



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

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 866/2018*, **

Communication submitted by: T.K.T. (represented by counsel, Tarig Hassan)

Alleged victim: The complainant

State party: Switzerland

Date of complaint: 16 March 2018 (initial submission)

Document references: Decisions taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on 22 March 2018 (not issued in document form)

Date of present decision: 19 July 2021

Subject matter: Deportation to Ethiopia

Procedural issue: Exhaustion of domestic remedies

Substantive issues: Non-refoulement; torture

Article of the Convention: 3

1.1 The complainant is T.K.T., a national of Ethiopia born in 1986. She claims that by deporting her to Ethiopia, the State party would violate article 3 of the Convention. The State party has made the declaration pursuant to article 22 (1) of the Convention, effective from 2 December 1986. The complainant is represented by counsel, Tarig Hassan.

1.2 On 22 March 2018, pursuant to rule 114 of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party to refrain from returning the complainant to Ethiopia while her communication was under consideration by the Committee. On 23 March 2018, the State party informed the Committee that, in compliance with the interim measure, it had suspended the complainant's deportation.

Factual background

2.1 The complainant claims to be a politically active individual and to have fled Ethiopia after her activities for the clandestine party Ginbot 7 were reported to the authorities by her boyfriend. She submits that in Switzerland she continued to oppose the Ethiopian regime and to advocate for human rights. She is still a member of Ginbot 7. Since 2017, she has been a member of the Executive Committee of the Ethiopian Human Rights and Democracy Task

* Adopted by the Committee at its seventy-first session (12–30 July 2021).

** The following members of the Committee participated in the examination of the communication:
Essadia Belmir, Claude Heller, Erdoğan İşcan, Liu Huawen, Ilvija Pūce, Ana Racu, Diego Rodríguez-Pinzón, Sebastian Touzé, Bakhtiyar Tuzmukhamedov and Peter Vedel Kessing.



Force in Switzerland. She is the organization's representative in the Canton of Lucerne and the founder of the women's activist group within the Task Force. She is also a member of the Association des Éthiopiens en Suisse. The complainant presents photos and links to online videos as evidence of her participation in opposition meetings, demonstrations and forums in Switzerland, of her acquaintance with prominent Ethiopian opposition leaders and human rights activists and of her interactions with Ethiopian Satellite Television & Radio journalists. The complainant claims that her brother has been imprisoned in Ethiopia since September 2016, likely in relation to her "high political profile".

2.2 On 4 September 2014, the complainant lodged an asylum application with the State party. On 17 September 2014 and 2 October 2014, she was interviewed by the Federal Office for Migration (which became the State Secretariat for Migration on 1 January 2015). She declared that in March 2010, she had joined Ginbot 7 in Ethiopia. She had received the party's flyers in her sister's shop and acted as an intermediary for further transmitting them. In around May–June 2011, she had come across her boyfriend's wallet and realized that he was an intelligence agent. They had known each other since around 2006–2007 and had lived together since around October–November 2010 but, until that day, she had believed he was a businessman. They had had a fight and she had made a decision to gradually end the relationship. In the meantime, the boyfriend had begun spying on her. A month and a half later, he had come to her sister's shop on a day the complainant had received Ginbot 7 flyers. When she had gone to the bathroom, he had found the flyers on the store counter. Back at home, he had forbidden her to go out, had beaten her, had threatened her with death and imprisonment and had tried to convince her to disclose the names of her collaborators. Two days later, when he had left town for work, she had escaped. In August 2011, she had left for Dubai. Her brother had learned from a friend who was a policeman that an arrest warrant had been issued against her. Her brother had managed to obtain a copy of the warrant and send a photo of it to the complainant's mobile telephone. The complainant's ex-boyfriend had threatened her family, and her brother had been imprisoned in late 2013–early 2014 for three months. The complainant had stated that her life had been in danger in Dubai because her ex-boyfriend still worked for the secret services and because the owner of the restaurant where she had worked had forbidden her to leave home and had repeatedly raped her. In 2012, she had renewed her passport through the Ethiopian embassy in Dubai. On 2 July 2014, she had taken a plane to Geneva, accompanied by a smuggler who had helped her to obtain a Schengen visa. On 3 July 2014, she had gone to France and stayed for 25 days in an unidentified location. She had then arrived in Calais, where she had stayed for another month, expecting to go to the United Kingdom of Great Britain and Northern Ireland. She had then realized that the smuggler who had brought her to Geneva had not given her passport to smugglers in France. She had illegally re-entered Switzerland and had applied for asylum.

