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

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 758/2016*, **, ***

Communication submitted by:	Adam Harun (represented by counsel, Ms. Gabriella Tau and Mr. Boris Wijkström)
Alleged victim:	The complainant
State party:	Switzerland
Date of communication:	8 July 2016 (initial submission)
Date of present decision:	6 December 2018
Subject matter:	Deportation to Italy
Procedural issues:	Failure to sufficiently substantiate claims; inadmissibility *ratione materiae*
Substantive issues:	Risk of torture; right to redress; cruel, inhuman or degrading treatment or punishment
Articles of the Convention:	3, 14 and 16

1.1 The complainant is an Ethiopian citizen born on 28 September 1990. He is facing deportation to Italy and considers that his removal would constitute a violation by Switzerland of articles 3, 14 and 16 of the Convention. He is represented by Gabriella Tau and Boris Wijkström of the Centre suisse pour la défense des droits des migrants.

1.2 On 13 July 2016, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party to refrain from deporting the complainant to Italy while his complaint was being considered by the Committee.

The facts as presented by the complainant

2.1 The complainant has been a political advocate for the Oromo cause since 2005, when his sister was killed by hanging at Mekelle University. In 2006, he joined the Oromo Liberation Front, a political party that campaigns for Oromo rights in Ethiopia. He conducted awareness-raising activities among young people and farmers and, while studying medicine, was in charge of the party's student wing at the Arat Kilo university

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

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

*** The text of an individual (dissenting) opinion of Committee member Abdelwahab Hani is appended to the present decision.

campus. In November 2006, he was arrested and incarcerated in Kalit Karchale prison until late January 2008.

2.2 During his time in prison, the complainant was subjected to severe acts of torture, which were focused mainly on his genitals and abdomen. His scrotum was slashed with scissors and his testicles scalded with hot water. He received blows to his lower abdomen and genitals, a blade was thrust into his right side and bottles were inserted into his anus and rectum. He also received violent blows to his back and on the soles of his feet.[1]

2.3 The complainant was released on an unspecified date on account of his extremely poor state of health. In late March 2008, he received a letter from the Government of Ethiopia informing him that he was to return to prison as soon as his health permitted it.

2.4 On 29 June 2008, the complainant fled from Ethiopia. Passing through Kenya and the Sudan, he crossed the Libyan desert and in November 2008 crossed the Mediterranean Sea from Libya by boat along with 485 other persons. Only 125 of them survived. The complainant was picked up by Italian soldiers who transported him by helicopter to a hospital in Rome for urgent treatment. As he was suffering from the effects of severe dehydration and salt contamination, he remained in hospital for three months. During this time, the doctors did not treat his health problems that were the result of the acts of torture to which he had been subjected in Ethiopia. Towards the end of his stay in hospital, he was interviewed by the Italian authorities. As soon as his state of health had improved, he was taken to Grosseto.

2.5 On 1 May 2009, the complainant was granted refugee status and a five-year Italian residence permit. His case file was assigned to police headquarters in Grosseto. Despite the complainant not having fully recovered, on an unspecified date, the supervisor of the reception centre ordered him to leave. Having still not left the centre a week later, the police came and ordered him to vacate the premises. He had to live on the street for three years[2] and was entirely unable to obtain the medicine or protective diapers that he needed. On several occasions, he asked to be treated at Grosseto hospital. However, he was refused treatment as he was unable to provide a fixed address. He also approached the police, who refused to assist him.

2.6 Given his poor state of health and having come to realize that he could not live in Italy where he had been refused any kind of assistance, the complainant travelled to Norway in March 2012 to apply for asylum. Immediately after his arrival, he received intensive medical care on account of his extremely poor state of health. Throughout his stay in Norway, he had to attend the hospital for treatment once or twice a week. Norway requested Italy to take back the complainant. The Norwegian authorities assured the complainant that he would be guaranteed medical and social care in Italy.

2.7 When the complainant arrived in Rome, the authorities sent him to Grosseto, where the situation proved to be quite different to that described to him in Norway: instead of taking responsibility for him, the local authorities made it quite clear that he would not receive care, board or lodging and that he should leave. Worse still, the police confiscated the documents[3] that allowed him to reside in Italy, which were never returned to him.

