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

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Committee against Torture

Communication No. 520/2012

Decision adopted by the Committee at its fifty-third session (3–28 November 2014)

Submitted by:	W. G. D. (not represented by counsel)
Alleged victim:	The complainant
State party:	Canada
Date of complaint:	17 August 2012 (initial submission)
Date of present decision:	26 November 2014
Subject matter:	Expulsion to Ethiopia
Procedural issues:	Exhaustion of domestic remedies, non-substantiation of the claim; claim manifestly ill-founded
Substantive issues:	Risk of torture upon return to the country of origin
Articles of the Convention:	3

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Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-third session)

concerning

Communication No. 520/2012

Submitted by:	W. G. D. (not represented by counsel)
Alleged victim:	The complainant
State party:	Canada
Date of complaint:	17 August 2012 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 26 November 2014,

Having concluded its consideration of complaint No. 520/2012, submitted to the Committee against Torture by W. G. D., under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, her counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant is Ms. W. G. D., an Ethiopian national born on 5 September 1955. She claims that her deportation to Ethiopia would constitute a violation by Canada of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. She is not represented by counsel.

1.2 Under rule 114, paragraph 1, of its rules of procedure, the Committee requested the State party, on 14 September 2012, to refrain from expelling the complainant to Ethiopia while her complaint is under consideration by the Committee. The State party agreed to temporarily refrain from deporting the complainant. On 30 May 2013, the Committee rejected the State party's request to lift the request for interim measures of protection.

Factual background

2.1 The complainant went to Canada on 16 March 2008 and on 2 June 2009 applied for refugee status. Her refugee claim was rejected on 25 January 2011 and her subsequent appeal to the Federal Court was also dismissed on 1 June 2011. She filed an application for a pre-removal risk assessment (PRRA) on 30 September 2011, but her PRRA application was dismissed on 1 June 2012. The complainant could not afford to file an application for

leave and for judicial review and maintains that, in any case, filing such an appeal would not stop her deportation. She further notes that over 80 per cent of all applications for leave are not even heard by a judge of the Federal Court and are dismissed without a hearing. On 13 August 2012, the complainant was told by a Canada Border Service Agency officer that she would be deported to Ethiopia within the following 90 days.

2.2 The complainant is of Oromo ethnicity and all her adult life has been a housewife with no political affiliations. She submits that the Oromo people have a history of being oppressed and discriminated against by the Ethiopian Government. When the Government announced that national elections would be held in 2005, the complainant's husband became an active campaigner for the opposition party United Front. He encouraged people to vote and openly and peacefully advocated on behalf of the opposition party candidate in their constituency. As the elections results were gradually released on 15 May 2005, it became clear that the governing party, the Ethiopian People's Revolutionary Democratic Front (EPRDF) was losing the elections. The Government consequently began a crackdown on the opposition and many of its supporters were arrested. Many ethnic Oromo who had supported the opposition were falsely accused of being supporters of the Oromo Liberation Front (OLF), an outlawed organization.

2.3 On 8 June 2005, the complainant's husband was arrested and held in custody for one month. Their home was repeatedly searched and the complainant was harassed when she visited her husband in detention. In 2006, the complainant let a house which she owned, and which was adjacent to her house, to two young students. On an unspecified date they disappeared and the police came and told the complainant that they (the students) had joined the OLF. The security police accused the complainant and her husband of harbouring OLF supporters and arrested them. The complainant was kept in detention for seven days and released due to her poor health. Her husband was held for two weeks. During that time they were interrogated repeatedly.

2.4 The complainant was traumatized by the events and decided to visit her daughter, who was living in Canada. After a lengthy application process she was allowed to leave the country and arrived in Canada on 16 March 2008. After her arrival, her brother called to inform her that her husband had been repeatedly summoned to the police station and asked about her whereabouts and whether she was meeting OLF supporters abroad. Her brother told her that the authorities regretted allowing her to leave and would arrest her if she returned. On an unspecified date, she received two letters from Ethiopia, from one W. and one A. She learned that her husband had been arrested again and accused of being an opposition supporter, and that he had subsequently been taken to an unknown location with other prisoners. The complainant is not aware of his whereabouts or of what happened to him.

The complaint

3. The complainant submits that she will be tortured and killed if returned to Ethiopia because of her ethnic origin and her perceived involvement with the OLF. On the basis of her past arrest, the continued interest of the security police in her whereabouts and the enforced disappearance of her husband, she believes that she is at risk of being persecuted if returned to Ethiopia.

