



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

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Committee against Torture

Communication No. 414/2010

**Decision adopted by the Committee at its forty-eighth session, 7 May to
1 June 2012**

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| <i>Submitted by:</i> | N.T.W. (represented by counsel, Tarig Hassan) |
| <i>Alleged victim:</i> | The complainant |
| <i>State party:</i> | Switzerland |
| <i>Date of the complaint:</i> | 18 March 2010 (initial submission) |
| <i>Date of decision:</i> | 16 May 2012 |
| <i>Subject matter:</i> | Deportation of the complainant to Ethiopia |
| <i>Procedural issue:</i> | Lack of substantiation of the claims |
| <i>Substantive issue:</i> | Risk of torture in the case of deportation of the complainant |
| <i>Article of the Convention:</i> | 3 |

Annex

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

concerning

Communication No. 414/2010

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|---------------------------|---|
| <i>Submitted by:</i> | N.T.W. (represented by counsel, Tarig Hassan) |
| <i>Alleged victim:</i> | The complainant |
| <i>State party:</i> | Switzerland |
| <i>Date of complaint:</i> | 18 March 2010 (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 16 May 2012,

Having concluded its consideration of complaint No. 414/2010, submitted to the Committee against Torture by N.T.W. 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, his counsel and the State party,

Adopts the following:

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

1.1 The complainant is N.T.W., a national of Ethiopia, born in 1974. The complainant is an asylum seeker, whose application for asylum was rejected. He claims that his forced return to Ethiopia would constitute a violation by Switzerland of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel, Tarig Hassan.

1.2 On 24 March 2010, under former rule 108, paragraph 1, of the Committee's rules of procedure,¹ the Committee requested the State party not to expel the complainant to Ethiopia while his complaint was under consideration by the Committee.

The facts as presented by the complainant

2.1 The complainant is an Ethiopian citizen of Oromo ethnicity who grew up in Addis Ababa and worked as a building constructor after studying architecture. During the electoral campaign in 2005, he became interested in politics and joined the supporters of the

¹ Rule 114, paragraph 1, of the current rules of procedure (CAT/C/3/Rev.5).

Coalition for Unity and Democracy party (CUD; abroad often referred to as CUDP or KINIJIT). He actively campaigned for the candidates of that party and was placed on its formal list of supporters. According to the complainant, after the elections resulted in a KINIJIT success, the governing party began a crackdown on the opposition party, and several members of the opposition were killed. The complainant was warned by a friend, who had connections with the governing party, that he was a target and that the police were looking for him. He left Ethiopia for Sudan in November 2005 and travelled from Khartoum via Germany to Switzerland, where he arrived in June 2006 and applied for asylum.

2.2 The complainant submits that he continues to be politically active in Switzerland, that he is one of the founding members of KINIJIT Switzerland. He states that his political interest is genuine and has participated in various demonstrations against the regime in Addis Ababa since 2006. He writes Internet commentaries on recent political developments and expresses his political opinions in online forums, including a well-known forum for Ethiopian politics.

2.3 The complainant submitted his first asylum request, based on his activities in Ethiopia, on 23 June 2006. The Swiss asylum authorities rejected his application on 18 August 2006 and on appeal on 18 July 2008. On 11 March 2009, the complainant lodged a second asylum request. The request was rejected by the Federal Office for Migration on 30 April 2009 and by the Federal Administrative Court on 10 February 2010. Following the latter judgement, the complainant was requested to leave Switzerland by 15 March 2010. The complainant submits that if he failed to leave voluntarily, he would be forcibly returned to Ethiopia.

2.4 The complainant submits that the Court found his position within the KINIJIT movement and the nature of his involvement not sufficiently prominent to cause a well-founded fear of persecution, although it acknowledged that the complainant was a founding member of KINIJIT Switzerland and that he participated in various demonstrations and political activities. The Court also stated that it cannot be presumed that his involvement was of such nature that the Government of Ethiopia would perceive him as a threat to the regime. It concluded that he faced no real risk of torture or other inhumane and degrading treatment were he to return to Ethiopia.

