



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. 765/2016*, **

<i>Communication submitted by:</i>	X (represented by counsel, Tarig Hassan)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	15 August 2016 (initial submission)
<i>Date of present decision:</i>	23 November 2018
<i>Subject matter:</i>	Deportation to Ethiopia
<i>Procedural issue:</i>	Lack of substantiation of claims
<i>Substantive issue:</i>	Risk to life or risk of torture or inhuman or degrading treatment, if deported to country of origin (non-refoulement)
<i>Article of the Convention:</i>	3

1.1 The complainant is Mr. X, a national of Ethiopia, born on 18 January 1977. He entered Switzerland illegally on 8 June 2011 and applied for asylum on the same date. His request for asylum was rejected on 13 July 2016 by the Federal Administrative Court, and his expulsion was ordered in compliance with the decision of the Federal Office for Migration dated 29 April 2014. He was requested to leave Switzerland by 18 August 2016, otherwise he would be forcibly removed. No date for his forcible removal has been fixed.

1.2 The complainant submits that his forcible removal to Ethiopia would constitute a violation by Switzerland of his rights under article 3 of the Convention as he fears he would face a real and imminent risk of torture by the Ethiopian authorities. He requests that interim measures be taken to prevent his removal in order to avoid irreparable harm to his physical and mental integrity. The complainant is represented by counsel.

1.3 On 16 August 2016, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party not to deport the complainant to Ethiopia while his complaint was being considered.

The facts as presented by the complainant

2.1 The complainant is a citizen of Ethiopia, of Oromo ethnicity. He grew up in Dembi Dolo. He comes from an environment supportive of the Oromo Liberation Front; he himself

* Adopted by the Committee at its sixty-fifth session (12 November–7 December 2018).

** The following members of the Committee participated in the examination of the communication: Essadia Belmir, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Honghong Zhang.



has assisted some of its affiliates. The Government of Ethiopia has classified the Front as a terrorist organization. Two of his brothers were active in the organization and lost their lives due to their membership. The complainant does not have details of the circumstances of their deaths owing to his young age at the time.¹

2.2 The complainant used to work as a driver delivering goods on behalf of Kemeo Shibo, the regional director of communications of Dembi Dolo, who was suspected of being an official of the Oromo Liberation Front and of being in contact with the general, Legesse Wegi. The complainant was aware of Mr. Shibo's affiliation with the Front, of which he himself was a supporter. The complainant believes that intelligence services put a trace on the phone of Mr. Shibo, which is how the complainant came to be arrested four times by the authorities between 2008 and 2011.

2.3 The complainant was arrested for the first time on 13 October 2008. He was beaten, slapped, blinded with a torch, kept handcuffed and forced to lie down, and the authorities attempted to force him to make a false confession of his affiliation with the Oromo Liberation Front and to give information about Mr. Shibo. He was released after 25 days upon payment of bail by his uncle, but he was requested to remain at the disposal of the authorities and not to leave Dembi Dolo. Subsequently, Mr. Shibo was also arrested and has not been released, according to the complainant's accounts. The complainant was treated similarly during his second arrest on 19 December 2009 by a commander of the army. He was detained for four days and questioned about his relations to Mr. Shibo. The Ethiopian security authorities tried to force him to make a false confession by torturing him in the same way as they had done the first time he was arrested. He was released after bail of 5,000 birr had been paid by his uncle. On 17 June 2010, he was arrested for the third time, questioned, tortured and threatened with death if he did not provide information on Mr. Shibo. He was released after a day of denying allegations. On 28 March 2011, the complainant was arrested for the fourth time, at his house. His detention lasted for five days and followed the same pattern, although he was also told that there was a witness against him. His uncle paid the bail for his release again and the complainant signed an agreement not to leave the area.

2.4 On 2 April 2011, the complainant learned that two individuals he had delivered goods to on behalf of Mr. Shibo had also been arbitrarily arrested. He became afraid that one of them might make a false confession against him and he decided to flee the country for the Sudan on 3 April 2011.