State party's observations on admissibility and merits

4.1 By Note Verbale of 7 March 2013, the State party submitted its observations on the admissibility and the merits of the communication. The State party notes that the complainant arrived in Canada in March 2008 and sought refugee protection in June 2009. According to her refugee protection application and the Personal Information Form (PIF) attached to it, the complainant sought refugee protection on grounds of a well-founded fear

of persecution for reasons of race, membership in a particular social group, and political opinion. She also sought protection because she faced a risk to life or a risk of cruel and unusual treatment or punishment. The State party notes that she expressly did not seek protection because she faced a danger of torture as defined in article 1 of the Convention. The State party submits that, according to the PIF "narrative", the complainant decided to ask for refugee protection on the basis of the information from her brother[1]. She also mentioned, in support of her claim, that she and her grandchildren in Canada had become attached to each other and asked to be allowed to stay in Canada "on a humanitarian basis".

4.2 On 20 January 2011, the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada heard the complainant's claim. She was represented by legal counsel. She had the opportunity to explain any ambiguities or inconsistencies and respond to any questions that the RPD might have had with regard to her claims. The RPD rendered its decision on 24 January 2011, finding that the complainant was not a "Convention refugee" and not a person in need of protection. In particular, the RPD accepted that the complainant was an unsophisticated person with virtually no formal education, yet concluded that that did not explain the various contradictions in her submissions. The State party further provides several examples of discrepancies identified by the RPD. For example, in her PIF the complainant stated that her husband was arrested on 8 June 2005 and that she was harassed by the police when she went to visit him, while in her oral evidence before the RPD, she stated that her husband was arrested at work and that the police then came to her house and arrested her. With regard to her arrest in 2006, in her PIF, the complainant stated that she and her husband were arrested in 2006 after she had rented a house to two students, while in her oral testimony to the RPD, she stated that about two months after her arrest in 2005, she had travelled to the capital to be with her brother. She stated that she had stayed with her brother until she came to Canada, and never saw her husband again. The RPD noted that the complainant was represented by an experienced lawyer at the time the PIF was filed, and that the lawyer would have been aware that the evidence in the PIF, including the written narrative, would be treated as sworn evidence at the hearing before the RPD. The State party notes that, in any case, the RPD finding that the complainant was not credible was not necessarily determinative of her claim for protection. The RPD found that there was nothing in the complainant's evidence which would provide a foundation for establishing that she faced a real and personal risk upon return.

4.3 The State party further notes that the complainant made an application for a pre-removal risk assessment (PRRA) on 30 September 2011. In her application, the complainant repeated the same version of events as was contained in her PIF. Although the complainant had testified before the RPD that there were significant mistakes in the PIF, neither she nor her counsel sought to present the "correct" version of the facts in her PRRA application. In her application, the complainant relied in part on two letters from persons in Ethiopia which indicated that her husband had been arrested again on account of being in the opposition,[2] as well as on several reports by human rights organizations and media articles detailing the ongoing political repression of opponents by the ruling party in Ethiopia. The complainant argued that she was at risk of persecution, torture or risk to life, or of cruel and unusual treatment or punishment by virtue of her perceived affiliation with those in opposition to the Government, her husband's political involvement, and the fact that she belonged to the Oromo ethnic group.

[1] See para. 2.4 above.

[2] Ibid.

4.4 On 1 June 2012, it was determined that the complainant was not at risk of persecution or torture if returned to Ethiopia. The PRRA Officer first noted that some of the evidence, including the two letters from Ethiopia, was not new but had already been put before the RPD. Pursuant to section 113 (a) of the Immigration and Refugee Protection Act, a PRRA applicant whose claim to refugee protection has been rejected by the RPD may present only new evidence that arose after the rejection or was not reasonably available at the time of the rejection. The PRRA Officer took the submitted reports of human rights organizations and media articles into consideration, but concluded that the articles were general in nature. The complainant's application for protection was therefore rejected.

