and F, nationals of Colombia born in 2006 and 2011, respectively. The complainants claim that by removing them and their children to Colombia, the State party would violate their rights under articles 3 and 16 of the Convention. The State party has made the declaration pursuant to article 22 (1) of the Convention, effective from 1 January 1987. The complainants are represented by counsel.

1.2 On 9 June 2021, the Committee, acting through its Rapporteur on new complaints and interim measures, issued a request for interim measures under rule 114 of the Committee's rules of procedure, requesting the State party to suspend the removal of the complainants to

* Adopted by the Committee at its seventy-sixth session (17 April-12 May 2023).

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

Colombia while the communication was pending before the Committee. On 15 June 2021, the State party informed the Committee that it had complied with the request.

Facts as submitted by the complainants

2.1 C is a freelance director and producer of audiovisual content (a documentary journalist). In 2019, he decided to produce, as a personal investigative project, an independent documentary about dissidents who refused to lay down their arms after a peace agreement was signed in 2016 between the Government of Colombia and the Revolutionary Armed Forces of Colombia (FARC). The documentary is unfinished. In August 2019, former FARC leader Iván Márquez announced that he was taking up arms again.

2.2 Also in 2019, a private company subcontracted to C a contract that it had signed with the Agency for Reincorporation and Normalization, the state body that is responsible for reintegrating former FARC combatants. Specifically, the private company commissioned C to produce 9 documentaries. The documentaries would focus on successful initiatives of the Agency through which former FARC combatants were developing their own reintegration projects in designated areas allocated to them by the Government.¹ The 9 documentaries were filmed over two weeks, between 30 September and 12 October 2019. One of the documentaries described a rehabilitation project that was run by one of the sons of the founder of FARC.

2.3 On 2 October 2019, C and his team were working on the documentary and were preparing to return to an area designated by the Government for a reintegration project. They were then informed by an employee of the Agency for Reincorporation and Normalization that the army major who was responsible for guaranteeing security in the designated area had warned the Agency of a possible kidnapping risk in that area and had advised C and his team to not go there. C and his team then changed their itinerary and travelled to the municipality of Uribe. After leaving his hotel in Uribe, C was approached by two men who introduced themselves as FARC dissidents and who threatened to kidnap C unless he deleted all of the audiovisual material that he had recorded. The two men told C that they knew where his wife and children lived. They ordered C not to file a criminal complaint and not to tell anyone about their conversation. C stated that he would delete his recordings (but did not do so). C returned to Bogotá as planned in order to continue working on his assignment. He only informed D about that incident on October 26 and did not report it to the police. To ensure their safety, D and the couple's children left their residence in a different town and went to stay with C in his apartment in Bogotá. Their apartment in Bogotá was located in a gated complex with a 24-hour concierge service and security cameras; thus, the family felt relatively safe there.

2.4 On 27 November 2019, when C was in Bogotá, he was approached outside of his office by one of the men who had threatened him on 2 October. The man stated that he knew that C's deadline to submit his reports was 6 December 2019. The man stated that he expected C to do whatever was necessary to ensure that his work was not submitted.

2.5 C submitted his work by the deadline of 6 December 2019. Thereafter, he and his family seldom left their apartment and travelled by taxi when doing so. On 24 December 2019, the Agency for Reincorporation and Normalization uploaded one of the documentaries that C had been working on to its social media channel. The documentaries would not be viewed favourably by FARC dissidents because they depict reintegrated ex-combatants in a positive light and suggest that the Government of Colombia will support ex-combatants in the process of reintegration into civilian life. On 24 December 2019, C received a call on his mobile phone from an unknown number. He answered the call but hung up as soon as he realized that the caller was the same individual who had threatened him on 2 October and 27 November. C did not answer the four calls that followed.

2.6 Anticipating another phone call, C downloaded an application that enabled him to record telephone conversations. At 5:29 p.m. on 26 December 2019, he answered and recorded a phone call. The caller stated that C and his family had been located and that FARC dissidents were nearby. The caller also stated that because C had not done what had been

¹ Those areas are formally referred to as Espacios Territoriales de Capacitación y Reincorporación.

asked of him, he had become a military target (a term used by FARC dissidents to refer to individuals that they intended to assassinate.) The caller accused C of making documentaries in collaboration with a dishonest regime that did not keep its promises.