2.5 The complainant submits that his activities relating to the election campaign in 2005 and the fact that he openly expressed his political opinion in discussions with governing party officials, as well as the fact that he was an educated professional resulted in him being noticed and targeted by the Government in Ethiopia. He maintains that the arrests made by the Government of Ethiopia are not limited to high-level politicians and that the Government is closely monitoring opposition movements,² both within Ethiopia and in exile. He submits that, following recently adopted anti-terrorism legislation, the Government's crackdown on political dissidents had intensified. A provision of the above-mentioned legislation provides for 20 years of imprisonment for "whosoever writes, edits, prints, publishes, publicizes, disseminates, shows, makes to be heard any promotional statement encouraging, supporting or advancing terrorist acts",³ and one analysis states that "the legislation conflated political opposition with terrorism".⁴ The complainant also refers to an analysis by Human Rights Watch in relation to this law, which states that

² The complainant refers to the United States Department of State 2009 Country Reports on Human Rights Practices: Ethiopia.

³ The complainant refers to a report of the Committee to Protect Journalists, "Attacks on the press 2009: Ethiopia".

⁴ Ibid.

“government opponents and ordinary citizens alike face repression that discourages and punishes free expression and political activity”.⁵

2.6 The complainant claims that after his arrival in Switzerland he intensified his political activism and that he had presented numerous pictures testifying to his involvement in demonstrations and political happenings, all published on the Internet. He claims that through his continued and resolute activism he has become a highly visible figure within the Ethiopian exile movement. He stresses that both his long absence from Ethiopia and his political views would put him at a real risk of being persecuted in case of return to his home country. The complainant refers to United States Department of State reports that state that Ethiopian police use torture methods against political opponents and critics. He also refers to reports of the Committee to Protect Journalists⁶ and a report by Human Rights Watch which states that detainees and convicted prisoners alike face torture and other ill-treatment, and he mentions a statement by the same organization that refers to the use of torture by Ethiopian police and military officials in both official and secret detention facilities across Ethiopia. He further refers to the Freedom House report “Freedom of the press 2009: Ethiopia” of May 2009, which states that the Government of Ethiopia monitored and blocked opposition websites and blogs, including news websites run by Ethiopians living abroad.

The complaint

3. The complainant claims that his forcible return to Ethiopia would constitute a violation by Switzerland of his rights under article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, since he risks being subjected to torture or other inhumane and degrading treatment by the Ethiopian authorities if returned.

State party’s observations on admissibility and on the merits of the complaint

4.1 On 30 March 2010, the State party informed the Committee that the complainant will remain in Switzerland while his case is under consideration by the Committee or until the interim measures are lifted.

4.2 The State party submits that the complainant filed an initial application for asylum in Switzerland on 23 June 2006. He claimed that he feared being harassed as a supporter of Coalition for Unity and Democracy after the 2005 elections. This request was denied by the Federal Office for Migration on 18 August 2006. The appeal against that decision was dismissed by the Federal Administrative Court on 18 July 2008. On 10 March 2009, the complainant filed a second asylum application, claiming that his political activities in Switzerland were of such nature that the Ethiopian authorities would likely have a strong interest in arresting him. On 30 April 2009, the Federal Office for Migration rejected the application. In his appeal to the Federal Administrative Court, the complainant explicitly recognized that the decision of 18 July 2008 had entered into force and motivated his application only with political activities in which he participated in Switzerland. By its decision of 10 February 2010, the Federal Administrative Court rejected the appeal.

4.3 The State party submits that the complainant argues before the Committee that he would run a personal, real and serious risk to be subjected to torture if returned to his country, because of his political activities in Switzerland. He does not present any new elements that would call into question the 10 February 2010 decision of the Federal

⁵ The complainant refers to Human Rights Watch, *World Report 2009* (New York, 2009), p. 71.