4.5 The State party maintains that the complainant could have made an application for leave and for judicial review of the PRRA Officer's decision to the Federal court. She could also have filed a motion seeking a judicial stay of removal pending the decision of the Court. The State party notes that that judicial review has consistently been recognized by the Committee as a procedure that must be exhausted for the purposes of admissibility.[3] For example, in its decision in *Yassin* v. *Canada*, the Committee stated that a judicial review of the complainant's negative PRRA decision was an effective remedy, and found his communication inadmissible on grounds of non-exhaustion of domestic remedies.[4] In several other communications involving Canada, the Committee has noted that "applications for leave and judicial review are not mere formalities, but that the Federal Court may, in appropriate cases, look at the substance of a case".[5]

4.6 The State party refers to the Committee's recent decision in *Nirmal Singh* v. *Canada*.[6] In that communication, the Committee accepted the complainant's argument that judicial review of his negative RPD and PRRA decisions did not provide him with an effective remedy. The State party argues that the Committee's decision in *Nirmal Singh* is limited to the specific facts of that particular case, and does not indicate a more general condemnation of the effectiveness of judicial review as a remedy. The State party further notes that the current system of judicial review by the Federal Court provides for "judicial review of the merits". It explains that, in a judicial review, whether asked to review a decision of the RPD or of a PRRA Officer, the Federal Court reviews factual errors or errors involving both facts and law, generally on a "reasonableness standard". However, the Court may also review questions of law on a "correctness standard". In addition, on judicial review pursuant to section 18.1(4) of the Federal Courts Act, the Federal Court can issue an appropriate remedy if it determines that a tribunal (a) acted without jurisdiction, acted

[3] See for example, Committee against Torture communications No. 307/2006, *Yassin* v. *Canada*, decision adopted on 4 November 2009, paras. 9.3–9.4; No. 304/2006, *L.Z.B.* v. *Canada*, decision adopted on 8 November 2007, para. 6.6; European Court of Human Rights judgment of 30 October 1991, *Vilvarajah and Others* v. *United Kingdom*, Application no. 13163/87; 13164/87; 13165/87; 13447/87; 13448/87, judgment of 30 October 1991, para. 126; Committee against Torture communications No. 66/1997, *P.S.S.* v. *Canada*, decision of inadmissibility adopted on 13 November 1998, para. 6.2; No. 86/1997, *P.S.* v. *Canada*, decision of inadmissibility adopted on 18 November 1999, para. 6.2; No. 42/1996, *R.K.* v. *Canada*, decision of inadmissibility adopted on 20 November 1997, para. 7.2; No. 95/1997, *L.O.* v. *Canada*, decision of inadmissibility adopted on 19 May 2000, para. 6.5; No. 22/1995, *M.A.* v. *Canada*, decision of inadmissibility adopted on 3 May 1995, para. 3; No. 183/2001, *B.S.S.* v. *Canada*, decision on admissibility adopted on 12 May 2004, para. 11.6; No. 273/2005, *T.A.* v. *Canada*, decision of inadmissibility adopted 15 May 2006, para. 6.3.

[4] Communication No. 307/2006, *Yassin* v. *Canada* (see footnote 3), paras. 9.3–9.5. Note that Mr. Yassin failed to apply for judicial review of either his negative PRRA decision or his negative H&C decision.

[5] Communication No. 273/2005, *T.A.* v. *Canada* (see footnote 3), para. 6.3; No. 304/2006, *L.Z.B.* v. *Canada* (see footnote 3), para. 6.6.

[6] Communication No. 319/2007, *Nirmal Singh* v. *Canada*, decision adopted on 30 May 2011.

beyond its jurisdiction or refused to exercise its jurisdiction; (b) failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe; (c) erred in law in making a decision or an order, whether or not the error appears on the face of the record; (d) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it; (e) acted, or failed to act, by reason of fraud or perjured evidence; or, (f) acted in any other way that was contrary to law.

4.7 Consequently, the State party submits that, had the complainant made an application for leave to apply for judicial review, and, if there had been an error of law or an unreasonable finding of fact made in the PRRA decision, the Federal Court would have granted leave to apply for judicial review and could have set the decision aside and sent the application back for re-determination by a different PRRA Officer. The State party provides a number of examples of applications sent back by the Court for re-evaluation.[7] In addition, as to the complainant's argument that judicial review of her PRRA decision would not stop her deportation, the State party submits that, while it is true that there is no automatic stay of removal, a judicial stay is available on application to the Federal Court. The State party notes that a stay of removal until a PRRA application has been decided is granted by the Federal Court on a regular basis.