2.7 On 29 December 2019, the complainants filed a complaint at a police station located at the Bogotá airport.² They had waited to file the complaint until they were about to leave Colombia because they feared for their safety. They stayed with a relative during the next few days.

2.8 On 4 January 2020, the complainants left Colombia and flew to Spain. On 5 January 2020, they arrived in Switzerland. Since then, they have not received further threats. C's complaint in Colombia has been discontinued.³

2.9 On 23 January 2020, one of the 9 documentaries that C had made for the Agency for Reincorporation and Normalization was posted online. On 2 February 2020, another documentary was broadcast on a widely viewed news programme on the Caracol channel. The 7 other documentaries were uploaded to the Agency's social media channel on 4 June 2020.

2.10 On 6 January 2020, the complainants filed an asylum application in Switzerland. On 27 and 28 February 2020, the State Secretariat for Migration interviewed the complainants in the presence of their counsel. On 15 May 2020, the State Secretariat for Migration rejected their asylum application. It reasoned, *inter alia*, that no concrete steps had been taken against the complainants despite the alleged threats. The behaviour of the FARC dissidents did not indicate an intention to cause serious harm to C. Presuming that C's allegations were true, the dissidents would not have merely renewed their threats after having informed C that he was a target for assassination, that the dissidents knew his place of residence and knew that his deadline to submit his report to his employer was 6 December 2019. The State Secretariat for Migration also noted that the complainants had not requested protection from the authorities in Colombia and had not taken any specific precautionary measures to safeguard their personal security, because they had remained in their apartment until 28 December 2019, when they attempted to leave Colombia, had not informed their employers about the threats, and had only filed a formal complaint at the airport a few days before leaving Colombia.

2.11 On 18 June 2020, the complainants appealed against the decision of the State Secretariat for Migration. On 13 July 2020, the Federal Administrative Court rejected the complainants' request for legal aid during the appeal procedure. The Court considered that after a *prima facie* review of the case, the appeal was bound to fail. On 11 March 2021, the Court, acting through a single judge, rejected the appeal in a summary decision on the basis that it was manifestly unfounded.

2.12 The decision of the Federal Administrative Court on the complainants' asylum claim is final. The complainants state that they have not submitted the same matter to another instance of investigation or settlement.

Complaint

3.1 The complainants submit that the State party would violate their rights and the rights of their children under articles 3 and 16 of the Convention by removing them to Colombia, where they would face irreparable harm from FARC dissidents who threatened to kill C. He risks being killed by the dissidents because of his work as a producer of documentaries that promote the goal of the Government of Colombia to reintegrate former FARC combatants. The dissidents indicated that C's family was also at risk. C's fear of reprisals by FARC dissidents is well-founded, given his high-risk profession as a journalist and the fact that his work ran counter to the interests of the dissidents. The killing in 2019 of the filmmaker Mauricio Lezama Rengifo, who was making a documentary on social violence, was widely attributed to FARC dissidents.⁴

² The complainants provided a copy of the complaint, dated 29 December 2019 at 14:30.

³ The complainants provided a copy of a virtual record, dated 25 April 2021, from the online database of the Oral Adversarial System of Criminal Justice in Colombia (Sistema penal oral acusatorio).

⁴ BBC News, "Colombia filmmaker shot dead reporting documentary on violence," 10 May 2019.

3.2 Because their criminal complaint was discontinued after they filed it, the complainants believe that Colombia is unable or unwilling to protect them and cannot guarantee their personal security. The State Secretariat for Migration relied on outdated information regarding the risk of persecution by the FARC. The response of the Government of Colombia to violence by FARC dissidents has been inadequate, both in terms of prevention and protection. With respect to journalists, a report of the Office of the U.N. High Commissioner for Human Rights cited statistics according to which 113 threats, 360 acts of aggression, and two murders were reported to have been committed against journalists in Colombia in 2019.⁵ The Government of Colombia is not in a position to effectively protect individuals who require protection in the exercise of their professional activity, even though a system of protection specifically aimed at such citizens was established by decree on 26 December 2011.