2.5 Once in Switzerland, although he had only been a sympathizer of the Oromo Liberation Front in Ethiopia, he strengthened his connection to the organization and became an active participant in the demonstrations held in support of the Oromo people.²

2.6 The Federal Administrative Court in Switzerland indicated that although it found his arrest credible, it did not consider the alleged threat of violence and aggression, and the psychological pressure that would result from the obligation to remain in Dembi Dolo, strong enough to justify granting refugee status to the complainant. The authorities did not find that his claim of future harm was well founded and they did not think that his appearance at events in Switzerland would make him known to the Ethiopian authorities.

2.7 The complainant affirms that his complaint has not been, and is not being, examined under another procedure of international investigation or settlement.

The complaint

3.1 The complainant claims that Switzerland would violate its obligations under article 3 of the Convention if it forcibly removed him to Ethiopia, since he would again face a risk to

¹ The State party's submission indicates that one of the complainant's brothers, who died in 2003, was in a cadre of the Oromo Liberation Front (Federal Administrative Court decision of 13 July 2016, letter B, annex 2).

² The complainant supplies proof of his membership of the Oromo Liberation Front (letters of June 2014 and August 2016) and participation in demonstrations held in support of the Oromo community of Switzerland, as he started to appear on the front line of opposition demonstrations with high-profile activists who are well known to Ethiopian authorities.

his life or of being subjected to torture or inhuman or degrading treatment, due to his suspected affiliation with the Oromo Liberation Front.

3.2 The complainant recalls that he has been tortured at the hands of the authorities, owing to his brothers' connections with the Oromo Liberation Front. He claims that he would face a real and imminent risk of torture or other cruel or degrading treatment if he were returned to Ethiopia, arguing that the authorities visited one of his brothers following the complainant's departure, which may corroborate his fear of being perceived as an affiliate of the Front. The complainant submits that the Federal Administrative Court has previously established that the Ethiopian authorities keep track of dissidents, even those of a low rank. Therefore, he fears that he would be identified and detained upon his arrival at the airport.

3.3 The complainant refers to the Committee's concluding observations on the initial report submitted by Ethiopia under the Convention (CAT/C/ETH/CO/1), in which it raised concerns at the persistent allegations concerning the use of torture by Ethiopian authorities against supporters of insurgent groups, in particular the Oromo Liberation Front (para. 10). He also refers to reports issued by Human Rights Watch and Amnesty International, in which those organizations stated that Oromo people were often accused, without any substantiation, of having links with the Oromo Liberation Front and that those with family links to the Front were at particular risk.³ He also refers to a report issued by the Department of State of the United States of America, in which it was stated that suspected sympathizers of opposition groups had been tortured in Ethiopia.⁴ In its report issued in 2006, Amnesty International stated that it believed that activists associated with the Coalition for Unity and Democracy and suspected activists at the national or local levels, as well as civil society activists and journalists who had criticized the Government and fled the country on account of experienced or threatened human rights violations, would be those most at risk of arbitrary and indefinite detention, an unfair trial or even extrajudicial execution, if forcibly returned to Ethiopia.⁵ Moreover, the complainant submits that the police officers in the Oromo region often subject individuals who are suspected of activities related to the Oromo Liberation Front to torture and other forms of ill-treatment.

3.4 The complainant therefore claims that he would likely be arrested, interrogated and tortured upon his return.

State party's observations on the merits

4.1 On 14 February 2017, the State party submitted its observations on the merits, summarizing the main claims in the present case, including the arrest of the complainant on four occasions between October 2008 and March 2011 in Ethiopia, his arrival in Switzerland on 8 June 2011 and application for asylum on the same date, and his participation in activities in support of the Oromo Liberation Front in Switzerland.

4.2 The State party submits that the complainant's asylum application was rejected by the Federal Office for Migration on 29 April 2014, and by the Federal Administrative Court on 13 July 2016. During the asylum proceedings, the complainant had presented the information surrounding his alleged arrests in an admittedly coherent, precise and detailed manner. The Court therefore accepted the complainant's allegations as probable. However, it did not consider the violence he had suffered to be serious enough to justify his recognition as a refugee. The Court did not consider the complainant's account of the reasons for his departure from Ethiopia to be credible either. In addition, the complainant did not prove it was probable that his participation in activities in support of the Oromo Liberation Front in Switzerland would expose him to a risk of torture in the event of his removal to Ethiopia, which would have merited granting him asylum.