2.3 On 17 November 2014, the Federal Office for Migration rejected the complainant's asylum request due to her failure to provide an identity document and the arrest warrant allegedly in her brother's possession,¹ and due to lack of credibility of her application. The Office considered it implausible that she would go to the bathroom and leave Ginbot 7 flyers within easy reach of her boyfriend, whom she knew to be an intelligence officer. The Office considered equally implausible that, after discovering the flyers and threatening her with death, her boyfriend would leave town and allow her to escape. On 16 December 2014, the complainant appealed to the Federal Administrative Court, providing an identity document, an original copy of the arrest warrant and documents attesting to her membership in Ginbot 7. On 27 April 2015, the Court rejected her appeal, concluding that her declarations lacked credibility, and were partly incoherent and "stereotypical". In particular, the Court found implausible that after being threatened by her boyfriend, she had taken the risk of leaving Ethiopia from an airport using her own passport and had later renewed the passport through the Ethiopian embassy. The Court considered that the arrest warrant did not have a determinant probative value in view of important non-credible elements in the complainant's statements. It noted that the complainant's initial reluctance to produce this document and the fact that she had produced the original after claiming that her brother had only obtained

¹ The complainant claimed that she no longer had the mobile telephone with the photo of the warrant and that her brother had been waiting for someone to travel to Switzerland in order to send her the documents, to avoid high postal fees.

a copy contributed to the existing doubts about her credibility. Regarding the evidence of her membership in Ginbot 7, the Court ruled that its probative value had to be “strongly relativized”. It noted that, according to some of the documents, the complainant had applied for membership in Ginbot 7 when she was already in Switzerland, and as at 23 September 2014, she had yet to take several of the steps required to become a member. Another document stated that she had been a member of Ginbot 7 since 18 August 2014, but it also indicated that the complainant resided in Basel, whereas she had claimed that she had entered Switzerland on 4 September 2014.

2.4 On 22 July 2015,² the complainant applied for re-examination of the Federal Office for Migration’s decision of 17 November 2014, claiming that she had not disclosed important reasons for her departure from Ethiopia. She declared that her boyfriend had repeatedly raped her after learning that she was a member of Ginbot 7. She also claimed that since her departure from Ethiopia, she had been convicted by a first instance court, that she risked arrest upon arrival to Ethiopia and that her ex-boyfriend, who still worked for the intelligence services, would immediately find her. She further referred to ill-treatment by her employer in Dubai and produced a medical certificate according to which she suffered from post-traumatic stress disorder. On 18 September 2015, the State Secretariat for Migration rejected the application, concluding that the alleged rape was claimed to have been perpetrated in the context of the complainant’s argument with her boyfriend, which, according to the previous assessment by the Federal Office for Migration and the Federal Administrative Court, lacked credibility, and that the alleged ill-treatment in Dubai was irrelevant to the asylum application.

2.5 On 11 January 2016,³ the complainant filed a new asylum application claiming a risk of persecution by Ethiopian authorities due to her political activities in exile. On 20 January 2016, the State Secretariat for Migration concluded that the new application had little chance of succeeding because the complainant had previously failed to prove a risk of persecution in Ethiopia, because it did not appear from the new application that her political activities in exile had received high exposure and because there were doubts about the authenticity of her political engagement, which had begun after her first asylum application had been rejected. The State Secretariat therefore requested the complainant to advance a fee of SwF 600 for the application to be processed. On 11 February 2016, it declared the application inadmissible due to the complainant’s failure to advance the fee. On 24 February 2016, the Federal Administrative Court rejected the complainant’s appeal against the State Secretariat’s decisions of 20 January 2016 and 11 February 2016. However, on 15 March 2016, the Court quashed its judgment of 24 February 2016 and the Secretariat’s decision of 11 February 2016 because the complainant had produced proof of payment of the fee.

2.6 On 13 April 2016, the State Secretariat for Migration dismissed the complainant’s second application for asylum. It stated that Ethiopian authorities were only interested in monitoring the exile activities of persons who were perceived as a threat to the Ethiopian political system. Due to the complainant’s failure to prove persecution by Ethiopian authorities in the first asylum proceedings, the State Secretariat concluded that there was no reason to believe that she had been placed under surveillance upon her arrival in Switzerland. Neither did the State Secretariat find indications that the complainant’s political activities in exile had attracted the attention of the Ethiopian intelligence service. It considered that the complainant’s activities were of relatively low importance and expressed doubts about the authenticity of her engagement. Concerning her alleged membership in Ginbot 7, the State Secretariat concluded that the complainant did not occupy any important position within the organization and that a letter attesting to her membership was a standard letter where her name had simply been inserted. On 8 February 2018, the Federal Administrative Court upheld the State Secretariat’s decision of 13 April 2016. The Court acknowledged that the political and human rights situation in Ethiopia had deteriorated in recent years, that persons suspected of critical attitudes towards the Ethiopian regime were threatened with arrest and that some had been sentenced to long terms of imprisonment. It also noted that in 2011,

² The complainant and the State party indicate that the application was lodged on 22 July 2015. However, the State Secretariat for Migration, in its decision of 18 September 2015, refers to an application dated 23 July 2015.

³ On 8 January 2016, according to the decisions of the Federal Administrative Court of 24 February 2016 and 15 March 2016.