⁶ The complainant refers to the report of the Committee to Protect Journalists, “Attacks on the press 2009: Ethiopia”.

Administrative Court, which was made following a detailed examination of the case, but rather disputes the assessment of the facts and evidence by the Court. The State party submits that it will demonstrate the validity of the Court's decision, in the light of article 3 of the Convention, the jurisprudence of the Committee and its general comments, and maintains that the deportation of the complainant to Ethiopia would not constitute a violation of the Convention by Switzerland.

4.4 The State party submits that according to article 3 of the Convention, the States parties are prohibited from expelling, returning or extraditing a person to another State where there exist substantial grounds for believing that he or she would be subjected to torture. To determine the existence of such grounds, the competent authorities must take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.⁷ The existence of gross, flagrant or mass violations of human rights is not in itself a sufficient basis for concluding that an individual might be subjected to torture upon his return to his country, and additional grounds must exist for the risk of torture to qualify under the meaning of article 3 as "foreseeable, real and personal".

4.5 Regarding the general human rights situation in Ethiopia, the State party submits that the elections in Ethiopia in May 2005 and August 2005 have strengthened the representation of opposition parties in the Parliament. It recognizes that, although the Ethiopian Constitution explicitly recognizes human rights, there are many instances of arbitrary arrests and detentions, particularly of members of opposition parties. In addition, there is a lack of an independent judiciary. However, being a member or supporter of an opposition political party does not, in principle, lead to a risk of persecution. It is different for persons who hold a prominent position in an opposition political party.⁸ In the light of the above information, the competent Swiss asylum authorities have adopted differentiated practices to determine the risk of persecution. Individuals who are suspected by the Ethiopian authorities to be members of the Oromo Liberation Front or the Ogaden National Liberation Front are considered at risk of persecution. With regard to persons belonging to other opposition groups, such as CUD, the risk of persecution is assessed on case-by-case basis, in accordance with the above criteria. With regard to monitoring political activities in exile, the State party submits that according to the information available to it, the Ethiopian diplomatic or consular missions lack the personnel and structural resources to systematically monitor the political activities of opposition members in Switzerland. However, active and/or important members of the opposition, as well as activists of organizations who are campaigning for the use of violence, run the risk of being identified and registered and, therefore, of being persecuted if returned.

4.6 The State party notes that the complainant does not claim to have suffered torture, or to have been arrested or detained by Ethiopian authorities.

4.7 As to the political activities in which the complainant engaged in his home country, the State party submits that the complainant appears to have been interested in politics, but that the work he had actually done in the context of the May 2005 elections was not of a

⁷ The State party refers to the Committee's general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22 (*Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44)*, annex IX), paras. 6 and 8, and the Committee's jurisprudence in communications No. 94/1997, *K.N. v. Switzerland*, Views adopted on 19 May 1998, para. 10.2, and No. 100/1997, *J.U.A. v. Switzerland*, Views adopted on 10 November 1998, paras. 6.3 and 6.5.

⁸ The State party refers to the UK Border and Immigration Agency's Operational Guidance Note on Ethiopia of March 2009, para. 3.7.9.

nature to make him a person of interest for the Ethiopian regime. The State party reiterates the Federal Administrative Court argumentation that the complainant has not presented in a convincing manner that he would have been persecuted by the authorities after those elections. The Court had based its conclusion on the contradictions between the statements of the complainant of 18 July 2006 and of 26 July 2006⁹ and on the fact that it was not clear from the case file whether the complainant had participated in the 2005 demonstrations. In view of the above the domestic asylum authorities had concluded that the complainant could not present credible evidence that he was wanted by the authorities after the 2005 elections due to his political activities or that the Ethiopian authorities would have taken any action against him because of his activities. The State party maintains that this conclusion was emphasized by the fact that the complainant could not explain what identity he used to fly to Europe (from Khartoum, Sudan to Frankfurt, Germany, then to Milan, Italy).

