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Committee against Torture
Thirty-fifth session
7 - 25 November 2005

DECISION

Communication No. 238/2003

Submitted by: Mr. Z. T. (No.2) (represented by counsel, Mr. Thom Arne Hellerslia)

Alleged victim: The complainant

State Party: Norway

Date of complaint: 31 July 2001

Date of present decision: 14 November 2005

[ANNEX]

* Made public by decision of the Committee against Torture.

Subject matter: Expulsion of Ethiopian national from Norway to Ethiopia

Procedural issues: Review of prior decision on inadmissibility - Exhaustion of domestic remedies – Application for leave to submit oral testimony

Substantive issues: Substantial grounds to fear danger of torture upon return

Articles of the Convention: articles 3 and 22, paragraph 5(b)

Rules of Procedure: Rule 111, paragraph 4

ANNEX

DECISION OF THE COMMITTEE AGAINST TORTURE UNDER ARTICLE 22 OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Thirty-fifth session

Concerning

Communication No. 238/2003

Submitted by:	Mr. Z. T. (No.2) (represented by counsel, Mr. Thom Arne Hellerslia)
Alleged victim:	The complainant
State Party:	Norway
Date of complaint:	31 July 2001

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

Meeting on 14 November 2005,

Having concluded its consideration of complaint No. 238/2003, submitted to the Committee against Torture by Mr. Z. G. T. 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 author of the complaint, his counsel and the State party,

Adopts the following decision:

1.1 The author of the communication is Z. T., an Ethiopian national born on 16 July 1962 and currently residing in Norway, where his request for asylum has been denied and he faces removal. He claims that he would risk imprisonment and torture upon return to Ethiopia and that his forced return would therefore constitute a violation by Norway of article 3 of the Convention. He is represented by counsel.

The facts as presented by the complainant

2.1 The complainant is of Amharic ethnic origin. During his high school in Addis Ababa, he participated in several demonstrations supporting Colonel Mengistu. When Mengistu came to power in February 1977, thousands of youth, including the complainant, were sent to rural areas as part of a literacy campaign. Disappointed with the regime, the complainant began to work for the Ethiopian People's Revolutionary Party (EPRP).

2.2 The EPRP started to organize resistance against the Mengistu regime by calling students and youth back from the rural areas to Addis Ababa. In 1977, the conflicts between the various political groups resulted in the so-called "Red Terror", the brutal eradication of all opposition to the governing Provincial Military Administrative Council (PMAC) and random killings. An estimated 100,000 people were killed. The complainant, who had been distributing pamphlets and putting up posters in Addis Ababa on behalf of the EPRP, was arrested and taken to a concentration camp, together with thousands of other youth, where he was held for one year between 1980 and 1981. While in the camp he was subjected to fake executions and brainwashing. According to the complainant, the "Red Terror" ended when the regime was convinced that all EPRP leaders were dead. Many political prisoners, including the complainant, were then freed.

2.3 After his release, the complainant went underground and continued work for the EPRP. He states that the Mengistu regime carefully followed the movements of previous political prisoners to suppress a revival of the opposition. In 1986/87, the complainant was arrested in a mass arrest and taken to Kerchele prison, where he remained for four years. According to him, the prisoners were forced to walk around naked and were subjected to ill-treatment in the form of regular beatings with clubs. While imprisoned, he suffered from tuberculosis.

2.4 In May 1991, the Mengistu regime fell and the Ethiopian People's Revolutionary Democratic Front (EPRDF) came to power. Once freed, the complainant tried to contact members of the EPRP, but all his contacts had left. He then started to work for the Southern Ethiopian Peoples Democratic Coalition (SEPDC), a new coalition of 14 regional and national political opposition parties. According to a translation supplied by the complainant, in early 1994 a warrant for his arrest was issued for interrogation on the basis of political activity. In February 1995, he was on his way to deliver a message to Mr. Alemu Abera, a party leader, when he was caught by the police in Awasa.