3.3 The State party also violated the complainants' procedural rights under article 3 of the Convention when the Federal Administrative Court denied their request for legal aid after determining that their appeal was bound to fail. In order to have their appeal assessed by the Court on the merits, the complainants were forced to bear the cost of the appeal, despite their demonstrated indigence. To pay the filing fee, the complainants had to borrow money from their pro bono representative, CARITAS Geneva.

3.4 In addition, the Federal Administrative Court did not effectively review the merits of the complainants' claims. Although the complainants had established a prima facie case for review, the Court did not apply rigorous scrutiny to their appeal and rejected it in a summary decision.

State party's observations on admissibility and the merits

4.1 In its observations dated 1 February 2022, the State party recalls the facts set forth by the complainants during domestic proceedings and explains the rationale of the Federal Administrative Court in its decision on the complainants' appeal. On 11 March 2021, the Court considered that the appeal was manifestly unfounded including for the following reasons: the dissidents did not react until 24 December 2019, following the submission by C of the news reports to his employer by the deadline of 6 December 2019; the complainants had been unable to plausibly explain the latter delay (their theory that the dissidents had perhaps been on vacation was not plausible); the complainants had not, despite their perception that the threats were very serious, immediately changed their place of residence; long intervals had elapsed between the different threats against C; C had been able to register his criminal complaint on 29 December 2019 without encountering any hurdles; the Government of Colombia did not tolerate the activities of FARC dissidents but was combatting them; and adequate protection infrastructure existed in Colombia for the complainants.

4.2 The communication is inadmissible because the complainants' claims are not within the scope of the Convention. At no point during domestic proceedings did the complainants invoke a risk of torture or ill-treatment within the meaning of articles 1 or 16 of the Convention, nor have they produced evidence to indicate such risks. Instead, the complainants claim a risk of a violation of their right to life. Furthermore, the complainants do not allege to face a risk of torture by agents acting with the express or tacit consent of the public authorities of Colombia, as required by articles 1 and 16 of the Convention. The Committee has stated in its jurisprudence that claims relating to the removal of an individual who risks experiencing pain or suffering by a non-governmental entity – without the express or tacit consent of the Government – lie outside the scope of article 3 of the Convention.⁶

4.3 The complainants do not dispute that the Government of Colombia has taken measures to protect individuals who are exposed to risks, including witnesses and journalists. The Government of Colombia has demonstrated its ability to protect the complainants. According to the complainants, on 2 October 2019, an army official warned C and his co-workers of a

⁵ A/HRC/43/3Add.3, para. 23.

⁶ *G.R.B. v. Sweden* (CAT/C/20/D/83/1997), para. 6.5; *K.N. v. Switzerland* (CAT/C/20/D/94/1997), para. 10.4; *R.S. et al. v. Switzerland* (CAT/C/53/D/482/2011), para. 8.4.

risk of kidnapping and advised them to change their plans. That measure indicates a willingness by the authorities to reduce risk through preventive action.

4.4 Furthermore, the authorities of Colombia are in no way responsible for the fact that C only reported the threats on 29 December 2019. At the same time, no adverse inference should be drawn from the fact that his complaint was discontinued after his departure from the country as there no longer was a concrete risk after their departure, and the complainants were no longer readily available to the authorities of Colombia from that moment on.

4.5 Under article 79 (2) of the Code of Criminal Procedure of Colombia, the complainants may resume the criminal proceedings at any time. Moreover, if the complainants considered that the police were not acting upon their complaint, nothing prevented them from filing a complaint to higher authorities, which they did not do.

4.6 Finally, the Government of Colombia does not allow FARC dissidents to freely operate but works to combat them. None of the complainants' claims indicate that the authorities in Colombia tolerated or encouraged attacks on the complainants or failed to respect their obligations under article 2 of the Convention. While the complainants refer to reports issued by non-governmental organisations in relation to their claim that the Government of Colombia cannot adequately protect them, those claims are of a general nature and do not directly pertain to their circumstances. Because the complainants are not exposed to a risk of ill-treatment or torture within the meaning of articles 1 or 16 of the Convention, the communication is inadmissible under articles 22 (2) and rule 113 (c) of the Committee's rules of procedure.⁷ 4.7 The communication is also without merit. The State party rejects the complainants' assertion that the domestic authorities did not thoroughly review their claims. The State Secretariat for Migration issued a reasoned decision on the complainants' claims after two hearings that were conducted in the complainants' native language and in the presence of their counsel. During those proceedings, the complainants were able to present their claims and supporting documentation. The domestic authorities did not call into question the authenticity of the documents that they provided. The Federal Administrative Court examined the complainants' appeal and, after a *prima facie* examination, conducted a complete examination of their claims and dismissed them in its decision of 11 March 2021. In other words, the Court conducted an effective, independent and impartial review of their case.

