



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

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Committee against Torture

Communication No. 426/2010

Decision adopted by the Committee at its fifty-first session, 28 October–22 November

<i>Submitted by:</i>	R.D. (represented by Tarig Hassan of Advokatur Kanonengasse)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	14 June 2010 (initial submission)
<i>Date of decision:</i>	8 November 2013
<i>Subject matter:</i>	Deportation of the complainant to Ethiopia
<i>Procedural issues:</i>	-
<i>Substantive issues:</i>	Risk of torture upon return to the country of origin
<i>Articles of the Convention:</i>	3; 22



Annex

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

concerning

Communication No. 426/2010

Submitted by: R.D. (represented by Tarig Hassan of Advokatur Kanonengasse)

Alleged victim: The complainant

State party: Switzerland

Date of complaint: 14 June 2010 (initial submission)

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

Meeting on 8 November 2013,

Having concluded its consideration of communication No. 426/2010, submitted to the Committee against Torture by Tarig Hassan on behalf of R.D. 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 is R.D., an Ethiopian national born on 22 September 1984 and residing in Switzerland. She claims that her deportation to Ethiopia would constitute a violation by Switzerland of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainant is represented by counsel, Tarig Hassan of Advokatur Kanonengasse.

1.2 On 29 June 2010, the Rapporteur on new complaints and interim measures decided not to request interim measures from the State party to suspend the complainant's deportation to Ethiopia.

The facts as submitted by the complainant

2.1 The complainant is of Oromo ethnicity. Her father, G.D., was a member of the Oromo Liberation Front (OLF), a political organization in Ethiopia, and has been unaccounted for since his arrest in September 2005. According to the complainant, she and

her family were harassed by the Ethiopian authorities on several occasions due to their presumed allegiance to the OLF. Soldiers searched the family's house to look for the complainant's brother, who had fled the country. An Ethiopian soldier tried to pressure the complainant to marry him in order to secure her family's safety.

2.2 After her mother's death in April 2007, the complainant fled Ethiopia with her brother's help. In September 2007, she travelled via Addis Ababa and Rome to Switzerland, where she filed an asylum claim on 13 September 2007. Since September 2008, the complainant has been an active member of the Swiss OLF section.¹ She has participated in various public events for the Oromo cause. Photos of her carrying the Oromo flag and photos of her at a meeting for the commemoration of martyrs have been published on the Internet.

2.3 On 10 July 2009, the Federal Office for Migration determined that it could not consider the merits of the complainant's asylum request, because the complainant had not provided a valid identification document. In a decision dated 26 February 2010, the Federal Administrative Tribunal rejected the complainant's appeal of the decision of the Federal Office for Migration.

2.4 On 29 March 2010, the complainant filed a second asylum claim, in which she remained content with describing her political activities in Switzerland while also submitting a school certificate and a letter from a former member of the Ethiopian parliament who had known her father. By its decision dated 10 May 2010, the Federal Office for Migration dismissed the claim without assessing the merits.²

The complaint

3.1 The complainant asserts that Switzerland would violate her rights under article 3 of the Convention by forcibly deporting her to Ethiopia, where she would "be at a real risk of being subjected to state persecution and inhumane treatment" due both to her own active participation in Ethiopian dissident activities in Switzerland, and to her father's and brother's association or imputed association with the political opposition. The complainant states that she is at risk because the Government of Ethiopia outlawed the OLF in 1992, considers it a terrorist organization and routinely harasses, abducts and mistreats its supporters. The complainant argues that she has become a visible figure in the Oromo exile movement through continued and resolute activism; that she entertains close ties with prominent dissident figures and is a member of the OLF European section's executive council; that photos of her participating in OLF events and holding the Oromo flag have been published on the Internet; that the Ethiopian authorities have likely taken note of her because her father was arrested on account of his political activism and long-standing membership in the OLF, and her brother fled the country for fear of sharing the same fate; and that the Government of Ethiopia has, through its newly enacted anti-terrorism legislation, recently intensified its efforts to crack down on political opposition and monitor

¹ On this issue, the complainant submits a letter issued by the OLF European office, dated 25 April 2010, stating that the complainant "has continued her political activities as an active member of OLF Executive Committee in Europe". (Complainant's enclosure 2.)