2.5 The complainant states that he was kept in detention for 24 hours in Awasa and then transferred to the central prison of Addis Ababa. After three days, he was taken to Kerchele prison where he was kept for one year and seven months. He was never tried nor had contact with a lawyer. The treatment in prison was similar to what he had experienced during his first imprisonment. He says that he was taken to the torture room and threatened with execution if he did not cooperate. He believes that the only reason he was not severely tortured like many other prisoners was that he was already in a weak physical condition. While in prison he developed epilepsy.

2.6 On 5 October 1996, the complainant managed to escape when he was taken to the house of one of the high-ranking guards to make some repairs. Through a friend, the complainant managed to get the necessary papers to leave the country and requested asylum in Norway on 8 October 1996.

2.7 On 18 June 1997, the Directorate of Immigration turned down his application for asylum, mainly on the basis of a report made by the Norwegian Embassy in Nairobi, on the basis of contradictory information said to have been given by the complainant and his mother, and discrepancies in his story. He appealed on 3 July 1997. The appeal was rejected by the Ministry of Justice on 29 December 1997 on

the same grounds. On 5 January 1998, a request for reconsideration was made which again was rejected by from the Ministry of Justice on 25 August 1998.

2.8 According to the complainant, his right to free legal assistance had been exhausted and the Rådgivningsgruppa (Advisory Group) agreed to take his case on a voluntary basis. On 1 and 9 September 1998, the Advisory Group made additional requests for reconsideration and deferred execution of the expulsion decision, which were rejected on 16 September 1999. The complainant has submitted to the Committee, in this regard, copies of 16 pieces of correspondence between the Advisory Group and the Ministry of Justice, including a medical certificate from a psychiatric nurse indicating that the complainant suffers from post-traumatic stress syndrome. The date of expulsion was finally set for 21 January 1999.

2.9 For the complainant, all the inconsistencies in his story can be explained by the fact that during the initial interrogation he agreed to be questioned in English, not having been informed that he could have an Amharic interpreter present. Since the difference in years between the Ethiopian and Norwegian calendar is approximately eight years, when he tried to calculate the time in Norwegian terms and translate this into English, he became confused. The communication was further complicated by the fact that in Ethiopia the day starts at the equivalent of 6 o'clock in the morning in Norway. That meant that when the complainant said "2 o'clock", this should have been interpreted as "8 o'clock".

2.10 During the interrogation, the complainant referred to the Southern Ethiopian People's Democratic Coalition (SEPDC) as the "Southern People's Political Organization" (SPPO), which does not exist. This error was due to the fact that he only knew the name of the organization in Amharic.

The complaint:

3. The complainant argues that he would be in danger of being imprisoned and tortured if he were to return to Ethiopia. He claims that, during the asylum procedure, the immigration authorities did not seriously examine the merits of his asylum claim and did not pay enough attention to his political activities and his history of detention.

The Committee's decision on admissibility relating to complaint No. 127/1999

4.1 On 25 January 1999, the complainant lodged his initial complaint with the Committee, alleging his expulsion by Norway to Ethiopia would violate article 3 of the Convention. On 19 November 1999, in light of the submissions of the parties, the Committee declared the complaint inadmissible for failure to exhaust domestic remedies.[1] The Committee reasoned as follows:

> [7.2] The Committee notes that the State party challenges the admissibility of the communication on the grounds that all available and effective domestic remedies have not been exhausted. It further notes that the legality of an administrative act may be challenged in Norwegian courts, and asylum-seekers who find their applications for political asylum turned down by the Directorate of Immigration and on appeal by the Ministry of Justice have the opportunity to request judicial review before Norwegian courts.
>
> [7.3] The Committee notes that according to information available to it, the complainant has not initiated any proceedings to seek judicial review of the decision

[1] Z.T. v Norway Complaint No. 127/1999, Decision adopted on 19 November 1999.

rejecting his application for asylum. Noting also the complainant's information about the financial implications of seeking such review, the Committee recalls that legal aid for court proceedings can be sought, but that there is no information indicating that this has been done in the case under consideration.

[7.4] However, in the light of other similar cases brought to its attention and in view of the limited hours of free legal assistance available for asylum-seekers for administrative proceedings, the Committee recommends to the State party to undertake measures to ensure that asylum-seekers are duly informed about all domestic remedies available to them, in particular the possibility of judicial review before the courts and the opportunity of being granted legal aid for such recourse.