Ginbot 7 had been recognized as a terrorist organization in Ethiopia and that the Ethiopian authorities had recently increased surveillance of Ethiopian activists in exile by means of sophisticated software. The Court admitted that Ethiopian nationals who actively engaged in opposition organizations abroad or sympathized with such organizations could be identified and, if returned to Ethiopia, detected upon their arrival. The Court stated however that the Ethiopian intelligence services focused on arresting persons who engaged in protest activities of a certain profile and could be viewed as a real potential threat to the regime. The Court considered that there were no indications that the complainant had attracted the attention of the Ethiopian authorities or could be viewed as a threat to the Ethiopian political system.

2.7 On 14 February 2018, the State Secretariat for Migration informed the complainant that she had to leave Switzerland by 15 March 2018.

Complaint

3.1 The complainant claims that by returning her to Ethiopia, the State party would violate article 3 of the Convention. She alleges that in Switzerland she is a leading human rights activist and opponent to the Government of Ethiopia and is viewed as such in Ethiopia. She is affiliated with the highest-ranking members of the most important Ethiopian opposition groups and has been seen with them in public, on television and in photos.⁴ Contrary to the findings of the State Secretariat for Migration and the Federal Administrative Court, her political activities cannot be described as being of low intensity. She has been politically active for years and her profile is high. She has already been targeted by the Ethiopian authorities and is perceived as a concrete threat to the Ethiopian political system.

3.2 The complainant evokes the existence of a consistent pattern of mass use of torture in Ethiopia. She refers to the concerns expressed by the Committee about numerous, ongoing and consistent allegations regarding the routine use of torture in Ethiopia.⁵ She submits that due to her exposed political profile, her active membership in several opposition groups and the Ethiopian authorities' "rigour" in suppressing political opposition, the risk for her to be tortured or otherwise ill-treated should she be returned to Ethiopia is real, foreseeable and imminent. She refers to the high political exposure she had already in Ethiopia, which increased in Switzerland. Due to numerous posts and shares on social media, and her broadcasts with leading figures of the opposition on national television, it is inevitable that the Ethiopian authorities have become aware of her political activities and dissent.

3.3 The complainant refers to the jurisprudence of the Federal Administrative Court, according to which the Court has acknowledged that political activities of Ethiopians in exile are monitored and recorded in databases by Ethiopian authorities.⁶ The Court accepted that political activists could be arrested if forcibly returned to Ethiopia, unless they clearly distanced themselves from their political views. It also recognized that there was monitoring of activities not only of high-ranking opposition members but also of low-profile activists, and that the Ethiopian authorities would most probably persecute activists who were removed to Ethiopia after seeking asylum abroad.⁷ Finally, she refers to Federal Administrative Court judgments, dated 17 March 2016 and 13 July 2017, in which the Court stated that the Ethiopian authorities had reinforced surveillance over political activists abroad by means of modern software, that people affiliated with Ginbot 7 and Ethiopian Satellite Television & Radio were targets of regular cyberattacks and that Ethiopian security services believed that persons affiliated with the opposition who were forcibly returned from abroad were opponents of the Government.

3.4 The complainant submits that, if returned to Ethiopia, she would be arrested upon her arrival and detained by the current regime as a dissident. She refers to "numerous stories" of members of the opposition who were arrested upon their arrival to Ethiopia. As an example,

⁴ She claims that her activities have been broadcast on Ethiopian national television and are easily accessible on YouTube and Facebook.

⁵ The complainant refers to CAT/C/ETH/CO/1, para. 10.

⁶ Reference is made to judgments adopted by the Court on 3 September 2010, 11 October 2010 and 20 April 2012.

⁷ Reference is made to a judgment of the Court of 30 November 2007.

she cites the case of Merera Gudina.⁸ She further refers to reports by non-governmental organizations, State authorities and the media that the Ethiopian authorities use antiterrorist legislation against dissidents,⁹ harass and detain members of the opposition,¹⁰ and torture and mistreat detainees,¹¹ with members of Ginbot 7 being particularly targeted.¹² She claims that under Ethiopian legislation, mere “moral support” of a person suspected of terrorism leads to long-term imprisonment.¹³ According to the Home Office of the United Kingdom of Great Britain and Northern Ireland, “anyone who is a member or perceived to be a member” of Ginbot 7 “may be subject to surveillance; harassment; arrest and imprisonment, where they are at risk of incommunicado detention, torture and other abuses, or even extra-judicial killing”.¹⁴ The complainant states that already in 2009, many Ginbot 7 members were being arrested under the antiterrorism legislation. Most of them were sentenced to lifelong imprisonment and some were condemned to death.¹⁵ In 2011–2012, the Government of Ethiopia arrested a significant number of journalists and dissidents, including Ginbot 7 members. Prison sentences ranging from eight years to life were pronounced against some opposition members, including 16 Ethiopians in exile.¹⁶ Ethiopia has used alleged contacts with Ginbot 7 as a reason to imprison dissenting voices on allegations of terrorism.¹⁷ The complainant states that in June 2014, then Secretary-General of Ginbot 7, Andargachew Tsege, was arrested in Yemen and brought to Ethiopia, where he was tortured by Ethiopian security services. The situation of the opposition has recently worsened in Ethiopia, with the authorities proceeding to arrest, detain, harass and torture persons critical of the Government. Ethiopia also uses the state of emergency regulations to restrict freedom of assembly.¹⁸ The complainant remarks that according to the Janes Sentinel Security Assessment in June 2017, the crackdown on opposition in Ethiopia was “unlikely to relax”.¹⁹ The complainant claims that the imprisonment of her brother supports her fears of arrest.