² In this second asylum decision, the Federal Office for Migration determined that the complainant did not fulfil the criteria to be considered a refugee and contested the credibility of her account. The Office considered the additional documentation provided by the complainant and found that her political commitment and militancy were superficial, such that her return to Ethiopia would not likely interest the Ethiopian authorities.

dissidents located abroad.³ Government officials frequently torture suspected activists.⁴ The complainant concludes that, considering “the political background of her family, her ethnicity, her own political activism and her long absence from Ethiopia, there is indeed a high risk that the complainant might be arrested, questioned and detained upon her arrival in Ethiopia”.

3.2 By letter dated 9 September 2010, the complainant submitted a psychologist’s medical report stating that she is undergoing psychological treatment in Switzerland due to severe depression. The complainant further asserts that “her current mental condition is, inter alia, a product of the traumatizing experiences she was confronted with in her home country”.

3.3 The complainant considers that she has exhausted domestic legal remedies. She filed an appeal of the decision by which the Federal Office for Migration denied the second asylum claim on 14 May 2010, and on 4 June 2010, the Federal Administrative Tribunal rejected the appeal.⁵ The complainant was ordered to leave Switzerland; but at the time of submission of the present communication, her deportation date had not been set.

State party’s observations on admissibility and on the merits

4.1 On 23 November 2010, the State party submitted its observations on the merits of the communication. The State party recalls the facts of the complaint and notes the complainant’s argument that she would run a personal, real and serious risk of being subjected to torture if returned to Ethiopia, because of her political activities with the OLF. The State party considers that the complainant does not present any new elements that would call into question the decisions of the Swiss asylum authorities, which were made following a detailed examination of the case, but rather disputes the assessment of the facts and evidence by them. The State party maintains that the deportation of the complainant to Ethiopia would not constitute a violation of the Convention by Switzerland.

4.2 The State party considers that, according to article 3 of the Convention, State parties are prohibited from expelling, returning or extraditing a person to another State where there exist substantial grounds for believing that he or she would be subjected to torture. To determine the existence of such grounds, the competent authorities must take into account all relevant considerations, including, where applicable, the existence in the State

³ The complainant cites Human Rights Watch, *One Hundred Ways of Putting Pressure* (2010). Available from www.hrw.org/en/node/89126/section7.

⁴ The complainant cites the United States of America Department of State, 2009 Country Reports on Human Rights Practices: Ethiopia (March 2010); Amnesty International, *Ethiopia: Prisoners of Conscience on Trial for Treason: Opposition Party Leaders, Human Rights Defenders, and Journalists* (May 2006); Human Rights Watch, “Suppressing dissent: human rights abuses and political repression in Ethiopia’s Oromia region” (9 May 2005).

⁵ In its decision, the Federal Administrative Tribunal cast doubt upon the new documents produced by the complainant. It noted, for example, that the undated declaration from the Oromo Parliamentarians Council, purporting to confirm the 2005 arrest of the complainant’s father, contained a section with numerous spelling and syntax errors, and did not state the name of the secretary who allegedly signed it. The declaration of Abiyot Shiferaw, a member of the federal Ethiopian parliament, lacked probative value because it stated that the complainant’s father was arrested in 2006, and not, as the complainant had alleged, in 2005. The additional photographs presented by the complainant did not reveal any circumstances that would establish a risk of State persecution directed at the complainant.

concerned of a consistent pattern of gross, flagrant or mass violations of human rights.⁶ Such a pattern is not in itself a sufficient basis for concluding that an individual might be subjected to torture upon his or her return to his or her country. To benefit from the protection under article 3, an applicant should show that he or she runs a “foreseeable, real and personal” risk of torture.

4.3 The State party considers that the facts of the complainant are insufficient and contain contradictory testimony on the alleged harassment she received by the Ethiopian authorities. She does not provide details of the harassment, and her complaint is inconsistent with the declarations she made at her first Federal Office for Migration hearing, when she stated that she had never been charged, detained or arrested by the Ethiopian authorities, and never personally experienced difficulties with either State authorities or private individuals. In her complaint, she stated that, beginning in November 2005, soldiers regularly came to her home to inquire about her brother. However, during the first Federal Office for Migration hearing, she stated that after the death of her mother, she left her home to stay with her brother’s fiancée and did not experience any problems.