[7.5] The Committee notes the complainant's claim about the likely outcome were the case to be brought before a court. It considers, nevertheless, that the complainant has not presented enough substantial information to support the belief that such remedy would be unreasonably prolonged or unlikely to bring effective relief. In the circumstances, the Committee finds that the requirements under article 22, paragraph 5 (b), of the Convention have not been met.

The complainant's renewed complaint

5.1 On 31 June 2001, the complainant filed a new complaint before the Committee, arguing that the grounds upon which the Committee had declared the case inadmissible no longer applied. He stated that, on 24 January 2000, he had applied for legal aid, which was rejected by the County Governor of Aust-Agder on 5 July 2000. On 14 March 2001, the Ministry of Labour and Administration rejected his appeal against the County Governor's decision. As to the possibility of retaining his own lawyer, in view of his precarious pecuniary situation, he would be unable to afford either the necessary legal fees and filing costs, or an award of costs, if unsuccessful. Nor could he represent himself, as he scarcely speaks Norwegian and lacks knowledge of the relevant rules of procedural and substantive law. Accordingly, the complainant argued that in practice, there was no "available" or "effective" remedy which he could pursue, and that the complaint should therefore be declared admissible.

5.2 On 21 August 2002, the renewed complaint was registered as complaint No. 238/2003 and transmitted to the Government of the State party for comments on its admissibility.

The State party's submissions on the admissibility of the renewed complaint

6.1 On 27 March 2003, the State party contested the admissibility of the renewed complaint, arguing that paragraph 7.3 of the Committee's original inadmissibility decision could be read in two ways. On the one hand, reading the second sentence in isolation would suggest that once legal aid was sought, admissibility would have to be reconsidered. On the other, the first sentence suggested a complainant must initiate judicial review proceedings, and a failure to do so – even following denial of legal aid – disposed of the issue. In the State party's view, the latter approach was most logical, and was supported by the context of the decision's paragraph 7.2, which rehearsed the arguments on the availability and effectiveness of judicial review. In this light, the first sentence of paragraph 7.3, read in conjunction with 7.5, constitutes the conclusive response of the Committee, and the second sentence *inter alia* bearing the word "also" was superfluous additional reasoning.

6.2 Even if the Committee held the complaint inadmissible simply for failure to seek legal aid, the complaint would not, according to the State party, become

admissible simply because legal aid was subsequently sought, as other reasons of inadmissibility may still apply. In particular, the State party submitted that judicial review was still an "available" remedy to be exhausted. There was no basis for exempting applicants from the obligation to exhaust domestic remedies for lack of financial means, as such an approach had no basis in the text of article 22, paragraph 5, of the Convention. The State party argued that, in any legal system, civil proceedings are generally financed by the parties, and that the framers of the Convention, aware of this approach, made no exception for applicants without resources. Such an approach would interfere with the principle of exhaustion of domestic remedies.

6.3 In the State party's view, were the Committee to do so, States would either (i) have to provide legal aid to a much greater extent than is currently practiced or required under international conventions, or (ii) accept the Committee's competence to review administrative decisions rejecting asylum claims without the domestic courts having had the opportunity to review those cases. As to the former option, few States would accept such an approach: civil legal aid is a scarce resource anywhere, and is subject to strict conditions (if available at all). Thus, in view of the large number of asylum applications rejected yearly, a State party would have to take the unlikely step of greatly increasing resources supplied to legal aid schemes.

6.4 The result of such a step would be that the Committee *de facto* makes itself the first review instance in a vast number of cases, and result in significant growth in the Committee's caseload. In Norway alone, 9000 asylum applications were rejected at last instance in 2002, and most asylum seekers would claim, as did the current complainant, to be of modest means and unable to access the legal system. There could thus be major consequences for the Committee.