2.8 His documents having been confiscated and knowing that he would be unable to obtain any kind of assistance, the complainant travelled to Switzerland on 18 July 2012 and

[1] According to the complainant, the beatings have compromised his psychological and physical integrity. As demonstrated by diverse medical reports attached to the case file, he experiences pain in his lower abdomen, genitals, right side and lower right limb, as well as urinary incontinence. He has blood in his urine and suffers from both nocturia and pollakiuria, which require him to get up between 15 and 20 times a night to urinate in small quantities so as not to wet his bed. The complainant also suffers from erectile dysfunction, painful haemorrhoids, constipation, sleep disorders, insomnia and major depressive disorder. He is obliged to wear protective diapers on a permanent basis.

[2] He lived in an abandoned stable, which housed some 15 people. There was no toilet or shower; the place was wholly unsanitary. The complainant found it particularly difficult to live in such conditions, given his state of health.

[3] There is no further information on this point.

applied for asylum the next day. Upon arrival in Switzerland, he received regular medical check-ups, as necessitated by his fragile state.

2.9 On 27 September 2012, the former Federal Office for Migration (OFM), which is now known as the State Secretariat for Migration, submitted an admission request to the Italian authorities in accordance with the Dublin II Regulation.[4] The OFM did not indicate that the complainant had been a victim of torture or that he had serious health problems. The Italian authorities did not issue their decision within the specified time frame. On 25 October 2012, the complainant submitted a medical report prepared by a Dr. B[5] dated 23 October 2012[6] to the OFM. On 9 November 2012, the OFM decided not to consider the case and ordered the complainant's deportation to Italy. The complainant's appeal against the decision was rejected by the Federal Administrative Court on 22 November 2012.

2.10 On 14 March 2013, the OFM informed the complainant that, according to information received on 13 March 2013, he had been granted refugee status in Italy. Subsequently, the OFM overturned its decision of 9 November 2012, as the complainant's case no longer fell within the scope of the Dublin Regulation.

2.11 On 15 March 2013, Dr. B. submitted a medical certificate to the Neuchâtel migration service, which confirmed that the complainant was undergoing a series of medical examinations for a "serious medical problem" and that he was therefore unfit to travel. Another medical report prepared by a urology specialist, dated 11 March 2013, stated that the complainant was suffering from severe microhematuria which required further examination. On 26 March 2013, in accordance with the European Agreement on the Transfer of Responsibility for Refugees, the OFM requested the Italian authorities to readmit the complainant, and they agreed on 22 April 2013.

2.12 On 25 July 2013, the hearing to which the complainant had been summoned by the OFM was cancelled owing to the lack of an interpreter. On 13 March 2014, Caritas Neuchâtel, which was representing the complainant, sent a letter to the OFM requesting the resumption of proceedings. On 27 March 2014, the OFM informed the complainant of its intention to issue a decision not to consider his case and to deport him to Italy, given that he had already been granted refugee status and that he had been given the opportunity to respond in writing. On 24 April 2014, Caritas Neuchâtel sent the complainant's personal account of his experience and health problems to the OFM, as well as a new medical certificate dated 21 April 2014.

2.13 According to the medical certificate issued by Dr. B., the complainant had been treated by the same doctor since October 2012 and a strong therapeutic relationship had been established which had served to stabilize the complainant's state of health. Dr. B. also confirmed that the complainant was suffering from severe depressive disorder in addition to his physical health problems.[7] The report indicated that "his current bout of depression was triggered by the uncertainty over his asylum situation and the fact that he has to live out his days with a mutilated body"[8] and stated that the complainant must make frequent visits to the doctor and take medicine on a regular basis or his state of health would rapidly deteriorate. The report also indicated that the complainant suffered from numerous allergies.

[4] Regulation (EC) No. 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

[5] Family doctor.

[6] The medical report indicated that the complainant was 1.79 m tall and weighed 58 kg and that he complained of: painful throbbing in his right hemiabdomen, concentrated in the inguinal region and on his right side; pain in his upper groin; scars on his scrotum; painful throbbing in his testicles; and a scar on his right side. The report presented the following diagnosis: "post-traumatic urinary disorders to be examined; continuous depressive disorder (unexamined post-traumatic stress syndrome); sleep disorders; and 'allergies' of unknown origin". The doctor recommended long-term treatment.

[7] Urinary problems associated with the loss of blood in the urine, urinary incontinence, chronic gastritis and problems affecting the perianal region.

[8] The certificate also stated that "his various medical problems were, for the most part, the consequence of torture inflicted during his time in prison in his home country".