4.8 With regard to the statistics on leave applications and judicial review applications, the State party notes that judges of the Federal Court consider each leave application on the basis of the written submissions made by the parties, without an oral hearing. A hearing does not have to be an oral hearing to be fair and to comply with the rules of justice. If leave is granted, the case is assigned to a different judge for an oral hearing on the merits of the judicial review application. For example, in 2011, out of 6,273 applications for leave to appeal in the refugee context, 894 were granted, a grant rate of 14 per cent. The State party submits that the acceptance rate for leave applications is not low, in view of the quality of the decision-making at the first instance.

4.9 As to the costs for filing an application for judicial review, the State party notes that it costs only CAD50 to file a leave application in the Federal Court. Moreover, an applicant does not have to be represented by a lawyer to file a leave application but can be assisted by a consultant or a friend or relative. The State party observes that the complainant had representation throughout her legal proceedings in Canada. In addition, legal aid is generally available throughout Canada and the complainant has not established that she had applied for legal aid but that her application was rejected. Accordingly, her assertion that she cannot afford to file a leave application is insufficient to excuse her failure to exhaust domestic remedies.

4.10 Furthermore, the State party maintains that the complainant could also have made an application to be allowed to apply for permanent resident status in Canada on the basis of

[7] The State party also refers to the Human Rights Committee's jurisprudence considering judicial review by the Federal Court to be an effective remedy for the purpose of admissibility. See for example, Human Rights Committee communications No. 1872/2009, *D.J.D.G.* v. *Canada*, decision of inadmissibility adopted on 26 July 2010, para. 7.4 ; No. 1580/2007, *F.M.* v. *Canada*, decision of inadmissibility adopted on 30 October 2008, para. 6.3; No. 1578/2007, *Dastgir* v. *Canada*, decision of inadmissibility adopted on 30 October 2008, para. 6.2; No. 939/2000, *Dupuy* v. *Canada*, decision of inadmissibility adopted on 18 March 2005, para. 7.3. See also Human Rights Committee communications No. 654/1995, *Adu* v. *Canada*, decision of inadmissibility adopted on 18 July 1997, para. 6.2; No. 603/1994, *Badu* v. *Canada*, decision of inadmissibility adopted on 18 July 1997, para. 6.2 ; No. 604/1994, *Nartey* v. *Canada*, decision of inadmissibility adopted on 18 July 1997, para. 6.2; see also ECHR judgment, *Vilvarajah and Others* v. *United Kingdom* (see footnote 3), para. 126.

humanitarian and compassionate considerations (H&C application). The State party submits that an H&C application is the remedy best suited to the humanitarian grounds that the complainant had raised in her application for refugee protection, where she referred to her close relationship with her Canadian grandchildren. A successful H&C application would allow her to remain in Canada as a permanent resident. The State party regrets the decisions of the Committee in recent cases such as *Kalonzo* v. *Canada*[8] and *T.I.* v. *Canada*[9] in which the Committee considered that H&C applications were not remedies that must be exhausted for the purposes of admissibility. Particularly in the present case, an H&C application is the remedy that is most directly applicable to the nature of her claim and potentially the most effective. Therefore, the State party submits that in the circumstances, the complainant's failure to make an H&C application renders her communication inadmissible on the grounds of non-exhaustion of domestic remedies.

4.11 In the alternative, the State party submits that the complainant's claim that she will be tortured and killed if she is returned to Ethiopia is manifestly unfounded, on the ground that she has not substantiated her allegations on even a *prima facie* basis. It submits that the Committee can only consider communications that allege, in a substantiated manner, violations of rights protected by the Convention.[10]

4.12 The State party notes that article 3 of the Convention prohibits the expulsion of "a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture". The Committee's general comment on article 3 and its consistent decisions in individual communications state that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. Although the risk does not have to meet the test of being highly probable, the burden is upon the complainant to present an arguable case establishing that she runs a "foreseeable, real and personal" risk of torture.[11] The State party submits that a consideration of those factors leads to the conclusion that there are no substantial grounds for believing that the complainant would be in danger of being subjected to torture. In particular, her claim is inconsistent, and she has not been tortured in the past. In addition, even though the human rights situation in Ethiopia is problematic, the general human rights situation in a country cannot in itself constitute sufficient grounds for establishing that the complainant would face a "foreseeable, real and personal" risk of torture if returned there.

4.13 The State party further notes that it is not the role of the Committee to weigh evidence or re-assess findings of fact made by domestic courts or tribunals.[12] The complainant's allegations and supporting evidence in the present communication are simply

[8] Communication No. 343/2008, *Kalonzo* v. *Canada*, decision adopted on 18 May 2012.