6.5 Administering such an exception would create great difficulties of law and fact for the Committee. It would have to set precise criteria concerning financial ability, and presumably some economic standards that could not be exceeded by applicants claiming impecuniosity. The Committee would have to develop methods to ensure that an applicant does not actually exceed these standards. It would be difficult for States parties to rebut an applicant's allegation of lack of resources, as pertinent information is rarely available. Likewise, in the present case, the State party had ascertained, through tax records, that the complainant had only very modest incomes in the last few years, and it could not scrutinise his financial situation any further. It had no knowledge of any assets abroad, nor any possessions in Norway which could be realised to finance review proceedings.

6.6 In the State party's view, only detailed regulations established in advance could deal with such problems, which would merely underpin the absence of such an exception in the Convention. A decision of admissibility would be a significant innovation in the Committee's case law and a considerable departure from the domestic remedies rule interpreted by treaty bodies. Only the jurisprudence of the Human Rights Committee revealed some very limited exceptions.

The complainant's comments on the State party's submissions

7.1 By letter of 26 May 2003, the complainant rejected the State party's submissions. He stated that he only receives a welfare check for basic daily needs, in addition to housing support, which would not suffice for raising private counsel. His

counsel before the Committee was acting *pro bono* in respect of those proceedings only. Neither he nor others could be expected to operate *pro bono* in respect of any judicial review proceedings.

7.2 As to the original reasons for inadmissibility, the complainant submitted it was clear that both elements were criteria on which the conclusion was founded. This was confirmed by the context of paragraph 7.4 of the original case. Were it otherwise, it would have been pointless for the Committee to make any remarks on the legal aid question. As both parties had made submissions on the legal aid issue, paragraph 7.3 was necessary to address those points and was thus far from superfluous. At a minimum, the decision should be reviewed to clarify whether, and on what conditions, judicial review is an available remedy even in the absence of legal aid.

7.3 Turning to whether judicial review must be pursued despite the absence of legal aid, the complainant pointed out that article 22, paragraph 5, only requires available and effective remedies to be exhausted by a complainant. Were the complainant to represent himself, with little knowledge of Norwegian law or language, against skilled lawyers of the State, domestic remedies would not be "effective" within the meaning of article 22.

7.4 The complainant argued that human rights treaties must be interpreted so as to make them effective. If complaints are held inadmissible for non-exhaustion in circumstances where domestic remedies are, in fact, unavailable, a victim has remedies neither at the national nor international level.

7.5 The complainant invoked the jurisprudence of the Human Rights Committee, which had found communications admissible under the Optional Protocol to the International Covenant on Civil and Political Rights in circumstances where legal aid was unavailable.[2]

7.6 The complainant observed that in Norway, many people received legal aid in different categories of cases. He easily satisfied the economic criteria. Thus, in support of his claim for legal aid, he invoked the doctrine of "positive obligations" for the State party to prevent human rights violations, as part of the general obligation to secure effectively the right to *non-refoulement*. The complainant pointed out that if a right to legal aid existed, it would certainly be considered relevant to an assessment of the exhaustion of domestic remedies, and thus the unavailability of legal aid should be treated similarly.

7.7 The complainant rejected the State party's misgivings about the results of holding the present case admissible. Firstly, it would not result in all unsuccessful asylum seekers pleading before the Committee. A possible violation of article 3 would arise only in few cases. In any event, the outcome on the merits would be a more important guide to the future. The Committee should thus be wary of the adverse

[2] The complainant cited Campbell v Jamaica Case No 248/1987, Views adopted on 30 March 1992; Little v Jamaica Case No 283/1988, Views adopted on 24 July 1989; Ellis v Jamaica Case No 276/1988, Views adopted on 28 July 1992; Wright v Jamaica Case No 349/1989, Views adopted on 27 July 1992; Currie v Jamaica Case No 377/1989, Views adopted on 29 March 1994; Hylton v Jamaica Case No 600/1994, Views adopted on 16 August 1996; Gallimore v Jamaica Case No 680/1996, Views adopted on 23 July 1999; and Smart v Trinidad & Tobago Case No 672/1995, Views adopted on 29 July 1998.

consequences advanced by the State party against an interpretation consistent with the Convention's purpose.