³ See Human Rights Watch, "Such a brutal crackdown?: killings and arrests in response to Ethiopia's Oromo protests" (15 June 2016) and Amnesty International, *"Because I am Oromo" Sweeping Repression in the Oromia Region of Ethiopia* (2014).

⁴ See United States of America, Department of State, "2009 country reports on human rights practices: Ethiopia", 11 March 2010.

⁵ Amnesty International, "Ethiopia. Prisoners of conscience on trial for treason: opposition party leaders, human rights defenders and journalists", May 2006, p. 12.

4.3 The State party recalls the Committee's jurisprudence, submitting that the complainant must establish the existence of a personal, present and substantial risk of being subjected to torture upon return to his or her country of origin. There must be grounds for describing the risk of torture as "substantial".⁶ The State party recalls that the following elements must be taken into account to ascertain the existence of such a risk: any evidence of a consistent pattern of gross, flagrant or mass violations of human rights in the country of origin; any claims of torture or ill-treatment made by the complainant in the recent past and any independent evidence to support those claims; any political activity that the complainant has engaged in within or outside the country of origin; any evidence concerning the credibility of the complainant; and any factual inconsistencies in the complainant's claims.⁷ The State party presents its observations in the light of these factors.

4.4 The State party points out that the existence of a consistent pattern of gross, flagrant or mass violations of human rights does not, in itself, constitute sufficient grounds for determining that a particular person would be subjected to torture upon return to his or her country of origin. The Committee must establish whether the complainant is "personally" at risk of being subjected to torture in the country to which he or she would be returned. Additional grounds must be adduced in order for the risk of torture to qualify as "foreseeable, real and personal" for the purposes of article 3 (1) of the Convention. The existence of such a risk must be assessed on grounds that go beyond mere theory or suspicion. Conversely, the absence of flagrant and systematic violations of human rights does not mean that a particular individual cannot face a risk of torture in his or her particular circumstances.⁸ The State party admits that the situation of human rights in Ethiopia is serious in many respects, and that torture is frequently used, in particular against political opponents or alleged members of violent separatist groups, such as the Oromo Liberation Front.⁹ However, the situation in the complainant's country of origin does not constitute, in itself, sufficient grounds for concluding that he would be at risk of torture if he were to be returned there. The State party alleges that the complainant did not present sufficient evidence to allow it to conclude that he would face a foreseeable, real and personal risk of torture in the event of his removal to Ethiopia.

4.5 With regard to the complainant's allegations that he had been tortured in the past, the State party recognizes that the complainant was beaten and threatened during interrogation following his arrests, and a torch was shone into his eyes. However, he was not exposed to torture or ill-treatment, which would have had harmful consequences. Although he was given an opportunity to clarify the events before the Federal Office for Migration and during the appeal proceedings, he did not elaborate on being exposed to serious ill-treatment. The fact that his legal counsel merely stated that it was highly probable that he had also been a victim of torture in detention suggests that he was not exposed to serious ill-treatment. The State party further recalls that he was released from detention each time following the provision of adequate guarantees, including bail. He has not experienced any difficulties since his last release in 2011, nor have the authorities placed any restrictions on his rights. Although he felt that he was under surveillance and that he had to report to the police, his situation was not unsustainable as it did not amount to intolerable psychological pressure.

4.6 With regard to his political activities in Ethiopia,¹⁰ the State party submits that the complainant does not claim to have been a member of the Oromo Liberation Front in Ethiopia but considered himself a mere sympathizer of the movement on account of his Oromo ethnicity. If the Ethiopian authorities had perceived him to be a political opponent, they would not have interrogated him at irregular and long intervals and they would have detained him for more than a few days at a time, when in fact only his first detention period

⁶ See the Committee's general comment No. 1 (1997) on the implementation of article 3 in the context of article 22, paras. 6 and 7, which was replaced by general comment No. 4, effective from 6 December 2017.