4.8 The State party notes that the complainant claims before the Committee to be a founding member of KINIJIT Switzerland. However, before the domestic authorities, he had stated that he became a member of this organization, which was founded before his arrival in Switzerland, in August 2006. According to the complainant, he was an active member of KINIJIT Switzerland, he participated in particular in some demonstrations and in meetings of KINIJIT Switzerland and contributed to the cyberethiopia.com forum between December 2008 and February 2009. The complainant had not claimed to have engaged in activities going beyond those or to have occupied a leadership position in the organization. The State party notes that the complainant's claims were the subject of extensive analysis by the Federal Administrative Court and that the latter noted in particular his extremely limited political involvement in Switzerland. The State party also submits that, in view of their limited resources, the Ethiopian authorities are focusing all their attention on individuals whose activities go beyond "the usual behaviour", or who exercise a particular function or activity that could pose a threat to the Ethiopian regime. However, the complainant presented no political profile when he arrived in Switzerland and the State party deems it reasonable to exclude that he has subsequently developed such a profile. The State party maintains that the documents produced by the complainant do not show activity in Switzerland able to attract the attention of the Ethiopian authorities. The fact that the complainant is identified in photographs of participants in certain demonstrations and has published texts on the Internet is not sufficient to demonstrate a risk of persecution if returned. The State party maintains that numerous political demonstrations take place in Switzerland, that photographs or video recordings showing sometimes hundreds of people are made publicly available by the relevant media and that it is unlikely that the Ethiopian authorities are able to identify each person, or that they even have knowledge of the affiliation of the complainant with the above organization.

4.9 The State party submits that there is no evidence that the Ethiopian authorities have opened criminal proceedings against the complainant or that they have adopted other measures towards him. Accordingly, the State party's immigration authorities did not qualify as convincing the claim that the complainant has a function within the Ethiopian diaspora in Switzerland able to attract the attention of the Ethiopian authorities. In other words, the complainant has not established that if returned to Ethiopia he would run a risk of ill-treatment because of his political activities in Switzerland.

4.10 The State party submits that, in the light of the above, there is no indication that there are substantial grounds for fearing that the complainant's return to Ethiopia would

⁹ It appears from the annexes to the State party's submission that the complainant gave different versions of his political involvement as well as of why he was being sought and by whom (members of a political party or the police).

expose him to a foreseeable, real and personal risk of torture, and invites the Committee against Torture to find that the return of the complainant to Ethiopia would not constitute a violation of the international commitments of Switzerland under article 3 of the Convention.

Complainant's comments on the State party's observations

5.1 On 30 August 2010, the complainant submitted that the Swiss immigration authorities have recognized themselves that he had a thorough political interest and that it was likely that he had engaged in critical political discussions in 2005. He reiterates that he was actively campaigning for KINIJIT during the electoral campaign in 2005 and that he was a well-informed advocate for the opposition movement. He maintains that he combines several qualities that would make him a potentially destabilizing factor to the Ethiopian regime and that accordingly it is very likely that the latter would take his dissident activism in exile seriously. He further submits that not only has he steadily continued his political activism in KINIJIT by participating in demonstrations and writing in Internet forums, but he also serves as the cantonal representative for KINIJIT for the canton of Zurich.

5.2 The complainant maintains that the Ethiopian authorities have at their disposal "very modern means of monitoring the activities of the opposition in exile". In case of return, Ethiopian members of the opposition movement are screened and risk imprisonment, because of their activities in exile. The complainant refers to the case of Judge Birtukan Mideksa, a former chairperson of the Unity for Democracy and Justice Party who, on an unspecified date, was arrested upon return to Ethiopia after travelling in Europe and making comments critical of the public regime. The author submits that he has published several critical comments on dissident Ethiopian websites and, considering the "much more advanced technical monitoring means" at the disposition of the Ethiopian authorities, it is very likely that he has been identified as an active member of the opposition in exile, especially given his position as cantonal representative of KINIJIT in Zurich.