7.8 On the facts of his case, the complainant noted that the State party had not disputed the details of his income. In the Norwegian legal aid scheme, the authorities were satisfied with a declaration from the applicant along with a print of tax records, and the State party should not hold the Committee to a stricter standard. In any event, as the Human Rights Committee's experience has shown, the consequences are manageable, and the advantage – greater protection of Convention rights for those who would otherwise go without any protection – is obvious. The complainant thus requested the Committee to declare the case admissible.

The Committee's decision on the admissibility of the renewed complaint

8.1 During its 31st session, in November 2003, the Committee considered the admissibility of the renewed complaint. It observed, at the outset, that the question of whether a complainant had exhausted domestic remedies that are available and effective, as required by article 22, paragraph 5, of the Convention, could not be determined *in abstracto*, but had to be assessed by reference to the circumstances of the particular case. In its initial decision, the Committee had accepted that judicial review, in the State party's courts, of an administrative decision to reject asylum was, in principle, an effective remedy. The Committee noted that a pre-condition of effectiveness, however, was the ability to access the remedy, and, in this case, as the complainant had not pursued an application for legal aid, he had not shown that judicial review was closed, and therefore unavailable, to him, within the meaning of article 22, paragraph 5, of the Convention.

8.2 In the present case, the complainant had since been denied legal aid. Had legal aid been denied because the complainant's financial resources exceeded the maximum level of financial means triggering the entitlement to legal aid, and he was thus able to provide for his own legal representation, then the remedy of judicial review could not be said to be unavailable to him. Alternatively, in some circumstances, it might be considered reasonable, in the light of the complainant's language and/or legal skills, that s/he represented himself or herself before a court.

8.3 In the present case, however, it was unchallenged that the complainant's language and/or legal skills were plainly insufficient to expect him to represent himself, while, at the same time, his financial means, as accepted by the State party for purposes of deciding his legal aid application, were also insufficient for him to retain private legal counsel. If, in such circumstances, legal aid was denied to an individual, the Committee considered that it would run contrary to both the language of article 22, paragraph 5, as well as the purpose of the principle of exhaustion of domestic remedies and the ability to lodge an individual complaint, to consider a potential remedy of judicial review as "available", and thus declaring a complaint inadmissible if this remedy was not pursued. Such an approach would deny an applicant protection before the domestic courts and at the international level for claims involving a most fundamental right, the right to be free from torture. Accordingly, the consequence of the State party's denial of legal aid to such an individual was to open the possibility of examination of the complaint by an internbatinal instance, though without the benefit of the domestic courts first addressing the claim. The Committee thus concluded that, since the complainant

applied unsuccessfully for legal aid, the initial reasons for inadmissibility no longer applied.

8.4 On 14 November 2003, the Committee declared the case admissible, since the reasons for inadmissibility referred to in its previous decision of 19 November 1999 on the initial complaint No. 127/1999 were no longer applicable and no other grounds for inadmissibility had been advanced. The Committee accordingly invited the State party to supply its submissions on the merits of the renewed complaint.

The State party's submissions on the merits of the renewed complaint

9.1 On 23 July 2004, the State party submitted that it considered its submissions on the merits of the renewed complaint to address the same matter as dealt with under complaint No. 127/1999, and invoked as relevant its submissions on the merits regarding the initial complaint The State party maintained that it observes relevant international standards both in its legal practices and in its administrative proceedings. On 1 January 2001, the State party established a quasi-judicial organ independent of the political authorities, known as Immigration Appeals Board and mandated to handle appeals against all decisions taken by the Directorate of Immigration, including asylum cases. It submitted that the Appeals Board maintained a large number of highly qualified employees, among them a country expert for Ethiopia who undertook a visit to Ethiopia as late as in February 2004, and co-operated closely with the special immigration officer in the Norwegian Embassy in Nairobi.

9.2 Since the State party's submission of 31 March 1999, the Immigration Appeals Board had, on its own initiative, undertaken another examination of the case before the Committee and, on 12 March 2004, upheld the decision to reject the complainant's asylum application. The Board's conclusion was based on its findings that there are no substantial grounds for believing that the complainant, upon return to Ethiopia, would be personally in danger of being subjected to torture or other forms of ill-treatment. The State party accordingly submitted that returning the complainant to Ethiopia would not constitute a violation of article 3 of the Convention.