[9] Communication No. 333/2007, *T.I.* v. *Canada*, decision adopted on 15 November 2010.

[10] Communications No. 36/1995, *X.* v. *The Netherlands*, Views adopted on 8 May 1996, and No. 18/1994, *Y.* v. *Switzerland*, decision adopted on 17 November 1994.

[11] Committee against Torture, general comment No. 1 on the implementation of article 3 in the context of article 22 of the Convention against Torture, paras. 6–7. Recent views reiterating those principles include communications No. 343/2008, *Kalonzo* v. *Canada* (see footnote 8), para. 9.3; No. 370/2009, *E.L.* v. *Canada*, decision adopted on 21 May 2012, para. 8.5; No. 414/2010, *N.T.W.* v. *Switzerland*, decision adopted on 16 May 2012, para. 7.3; No. 393/2009, *E.T.* v. *Switzerland*, decision adopted on 23 May 2012, para. 7.3.

[12] Communication No. 148/1999, *A.K.* v. *Australia*, decision adopted on 5 May 2004, para. 6.4; Human Rights Committee communications No. 215/1986, *G.A. van Meurs* v. *the Netherlands*, decision on admissibility adopted on 13 July, 1990, para. 7.1.; No. 485/1991, *V.B.* v. *Trinidad and Tobago*, decision of inadmissibility adopted on 26 July, 1993, para. 5.2; No. 949/2000, *Keshavjee* v. *Canada*, decision of inadmissibility adopted on 2 November 2000, para. 4.3; No. 934/2000, *G.* v. *Canada*, decision of inadmissibility adopted on 8 August 2000, paras. 4.2.–4.3; No. 761/1997, *Singh* v. *Canada*, decision of inadmissibility adopted on 29 July 1997, para. 4.2.

copies of those that have been submitted to competent domestic tribunals and that it was determined did not support a finding of risk in Ethiopia. It further submits that the analysis of the evidence and the conclusions drawn by both the RPD and the PRRA officer who assessed the risk to which she may be exposed if returned to Ethiopia were appropriate and well-founded. The State party relies on the findings by the RPD, which heard the complainant's oral evidence and which questioned her about the inconsistencies in her story, to the effect that important aspects of her claim were not credible or plausible. The State party refers to the Committee's views that it cannot review credibility findings "unless it is manifest that the evaluation was arbitrary or amounted to a denial of justice". It notes that the complainant has made no such allegations and the material submitted does not support a conclusion that the RPD decision had such defects.[13]

4.14 Nevertheless, should the Committee feel inclined to reconsider the facts and credibility of the complainant's claim, a focus on some of the more important issues clearly supports a finding that she has not substantiated her claim on even a prima facie basis. The State party submits that none of the main grounds on which the complainant bases the alleged risk of being tortured have been established to the requisite level of proof or support a finding that she would be personally at risk of torture if returned to Ethiopia. In particular, the State party submits that the story of the complainant's arrest and detention in 2005 and in 2006 is not credible, as there were significant discrepancies between the story told in her written submission filed in support of her claim for refugee protection and her oral testimony before the RPD.[14] The State party further notes that no objective evidence was provided to support any element of the alleged arrests. Despite asserting to the RPD during the hearing that her written submission was erroneous, the complainant repeated exactly the same story, acknowledged to be erroneous, in her subsequent PRRA application.

4.15 The State party submits that, even if the complainant is given the benefit of the doubt and it is accepted that she had previously been detained, that in no way supports a finding that she would be detained in the future and, in particular, does not support a finding that she would be tortured and killed if detained again. The State party further notes that, in both her PIF and in her PRRA application form, the complainant acknowledged that she had obtained an exit visa from the Ethiopian authorities in order to be allowed to leave Ethiopia to travel to Canada. She alleges that she had intended to return to Ethiopia until she learned from her brother that her husband had been questioned about her, that the Ethiopian authorities regretted having allowed her to travel abroad and that the authorities intended to arrest her when she returned. The State party submits that it is not plausible that the Ethiopian authorities would be more interested in the complainant now than when she was still living in Ethiopia. If the Ethiopian authorities were concerned about the complainant because of her imputed political opinion, they would not have released her after only a few days of detention, and would not have issued her with an exit permit to leave Ethiopia. Nor has the complainant alleged that she has taken part in any political activities while in Canada that might have come to the attention of the Ethiopian authorities.