2.14 On 6 August 2014, the OFM decided not to consider the complainant's case and to deport him to Italy, where, it concluded, the complainant could obtain appropriate medical care. The OFM found that, since the Italian authorities had granted the complainant refugee status, it was also their responsibility to provide him with the necessary support. It found, in addition, that the complainant's health problems were a result of the ill-treatment that he had suffered in Ethiopia before his departure, that he had been living with those problems for almost six years and that it did not appear from his file that his physical health had deteriorated since then. The complainant filed an appeal, submitting a new medical report[9] and a medical certificate[10] both dated 18 August 2014 and prepared by Dr. B., as well as a list of the medicines that he required. In its preliminary opinion of 20 November 2014, the OFM indicated that the appeal did not contain any new facts or evidence that might alter its point of view and subsequently rejected it.[11]

2.15 On 19 December 2014, the complainant submitted his comments to the Federal Administrative Court, arguing that his deportation would violate, inter alia, article 14 of the Convention, as Switzerland would be impeding his rehabilitation insofar as he would have no access to the specialized care that he needed in Italy. The complainant once again described his living conditions in Italy and his health problems, and mentioned the fact that Italy had given Norway assurances that he would be taken care of, a promise that was not honoured upon his return to Italy in 2012. The complainant enclosed a new medical certificate from Dr. B. dated 16 December 2014,[12] and a list of the medicines prescribed to him in 2015, explaining that his condition remained very complex and that he had had to rush to hospital upon discovering that he was intolerant to a new medicine that he had taken.

2.16 On 1 March 2016, the Federal Administrative court rejected his appeal and confirmed his deportation from Switzerland, deeming Italy to have medical facilities similar to those in Switzerland and that there was no evidence to suggest that Italy would refuse to provide the complainant with adequate medical care.

2.17 On 24 April 2016, Dr. B. prepared a new medical report detailing the deterioration of the complainant's health.[13]

The complaint

3.1 The complainant points out that, although he claimed before the Federal Administrative Court that the Convention had been violated, the Court failed to comment on the claims. The municipality of Grosseto refused to provide him with any kind of support and he was forced to live in inhuman conditions, a claim for which no evidence can be provided. However, the available information demonstrates that he had no access to the

[9] Which concluded that "without appropriate treatment, medicine, meticulous hygiene, a suitable and balanced diet and a stable environment, Mr. Harun's state of health would deteriorate very quickly, endangering his physical and psychological integrity. He would therefore no longer be able to lead a life consistent with human dignity".

[10] Which confirmed that he was under examination for spitting up blood and underlined the need to pinpoint the cause, which could be, inter alia, infectious or tumorous.

[11] The preliminary opinion stated, inter alia, that the medical certificate of 18 August 2014, which referred to examinations for spitting up blood, was incomplete as it failed to present a diagnosis and contained no information that might assist in making one.

[12] According to the certificate, the complainant's urinary incontinence was a result of his having been tortured in prison and, without protective diapers that could be changed daily and proper hygiene, it could quickly lead to an infection of the genitourinary system and of the kidneys, which would have a negative impact on his health. This incontinence could lead to social exclusion if it was not monitored and treated. In addition, owing to his multiple food allergies and gastroesophageal problems, the complainant rapidly suffered from nutritional deficiencies and weight loss in the absence of a stable environment.

[13] The report stated that the complainant was experiencing breathing difficulties on account of an allergy. In February, his urinary problems had intensified, and he needed to urinate constantly, particularly at night, and had again started to leak urine during the day. He felt very ill and was frightened by what was happening to him. He was experiencing abdominal pain, especially in the region of his lower abdomen and in his right side. It was as if a knife was being thrust into him. The report also described the complainant's urinary problems.

medical care that he required and that his physical and psychological vulnerability will not be taken properly into account by the Italian authorities.

3.2 The medical report dated 23 October 2012 confirms that the complainant had been attacked by his roommates in the asylum centre in Switzerland as they could no longer tolerate him getting up at all hours of the night on account of his post-traumatic urinary disorders. He requires care and follow-up to which he does not have access in Italy. Without this treatment, he will be subjected to living conditions that are contrary to human dignity.

3.3 Since receiving medical care in Switzerland, his health has improved slowly as a result of receiving specialized treatment on a regular basis. The loss of the therapeutic relationship that he has progressively established with his doctor would prove fatal. The State party should have undertaken an individualized risk assessment and should not have based its decision on general information and on the assumption that he would, in principle, have the right to work and receive social benefits in Italy. Furthermore, the Swiss authorities do not explain how the residence permit issued to him would protect him from the hardship and poverty that he experienced during his previous stays in Italy.

3.4 In light of the foregoing, his deportation to Italy would contravene the principle of non-refoulement enshrined in article 3 of the Convention.