4.4 The State party takes the view that suspected OLF affiliates may run a risk of persecution in Ethiopia. Expatriates who are active opponents of the Ethiopian regime may very well risk being identified and persecuted upon their return, even if the Government appears to lack the means to conduct systematic surveillance of political opponents abroad. Nevertheless, the State party submits that it is implausible that the Ethiopian authorities have taken note of the complainant’s activities (either in Ethiopia or abroad). In the instant proceeding, the complainant does not assert that she was politically active in Ethiopia, and her prior testimony on this issue indicated that her ONEG⁷ membership card was automatically issued due to her father’s membership in the party. Moreover, the documents she produced do not demonstrate that she has participated in any activities in favour of a political position in Switzerland. In its second decision, the Federal Administrative Tribunal noted the doubtful authenticity and veracity of the letters provided by the Oromo Parliamentarians Council (OPC) and Mr. Shiferaw. Specifically, the Tribunal noted that the letter from Mr. Shiferaw (dated 11 March 2010) stated that the arrest of the complainant’s father occurred in 2006 and not, as the complainant had claimed, in 2005. Moreover, the signature on the letter did not match the signature on the undated OPC statement, which was also allegedly signed by Mr. Shiferaw. The Tribunal further noted that the OPC statement exhibited many spelling and syntax errors in the section discussing the personal situation of the complainant, contrary to the rest of the statement, which reproduced the information contained on the OPC website. The OPC statement did not feature the name of the secretary supposed to have signed it. It further erroneously stated that the Swiss authorities had rejected the complainant’s asylum application on the ground that Ethiopia is a democratic country. The State party further considers that the Ethiopian authorities do not target persons of Oromo ethnicity generally, but rather focus on high-profile individuals who, for example, participate in activities that could represent a danger to the Ethiopian

⁶ The State party refers to the Committee’s general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22 (*Official Records of the General Assembly, Fifty-third Session, Supplement No. 44* (A/53/44 and Corr.1), annex IX), paras. 6 and 8, and the Committee’s jurisprudence in communications No. 94/1997, *K.N. v. Switzerland*, Views adopted on 19 May 1998, paras. 10.2 and 10.5, and No. 100/1997, *J.U.A. v. Switzerland*, Views adopted on 10 November 1998, paras. 6.3 and 6.5.

⁷ The complainant explained at her asylum hearing on 13 November 2007 that ONEG and OLF are the same entity.

regime. The State party considers that the complainant does not present such a profile; the photographs and documents she produced do not establish a risk of persecution should she return to Ethiopia.

Complainant's comments on the State party's submission

5.1 By letter dated 7 February 2011, the complainant submitted her comments on the observations of the State party. As a preliminary matter, she emphasizes that the Federal Office for Migration did not technically “reject” her first asylum claim, because it did not consider the merits of the case.

5.2 The complainant reiterates that she was harassed in Ethiopia and states that she has been consistent in her allegations on this issue. She submits that she never claimed to have been politically active in Ethiopia, but maintains that she was targeted due to her father’s political activities. The complainant argues that her father’s activism is corroborated by Mr. Shiferaw’s statement, and that her allegation that the Government of Ethiopia closely monitors and pursues opponents living abroad is substantiated by a recent report on Djibouti published by the Human Rights League of the Horn of Africa.⁸ The complainant states that the Government’s crackdown on Oromo opposition is targeting more than just the party elite,⁹ and the complainant is “one of the leading figures of the [OLF] movement in Switzerland”. According to the complainant, a simple consultation of well-known dissident websites, such as the Oromia Times, would reveal the complainant’s activism to the Ethiopian authorities. The complainant therefore claims to face a “real, imminent, and personal risk of being subjected to treatment contrary to the Convention” if returned to Ethiopia.

5.3 The complainant provides a first-person statement of her OLF activities in Switzerland. She asserts that the OLF is a political organization whose objective is to struggle for self-determination of the Oromo people after a century of repression by Ethiopian rulers. The complainant states that between 2008 and 2009, her role in the OLF consisted of: participating in monthly contribution and fundraising activities; participating in monthly meetings; promoting Oromo cultural activities, displaying Oromo identity and celebrating Oromo national festivals; actively participating in the commemoration of Oromo Martyrs’ Day; and preparing Oromo national food for fundraising purposes. In 2010, she was elected as an executive committee member of OLF Switzerland, and in this role she engages in: organizing the Oromo diaspora “according to gender, age, and profession to enhance their participation for the struggle of Oromo politics”; teaching the Oromo language; inculcating OLF ideological hegemony among Oromos in Switzerland; informing the Oromo diaspora about the false propaganda of the Government of Ethiopia; and writing the monthly reports of the organization.