⁷ *Ibid.*, para. 8.

⁸ See, for example, *N.S. v. Switzerland* (CAT/C/44/D/356/2008), para. 7.2.

⁹ See, for example, *R.D. v. Switzerland* (CAT/C/51/D/426/2010), para. 9.6.

¹⁰ See the Committee's general comment No. 1 (1997), para. 8 (e), which was replaced by general comment No. 4, effective from 6 December 2017.

lasted for 25 days. The State party claims that, according to his statements, the complainant never directly contributed to the activities of the movement and only contributed to “unspecified activities” through an intermediary, Mr. Shibo, who was the focus of the investigation by the Ethiopian authorities as he was suspected of being in contact with a prominent member of the Oromo Liberation Front. The complainant was released from detention each time following the provision of adequate guarantees, denying any links with the Front. The State party observes that only the complainant’s first detention period in 2008 lasted for several weeks, and that he left Ethiopia in 2011. Moreover, the complainant has alleged that two of his older brothers were active within the Oromo Liberation Front; one was a passive sympathizer of the movement and the other belonged to its ranks. The older brother, whose role was to promote the party line and recruit new members, died in 1995, several months after his release from prison where he had suffered ill-treatment. The State party submits that the complainant’s brothers were involved in the movement some 20 years ago, therefore their involvement would not expose the complainant to a foreseeable risk of ill-treatment if he were deported to Ethiopia.

4.7 The State party claims that the authorities would not have released the complainant if they had suspected that, due to his family ties, he was personally involved in the Oromo Liberation Front. Moreover, during the hearings, the complainant did not mention the political activism of his brothers as the source of his problems, but only referred to it in order to explain the reasons for which Mr. Shibo had decided to entrust him with delivering goods. The complainant also confessed that, apart from his deceased brothers, no one in his family was active in the Oromo Liberation Front. The State party therefore claims that there is nothing on file that would allow it to conclude that the complainant was wanted by the authorities when he decided to leave Ethiopia. He did not mention any legal proceedings or an arrest warrant against him. The complainant has not shown that he has a profile that could attract the attention of the Ethiopian authorities.

4.8 With regard to the complainant’s political activities in Switzerland, the State party recalls the Committee’s jurisprudence, submitting that any political activity carried out in exile is not sufficient to confirm the existence of a substantial risk that the individual concerned would be subjected to torture if returned to his or her country of origin. Such a risk is only substantiated if the individual has engaged in ideological and political activity of a particular nature, which is likely to attract the attention of the authorities in the country of origin. In his submission to the Committee, the complainant alleges that he is currently an active member of the Oromo Liberation Front and the Oromo community in Switzerland, and he has participated in many events and meetings. To support his allegations, he submits three letters to prove his membership of the Front and the Oromo community, and several photographs.

4.9 With reference to the judgment of the Federal Administrative Court, the State party claims that the complainant has not clearly shown his involvement in political activity of sufficient importance to attract the attention of the Ethiopian authorities. Although it is confirmed in the letter dated 7 July 2014 that the complainant is an active member of the Oromo community, there is no indication of the activities that he may have carried out as a member of that community. According to the letter dated 7 June 2014, the complainant is a sympathizer of the Oromo Liberation Front and has taken part in its demonstrations, although there is no indication of the activities that he has carried out, and therefore that cannot be considered to have decisive probative value either. The State party submits that the letter dated 7 June 2014 does not provide any sources to indicate that the complainant would be identified by the Ethiopian authorities, nor does it provide any concrete evidence for such a conclusion. Moreover, the photographs do not show the complainant as a leader or a person whose activities would lead to his investigation by the Ethiopian authorities. Lastly, the letter to prove his membership of the Oromo Liberation Front dated 8 August 2016 was issued after the Federal Administration Court had terminated the proceedings on 13 July 2016, therefore it could not be considered. The final letter indicates that the complainant is currently an active member of the Oromo Liberation Front, which had not been indicated previously. However, there is no mention of any concrete activities that would make the complainant particularly identifiable.