State party’s observations on admissibility and the merits

4.1 On 19 September 2018, the State party submitted its observations on admissibility and the merits of the communication.

4.2 As regards admissibility, the State party notes that the complainant did not appeal the State Secretariat for Migration’s decision of 18 September 2015 dismissing her request for

⁸ “Ethiopia security detain prominent opposition party leader Dr. Merera Gudina”, *Addis Standard*, 1 December 2016; and Abdur Rahman Alfa Shaban, “Ethiopia replies EU MPs: quit criticisms and give ‘constructive support’”, *Africanews*, 20 May 2017.

⁹ Amnesty International, “Dismantling dissent: intensified crackdown on free speech in Ethiopia” (2011); United States of America Department of State, *Country Reports on Terrorism 2016* (2017); Tonny Onyulo, “In Ethiopia, a cry for basic freedoms”, *USA Today*; and United States Department of State, *2016 Country Reports on Human Rights Practices*, “Ethiopia”.

¹⁰ Australia, Department of Foreign Affairs and Trade, *DFAT Country Information Report: Ethiopia*, 28 September 2017, para. 3.31. Available at https://www.ecoi.net/en/file/local/1419297/4792_1512556608_country-information-report-ethiopia.pdf.

¹¹ United States Department of State, *2009 Country Reports on Human Rights Practices*, “Ethiopia” (11 March 2010); Human Rights Watch, *World Report 2017*, “Ethiopia” (2017).

¹² Rahel Zürrer, “Äthiopien: Update – Aktuelle Entwicklungen bis Juni 2014” (Bern, Swiss Refugee Council, 17 June 2014), p. 12.

¹³ Human Rights Watch, “Analysis of Ethiopia’s draft anti-terrorism law” (30 June 2009).

¹⁴ Home Office, “Country policy and information note: Ethiopia – opposition to the government” (London, October 2017), para. 2.3.12. Available at www.refworld.org/docid/59ddc9734.html.

¹⁵ Country of Origin Information Centre (Landinfo), “Ethiopia: the Ginbot 7 party”, topical note (20 August 2012), pp. 8–9.

¹⁶ Ibid., p. 10.

¹⁷ Amnesty International, “Ethiopia: end the onslaught on dissent as arrests continue” (10 July 2014).

¹⁸ United States Department of State, *2016 Country Reports on Human Rights Practices*, “Ethiopia”. The complainant quotes an extract from section 2.A of the report related to detentions, arrests and harassment of persons who criticize the Government. The quoted paragraph does not deal with the right to the freedom of assembly.

¹⁹ Cited in Home Office, “Country policy and information note: Ethiopia”, para. 10.1.7.

review of her first asylum application. Therefore, she did not exhaust the available domestic remedies.

4.3 Regarding the merits, the State party relies on the criteria provided in paragraph 49 of the Committee's general comment No. 4 (2017) and on the Committee's practice in order to demonstrate that the decisions of national authorities are consistent with article 3 of the Convention.

4.4 Concerning the evidence of a consistent pattern of gross, flagrant or mass violations of human rights, the State party submits that this condition in itself is not sufficient to conclude that an individual would risk torture upon return to his or her country of origin.²⁰ The risk has to be foreseeable, real and personal.²¹ The existence of such risk must be assessed on grounds that go beyond mere theory or suspicion.²² The State party is aware that concerns remain about the human rights situation in Ethiopia and that the use of torture seems to be frequent.²³ It submits that the complainant does not demonstrate how the arrests and detentions mentioned in her communication are similar to her individual situation and why they would imply the existence of a threat to her person. The State party notes that Mr. Gudina and Mr. Tsege are leading figures of political opposition and therefore have a high level of exposure. Their circumstances are in no way comparable to those of the complainant. The complainant fails to evoke elements that are sufficient to conclude that she runs a foreseeable, real and personal risk of being subjected to torture if returned to Ethiopia. The State party also points out that the situation in Ethiopia has evolved in different ways. The state of emergency declared in February 2018 was officially lifted in June 2018, Prime Minister Abiy Ahmed concluded a peace treaty with Eritrea and hundreds of political prisoners have been freed, including Mr. Gudina.