Complainant's additional submission

6.1 On 19 September 2013, the complainant made a further submission which included a medical report, a medical certificate, a letter from the Oromo Community Switzerland (OCS), and the complainant’s OCS membership card. The card, issued on 1 August 2012,

⁸ The complainant provides a copy of the report dated 12 January 2011. It describes the disappearance of nine Ethiopian Oromo refugees after their arrest in Djibouti by members of the Djibouti forces who were allegedly supported by Ethiopian security agents.

⁹ The complainant cites Country of Origin Research and Information (CORI), “CORI country report: Ethiopia” (January 2010), p. 31.

states that the complainant has been an OCS member since 2008. The letter, dated 9 September 2013, states that the purpose of OCS is to promote Oromo culture and language within the diaspora and Switzerland. The letter also states that the complainant was “victimized and brutally mistreated by the Ethiopia government security forces”. The letter does not specify the basis for this statement. The medical certificate states that the complainant has, since 2 May 2012, required regular medical treatment for a chronic inflammatory disease of the spine and pelvis. The separate medical report, dated 26 April 2013, states that the complainant suffers from recurrent depressive disorder, and that any further stress risks aggravating her condition. A second medical report by the same psychologist, issued on 9 September 2013 and requested by the Federal Office for Migration, provides a favourable mid-term prognosis for the complainant but states that the prognosis would be unfavourable should the complainant return to Ethiopia, due to the weak medical system in Ethiopia as well as the complainant’s status as a single woman.

State party’s comments on the complainant’s additional submission

7.1 On 10 October 2013, the State party submitted a response to the complainant’s additional submission. The State party considers that the complainant has not furnished any information regarding her claimed political activities in Switzerland. The State party further notes the discrepancy between the dates of birth stated on the OCS letter and the OCS membership card. The State party also takes the view that the medical certificate and reports do not indicate that the complainant would be subject to treatment in violation of article 3 if returned to Ethiopia.

Issues and proceedings before the Committee

Consideration of admissibility

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

8.2 The Committee recalls that, in accordance with article 22, paragraph 5 (b), of the Convention, it shall not consider any communications from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that in the instant case the State party concedes that the complainant has exhausted all available domestic remedies.

8.3 The Committee considers that the complaint raises substantive issues under article 3 of the Convention, and that these issues should be examined on the merits. As the Committee finds no obstacles to admissibility, it declares the communication admissible.

Consideration of the merits

9.1 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.

9.2 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. 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.¹⁰

9.3 The Committee recalls its general comment No. 1 (1997) on the implementation of article 3 of the Convention, that “the risk of torture must be assessed on grounds that go beyond mere theory or suspicion”. While the risk does not have to meet the test of being “highly probable” (para. 6), 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.¹¹ While under the terms of its general comment the Committee is free to assess the facts on the basis of the full set of circumstances in every case, it recalls that it is not a judicial or appellate body, and that it must give considerable weight to findings of fact that are made by organs of the State party concerned.¹² In this respect, the Committee notes that various authorities in the State party examined the facts and evidence that the complainant produced and also submitted to the Committee.

9.4 In assessing the risk of torture in the present case, the Committee notes the complainant’s claims that her father was abducted in 2005 due to his OLF activities, and that her brother was sought by the Ethiopian authorities due to his presumed allegiance to the OLF. The Committee also takes note of the complainant’s allegations that a soldier tried to pressure her to marry him in order to secure her family’s safety, and that the authorities repeatedly visited her family home to interrogate her about her brother’s whereabouts. The Committee further notes the complainant’s submissions about her own involvement in the activities of the OLF. It also notes the State party’s position in this regard, namely, that it considers that the complainant’s activities within the OLF are not eminently political in nature and would not be of interest to the Ethiopian authorities. The Committee observes the State party’s contention that the documents furnished by the complainant to substantiate her involvement in the OLF “demonstrate neither the author’s political commitment to an opposition movement, nor antigovernment militant activity”.