4.10 The complainant had many opportunities to provide the State party with evidence and details of his political activities. However, the evidence that he filed did not allow the Federal Administrative Court to conclude that his political activities were of sufficient importance to expose him to a substantial risk of being subjected to torture upon his return to Ethiopia. The mere participation of the complainant in demonstrations and gatherings of the Oromo movement while in exile, as far as it is proven, is not a political activity of sufficient importance and nature to represent a serious and concrete threat to the Government of Ethiopia.¹¹ The State party therefore submits that the evidence adduced by the complainant before the Committee does not demonstrate any type of behaviour in exile that may be of particular concern to the Ethiopian authorities. It holds that the complainant's political activities in Switzerland would not expose him to a risk of torture if he were returned to Ethiopia.

4.11 With regard to the factual inconsistencies and credibility of the complaint, the State party submits that an allegation is insufficiently substantiated when precise details are lacking, which may instead prove that the complainant did not experience the events as described. Similarly, it considers an allegation implausible when, on an essential point, it is contrary to logic or general experience. The State party does not believe that the complainant's allegations are credible for the following reasons. He, for example, alleges that he fled Ethiopia after hearing, the day after his last arrest and release, that two people to whom he allegedly delivered goods for Mr. Shibo had been arrested. The complainant feared that those two people would make false statements against him. He does not claim, however, that the authorities sought him at his home after he left the country. On the other hand, he indicates that his brother has encountered financial problems since his departure, such as being obliged to pay heavy tax despite the closure of his butcher's shop. However, his brother does not appear to have faced any other problems, and the complainant's explanation of the financial problems experienced by his brother since his departure was evasive. It did not lead to the conclusion that the authorities would have had new reason to believe that the complainant was involved in the activities of the Oromo Liberation Front or that he would be actively sought. The complainant therefore has not credibly established the circumstances in which he left Ethiopia.

4.12 In conclusion, the State party considers that the complainant failed to establish any serious grounds to prove that he would face a real and personal risk of torture in the event of his removal to Ethiopia. Accordingly, it invites the Committee to declare that the complainant's removal to Ethiopia would not constitute a violation of its obligations under article 3 of the Convention.

Complainant's comments on the State party's observations

5.1 On 26 June 2017, the complainant submitted his comments on the State party's observations.

5.2 He initially points out that the State party has acknowledged that the human rights situation in Ethiopia is worrying and that the use of torture has been frequent, in particular against political opponents or persons affiliated with violent separatist groups, such as the Oromo Liberation Front. The complainant objects to the State party's assertion that he has not provided any evidence to suggest that he would face a foreseeable, real and personal risk of being subjected to torture upon his return to Ethiopia. As submitted in the original communication, the complainant considers that his political activities in Ethiopia and Switzerland are of sufficient significance to attract the attention of the Ethiopian authorities, thereby exposing him to a foreseeable, real and personal risk of being subjected to torture if he were returned to Ethiopia.

5.3 The complainant further objects to the State party's claim that the torture and ill-treatment that he suffered in the past, as described during the hearings before the Federal Office for Migration and the appeal procedure before the Federal Administrative Court, was not of sufficient severity to have particularly affected him. The complainant also objects to

¹¹ See, for example, *M.F. v. Switzerland* (CAT/C/59/D/658/2015), para. 7.6.

the claim that his allegations of being subjected to torture while in detention were a mere statement without the support of concrete evidence.