4.5 The State party observes that the complainant does not claim to have been subjected to past torture or ill-treatment by the Government of Ethiopia. During the interview of 17 September 2014, she claimed that when her partner had learned that she was a member of Ginbot 7, he had beaten her, threatened her with death and forced her to denounce members of the party. In her request, submitted on 22 July 2015, for review of her asylum application, she claimed that her partner had repeatedly raped her. The complainant's allegations of ill-treatment in Ethiopia did not evolve during the procedure. They are "stereotypical" and lack substance. The complainant provides no evidence from independent sources of the ill-treatment she was allegedly subjected to by her partner.

4.6 Concerning the complainant's engagement in political activities in Ethiopia, the State party submits that during the first asylum proceedings, the Federal Office for Migration and the Federal Administrative Court established that the complainant had not produced credible evidence of her fear of political persecution by Ethiopian authorities. She failed to substantiate her allegations that an arrest warrant had been issued against her, her family had received threats and her brother had been arrested. In its decision of 17 November 2014, upheld by the Federal Administrative Court on 27 April 2015, the Office concluded that her allegations were not supported by real, concrete and detailed elements. Nothing indicates that the complainant had been identified as a political dissident before her departure from Ethiopia. Therefore, there are no reasons to assume that she had been placed under surveillance by the Ethiopian authorities upon her arrival in Switzerland.

4.7 Regarding the political activities of nationals of Ethiopia in Switzerland, the State party recalls previous decisions of the Committee in which the Committee states that political activities in exile are not sufficient to put persons at a substantial risk of torture should they be returned to their country of origin unless they are engaged in ideological and political activities of a profile high enough to attract the attention of Ethiopian authorities.²⁴ The State party confirms that Ethiopian security services have recently reinforced surveillance of

²⁰ *M.F. v. Switzerland* (CAT/C/59/D/658/2015), para. 7.3.

²¹ *N.S. v. Switzerland* (CAT/C/44/D/356/2008), para. 7.3; and *T.Z. v. Switzerland* (CAT/C/62/D/688/2015), para. 8.3.

²² Committee against Torture, general comment No. 1 (1997), para. 6; *T.Z. v. Switzerland*, para. 8.4.

²³ *R.D. v. Switzerland* (CAT/C/51/D/426/2010), para. 9.6.

²⁴ *M.F. v. Switzerland*, paras. 7.6 ff.; *E.E.E. v. Switzerland* (CAT/C/54/D/491/2012), para. 7.7; *R.D. v. Switzerland*, para. 9.7; and *H.K. v. Switzerland* (CAT/C/49/D/432/2010), para. 7.5.

political opponents in exile by means of modern information technologies. It can be assumed that Ethiopian nationals who are active in opposition organizations abroad can be identified and are known to Ethiopian security services from the time they arrive at an airport. The State party notes however that Ethiopian security services focus on individuals who, rather than engage in low-profile political protest, exercise functions or activities that make them serious political opponents who could pose danger to the regime in place and whose activities go beyond low-profile protest. The State party notes that numerous events of Ethiopian opposition are organized in Switzerland and that group photos, sometimes of hundreds of persons, are published in the media. Even if Ethiopian authorities are aware of these activities, they cannot identify and put under surveillance each participant. Moreover, Ethiopian authorities must be aware that many Ethiopian nationals living in Switzerland for economic reasons try to obtain a long-term residence card by participating in opposition events. The Ethiopian authorities are only interested in identifying individuals whose activities are perceived as a concrete threat to the political system in place.

4.8 The State party believes that in the present case, nothing indicates that the complainant is exposed in a particular manner because of her activities in Switzerland. Neither her declarations, nor the evidence submitted to the Committee are sufficient to conclude that she exercises qualified political activities or that she assumes public tasks that imply responsibilities. Her political activities are marginal. The commercial registers of the Ethiopian Human Rights and Democracy Task Force in Switzerland and the Association des Éthiopiens en Suisse do not mention the complainant as a member of either executive office. The letters that confirm the complainant's membership in Ginbot 7, the Task Force and the association do not prove that Ethiopian authorities have taken an interest in the complainant. The letters of Ginbot 7 and the association do not provide any indication of concrete activities in which the complainant has participated, but rather are generic texts with general information that do not demonstrate that the complainant has assumed a particular engagement. The letter of Ginbot 7 even refers to the complainant in the masculine form. While the Task Force letter states that the complainant is a founding member of the women's activist group, it describes her responsibilities within the organization in a very general manner; it does not appear that she has been particularly exposed in public. The complainant's allegation that she has been exposed during public events and has been in contact with high-ranking members of the opposition is very general. It does not appear from the photos provided by the complainant that she stood out particularly in the group of demonstrators or the anonymous group of event participants. Her private photos with Obang Meto, Bezuneh Tsige and Berhanu Nega are not available online. Regarding the availability on Facebook and YouTube of photos and videos of demonstrations and other public events in which she has taken part, the State party underlines that while Ethiopian authorities must be aware of these events, it is not certain to what extent they have identified the complainant. Even if they have identified her, there is no reason to believe that they have taken any interest in her and believe that she belongs to the "hard core" of the opposition. The State party concludes that the complainant cannot be considered as a danger to the Ethiopian regime based on her activities in Switzerland. The activities are too marginal to substantiate a claim that the author faces a personal, actual and serious risk of being subjected to torture if she were to be returned to Ethiopia.

