



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

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Committee against Torture

Communication No. 393/2009

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

<i>Submitted by:</i>	E.T. (represented by counsel, Tarig Hassan)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	27 July 2009 (initial submission)
<i>Date of present decision:</i>	23 May 2012
<i>Subject matter:</i>	Deportation of the complainant to Ethiopia
<i>Procedural issue:</i>	-
<i>Substantive issue:</i>	Risk of torture upon return to country of origin
<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. 393/2009

Submitted by: E.T. (represented by counsel, Tarig Hassan)

Alleged victims: The complainant

State party: Switzerland

Date of complaint: 27 July 2009 (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 23 May 2012,

Having concluded its consideration of complaint No. 393/2009, submitted to the Committee against Torture by Tarig Hassan on behalf of E.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 complainant, her counsel and the State party,

Adopts the following:

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

1.1 The complainant of the communication dated 27 July 2009 is E.T., born on 30 August 1963 in Ethiopia. She claims that her deportation to Ethiopia would constitute a breach by Switzerland of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainant is represented by counsel, Tarig Hassan.

1.2 On 31 July 2009, under rule 114 (former rule 108) of its rules of procedure (CAT/C/3/Rev.5), the Committee requested the State party not to deport the complainant to Ethiopia while her complaint was under consideration by the Committee. On 3 August 2009, the State party confirmed compliance with the Committee's request for interim measures.

The facts as presented by the complainant

2.1 The complainant belongs to the Amhara ethnic minority, mostly living in the central highlands of Ethiopia. She left her home country due to political problems and arrived in Switzerland on 31 July 2003, where she filed an asylum claim.

2.2 On 14 June 2005, the Federal Office for Migration rejected her asylum request and ordered her to leave Switzerland. On 9 August 2007, the Federal Administrative Court rejected her appeal on the basis that it was not well established that the complainant's political activities in Switzerland have exposed her to such an extent as to attract the attention of the Ethiopian authorities.

2.3 While in Switzerland, the complainant continued her political work within the Ethiopian diaspora. She became an active member of the diaspora opposition political organization KINIJIT/Coalition of Unity and Democracy Party Switzerland (CUDP) and participated in numerous demonstrations and political rallies. According to the author, CUDP is one of Ethiopia's leading opposition movements. In Ethiopia, CUDP regularly faces political repression from the Government and its members continue to be persecuted. The complainant gives the example of Birtukan Mideksa, chairperson of CUDP, who was arrested on 28 December 2008 and convicted of attempting to overthrow the constitutional order. She was sentenced to life imprisonment. About a month before her arrest, Ms. Mideksa had visited the Swiss section of KINIJIT in Geneva. At that time, the complainant met her personally and helped her to organize her meetings.

2.4 For many years, the complainant helped organize gatherings for her political movement in Switzerland. Various pictures of her as part of crowds in demonstrations have appeared in the media. Besides her activity with KINIJIT, the complainant joined the Association des Ethiopiens de Suisse (AES), an important community and discussion forum for the Ethiopian diaspora, that organizes cultural and political events. Since 2004, the complainant has been a member of the executive committee. She further appeared in public in an Ethiopian radio programme on a Swiss local radio station speaking in Amharic to her fellow citizens.

2.5 On 5 October 2007, the complainant submitted a second asylum request based on her recent political activities in Switzerland. The Federal Office for Migration forwarded her request to the Federal Administrative Court, which considered it a revision request. The Court rejected her request on 12 June 2009, for lack of evidence proving a real risk upon return to Ethiopia, and ordered her expulsion.

The complaint

3.1 The complainant claims that her forcible deportation to Ethiopia by Switzerland would amount to a violation of article 3 of the Convention because she risked being arrested and tortured as a result of her political activities in Switzerland. The complainant emphasizes that the Federal Administrative Court, in considering the merits of previous asylum requests submitted by the Ethiopians active in KINIJIT, has acknowledged that the Ethiopian security authorities monitors the activities of Ethiopians in exile and records them in an electronic database. The complainant adds that in a similar case, the Federal Court had recognized that there was a high risk that Ethiopians living abroad, who were active in or merely sympathizers of the CUDP, would be identified by the Ethiopian authorities.¹

3.2 The complainant submits that her activities go far beyond those of a passive sympathizer. Indeed, not only does she participate regularly in political events, but she publishes critical articles on the Internet and has become an important voice within the Ethiopian diaspora. She has contacts with important opposition leaders, as indicated by her

¹ Federal Administrative Court of Switzerland, unpublished judgement E-368/2009 of 12 February 2009.

meeting with Ms. Mideksa. She claims that such exposure puts her in a prominent position and makes her a target for the Ethiopian security forces.