4.16 Furthermore, the State party notes the complainant's allegation that, according to two letters she received from Ethiopia, her husband has been arrested again, and that he has been forcibly transferred to an unknown location. It notes that the arrest of her husband

[13] See for example the decisions in Committee against Torture communications No. 148/1999, *A.K.* v. *Australia* (see footnote 12), para. 6.4; No. 135/1999, *S.G.* v. *The Netherlands*, decision adopted on 12 May 2004, para. 6.6; Human Rights Committee communications No. 891/1999, *Tamihere* v. *New Zealand*, adopted on 18 April 2000, para. 4; No. 728/1996, *Paul* v. *Guyana*, Views adopted on 1 November 2001, para. 9.3.

[14] See para. 4.2 above.

presumably took place in 2010, since that is when the letters were first presented to the State party's authorities. However, no information is provided in the communication concerning the husband's current status or attempts by any family or friends in Ethiopia to ascertain whether or not he is still detained in a known or unknown location. Considering that, according to the complainant, her husband had been detained and released on a number of previous other occasions, the State party submits that some attempt should have been made to provide current information to the Committee. The State party maintains that the allegation that the complainant's husband was detained in 2010, for which no probative evidence was submitted, in no way supports her claim that she will be detained, and tortured and killed if she is returned to Ethiopia.

4.17 As to the complainant's argument that her status as an ethnic Oromo is one of the reasons why she would allegedly be targeted by the Ethiopian authorities, the State party notes that at the domestic level she stated that she had not been targeted because of her ethnicity in the past. The State party submits that, in those circumstances, the complainant's Oromo ethnicity would not, in itself, put her at foreseeable, real and personal risk of torture. The State party takes note of several reports on the human rights situation in Ethiopia, including the Committee's recent concluding observations on the human rights situation in Ethiopia.[15] Nevertheless, although the human rights situation in Ethiopia is problematic, the State party submits that it is insufficient in itself to lend credence to the complainant's allegations.[16]

4.18 In light of the above, the State party submits that the complainant in the present communication has failed to establish that she faces a foreseeable, real and personal risk of torture if returned to Ethiopia. Consequently, the present communication is manifestly ill-founded and inadmissible.

4.19 In the alternative, if the communication is declared admissible, the State party requests that the Committee conclude, on the basis of the information provided, that the prsent communication is without merit. The complainant has failed to establish that she faces a foreseeable, real and personal risk of being subjected to torture if she were returned to Ethiopia.

The complainant's comments on the State party's observations on admissibility and merits

5.1 In reply to the State party's observations, on 30 April 2013 the complainant submitted that none of the remedies mentioned by the State party, which she supposedly had to exhaust, constitute an effective remedy. In this connection, she notes that in 2011 she tried to file for a judicial review to appeal the negative decision of the RPD dated 24 January 2011; however it was dismissed by the Federal Court on 1 June 2011without even a hearing. She further notes that 80 to 85 per cent of the "immigration appeals (judicial reviews)" to the Federal Court are not granted leave and that that demonstrates the ineffectiveness of the remedy. She also notes that the State party acknowledged in its

[15] CAT/C/ETH/CO/1.

[16] The State party makes reference to the Committee's decision in its communication No. 393/2009, *E.T.* v. *Switzerland* (see footnote 11), para. 7.5., where the Committee stated that it "is concerned at the many reports of human rights violations, including the use of torture in Ethiopia, but recalls that for the purposes of article 3 of the Convention, the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he or she is returned." Since the complainant in that case had not established a foreseeable, real and personal risk of being tortured, the Committee concluded that it would not be a violation of article 3 of the Convention to return her to Ethiopia. The same concerns were raised and the same conclusion was also reached in communication No. 414/2010, *N.T.W.* v. *Switzerland* (see footnote 11), para. 7.5.

observations that only 14 per cent of the cases "were listened in a hearing at the Federal Court". The complainant notes the Committee's findings in the case *Nirmal Singh v. Canada* that the judicial review of a negative refugee protection decision or a pre-removal risk assessment does not constitute an effective remedy.[17]

5.2 As to the State party's arguments concerning recourse to the H&C application procedure as an effective remedy, the complainant notes that a lawyer had told her that it took 24 to 28 months to process such applications and that the examination of her H&C application would not stop her deportation. The lawyer also informed her that she would not have a good chance of success, as her fear of danger and persecution in Ethiopia was not one of the permitted grounds within the H&C application procedure. In addition, the lawyer noted that the complainant's ties with her daughter and grandchildren in Canada would be only one of the factors in the H&C application process and that it would not "determine the application" in her favour. The complainant also states that she could not afford to pay the fee to initiate the application process, nor could she afford a lawyer.