5.3 The complainant further submits that the regime in his home country is extremely hostile to criticism and opposition in general. With the recent anti-terrorist legislation, repression of political speech and peaceful protest has been legalized. Detention of persons suspected of maintaining links with the opposition parties is common. The complainant maintains that upon his return to Ethiopia, he will be apprehended and interrogated, that prison conditions are among the worst in the world and that torture is employed frequently. The complainant further makes reference to a case in which the Swiss immigration authorities had granted refugee status to an Ethiopian national who had been working for the Ethiopian Human Rights Council and was then active as a cantonal representative of the CUPD. He claims that his case is similar and therefore maintains that the State party's allegations that it is unlikely that the complainant had been registered by the Ethiopian authorities provide no guarantee "against the likely mistreatment the complainant will suffer". He reiterates that if Switzerland forcibly returns him to Ethiopia, it will violate its obligation under article 3 of the Convention.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering a claim 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.

6.2 The Committee recalls that, in accordance with article 22, paragraph 5 (b), of the Convention, it shall not consider any communications from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that in the instant case the State party has recognized that the complainant has exhausted all available domestic remedies. As the Committee finds no further obstacles to admissibility, it declares the communication admissible.

Consideration of the merits

7.1 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.

7.2 The issue before the Committee is whether the removal of the complainant to Ethiopia would violate 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. 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 this 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 such 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 return.

7.3 The Committee recalls its general comment No. 1, that "the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable" (para. 6), but it must be personal and present. In this regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal.¹⁰ The Committee recalls that under the terms of its general comment No. 1, it gives considerable weight to findings of fact that are made by organs of the State party concerned, while at the same time it is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.

7.4 The Committee has noted the complainant's submissions about his involvement in the electoral campaign in 2005 and in the activities of KINIJIT Switzerland. The Committee also notes the complainant's submission that in 2005 he was warned by a friend, who had connections with the governing party, that the police were looking for him. The Committee, however, observes that the complainant has not submitted any evidence that the police or other authorities in Ethiopia had been looking for him since. The Committee also notes that the complainant has never been arrested or ill-treated by the authorities during or after the 2005 election, nor does he claim that any charges have been brought against him under the anti-terrorist or any other domestic law. The Committee further notes the complainant's submission that the Ethiopian authorities use sophisticated technological means to monitor Ethiopian dissidents abroad, but observes that he has not elaborated on this claim or presented any evidence to support it. In the Committee's view, the complainant has failed to adduce sufficient evidence about the conduct of any political activity of such significance that would attract the interest of the Ethiopian authorities, nor has he submitted any other tangible evidence to demonstrate that the authorities in his home

¹⁰ See, inter alia, communications No. 258/2004, *Daftar v. Canada*, decision adopted on 23 November 2005, and No. 226/2003, *T.A. v. Sweden*, decision adopted on 6 May 2005.

country are looking for him or that he is at a personal risk of being tortured if returned to Ethiopia.

7.5 The Committee finds accordingly that the information submitted by the complainant, including the low-level nature of his political activities in Ethiopia and his subsequent activities in Switzerland, is insufficient to establish his claim that he would personally be exposed to a substantial risk of being subjected to torture if returned to Ethiopia. The Committee is concerned at the many reports of human rights violations, including the use of torture in Ethiopia,¹¹ 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. In the light of the foregoing, the Committee deems that such a risk has not been established.

8. In the light of the above, 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 decision of the State party to return the complainant to Ethiopia would not constitute a breach of article 3 of the Convention.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

¹¹ The Committee notes that Ethiopia is also a State party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and recalls its 2011 concluding observations (CAT/C/ETH/CO/1), paras. 10-14.