4.8 The State party also rejects the complainants' claim that the rejection of their request for free legal aid to file their appeal constituted a violation of their rights under the Convention. Neither the Convention nor the Committee's general observation No. 4 requires that legal aid be provided free of charge. The complainants were represented by counsel throughout domestic proceedings. Their representation before the first instance was the responsibility of the State, and access to the Federal Administrative Court was guaranteed in fact and in law.

4.9 The complainants have not demonstrated that they face a foreseeable, present, personal and real risk of being subjected to torture upon return to Colombia. In its decision of 11 March 2021, the Federal Administrative Court noted that Colombia was not experiencing a situation of war, civil war or generalized violence. The Court further noted that the Government of Colombia was countering FARC dissidents and had structures to protect its citizens, including a police force, an adequate judicial system and a witness protection program. The Court therefore considered that there was no reason to presume the existence of a concrete risk for all of the nationals of Colombia. The complainants never requested any protection from the authorities in Colombia that was aimed at protecting them from the alleged risks. While the reports cited by the complainants mention threats, attacks and two murders of journalists, they do not contain any elements that would call into question the general assessment of the situation in Colombia.

4.10 According to the communication, the complainants have not been subjected to torture in Colombia and have not carried out political activities in Colombia or in Switzerland. The complainants' claims, including those relating to conditions for journalists in Colombia, have already been examined by the domestic authorities, which deemed that the complainants had

⁷ *Aytulun and Güclü v. Sweden* (CAT/C/45/D/373/2009), para. 6.2.

not demonstrated a credible and well-founded fear of persecution in the event of their return to Colombia. A fear of reprisals by non-State actors is only relevant under the Convention if the State fails to afford the requisite protection. Colombia is endowed with relevant infrastructures that make it possible to protect the complainants.

4.11 The complainants' allegation that their complaint to the police was discontinued after they left Colombia does not impeach the findings of the State party's authorities. Because the complainants left Colombia just after having filed their complaint with the police, the authorities were aware that there was no longer any imminent risk of harm to the complainants. Moreover, the complainants were unable to indicate the identity of the individuals who had threatened them; the authorities were thus unable to investigate or prosecute the incidents. In addition, C could have requested, but did not request measures of protection from the Public Prosecutor. Thus, the complainants did not exhaust available remedies for obtaining protection in Colombia.

Complainants' comments on the State party's observations on admissibility and the merits

5.1 In their comments of 25 November 2022, the complainants assert that it would be illogical if the Convention prohibited torture but permitted violent death. Any violent death is a form of torture, as an act that inflicts severe physical and mental suffering in order to punish a victim. The State party has not contested C's allegation that certain individuals threatened to kidnap and kill him.

5.2 The Government of Colombia is not capable of protecting the complainants. The Federal Administrative Court did not examine that issue in detail and instead merely referred to two of its previous decisions in which it had noted that the Government of Colombia offered a witness protection program and other structures aiming to protect its citizens, including a police force and an adequate judicial system. The Court did not assess whether those measures sufficed to protect victims against violence by organized gangs such as the FARC dissidents.

5.3 Contrary to the State party's argument, the reports that the complainants cited in the communication relate to their personal situation and to the inability of the Government of Colombia to protect them. C stated during an oral hearing that he had feared filing a complaint in Colombia because of the threats from the FARC dissidents and because he knew that filing such a complaint would not guarantee him swift protection, given the nature of the criminal justice system. The State party has not indicated which measures the complainants could have taken to obtain state protection in Colombia. It is the responsibility of the State party to verify whether Colombia is both able and willing to protect the complainants.