9.3 Among the factors contributing to a personal risk of the complainant to be subjected to torture upon return to Ethiopia was the complainant's degree of involvement in political activities in the early 1990s in Ethiopia. The State party submitted that the information provided by the complainant in that regard lacked credibility, as it contained numerous contradictions and as his explanations changed throughout the history of this case. According to the information provided by the complainant in his asylum interview on 19 and 20 October 1996, he had been arrested on 20 February either in 1992 or 1993 (Gregorian calendar) and had been imprisoned for one year and seven months, after which he claimed to have fled directly to Norway. However, he did not arrive in Norway until October 1996; the State party concluded that his safe and voluntary stay in Ethiopia for another two years after his imprisonment was incompatible with his alleged fear of persecution.

9.4 The State party further submitted that an inquiry conducted by the Norwegian Embassy in Ethiopia with former leader of the SEPDC coalition, revealed that the latter had not heard of the complainant himself nor of two of the three SPPO leaders who the complainant claimed to have worked for. Upon learning of the former leader's statements, the complainant changed his statements and confirmed that it was in fact the SEPDC coalition he had been a member of and had assisted, and that the

confusion resulted from a mistranslation. The State party argued that the confusion between a single political party (the SPPO) and a 14-party coalition (the SEPDC) could not simply be attributed to problems of translation.

9.5 The State party dismissed the credibility of the complainant's claims on the basis of fundamental contradictions between the complainant's claims and those of his mother who was interviewed by the Norwegian Embassy in Ethiopia. After the complainant learned that his mother had informed the Norwegian authorities of his prior imprisonment for his membership of the EPRP, he claimed to have been arrested several times, a fact which he had not previously mentioned. Further discrepancies between his account and that of his mother included the identity of his siblings and his places of residence at different stages in his life, which the State party regarded as undermining the complainant's credibility further.

9.6 The State party noted that in his asylum interview, the complainant had stated that he had never been subjected to any kind of physical torture, but that he had been threatened in a way akin to psychological torture. Two years later, however, when requesting the annulment of the Ministry of Justice's negative decision concerning his asylum claim, he claimed to have been subjected to torture in the form of baton blows to his head. The State party maintained that the late submission of such a crucial fact further undermined the credibility of the complainant's claims. It further argued that his contraction of epilepsy was not, contrary to the arguments advanced by the complainant, a result of the torture he allegedly suffered, but that it more likely emerged from his infection with a tapeworm. The State party finally argued that the contradictions and inconsistencies in the complainant's story cannot, as maintained by the complainant, be reasonably attributed to post-traumatic stress disorder (PTSD), as the complainant's allegation to be suffering from PTSD had been submitted late and had not been substantiated beyond a declaration by a nurse purely based on the complainant's own account.

9.7 The State party did not regard the support letter from the EPRP's Norwegian group, certifying that the complainant was a victim of imprisonment and political persecution in Ethiopia, as sufficient evidence for the claim that the complainant had been politically active in his home country or that he was viewed with suspicion by the authorities. In the State party's experience, exile organisations had a tendency routinely to issue "confirmations" to country people requesting them. The State party contended that EPRP's Norwegian section had only limited knowledge of the complainant's case.

9.8 In the State party's view, accepting that complete accuracy is seldom to be expected from potential victims of torture, the credibility of the complainant's claim was nonetheless comprehensively undermined by the evident contradictions and inconsistencies set out. Moreover, even if the complainant's account of his political persecution in the past had been true, given the current situation in Ethiopia, there was no basis for holding that he would now be of particular interest to the Ethiopian authorities. The State party therefore concluded that the assessment of the available information and material made by the Norwegian authorities was correct, and that those assessments warranted the conclusion that there were no substantial grounds for believing that the complainant would be at a personal and real risk of being subjected to torture or other ill-treatment if returned to Ethiopia.