5.4 The complainant claims that it is an undisputed fact that he was arrested on four occasions between 2008 and 2011.¹² Being hit with sticks and dazzled, handcuffed, threatened with death and forced to lie on the ground goes well beyond a simple physical reprimand. Taking into account the number of times he faced such acts of violence, the complainant cannot understand why the first instance asylum authorities did not believe that they were serious enough to particularly affect him. In that context, he refers to the case law on the application of article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, according to which once any suffering inflicted has reached a certain level of severity, it must be examined in its entirety. He adds that the criteria for describing suffering as “serious” should include: the duration of the attack, the physical and psychological effects on the victim and on his or her health, the purpose of the attack and the intention of the officers, and the circumstances in which it took place. The complainant recalls that he was arrested four times and subjected to several physical examinations during several interrogations, which can be qualified, as a whole, as a long-term matter. Although the complainant does not carry physical scars, the short-term effects, such as the temporary loss of sight due to glare, should not be forgotten. The purpose of the attacks was to force the complainant to make a false confession, which is absolutely prohibited and a strong indication of torture. Since he is of Oromo ethnicity, and he was suspected of being part of a separatist movement, the intention of the officers was also to make him suffer. The fact that the repeated attacks against him took place while he was a detainee is a further indication that he was tortured. In any event, he was exposed to ill-treatment that was serious enough to significantly affect him. Referring to the jurisprudence of the European Court of Human Rights, the complainant claims that the death threats that he received amounted to inhuman treatment.

5.5 With regard to the State party’s argument that the complainant was released each time following the provision of adequate guarantees and that he did not have restrictions placed on him, although he had to report regularly to the police, the complainant claims that his freedom of movement was restricted, since he did not have the right to leave Dembi Dolo and was obliged to limit his professional activity to a specific area. He was also afraid to resume making deliveries for Mr. Shibo, in the light of his arrest, and he was therefore forced to limit his work also on a personal level. Such restrictions amounted to genuine psychological pressure as they lasted over several years.

5.6 With regard to his political activities in Ethiopia, the complainant repeatedly stated during the hearings that it was probable that the authorities did not have evidence against him. He only began to fear he was at risk of long-term detention after the two individuals to whom he had delivered goods had been arrested. It is also likely that the authorities released him each time hoping that he would get back in touch with Mr. Shibo, in order to gain evidence of dissident activity against them both. He reiterates that his first detention period lasted for several weeks. He submits that the Ethiopian authorities enquired about the activities of his two brothers, dating back 20 years, during his interrogation. Therefore, it cannot be ruled out that the Ethiopian intelligence services have conducted an investigation into the complainant’s activities since his departure, including his dissident activities in Switzerland, since they managed to uncover his family history. The complainant could therefore be identified as the brother of two former political opponents. Referring to a report by Amnesty International, he claims he could have “inherited” suspicion due to the views held by his brothers, therefore it is highly likely that he would be detained upon his return.¹³

5.7 The complainant also opposes the State party’s contention that there was no evidence to allow it to conclude that he was wanted by the authorities when he decided to leave Ethiopia. He claims that the two arrested persons to whom he was delivering goods could reveal his identity and activities, and therefore provide evidence to justify his long-

¹² The complainant refers to the Federal Administrative Court judgment of 13 July 2016.

¹³ Amnesty International, “*Because I am Oromo*”, p. 10.

term detention. However, he admits that it is not certain that the authorities had evidence against him or that he really was wanted by them at the time of his departure.

5.8 In answer to the State party's claim that there is no clear evidence that the complainant's political profile in Switzerland is of sufficient importance to attract the attention of the Ethiopian authorities, the complainant concedes that the letters to confirm his membership of the Oromo community in Switzerland are not sufficient to prove that he would attract the attention of the Ethiopian authorities. Nevertheless, they show that he is a member of an organization declared to be a terrorist movement by the Ethiopian authorities.¹⁴ It is his affiliation with the movement that puts him at a foreseeable, real and personal risk of being subjected to torture or inhuman treatment in the event of his return to Ethiopia. The photographs show that the complainant is an active member who regularly goes to the meetings and events of the movement in Switzerland. The photographs also establish that the complainant has met with high-ranking political opponents such as Haile Neway and Leta Baysissa. These people are regularly and closely followed, so even short-term contact may be enough for the Ethiopian authorities to identify the complainant as a political opponent.