5.4 According to the U.N. High Commissioner for Refugees, the effectiveness of state protection against persecution by criminal groups or gangs depends on several factors, including the financial interests of that State in the activities of the criminal group; the State's assessment as to whether the persecuted individuals concerned are worthy of protection; a prevalence of corruption, impunity and serious crimes involving the police and security forces; and a lack of willingness amongst the general population to avail themselves of state protection owing to a perception of ineffectiveness or an increased risk of aggression by the criminal group. Moreover, the assessment requires an individualized examination of the circumstances and of updated information regarding the country concerned.⁸

5.5 The Federal Administrative Court has noted in several decisions that the ability to file a complaint does not in and of itself indicate that state protection is possible and effective.⁹ Available information clearly indicates that Colombia is unable to protect individuals who are targeted by organized gangs such as FARC dissidents.¹⁰ The authorities in Colombia have not established effective protection measures for at-risk individuals, including journalists

⁸ U.N. High Commissioner for Refugees (UNHCR), Guidance Note on Refugee Claims Relating to Victims of Organized Gangs, 31 March 2010, p. 9.

⁹ For example, E-3683/2019, 7 August 2019, para. 5.4.3.

¹⁰ Organisation Suisse d'aide aux réfugiés (OSAR), "Country Analysis Intelligence – Colombia: FARC Dissidents and State Protection," 2 December 2021, p. 13-15.

who have been threatened by armed groups.¹¹ Local authorities in Colombia lack resources and are themselves threatened by criminal groups. Protective measures have limited effectiveness and may even increase risks for protected persons.¹² Support from the authorities is often slow to materialize. The National Protection Office (Unidad Nacional de Protección) is responsible for establishing measures of protection for at-risk persons but is overwhelmed by such requests. It is inefficient and slow to react. Most requests are rejected, and some individuals who have benefited from protective measures have nevertheless been killed. Armed groups, including FARC dissidents, target government protection programs in Colombia.¹³ The Federal Administrative Court has considered that the National Protection Office is ineffective.¹⁴

5.6 Regarding the merits of the communication, the complainants reiterate their previous arguments.¹⁵ They also refer to reports in which it is indicated that FARC dissidents have been responsible for several attacks and acts of torture against civilians and for threats and killings of journalists who have been designated as military targets.¹⁶ During the asylum proceedings, C described in a detailed and consistent manner the threats that he had faced.

Issues and proceedings before the Committee

Consideration of admissibility

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

6.2 In accordance with article 22 (5) (b) of the Convention, the Committee 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 the complainants obtained a final, negative decision on their asylum claim from the Federal Administrative Court. The Committee also observes that the State party does not dispute that the complainants have exhausted all available domestic remedies in Switzerland. The Committee therefore finds that it is not precluded by article 22 (5) (b) of the Optional Protocol from considering the communication.

6.3 Regarding the complainants' claim that the Federal Administrative Court violated their procedural rights under article 3 of the Convention by superficially assessing their claims and denying their request for free legal aid, the Committee recalls that article 3 of the Convention requires an opportunity for effective, independent and impartial review of a decision to expel or return when there is a plausible allegation of issues under article 3.¹⁷ The Committee also recalls its general comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, in which it stated that States parties should take legislative, administrative, judicial and other preventive measures against possible violations of the principle of non-refoulement, including, for example, the provision of access to free legal aid when necessary.¹⁸ In the present case, the Committee notes that during the asylum procedure, the State party's migration authorities conducted lengthy, separate interviews with the complainants in the presence of their counsel and in their native language, and afforded them an opportunity to set forth their claims, both in writing and orally, before denying their asylum application in a reasoned decision, and there is no claim that the representation by

¹¹ Organisation Suisse d'aide aux réfugiés (OSAR), "Country Analysis Intelligence – Colombia: FARC Dissidents and State Protection," 2 December 2021, p. 13.

¹² Ibid.

¹³ Ibid, p. 14.

¹⁴ E-3683/2019, 7 August 2019, para. 5.4.3.

¹⁵ Regarding the review conducted by the Federal Administrative Court, the complainants compare their situation to the facts described in *M.G. v. Switzerland* (CAT/C/65/D/811/2017).