3.3 The complainant maintains that the Federal Administrative Court did not examine in detail whether her political activity would lead to a risk of torture if she was forcibly returned to Ethiopia. She further maintains that Ethiopia is well known for its human rights abuses against opposition leaders, and reliable reports confirm that the Ethiopian authorities monitor the activities of Ethiopians in the diaspora.² As such, the complainant claims that she would be exposed to a real risk of arrest and torture if she were returned to Ethiopia.

3.4 According to human rights organizations, the Ethiopian Government intensified its efforts to suppress dissent political organization.³ The Ethiopian Parliament is currently debating the draft of a new anti-terrorism proclamation with the objective of cracking down on all forms of opposition in the country, assimilating political activities, including peaceful political demonstrations, to terrorist acts. The complainant submits that the draft law would also permit long-term imprisonment and the death penalty for offences such as damage to property or disruption of any public service for the purpose of advancing a political, religious or ideological cause. She further submits that a person need only threaten to commit such a crime to be prosecuted as a terrorist. The complainant maintains that due to her political background and her prominent role within CUDP/KINIJJIT, she fears persecution and claims that she would be exposed to a high risk of torture if she returns to Ethiopia.

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

4.1 On 27 January 2010, the State party submits its observations on the admissibility and the merits. The State party submits that according to article 3 of the Convention, States parties are prohibited from expelling, returning or extraditing a person to another State where there exist substantial grounds to believe that he/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.⁴ 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/her return to his/her country of origin or that additional grounds must exist for the risk of torture to qualify, under the meaning of article 3, as "foreseeable, real and personal."

4.2 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 Parliament. It acknowledges 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, an independent judiciary is lacking. However, being a member or supporter of an opposition political party does not, in itself, lead to a risk of persecution. The situation is different for a person who holds a prominent position in an opposition political party.⁵ In the light of the above information, the competent Swiss asylum authorities have adopted a differentiated approach to determine the risk of persecution. Persons, who are suspected by

² Amnesty International Report 2009, Ethiopia.

³ Human Rights Watch, "An analysis of Ethiopia's draft anti-terrorism law," updated 30 June 2009.

⁴ The State party refers to the Committee's general comment No. 1 (1996) and communications No. 94/1997, *K.N. v. Switzerland*, para. 10.2; and No. 100/1997, *J.U.A. v. Switzerland*, paras. 6.3 and 6.5.

⁵ The State party refers to United Kingdom Border Agency, "Operational Guidance Note: Ethiopia," issued March 2009, para. 3.7.9.

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 the Coalition for Unity and Democracy (CUD or KINIJIT or CUPD), the risk of persecution is assessed on a case-by-case basis, in accordance with the above criteria. With regard to monitoring political activities of Ethiopians in exile, the State party submits that according to the information available to it, the Ethiopian diplomatic and consular missions do not have the personnel nor 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 campaigning for the use of violence run the risk of being identified and registered and, therefore of being persecuted if returned to Ethiopia.

4.3 The State party notes that the complainant has not claimed to have suffered torture or to have been arrested or detained by Ethiopian authorities. It therefore recalls the conclusions of the Federal Office for Migrations of 22 March 2007, and those of the Federal Administrative Court of 9 August 2007, which held that the complainant's allegations with regard to her arrest in Ethiopia were not credible. It also notes that the complainant, who allegedly was being persecuted for her political activities in Ethiopia, left the country with a valid exit visa.

4.4 As to the complainant's political activities in her home country, the State party summarizes the conclusions of the domestic authorities, who had examined the complainant's case in detail, and concluded that her claim regarding her engagement in political activities lacked credibility. In support of her claim before the domestic authorities, the complainant submitted three summonses and a document from the federal police, which were assessed as lacking authenticity with regard to the signatures, stamps and authorities who supposedly issued the documents. Furthermore, in the domestic proceedings, the complainant contradicted herself on important issues.