5.9 In objection to the alleged lack of evidence that the complainant's political activities are of a sufficient importance and nature to make him a target of the Ethiopian authorities, he claims that the level of surveillance of Ethiopians who carry out dissident activities abroad is high. He reiterates that his presence at numerous dissident activities while in exile, which were also attended by leaders of the movement, and his political profile, have reached a significance that could represent a serious and concrete threat to the Ethiopian authorities. Given the fact that he is a brother of two former opponents of the Government, that he was already suspected of being in contact with political opponents in his country of origin, and that he sought asylum abroad, it is highly unlikely that the Ethiopian authorities would not have an interest in him.

5.10 With regard to the State party's argument concerning the factual inconsistencies and weak credibility of the complainant due to his evasive replies and lack of evidence that he was sought by the Ethiopian authorities at his home after leaving the country, the complainant submits that his brother, with whom he lived in the same house in Ethiopia, encountered problems following his departure. He adds that punishing family members of alleged opponents is typical in Ethiopia. The Ethiopian authorities routinely criticize the family members of those with dissenting opinions, arresting them in place of their real opponents. With regard to his explanations of the problems encountered by his brother that he gave during the asylum procedure, the complainant asserts that his answers were not evasive, but that he had difficulty understanding. Once he understood what the investigator wanted to know about the concrete problems his brother had encountered, he answered in a very plausible way.

5.11 The complainant concludes by submitting that he has significant reason to fear that he would be personally exposed to torture if he were to return to Ethiopia. Accordingly, he requests the Committee to find that his return to Ethiopia would be contrary to the principle of non-refoulement and would therefore constitute a violation of article 3 of the Convention by Switzerland.

Issues and proceedings before the Committee

Consideration of admissibility

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

¹⁴ Country of origin research and information, "Ethiopia: treatment of members of the Oromo Liberation Front, including members of their family", 6 June 2009.

6.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the present case, the State party has not challenged the admissibility of the communication on this ground.

6.3 The Committee considers that the present communication, in which the complainant claims to face a risk of being arrested, interrogated and subjected to torture or ill-treatment if he were returned to Ethiopia, due to his suspected affiliation with the Oromo Liberation Front in his country of origin and his dissident activities in his country of asylum, raises substantive issues under article 3 of the Convention as the facts and the basis of the complainant's claims reach the level of substantiation required for the purposes of admissibility.¹⁵ In the absence of any objection from the State party as to the admissibility of the present communication, the Committee finds no obstacles and declares it admissible.

Consideration of the merits

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

7.2 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 (1) 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.

7.3 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 his return to Ethiopia.

7.4 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 such determination is to establish whether the complainant 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.¹⁶

7.5 The Committee recalls its general comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, according to which the Committee will assess "substantial grounds" and consider the risk of torture as foreseeable, personal, present and real when the existence of credible facts relating to the risk by itself, at the time of its decision, would affect the rights of the complainant under the Convention in case of his or her deportation. Indications of personal risk may include, but are not limited to: (a) the complainant's ethnic background; (b) political affiliation or political activities of the complainant or his or her family members; (c) arrest or detention without guarantee of a fair treatment and trial; and (d) sentence in absentia (para. 45). With respect to the merits of a communication submitted under article 22 of the Convention, 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 (para. 38).¹⁷ The Committee also recalls that it gives considerable weight to findings of fact made by organs of the State party concerned, however it is not bound by such findings, as it can make a free assessment of the

¹⁵ See, for example, *K.A. v. Sweden* (CAT/C/39/D/308/2006), para. 7.2.

¹⁶ See, for example, *E.K.W. v. Finland* (CAT/C/54/D/490/2012), para. 9.3.

¹⁷ See, for example, *T.Z. v. Switzerland* (CAT/C/62/D/688/2015), para. 8.4.

information available to it in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to each case (para. 50).

7.6 In assessing the risk of torture in the present case, the Committee notes the complainant's claims that he was repeatedly arrested and detained in Ethiopia due to the political activities of his two brothers and his suspected affiliation with the Oromo Liberation Front, and that he was subjected to beating, ill-treatment and threats during interrogations. It also notes his claim that, if he were returned to Ethiopia, he would face a real risk of torture or ill-treatment from the Ethiopian authorities on account of his political profile and participation in the activities of the Oromo Liberation Front in Switzerland. The Committee further notes that, to support his allegations, the complainant referred to reports of a crackdown on political dissidents and exiled activists, in particular on suspected supporters of the Oromo Liberation Front. He also argued that not only were the leaders or high-profile figures of political movements at risk of being detained, ill-treated or tortured in Ethiopia, but anyone who opposed or was suspected of opposing the current authorities.