¹⁶ Organisation Suisse d'aide aux réfugiés (OSAR), "Country Analysis Intelligence – Colombia: FARC Dissidents and State Protection," 2 December 2021, p. 11.

¹⁷ For example, *M.G. v. Switzerland* (CAT/C/65/D/811/2017), para. 7.4.

¹⁸ CAT/C/GC/4, para. 18 (b).

counsel was deficient. The Committee also notes that before denying their request for legal aid, the Federal Administrative Court reviewed their case file on a prima facie basis to determine whether their appeal was likely to succeed. The Committee also observes that while the complainants disagree with the factual and legal conclusions of the Court in its decision of 11 March 2021, including regarding the human rights situation in Colombia, the Court set forth specific and reasoned grounds for rejecting the complainants' arguments. The Committee considers that there has been no showing that the complainants were denied fair consideration or effective review of their claims under Article 3 by the fact that the decision of the Court that they did not qualify for free legal counsel. Accordingly, the Committee considers that this aspect of the communication is inadmissible owing to insufficient substantiation.

6.4 The Committee notes the State party's position that the communication is inadmissible *ratione materiae* because the complainants' claims lie outside of the scope of the Convention, as they allege to face a risk of death, not torture or ill-treatment, in Colombia. The Committee takes note of the complainants' assertion that they and their children would risk being killed in Colombia because C was threatened by former FARC dissidents owing to his work as a documentary journalist reporting on the reintegration of former FARC combatants. The Committee considers that the complainants' claim – according to which they risk being intentionally and violently kidnapped or killed, as a form of punishment for C's work, by non-state actors from whom the Government of Colombia would fail to exercise due diligence in order to protect them – could in principle raise issues under the articles that the complainants have invoked, namely, articles 3 and 16 of the Convention. The Committee therefore considers that articles 22 (2) and rule 113 (c) of the Committee's rules of procedure do not preclude it from examining the communication.

6.5 As the Committee finds no further obstacles to admissibility, it declares the complainants' claims under articles 3 and 16 of the Convention admissible – insofar as they relate to the assessment of the risk that the complainants would face if they were returned to Colombia – and proceeds to consider them on the merits.

Consideration of the merits

7.1 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.

7.2 The Committee is called upon to determine whether the forced removal of the complainants and their children to Colombia 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 that person would be in danger of being subjected to torture.

7.3 In assessing that issue, 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.¹⁹ However, the Committee recalls that the aim of the determination is to establish whether the individuals concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which they would be returned.²⁰ 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.²¹ Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that particular individuals might not be subjected to torture in their specific circumstances.²²

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 "substantial

¹⁹ See, for example, *C v. the Netherlands* (CAT/C/68/D/863/2018), para. 8.3.

²⁰ *Ibid.*

²¹ *Ibid.*

²² See *Y.G. v. Switzerland* (CAT/C/65/D/822/2017), para. 7.2.

grounds” exist whenever the risk of torture following removal is “foreseeable, personal, present and real.”²³ Indications of personal risk may include, but are not limited to: (a) ethnic background and religious affiliation; (b) previous torture; (c) incommunicado detention or other form of arbitrary and illegal detention in the country of origin; and (d) political affiliation or political activities of the complainant.²⁴

7.5 The Committee also recalls that the burden of proof is on complainants, who must present an arguable case – that is, submit substantiated arguments showing that the danger that they will be subjected to torture is foreseeable, present, personal and real.²⁵ However, when complainants are unable to elaborate on their case, such as when they have demonstrated that they are unable to obtain documentation relating to their allegations of torture or have been deprived of their liberty, 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.²⁶ The Committee gives considerable weight to findings of fact made by organs of the State party concerned; however, it is not bound by such findings. The Committee freely assesses the information available to it in accordance with article 22 (4) of the Convention, taking into account all of the circumstances relevant to each case.²⁷

7.6 In the present case, the Committee notes the complainants’ claim that there are substantial grounds for believing that they and their children would risk being kidnapped and killed in Colombia because C received threats from FARC dissidents when he was working on a project to produce short films on state-funded programmes through which former FARC combatants were successfully reintegrated society. The Committee recalls its jurisprudence to the effect that an obligation to refrain from removing a person who might risk severe pain or suffering inflicted by a non-governmental entity, without the consent or acquiescence of the Government, falls outside the scope of article 3 of the Convention.²⁸ The Committee further recalls its general comment No. 4, in which it stated that States parties should refrain from deporting individuals to another State where there are substantial grounds for believing that they would be in danger of being subjected to torture or other ill-treatment at the hands of non-State entities, 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.²⁹