9.5 The Committee takes note of the State party’s observations concerning the complainant’s lack of credibility. These concerns are based on factors including the presentation of contradictory information concerning the harassment suffered by the complainant in Ethiopia and the year in which her father’s arrest occurred; the questionable authenticity/veracity of the corroborating statements she provided from the Oromo Parliamentarians Council and Mr. Shiferaw; and the complainant’s inability to provide a valid means of identification or, in the alternative, an acceptable explanation for her inability to do so.

¹⁰ 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.

¹¹ See, inter alia, communications No. 258/2004, *Dadar v. Canada*, decision adopted on 23 November 2005, and No. 226/2003, *T.A. v. Sweden*, decision adopted on 6 May 2005.

¹² General comment No. 1, para. 9; communication No. 375/2009, *T.D. v. Switzerland*, decision adopted on 26 May 2011, para. 7.7.

9.6 The Committee recalls its concluding observations of 2010, issued in connection with the initial report of Ethiopia, in which it states that it was “deeply concerned” about “numerous, ongoing and consistent allegations concerning the routine use of torture” by government agents against political dissidents and opposition party members, students, alleged terrorists and alleged supporters of violent separatist groups such as the OLF (CAT/C/ETH/CO/1, para. 10).¹³ The Committee further takes note of the complainant’s assertions regarding the attempts by the Government of Ethiopia to identify political dissidents living abroad. The Committee notes that the State party, while expressing disagreement regarding the extent of this surveillance, acknowledges that active expatriate dissidents risk persecution upon their return to Ethiopia. The Committee does not have information that this situation has improved following the change in leadership that occurred upon the death of Ethiopian Prime Minister Meles Zenawi in August 2012.

9.7 Nevertheless, in the Committee’s view, the complainant has failed to substantiate her claims in relation to her political or other circumstances, in particular as regards whether they would be of such significance to attract the interest of the Ethiopian authorities at the current time, nor has she submitted any other credible evidence to demonstrate that she is at a personal risk of being tortured or otherwise subjected to ill-treatment if returned to Ethiopia. The Committee considers that the complainant’s OLF activities in Switzerland do not appear to be markedly political in nature (fundraising, organization of and participation in cultural events, teaching the Oromo language), and the complainant has fallen short of substantiating her claims that she participated in high-profile ideological and political activities that would logically attract such attention of the Ethiopian authorities that would render her vulnerable to coercive and torturous treatment. The Committee further observes that the complainant has not submitted any evidence supporting her claims of having been harassed by the Ethiopian authorities prior to her arrival in Switzerland or establishing that the police or other authorities in Ethiopia have been looking for her since.¹⁴ Nor has the complainant claimed, either before the Swiss asylum authorities or in her complaint to the Committee, that any charges have been brought against her under any domestic laws.¹⁵ The Committee is concerned at the many reports of human rights violations, including the use of torture in Ethiopia,¹⁶ 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.¹⁷ In the light of the foregoing, the Committee finds that the information submitted by the complainant, including the low-level nature of her political activities in Switzerland, coupled with the nature and extent of inconsistencies in her accounts, 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 at the present time.

10. 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

¹³ The Committee reported that such acts frequently occurred with the participation of, at the instigation of, or with the consent of commanding officers in police stations, detention centres, federal prisons, military bases, and unofficial or secret places of detention (CAT/C/ETH/CO/1, para. 10).

¹⁴ See *H.K. v. Switzerland*, communication No. 432/2010, decision adopted on 23 November 2012, para. 7.6; *T.D. v. Switzerland*, para. 7.9.

¹⁵ *H.K. v. Switzerland*, para. 7.4, and *T.D. v. Switzerland*, para. 7.9.

¹⁶ The Committee notes that Ethiopia is also a State party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

¹⁷ See, inter alia, *S.M. v. Switzerland*, communication No. 406/2009, decision adopted on 23 November 2012, para. 7.4; *H.K. v. Switzerland*, para. 7.4; *T.D. v. Switzerland*, para. 7.9.

Treatment or Punishment, concludes that the deportation of the complainant to Ethiopia would not constitute a violation of article 3 of the Convention.

[Adopted in English, French, Russian and Spanish, 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.]