3.5 If he was deported to Italy, the complainant would be left to fend for himself and could again become homeless, totally destitute and have very limited access to medical care. Given his status as a victim of torture and the physical and psychological disorders from which he is suffering, failure to provide him with housing and to guarantee him access to specialized care would amount to humiliating treatment and an affront to his dignity. The deportation decision therefore constitutes a violation of article 14 of the Convention.

3.6 Given his particularly fragile state, the living conditions that he would have to endure if he was deported to Italy would probably constitute a violation of article 16 of the Convention.

3.7 In light of the unprecedented migration crisis in the Mediterranean, Italy is no longer able to meet the needs of asylum seekers or to guarantee their access to basic services, such as housing and essential medical care. The situation is particularly degrading to victims of torture who have special medical needs. This situation was acknowledged by the Office of the United Nations High Commissioner for Refugees (UNHCR)[14] and by the European Court of Human Rights in the case of *Tarakhel v. Switzerland*.[15]

3.8 The Swiss Refugee Council (OSAR) concluded in 2013 that the Italian system operates on the principle that persons who have been granted protection status must fend for themselves and little accommodation is therefore made available to them. [16] Responsibility for the provision of social assistance lies with the municipality concerned, and services vary from one place to another. Refugees have no recourse to public funds and those who do not have family to support them are left to fend for themselves.[17]

State party's observations on admissibility

4.1 On 26 August 2016, the State party challenged the admissibility.

4.2 According to the Federal Administrative Court, the complainant failed to demonstrate in a concrete manner that he would face a situation of severe precariousness and material hardship and that his living conditions in Italy would be onerous and severe to the point that they would constitute inhuman or degrading treatment. The Federal Administrative Court also took account of the medical reports and noted that, according to the jurisprudence of the European Court of Human Rights, the forced return of persons in poor health is only likely to constitute a violation of article 3 of the Convention for the

[14] UNHCR, *UNHCR Recommendations on Important Aspects of Refugee Protection in Italy*, July 2013.

[15] *Tarakhel v. Switzerland* [GC], No. 29217/12, 4 November 2014.

[16] OSAR, *Reception conditions in Italy: Report on the current situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees, in Italy*, October 2013, p. 44.

[17] Ibid., p. 51.

Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) if the illness of the person concerned has reached an advanced or terminal stage and he or she is likely to die in the near future.[18] The complainant's health problems are clearly not severe enough for his deportation to Italy to constitute inhuman or degrading treatment.

4.3 The complaint should therefore be declared inadmissible *ratione materiae*. The complainant does not refer to any grounds and provides no evidence to suggest that he would be in danger of being subjected to torture upon his return to Italy. The treatment to which he refers therefore falls outside the scope of application of article 1 of the Convention.

4.4 Furthermore, in the *Tarakhel v. Switzerland* case, which was decided by the European Court of Human Rights, it was not a question of acts of torture within the meaning of the Convention against Torture. In the judgment in question, the Court in no way found that deportation to Italy was inadmissible for asylum seekers, as it had observed in the case of *M.S.S. v. Belgium and Greece*.[19] This jurisprudence and the practice of the Swiss authorities show that the Italian asylum system is not marred by systemic deficiencies.[20] Moreover, the judgment in the *Tarakhel* case concerned a specific situation involving the deportation of a family with children and is therefore not comparable to the one under consideration. Furthermore, according to the jurisprudence of the European Court of Human Rights, foreign nationals who are subject to expulsion cannot in principle claim any entitlement to remain in the territory of a Contracting State in order to continue to benefit from medical, social or other forms of assistance and services provided by the expelling State. The fact that the complainant's circumstances, including his life expectancy, would be significantly reduced if he was removed is not sufficient in itself to give rise to a breach of article 3.[21]

4.5 As to the claim under article 16 of the Convention, according to the Committee's jurisprudence, only in very exceptional circumstances may a removal per se constitute cruel, inhuman or degrading treatment, for example when the execution of the deportation order per se would constitute a violation of article 16, given the fragile psychiatric state and the severe post-traumatic disorders from which the complainant suffers as a result of the torture to which he was subjected.[22] The Committee also found that the aggravation of the state of an individual's physical or mental health by virtue of a deportation is generally insufficient, in the absence of additional factors, to amount to degrading treatment in violation of article 16.[23] In this case, the complainant has not described circumstances that might lead the State party to conclude that his deportation would constitute per se cruel, inhuman or degrading treatment. Accordingly, the claim under article 16 is inadmissible *ratione materiae*.