4.9 The State party submits that an allegation of risk of torture is not substantiated if the complainant fails to provide specific details on essential points and thus to prove that she has truly experienced the described events. A claim is not deemed credible if, on essential points, it is contrary to logic and general experience. The asylum authorities concluded that the complainant's account of the circumstances surrounding her departure from Ethiopia, the obtention of a visa for Switzerland, the renewal of her passport in Dubai and the loss of her passport were not credible. It is illogical and contrary to general experience that while being aware of the risks she was running, the complainant left Ginbot 7 flyers in plain sight at her workplace. Neither is it credible that her partner, after discovering that she was implicated in the opposition movement, threatening her, ill-treating her and forbidding her to leave home, had left her without surveillance, letting her escape, but had later denounced her to the authorities.

Complainant's comments on the State party's observations

5.1 In comments dated 13 May 2019, the complainant submits that even though the general situation in Ethiopia has improved in recent months, following the election of the new Prime Minister, Mr. Ahmed, it is impossible to predict whether the efforts of the Ethiopian authorities to reconcile with the opposition will be successful and sustainable. The Federal Administrative Court has stated in several recent judgments that, despite progress, the situation in Ethiopia remains of concern and is still far from stability. It is not known whether the new Prime Minister will be able to hold on to power, as he already faced an assassination attempt in June 2018. The tense and partly contradictory situation in Ethiopia is described in a report published by the Danish Immigration Service, which points out that despite improvements, there are still reports about detentions on political grounds and a substantial number of political prisoners have not yet been released.²⁵

5.2 The complainant objects to the State party's claim that her account of the ill-treatment by her former partner is "stereotypical" and lacks substance. She had informed the Federal Office for Migration that she was already an active member of Ginbot 7 in Ethiopia, and that her then boyfriend, an intelligence agent, had threatened, beaten and repeatedly raped her after learning that she was a Ginbot 7 member and she had therefore been forced to leave Ethiopia. Her declarations to the asylum authorities were precise and consistent.

5.3 The complainant claims that the evidence submitted with her communication clearly indicates that she is strongly involved with the Ethiopian community in Switzerland and opposes human rights violations in her home country. She is a member of the Executive Committee of the Ethiopian Human Rights and Democracy Task Force and represents the organization in the Canton of Lucerne. Most members of the Executive Committee are not listed in the commercial register. The Task Force confirmed her involvement in a letter dated 20 February 2018 and described her activities in detail, stating that she was highly involved in decision-making, in promoting the Task Force in general and in different events in Lucerne. The tasks performed by the women's group, of which the complainant is a founding member, are described extensively, for example, supporting Task Force events by preparing food and drink and raising funds for the organization. Therefore, the complainant's involvement cannot be described as marginal. The complainant is acquainted with numerous high-ranking opposition members and has taken part in countless meetings, demonstrations and forums. Pictures and videos of the events, showing the complainant, can easily be found on the Internet. Her regular and intense participation can be detected without effort by the Ethiopian authorities, which, as the State party acknowledges, have intensified their search for citizens with dissenting opinions. This has not changed much since the change of power in 2018.

5.4 The complainant notes that the Swiss Refugee Council, a non-governmental organization, recently pointed out that the National Intelligence and Security Service of Ethiopia intensively monitored Ethiopian nationals abroad, whether or not they were particularly exposed in the opposition. Expressing sympathy for the political opposition could be sufficient. Moreover, there were signs that even after the legalization of certain groups, the Service continued to monitor the diaspora in order to find out whether new groups opposing the Government were being founded.²⁶

State party's additional observations

6. On 14 May 2019, the State party informed the Committee that the complainant's comments of 13 May 2019 did not contain any new elements and that it maintained the position formulated in its observations of 19 September 2018.

²⁵ Danish Immigration Service, *Ethiopia: Political Situation and Treatment of Opposition* (2018), pp. 12–13.

²⁶ Swiss Refugee Council, "Äthiopien: Exilpolitische Aktivitäten, staatliche Überwachung, neuer Entwicklungen" (26 September 2018), pp. 8–9.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 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.

7.2 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 takes note of the State party's claim that the complainant failed to appeal the decision of 18 September 2015 by which the State Secretariat for Migration dismissed her request for a review of her first asylum application in the light of additional elements. The Committee notes, however, that it is uncontested that the complainant exhausted all available domestic remedies against the decision of the Federal Office for Migration, dated 17 November 2014, rejecting her first asylum application, and the decision of the State Secretariat for Migration, dated 13 April 2016, rejecting her second asylum application. Consequently, the Committee considers that it is not precluded by article 22 (5) (b) of the Convention from examining the communication.