7.7 The Committee recalls C’s claim that on 2 October and 27 November 2019, he received oral threats from FARC dissidents who warned him that if he submitted his documentary footage to his employer by the contractual deadline of 6 December 2019, he would be kidnapped. The Committee also notes C’s assertion that during the incident on 2 October, the dissidents told him that they knew the names of his wife and children. While the Committee notes the State party’s observation that the complainants could have filed, but did not file, a request for state protection, C explained that he feared going to the police because the dissidents warned him not file a complaint or tell anyone about the threats. The Committee also notes C’s argument that because the dissidents knew the date of his deadline to submit his documentary footage, they had presumably infiltrated the government agency for which C was producing the short films. The Committee also notes C’s statements that after receiving the first threat on 2 October, he instructed his wife and children to leave their place of residence and stay with him in Bogotá, a larger city where he felt that the family would be relatively safe in a secure apartment complex. The Committee also observes that on 27 November, after receiving the second threat, C purchased plane tickets for the family to leave Colombia on 28 December 2019. While the Committee notes the State party’s observation that on 2 October 2019, an army official informed the government agency of a

²³ See general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, para. 11.

²⁴ General comment No. 4 (2017), para. 45.

²⁵ See, for example, *E.T. v. the Netherlands* (CAT/C/65/D/801/2017), para. 7.5.

²⁶ General comment No. 4 (2017), para. 38.

²⁷ General comment No. 4 (2017), para. 50.

²⁸ *G.R.B. v. Sweden* (CAT/C/20/D/83/1997), para. 6.5; see also *R.S. et al. v. Switzerland* (CAT/C/53/D/482/2011), para. 8.4.

²⁹ General comment No. 4 (2017), para. 30.

possible kidnapping risk in the area where C had planned to travel, the Committee notes C's response that the warning indicates that the army would have been unable to protect C from kidnapping, as the official advised C to change his travel plans. The Committee also notes C's allegation that although he changed his itinerary, on the same day, the two FARC dissidents threatened to kidnap him. The Committee further notes C's allegation that on 26 December 2019 (two days after the dissemination on social media of the first documentary that he produced for the government agency), the threats escalated when he received and recorded a telephone call in which he was told that the dissidents were nearby and that C had been placed on a list of targets for killing because he had collaborated with the Government of Colombia. The Committee further notes that while the complainants waited until 29 December 2019 to file a complaint with the police, they do not allege to have received any contact from the police during the days before their departure from Colombia on 4 January 2020. The Committee notes that in his police complaint, C reported the alleged threats and stated that he needed help for his family. While the Federal Administrative Tribunal noted that the complainants had not changed their place of residence between 6 and 28 December 2019 and considered that the complainants therefore could not have felt that their lives were endangered, the Committee also notes C's allegation that he and his family lived in hiding during the days before they left the country.

7.8 While the Committee notes the State party's observation that the complainants could have requested protection from the authorities of Colombia, it also notes that in a judgment issued in 2019, the Federal Administrative Court considered that the National Protection Office, which has a mandate to provide protection to at-risk individuals, was not sufficiently effective.³⁰ The Committee also takes note of the report cited by the complainants, according to which protective measures provided by the authorities in Colombia may be inadequate and ineffective.³¹ The Committee also notes the complainants' assertion that C's situation is similar to that of Mauricio Lezama, a documentary journalist whose murder in 2019 was attributed to FARC dissidents who allegedly believed that he was collaborating with the Government of Colombia. The Committee further notes C's allegation that the peace agreement entered into in 2016 between the Government of Colombia and the FARC did not bring violence by FARC dissidents under control, as they took up arms again in 2019 and killed several government soldiers in Colombia in 2022, thus indicating that the authorities, despite their efforts, are unable to adequately control them.³² The Committee also notes reports that armed non-state actors in Colombia have frequently attacked both government agents and civilians, in particular certain vulnerable groups including journalists.³³