5.3 The complainant further submits that the motion for "Stay of Removal" is not an effective mechanism as in most cases it does not stop or delay the deportation and that the State party cannot guarantee that lodging such a motion would stop her deportation.

The State party's further observations

6.1 By Note Verbale of 24 September 2013, the State party submitted its further observations. It reiterates its previous observations on the author's failure to exhaust domestic remedies, for failing to apply for judicial review of the PPRA decision and for failure to file an H&C application. It also reiterates that an application to judicially review a negative PRRA decision can be combined with an application for a judicial stay of removal.

6.2 As to the opinion of a lawyer concerning her chances of success within the H&C application procedure, the State party submits that the complainant's lawyer's statements or opinions are not evidence and cannot in and of themselves support a view that the H&C application process is not an effective remedy.[18]

6.3 In the light of the above, the State party reiterates its request that the complainant's communication be considered by the Committee to be inadmissible for non-exhaustion of domestic remedies.

6.4 The State party submits that, to the extent that any of the complainant's allegations about the deficiencies in the judicial review system may have had a direct bearing on the assessment of her claim for protection, those claims could and should have been raised first before the Federal Court itself and, on appeal with leave, to the Supreme Court of Canada.[19] To raise new issues, whether general or specific, before the Committee is a clear example of non-exhaustion of domestic remedies, as the State party's domestic authorities have not been given an opportunity to address allegations of specific or systematic defects and correct them if they are found to exist.

6.5 The State party further reiterates that the complainant's failure to address the doubts about her story strongly supports the conclusion that the communication is insufficiently substantiated.

[17] See para. 4.6 above.

[18] The State party refers to the Human Rights Committee's Views in communication No. 1959/2010, *Warsame* v. *Canada*, Views adopted on 21 July 2011, para. 7.6, that "doubts about the effectiveness of domestic remedies do not absolve complainants from exhausting them".

[19] The State party refers to the Views of the Human Rights Committee for example in communication No. 1494/2006, *Chadzjian* v. *Netherlands*, decision adopted on 22 July 2008, para. 8.3.

6.6 Finally, the State party reiterates that, even if the complainant is given the benefit of the doubt concerning her alleged detention, at no point has she ever alleged that she was tortured or otherwise mistreated while in detention. Thus, even if it is accepted that the complainant has previously been detained, that in no way supports a finding that she would be tortured and killed if she were detained again. The State party therefore maintains that the complainant has failed to establish that she faces a foreseeable, real and personal risk of torture if returned to Ethiopia.

6.7 Taking into account the above, the State party requests that the Committee consider the present communication to be inadmissible on the grounds of non-exhaustion of domestic remedies. In the alternative, the complainant's communication is inadmissible on the grounds of non-substantiation. If the Committee considers the communication to be admissible, the State party requests the Committee to consider the communication to be without merit.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claims contained 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, paragraph 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 takes note of the State party's argument that the communication should be declared inadmissible under article 22, paragraph 5 (b), of the Convention, as the complainant failed to apply to the Federal Court for leave to apply for a judicial review of the PRRA decision dated 1 June 2012, and did not apply for permanent resident status in Canada on humanitarian and compassionate grounds. The Committee also takes note of the complainant's argument that the remedies in question would not constitute an effective remedy in her case.

7.3 The Committee notes that, according to section 18.1(4) of the Canadian Federal Courts Act, the Federal Court may quash a negative PRRA decision if satisfied that a tribunal acted without jurisdiction; that it failed to observe a principle of natural justice or procedural fairness; that it erred in law in making a decision; that it based its decision on an erroneous finding of fact; that it acted, or failed to act, by reason of fraud or perjured evidence; or that it acted in any other way that was contrary to law.[20] The Committee observes that none of the grounds above include a review on the merits of the complainant's claim that she would be ill-treated if returned to Ethiopia.[21]

7.4 Further, with regard to the complainant's failure to apply for permanent residence on humanitarian and compassionate grounds, the Committee recalls that, at its twenty-fifth session, in its concluding observations concerning the examination of the third periodic report of the State party, it considered the question of requests for ministerial stays on humanitarian grounds. It noted the apparent lack of independence of the civil servants deciding on such a remedy and the possibility that a person could be expelled while such an application was being considered. It observed that those circumstances could detract from effective protection of the rights covered by article 3, paragraph 1, of the Convention. It concluded that, although the right to assistance on humanitarian grounds may be a remedy under the law, such assistance is granted by a minister on purely humanitarian grounds,

[20] See para. 4.6 above.