7.3 As the Committee finds no further obstacles to admissibility, it declares the complaint admissible and proceeds with its consideration of the merits.

Consideration of the merits

8.1 In accordance with article 22 (4) of the Convention, the Committee has considered the communication in the light of all the information made available to it by the parties.

8.2 The issue before the Committee is whether the forcible removal 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 ("refoul") a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture or other cruel, inhuman or degrading treatment or punishment. The Committee notes that the prohibition against torture is absolute and non-derogable and that no exceptional circumstances whatsoever may be invoked by a State party to justify acts of torture.²⁷

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 Ethiopia. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of the determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.²⁸

8.4 The Committee recalls its general comment No. 4 (2017), according to which the non-refoulement obligation exists whenever there are "substantial grounds" for believing that the person concerned would be in danger of being subjected to torture in a State to which the person is facing deportation, either as an individual or as a member of a group that may be at risk of being tortured in the State of destination. The Committee recalls, from the same

²⁷ Committee against Torture, general comment No. 2 (2007), para. 5.

²⁸ See, for example, *E.T. v. Netherlands* (CAT/C/65/D/801/2017), para. 7.3; and *Y.G. v. Switzerland* (CAT/C/65/D/822/2017), para. 7.3.

general comment, that “substantial grounds” exist whenever the risk of torture is “foreseeable, personal, present and real” (para. 11). Indications of personal risk may include, but are not limited to: (a) the political affiliation or political activities of the complainant and/or the complainant’s family members; (b) previous torture; (c) clandestine escape from the country of origin following threats of torture; and (d) violence against women, including rape (para. 45).

8.5 The Committee recalls that the burden of proof is upon the author of the communication, who must present an arguable case, that is, submit substantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real. However, when complainants are in a situation where they cannot elaborate on their case, such as when they have demonstrated that they have no possibility of obtaining documentation relating to their allegation 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.²⁹ 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. It follows that the Committee will make a free assessment of the information available to it in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to each case.³⁰

8.6 The Committee takes note of the complainant’s claim that she would risk arrest and torture in Ethiopia due to her activities as a member of political opposition organizations in Ethiopia and in Switzerland. The Committee notes that to support these claims, the complainant mainly relies on reports on the human rights situation in Ethiopia and on the jurisprudence of the Federal Administrative Court. It also notes that the complainant believes that the asylum authorities erred in assessing the risk of persecution in her case. It further notes that the State party does not dispute that political dissidents may risk arrest and torture in Ethiopia but considers that the complainant has failed to demonstrate the existence of a foreseeable, real and personal risk of torture should she be forcibly returned to Ethiopia. The Committee notes the State party’s argument that the complainant’s account of the persecution she allegedly suffered in Ethiopia is not credible and that her political activities in Switzerland are too marginal to attract the attention of the Ethiopian authorities. It also notes the State party’s claim, undisputed by the complainant, that the human rights situation in Ethiopia started to improve in 2018.

8.7 The Committee notes that the complainant does not provide any evidence to support her claims that she was subjected to torture or ill-treatment in Ethiopia, and that the State party has noted contradictions in the complainant’s statements regarding the treatment to which her former boyfriend had allegedly subjected her. Furthermore, the Committee recalls that ill-treatment suffered in the past is only one element to be taken into account when assessing the risk of violation of article 3 of the Convention. The principal aim of such assessment is to determine whether the complainant currently runs the risk of being subjected to torture upon her return to her country of origin. It does not automatically follow from the complainant’s former ill-treatment that she would still be at risk of being subjected to torture if she is returned to Ethiopia.³¹

8.8 The Committee notes that the complainant does not claim that the Ethiopian authorities attempted to prevent her from leaving Ethiopia. Neither has she submitted any evidence suggesting that Ethiopian authorities, such as the police or other security services, have been searching for her.³² Moreover, in 2012 she was able to renew her national passport at the Ethiopian embassy in Dubai. The Committee notes that the complainant has not provided any further explanations or evidence to support the claims she made to the national authorities that an arrest warrant had been issued against her by Ethiopian authorities and that

²⁹ General comment No. 4, para. 38.

³⁰ Ibid., para. 50.

³¹ *X, Y and Z v. Sweden* (CAT/C/20/D/61/1996), para. 11.2; *G.B.M. v. Sweden* (CAT/C/49/D/435/2010), para. 7.7; *X. v. Denmark* (CAT/C/53/D/458/2011), para. 9.5; and *S.S.B. v. Denmark* (CAT/C/60/D/602/2014), para. 8.7.

³² See, for example, *I.E. v. Switzerland* (CAT/C/62/D/683/2015), para. 7.6; and *H.R.E.S. v. Switzerland* (CAT/C/64/D/783/2016), para. 8.13.

she had been convicted in absentia in Ethiopia. Neither does the complainant substantiate her claim that her brother was imprisoned in Ethiopia in relation to her political activities.