The complainant's comments on the State party's submissions:

10.1 By letter of 5 November 2004, the complainant noted that the State party's rejection of his claim that he would risk being tortured upon return to Ethiopia was based on its allegations of inconsistencies in his account. He referred to the Committee's case law, according to which neither inconsistencies in an applicant's story, provided they did not raise doubts about the general veracity of the claim,[3] nor late submissions,[4] automatically constituted obstacles to the protection guaranteed by article 3 of the Convention. He pointed out that the Committee has rejected similar arguments advanced by the State party in Tala v. Sweden,[5] and that it found, for example in Mutombo v. Switzerland,[6] that "even if there are doubts about the facts adduced by the [complainant], [the Committee] must ensure that his security is not endangered." He further submitted that the risk of torture invoking protection under article 3 must go beyond mere theory or suspicion, whereas the wording of article 3 does not demand a demonstration of a "high probability" that torture will occur. He also recalled that the reasons for the danger of being tortured should have been established before or after the flight of the involved person, or as a combination of both.[7]

10.2 The complainant argued that his identity as well as his involvement in politics and his imprisonment for his political activities, both under the former and under the present regime, had been established beyond reasonable doubt. The information provided by his mother confirmed that he disappeared about four years ago, which corresponded to the period of his last imprisonment and his political underground work. His political activities in Ethiopia and his persecution by the Ethiopian authorities were further confirmed by the support letters from the EPRP's Norwegian section. The complainant also submitted a copy of an arrest warrant of 25 March 1994, when he worked for SEPDC, showing that he was wanted for interrogation. The complainant's continued involvement in the EPRP's Norwegian section wa also acknowledged in a support letter from that organisation. According to the complainant, his name appeared in the headlines of the Norwegian media several times in that context.[8] All of these facts could not, in the complainant's view, be overshadowed by the alleged inconsistencies in his case.

10.3 Regarding the allegations of inconsistencies and of the complainant intentionally presenting false information, the complainant recalls that he had initially given his account under adverse conditions. Having recently arrived in Norway and been kept in a security cell for some hours before his interrogation, and suffering from PTSD, his uncertainty and fear were worsened by the behaviour of the interrogation officer and the translator who allegedly ridiculed him. Moreover, the complainant communicated his surprise that the interrogation focused mainly on his family background and his departure from Ethiopia (11 pages of the protocol), rather than

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[3] Kisoki v Sweden Complaint No. 41/1996, Views adopted on 8 May 1996, Alan v Switzerland Complaint No. 21/1995, Views adopted on 8 May 1996, and I.A.O. v Sweden Complaint No. 65/1997, Views adopted on 6 May 1998.

[4] Khan v Canada Complaint No. 15/1994, Views adopted on 15 November 1994, and Tala v Sweden Complaint No. 43/1996, Views adopted on 15 November 1996.

[5] Ibid.

[6] Case No 13/1993, Views adopted on 27 April 1994, at paragraph 9.2.

[7] The complainant here refers to Aemei v Switzerland Complaint No. 34/1995, Views adopted on 9 May 1997.

[8] The complainant supplies no further detail as to the sources or content of these media reports.

on what the complainant regards as material to his reasons for seeking asylum (1,5 pages), such as his political involvement and his fear of being returned to Ethiopia.

10.4 Regarding his family and personal history, the complainant submitted that related inconsistencies concern questions of minor importance, whereas the main facts provided by him, such as his family members' names and place of their home, were correct.

10.5 Concerning his alleged persecution in the past, the complainant claimed that, following his first asylum interrogation, he submitted additional details rather than, as the State party alleges, providing another account altogether. In fact, the complainant had, during the asylum interrogation, submitted only those details he deemed relevant, and submitted further facts once informed by the Advisory Group of their importance. The State party's claim that the complainant had said in the interrogation that he was arrested "only" once was false.