7.7 The Committee notes that the State party recognizes the legitimate concern regarding the human rights situation in Ethiopia. In the present case, the Committee notes that the complainant claims to have been arrested, ill-treated and tortured while detained due to his two brothers' and his suspected affiliation with the Oromo Liberation Front and that, following the conclusion of the national asylum procedure, he submitted letters that confirmed his membership and participation in the activities of the Front. The Committee also notes that, according to the State party, the complainant did not establish that the ill-treatment he suffered amounted to intolerable psychological pressure, nor did he provide a precise description of his activities carried out in support of the Front, or tangible evidence demonstrating that he was actually a member of the movement. The Committee notes that, according to the State party, the complainant's statements lacked consistency, including with regard to his release despite his alleged involvement in the Front, the absence of claims by him that the activism of his brothers was the cause of his problems, and the time that had elapsed between his first detention in 2008 and his escape in 2011, which, according to the national asylum authorities, undermined the complainant's credibility. Furthermore, the Committee notes that, according to the State party, the complainant's political activities in Switzerland were not of a sufficiently high profile for him to be considered as a serious threat to the Government of Ethiopia. The Committee also notes the complainant's claim that the Ethiopian authorities monitor opposition members abroad, but observes that he did not elaborate on this claim or present any evidence to support it. Lastly, the Committee notes the recent process of political transition in Ethiopia, including the commitment to respect human rights and ensure accountability for past violations, which may be a sign that the risk of any ill-treatment for returnees to their country of origin has been reduced.

7.8 The Committee recalls that it must ascertain whether the complainant is currently at risk of being subjected to torture if he were returned to Ethiopia.¹⁸ The Committee notes that the complainant has had ample opportunity to provide supporting evidence and further details of his claims, including medical certificates or letters of attestation, at the national level to the Federal Office for Migration and the Federal Administrative Court, but that the evidence he provided did not allow the national asylum authorities to conclude that his past experiences of arrest and torture would expose him to a risk of being subjected to torture if he were returned to Ethiopia. The Committee observes that the complainant did not report any irregularities in the national asylum proceedings. The Committee observes that the complainant has failed to adduce sufficient evidence of his work for the Oromo Liberation Front and to adequately substantiate that his participation in political activities in Switzerland would be of enough significance to attract the real interest of the Ethiopian authorities; nor has he submitted any evidence to demonstrate that the Ethiopian authorities are looking for him or that he would face a personal risk of being tortured if he were returned to his country of origin. The Committee is concerned by the past reports of human

¹⁸ See, for example, *G.B.M. v. Sweden* (CAT/C/49/D/435/2010), para. 7.7.

rights violations, including the use of torture, in Ethiopia¹⁹ and by the crackdown on political dissidents and arrests of bloggers and journalists.²⁰ Nonetheless, it recalls that for the purposes of article 3, the individual concerned must face a foreseeable, real, personal and present risk of being tortured in the country to which he or she is returned, considering that past arrests do not as such represent substantial grounds for believing that such a risk is present. In this regard, the Committee emphasizes that no risk of torture or pressure by the authorities is acceptable, even if not intolerable (see para. 4.5). Consequently, the Committee considers that the information submitted by the complainant is insufficient to establish that he would be at a foreseeable, real and personal risk of torture if he were returned to Ethiopia.

8. In the light of the foregoing, the Committee, acting under article 22 (7) of the Convention, concludes that the return of the complainant to Ethiopia by the State party would not constitute a violation of article 3 of the Convention.

¹⁹ The Committee notes that Ethiopia is also a State party to the Convention, and recalls its concluding observations on the initial report of Ethiopia (CAT/C/ETH/CO/1, paras. 10–14).

²⁰ See Human Rights Watch, “Such a brutal crackdown”.