[21] See for example communication No. 319/2007, *Nirmal Singh* v. *Canada* (see footnote 6), para. 8.8.

rather than on a legal basis, and is thus ex gratia in nature. Based on those considerations, the Committee concludes that, in the present case, the complainant's failure to exhaust that remedy does not constitute an obstacle to the admissibility of the complaint.[22]

7.5 The Committee considers the author's claim, which raises issues under article 3 of the Covenant, to be sufficiently substantiated for the purposes of admissibility, declares it admissible and proceeds to its examination on the merits.

Consideration of the merits

8.1 In accordance with article 22, paragraph 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 In the present case, the issue before the Committee is whether the return of the complainant to Ethiopia 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 upon return to his country of origin. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 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 individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

8.4 The Committee recalls its general comment No. 1 on the implementation of article 3, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being "highly probable",[23] the Committee recalls that the burden of proof generally falls on the complainant, who must present an arguable case that he faces a "foreseeable, real and personal" risk.[24] The Committee further recalls that, in accordance with its general comment No. 1, it gives considerable weight to findings of fact that are made by the organs of the State party concerned, while at the same time it is not bound by such findings and instead has the power, under article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.[25]

8.5 The complainant claims that in Ethiopia she may be tortured or even killed because of her ethnic origin and her perceived involvement with the OLF; her past arrest; the

[22] See for example communication No. 343/2008, *Kalonzo* v. *Canada*, (see footnote 11), para. 8.3.

[23] See footnote 11.

[24] Ibid. See also communication No. 203/2002, *A.R.* v. *The Netherlands*, decision of 14 November 2003, para. 7.3.

[25] See, inter alia, communication No. 466/2011, *Alp* v. *Denmark*, decision of 14 May 2014, para. 8.3.

security police's continued interest in her whereabouts; and the enforced disappearance of her husband.

8.6 The Committee notes that the complainant has not submitted any objective evidence whatsoever to substantiate that she would be at risk of being subjected to torture by the authorities if returned to Ethiopia. The Committee notes, in particular, the complainant's statement that all her life she has been a person with no political affiliations. It further takes note of the State party's observation that the complainant has made no attempt whatsoever to explain before the domestic authorities the contradictions in her claims as to her alleged arrest and detention in Ethiopia in 2005 and 2006, the Ethiopian authorities' alleged continued interest in her whereabouts and activities, and in her husband's arrest and his current situation and whereabouts. Those contradictions were not clarified by the complainant in her communication to the Committee either. The Committee notes that the complainant had ample opportunity to substantiate and clarify her claims at the domestic level before the RPD and within the PRRA procedure, and in the context of the present communication. Nor has the complainant provided the Committee with any objective documentary evidence, such as a copy of her summons or a detention warrant, in support of her account of events and claims.

8.7 Furthermore, the Committee recalls that the occurrence of human rights violations in his/her country of origin is not sufficient, in itself, for it to be concluded that a complainant, personally, runs a risk of torture. The Committee notes that the complainant does not claim that she has ever been personally subjected to torture or any kind of ill-treatment or punishment in Ethiopia prior to her departure to Canada, with the exception of her claim concerning her husband's alleged enforced disappearance. In addition, it also notes that she has not submitted any information or arguments to substantiate that she, personally, would be at risk of torture if she returned to Ethiopia.[26]

9. In the circumstances, and in the absence of any other pertinent information on file, the Committee finds that the complainant has failed to provide sufficient evidence to indicate that, in the event of her forcible return to her country of origin, she would face a foreseeable, real and personal risk of being tortured.

10. Accordingly, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the complainant's return to Ethiopia would not constitute a breach of article 3 of the Convention by the State party.

[26] See for example communication No. 243/2004, *S.A.* v. *Sweden*, decision of inadmissibility of 6 May 2004, para. 4.2.