7.9 The Committee takes note of reports that certain FARC dissidents and the Government of Colombia entered into a six-month ceasefire agreement in January 2023. Nevertheless, given the recency and short-term nature of the current ceasefire agreement, the Committee considers that there is no clear indication as to whether the situation in the country for individuals who have been threatened by FARC dissidents has changed.³⁴ In that regard, the Committee takes note of the human rights situation in Colombia for journalists reporting on FARC dissidence, and the reported inadequacy of measures from the authorities in Colombia to protect such individuals from violence and killing.³⁵ In this connection, It recalls that, in its recent concluding observations on the sixth periodic report of Colombia (CAT/C/COL/CO/6) (2023), the Committee specifically expressed concern about reports

³⁰ E-3683/2019, 7 August 2019, para. 5.4.3.

³¹ Organisation Suisse d'aide aux réfugiés (OSAR), "Country Analysis Intelligence – Colombia: FARC Dissidents and State Protection," 2 December 2021, p. 13-15.

³² Merco Press, "[Four Colombian soldiers killed by dissident FARC group](#)," 14 April 2022; Latin Times, "[Army Announce the Death Of Six Colombian Soldiers In FARC Dissident Attack](#)," 7 December 2022.

³³ For example, Human Rights Watch, [World Report: Colombia](#) (2023).

³⁴ Office of the U.N. High Commissioner for Human Rights, Situation of Human Rights in Colombia (A/HRC/49/19) (2022), para. 40 ("With regard to journalists, the Press Freedom Foundation recorded 575 attacks, including 168 assaults, 172 threats, 57 cases of obstruction of journalistic work and 65 cases of harassment.")

³⁵ For example, Committee to Protect Journalists, "[Documentary filmmaker Mauricio Lezama shot and killed in Colombia](#)," 13 May 2019; Reporters Without Borders, "[Journalist receiving state protection gunned down in Colombia](#)," 19 October 2022.

documenting, inter alia, homicides, disappearances, threats and attacks perpetrated by non-state armed actors and criminal organizations in various areas of the country and the insufficiency of the measures in place for the protection of civilians and persons who report and/or participate in the investigation of such crimes (paras. 18 (a) and 18 (e)). The Committee notes C's allegations that he produced short films for a government agency working to reintegrate former FARC combatants; received two in-person threats and one death threat by telephone from FARC dissidents in October and November 2019; reported the threats to the police, which took no action during the five days preceding the family's departure from Colombia; relocated his family after receiving the first threat but was then informed that he had been located by the dissidents again; was unable to report the threats to the government agency employing him because of a credible fear that it was not safe to do so; and was informed by the dissidents that he had been placed on a list of targets for killing and that his wife and children were also at risk. The Committee considers that given the visible nature of C's films, which remain accessible through the social media channel of the government agency, there is no indication that the threat to C and his family has dissipated since their departure from Colombia. The Committee further recalls its jurisprudence to the effect that the possibility of internal flight or relocation does not represent a reliable and durable alternative where the lack of protection is generalized and the individual concerned would be exposed to a further risk of persecution or serious harm.³⁶ The Committee considers that based on the totality of the information before it, there are substantial grounds for believing that if the complainants and their children were returned to Colombia, the authorities would not be able to exercise due diligence in protecting them from facing a real, present, personal and foreseeable risk of having severe pain or suffering intentionally inflicted on them by FARC dissidents whom the Government of Colombia is unable to control, and accordingly would effectively be in a position of having no choice but to acquiesce to such treatment. Accordingly, the Committee considers that the complainants' removal to Colombia by the State party would violate their rights under article 3 of the Convention.

8. In the light of the foregoing, the Committee, acting under article 22 (7) of the Convention, concludes that the removal of the complainants to Colombia would constitute a violation of article 3 of the Convention by the State party. Having reached that conclusion, the Committee does not consider it necessary to examine the complainants' remaining claims under article 16 of the Convention.

9. The Committee is of the view that, in accordance with article 3 of the Convention, the State party has an obligation to refrain from forcibly returning the complainants to Colombia.

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

³⁶ *I.A. v. Sweden* (CAT/C/66/D/729/2016), para. 9.7.