4.5 The State party notes that the complainant claims to belong to the Association des Ethiopiens en Suisse (AES) and that as a member of the executive committee, she was in charge of organizing numerous political activities, including demonstrations. The State party argues that according to the commercial registry, AES is a politically neutral organization and the complainant is not registered as a member of the executive committee. The State party further notes that the complainant had submitted a letter of confirmation by the President of the "Council of Europe, Africa and Australia Kinijit Support Chapters" and a photo showing her with Birtukan Mideksa. The State party argues that, according to that letter, the complainant's activity was limited to the preparation of the visit of a delegation of the CUPD to Switzerland. It submits that none of the documents submitted by the complainant showed political engagement beyond participation in demonstrations, an activity of most politically active Ethiopians in Switzerland. The State party also submits that, in view of their limited resources, the Ethiopian authorities are focusing 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. The case of Birtukan Mideksa is an example thereof. However, the complainant presented no such political profile when she arrived in Switzerland and the State party deems it reasonable to exclude that she subsequently developed such a profile. The State party maintains that the documents produced by the complainant do not show any activity in Switzerland that would attract the attention of the Ethiopian authorities. According to the complainant, she participated in four demonstrations between 2005 and 2006 and four CUDP/KINIJIT assemblies between 2007 and 2008. The fact that the complainant is identified in photographs or videos of participants in certain demonstrations 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.

4.6 The State party further argues that the complainant's claim that she spoke in Amharic on a local Swiss radio station to her fellow citizens does not change the above appreciation of the case, in particular as the radio station contradicted the complainant's assertion and stated that the complainant's activity was limited to sending two articles to the responsible editor.

4.7 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 her. 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 that would attract the attention of the Ethiopian authorities. In other words, the complainant has not established that if returned to Ethiopia she would run a risk of ill-treatment because of her political activities in Switzerland.

4.8 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 expose her 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. On 26 March 2010, the complainant reiterates her initial submission and submits that she continues to be politically engaged and that she has participated in numerous activities of CUDP/KINIJJIT. She notes in particular that she had participated in a meeting of the GINBOT 7 and can be seen in photographs with the well-known founder of the movement, Berhanu Nega. She further published an article on the WARKA forum criticizing the new anti-terrorist legislation. The complainant reiterates that she is a very active member of the dissident movement of Ethiopians in Switzerland and that she had met Birtukan Mideksa before her arrest. She has organized several meetings and participated in numerous demonstrations, as well as posted several articles exposing her political views on the Internet. Citing the assessment of the NGO, Human Rights Watch, the complainant notes that the Ethiopian authorities have increased their surveillance of political opponents, including on the Internet.⁶ She therefore maintains that she would face an imminent, personal and real risk of torture if deported to Ethiopia.

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 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

⁶ Human Rights Watch, "One hundred ways of putting pressure: Violations of freedom of expression and association in Ethiopia," March 2010.

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 the 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 (1996)⁷ on the implementation of article 3 of the Convention, according to which “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.⁸ 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 for in article 22, paragraph 4, of the Convention, of free assessment of the facts, based on the full set of circumstances in every case.

7.4 The Committee has noted the complainant's submissions about her involvement in the activities of KINIJIT/CUDP Switzerland and in the Association des Ethiopiens de Suisse. It also notes her claim that she helped to organize meetings of a well-known Ethiopian opposition politician during her visit to Switzerland, and that she has been visible on the Internet, during demonstrations and on a local radio station. The Committee further notes that the complainant has not claimed to have been arrested or ill-treated by the Ethiopian authorities, nor has she claimed that any charges have been brought against her 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 she 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 she submitted any other tangible evidence to demonstrate that the authorities in her home

⁷ See HRI/GEN/Rev.9

⁸ See, *inter alia*, communications No. 258/2004, *Dadar v. Canada*, decision adopted on 23 November 2005, and Nos. 226/2003, *T.A. v. Sweden*, decision adopted on 6 May 2005.

country are looking for her or that she would face a personal risk of being tortured if returned to Ethiopia.

7.5 The Committee concludes accordingly that the information submitted by the complainant, including the unclear nature of her political activities in Ethiopia and the low-level nature of her political activities in Switzerland, is insufficient to establish her claim that she 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,⁹ 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 concludes 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, Russian and Chinese as part of the Committee's annual report to the General Assembly.]

⁹ 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.