10.6 The complainant confirmed that he had stated in the asylum interview to have been "active in", rather than being "a member" of, the SEPDC, whose title he translated freely into English by retaining the main concepts of the organisation. The State party's assumption that the former SEPDC leader it interviewed knew all the members of the SEPDC was, in the complainant's view, rebutted by the former's stated willingness to investigate further into the case. The fact that the complainant mainly operated underground in an illegal organisation supports the former SEPDC leader's unawareness of the complainant's work as well as his claim that activists were not formally registered. The complainant notes that the State party has not informed the Committee or the complainant about any possible verification work undertaken by it, such as further contact with the former SEPDC leader or the verification of the detailed description of the Kerchele prison in Addis Ababa provided by the complainant.

10.7 Concerning past incidents of torture, the complainant submits that he was beaten during his long imprisonment in the 1980s, whereas he was not subjected to physical torture during his last imprisonment in the 1990s. However, he claims to have been tortured mentally in custody, and witnessed the torture of Abera, one of his political leaders, by the police.

10.8 The complainant submits that he faces a substantial risk of being tortured if returned to Ethiopia. Information provided by Human Rights Watch and United States' Department of State reports of 2003 leave little doubt that there is a consistent pattern of gross, flagrant and mass violations of human rights in Ethiopia, a country which still produces refugees. That the complainant has been politically active in two major opposition movements and escaped from prison eight years ago under the present regime, as well as his continued involvement as an "active member" in the EPRP in Norway[9] all render him at a risk of being tortured if returned. Since Ethiopia has not recognised the Committee's competence to act under article 22 of the Convention, the complainant will have no possibility of bringing a complaint before the Committee if tortured upon return.

Supplementary submissions of the parties

[9] The complainant provides no details as to what political activities he undertook in Norway.

11.1 On 6 April 2005, the State party submitted additional observations regarding the Immigration Appeals Board's decision of 12 March 2004. It states that its decision to review the complainant's case was taken by the Board on its own initiative, without any formal request by the complainant. While the Committee's admissibility decision of 14 November 2003 was the cause for the review, there was no obligation upon the Board to do so. The State party points out that the final decision of 29 December 1997 has now been reviewed four times in total by the Norwegian authorities, who each time did not find substantial grounds for believing that he would be at a substantial, present and personal risk of torture if returned to Ethiopia.

11.2 By letter of 22 April 2005, the complainant responded to the State party's supplementary submission, criticizing the procedure followed by the Immigration Appeals Board concerning its most recent decision of 12 March 2004. He accepts that the decision entailed "an extensive deliberation of the case", but states that due to a change in counsel the decision was apparently not received by him. He argues that he should have been provided with prior notice of the hearing and should have been provided with the Board's decision.

Disposition of procedural issue:

12.1 On 10 November 2004, the complainant applied to the Committee, under Rule 111, paragraph 4, of the Committee's Rules of Procedure, for leave to submit oral testimony to the Committee. He argued that he had not had not had opportunity to present his case in person before the domestic decision-making bodies in his case, nor had he appeared before the courts. Given that a major reason for the rejection of his claim was an assessment of his credibility, an issue that can be well tested in oral testimony, he contended that oral testimony before the Committee would provide it with a basis to assess his credibility.

12.2 On 26 November 2004, at its 33rd session, the Committee rejected the complainant's application under Rule 111, paragraph 4.

Examination of the merits:

13.1 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 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 past incidents of torture or 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.

13.2 The Committee has considered the periods of imprisonment suffered by the complainant in the 1980s and 1990s and his allegation that he was subjected to beatings, to maltreatment and psychological torture in Ethiopia in the past on account of his political activities. It notes the interest of the Ethiopian authorities in his person

apparently demonstrated by an arrest warrant dating from 1994. The Committee has finally noted the complainant's submissions about his involvement in the Norwegian section of the EPRP. Nevertheless, in the Committee's view, the complainant has failed to adduce evidence about the conduct of any political activity of such significance that would still attract the interest of the Ethiopian authorities at the current time, nor has he submitted any other tangible evidence to demonstrate that he continues to be at a personal risk of being tortured if returned to Ethiopia.

13.3 The Committee finds accordingly that, in view of the lengthy period of time that has elapsed since the events described by the complainant, the information submitted by the complainant, including the low-level nature of his political activities in Ethiopia and Norway, coupled with the nature and extent of inconsistencies in the complainant's accounts, 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 at the present time.

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