8.9 The Committee recalls that when evaluating the risk of violation of article 3 of the Convention, it is pertinent to take into account whether the complainant has engaged in political or other activities within or outside the State concerned that would appear to make the complainant vulnerable to the risk of being subjected to torture were the complainant to be returned to the State in question.³³ The Committee recalls that it is generally for the instances of States parties to the Convention to review or evaluate facts and evidence in order to determine the existence of danger of persecution. It appears from the information available to the Committee that the Swiss authorities took into consideration the evidence provided by the complainant and concluded that she had not been persecuted by Ethiopian authorities before her departure from Ethiopia, that her political activities had begun in Switzerland and that she had not attained a profile high enough to attract the attention of the Ethiopian authorities. In the present case, the Committee observes that the Federal Office for Migration, the State Secretariat for Migration and the Federal Administrative Court thoroughly examined the complainant's claims and the evidence presented by her in support of such claims. While the complainant disagrees with the factual conclusions of the State party's authorities, she has not shown that they were arbitrary or manifestly erroneous, or that they amounted to a denial of justice.

8.10 The Committee notes that in accordance with article 3 (2) of the Convention, in order to determine whether there are substantial grounds for believing that a person would be in danger of being subjected to torture if returned to another State, the competent authorities are to take into account the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights, including harassment and violence against minority groups.³⁴ The Committee recalls however that the occurrence of human rights violations in a complainant's country of origin is not sufficient in itself to conclude that he or she runs a personal risk of torture upon return to that country. Therefore, the mere fact that human rights violations occur in Ethiopia is not in itself sufficient to conclude that the complainant's removal to that country would constitute a violation of article 3 of the Convention.³⁵ In the present case, the Committee notes that it appears from the case file that the State party's authorities took into account the relevant background information when examining the complainant's asylum applications. Regarding the complainant's assertion that her membership in Ginbot 7 and other opposition organizations and her appearance in television broadcasts by Ethiopian Satellite Television & Radio would place her at risk of being arrested and tortured by the Ethiopian secret services, the Committee takes note of improvements in the human rights situation in Ethiopia since 2018, including the release of political detainees, the decriminalization of opposition movements, the granting of amnesty and the return to the country of exiled members of political opposition groups, journalists and media organizations. In particular, the Committee observes that in 2018, Ginbot 7 was removed from the Government's list of terrorist organizations; its Secretary-General, Mr. Tsege, was pardoned; its leader, Mr. Nega, returned to Ethiopia after all charges against him had been dropped; and Ethiopian Satellite Television & Radio reopened in Addis Ababa.³⁶ It also takes note of reports that Ginbot 7 dissolved itself to become, in May 2019, part of the political party Ethiopian Citizens for Social Justice.³⁷ On the other hand, the Committee observes that the arrest and detention of high-profile opposition individuals continued to

³³ General comment No. 4, para. 49 (f).

³⁴ Ibid., para. 43.

³⁵ See the following decisions related to deportation to Ethiopia: *H.K. v. Switzerland*, para. 7.5; *R.D. v. Switzerland*, para. 9.7; *X. v. Denmark*, para. 9.6; *E.E.E. v. Switzerland*, para. 7.7; *M.F. v. Switzerland*, para. 7.7; *T.Z. v. Switzerland*, para. 8.7; and *X v. Switzerland* (CAT/C/65/D/765/2016), para. 7.8.

³⁶ *X v. Switzerland* (CAT/C/67/D/775/2016), para. 8.9. See also

<https://news.un.org/en/story/2018/04/1008312>;

www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23174&LangID=E; and

A/HRC/42/14, paras. 9, 11, 64, 105 and 106.

³⁷ Abdur Rahman Alfa Shaban, "Ethiopia's Ginbot 7 dissolves, transforms into new 'united' party", *Africanews*, 10 May 2019; and Morris Kiruga, "Ethiopia opposition leader Berhanu Nega leads new party", *The Africa Report*, 14 May 2019.

occur, in particular in the context of the recent national elections.³⁸ However, while recognizing that the current human rights situation in Ethiopia with regard to political opposition may still be of concern, the Committee considers that the complainant has not submitted any evidence that she is, or would be, personally targeted and subjected to torture or ill-treatment by the State party's authorities if returned to Ethiopia.

9. In the light of the above considerations and on the basis of all of the information submitted by the parties, the Committee considers that the complainant has not adequately demonstrated the existence of substantial grounds for believing that her return to Ethiopia would expose her to a real, foreseeable and personal risk of torture, contrary to article 3 of the Convention.

10. The Committee, acting under article 22 (7) of the Convention, concludes that the complainant's removal to Ethiopia by the State party would not constitute a violation of article 3 of the Convention.

³⁸ African Union Election Observation Mission to the 21 June 2021 General Elections in the Federal Democratic Republic of Ethiopia, preliminary statement, Addis Ababa, 23 June 2021, para. 3.