4.6 As to the claim under article 14 of the Convention, the application of this article does not go beyond victims of acts of torture committed in the State party's territory or committed or suffered by a national of the State party.[24]

Complainant's comments on the State party's observations on admissibility

5.1 On 28 October 2016, the complainant pointed out that the State party had not contested the fact that he was a victim of torture suffering from serious physical and psychological health problems that require specialized medical care. His extreme vulnerability must therefore be regarded as established. In addition, the State party did not address the intolerable situation facing beneficiaries of international protection in Italy or

[18] European Court of Human Rights, *N. v. United Kingdom* [GC], No. 26565/05, 27 May 2008, and *D v. United Kingdom*, No. 30240/96, 2 May 1997.

[19] European Court of Human Rights, *M.S.S. v. Belgium and Greece* [GC], No. 30696/09, 21 January 2011.

[20] European Court of Human Rights, *Mohammed Hussein et al. v. the Netherlands and Italy* (dec.), No. 27725/10, 2 April 2013, and *Tarakhel v. Switzerland*.

[21] European Court of Human Rights, *A.S. v. Switzerland*, No. 39350/13, 30 June 2015, para. 31.

[22] *M.M.K. v. Sweden* (CAT/C/34/D/221/2002), para. 7.3.

[23] *Y.G.H. et al. v. Australia* (CAT/C/51/D/434/2010), para. 7.4.

[24] European Court of Human Rights, *Naït-Liman v. Switzerland*, No. 51357/07, 21 June 2016, paras. 118–120.

the importance of maintaining the therapeutic relationship that he has established with doctors in Switzerland in order to ensure his proper rehabilitation and to prevent his state of health from deteriorating.

5.2 The deportation of the complainant to Italy would constitute degrading treatment within the meaning of article 16 and would also violate the principle of non-refoulement enshrined in article 3. As an asylum seeker, he belongs to a particularly vulnerable population group that is in need of special protection.[25] The European Court of Human Rights[26] and the Human Rights Committee[27] have found that exposing an asylum seeker to destitution may constitute a violation of the prohibition of torture and inhuman or degrading treatment.

5.3 The notion of vulnerability is not limited to families with young children but may also extend to young men and victims of torture. Despite his case not concerning a family with children, the complainant is, as has already been established, an extremely vulnerable individual owing to the state of his physical and mental health and his need for ongoing care, which has not been contested by the State party.

5.4 The State party does not contest that the living conditions for beneficiaries of international protection in Italy are intolerable. A report published by OSAR in August 2016 underlines the systemic deficiencies of the reception system in Italy, especially with regard to accommodation.[28]

5.5 The complainant refutes the statement that the Committee would only recognize deportation to constitute cruel, inhuman or degrading treatment in exceptional cases and considers that the complaint clearly demonstrates that his case involves "very exceptional" circumstances in the light of which his deportation to Italy would constitute a violation of article 16 of the Convention. He also questions the relevance of the *M.M.K. v. Sweden* case referred to by the State party, as the complainant had not argued that his case involved "very exceptional circumstances" and had been deported to his country of origin where he had a family network and where access to the medical care that he needed was guaranteed.

5.6 As to the violation of article 14, according to the Committee's jurisprudence and its general comment No. 3 (2012) on the implementation of article 14 by States parties, that article has no geographical limitation. According to the jurisprudence, specialized rehabilitation services and programmes must be made available to victims who are asylum seekers or refugees, and each State party must ensure that victims of torture have access to effective rehabilitation, regardless of the perpetrator. The complainant has access to regular and specialized treatment and the State party is therefore meeting in full its obligations under article 14. Since the complainant will not have access to effective rehabilitation in Italy, his deportation would constitute a violation of article 14 of the Convention.

5.7 In conclusion, the State party has not sufficiently assessed the complainant's case, as it did not consider it necessary to take into account the "exceptional circumstances" characterizing it.

State party's observations on the merits

6.1 On 9 January 2017, the State party submitted observations on the merits. According to the Committee's general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22,[29] the complainant must prove that there are "substantial" grounds to believe that there is a "personal and present" risk of him being subjected to torture if deported to his country of origin. The existence of such a risk must be assessed on grounds that go beyond mere theory or suspicion. There must be additional grounds for qualifying the risk of torture as "substantial" (paras. 6 and 7).

[25] *M.S.S. v. Belgium and Greece*, para. 251.

[26] *M.S.S. v. Belgium and Greece.*

[27] *Jasin v. Denmark* (CCPR/C/114/D/2360/2014).

[28] OSAR, *Reception conditions in Italy: Report on the current situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees, in Italy*, August 2016.

[29] This general comment was replaced on 6 December 2017 by general comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22.

6.2 The primary aim of article 14 of the Convention is to restore the dignity of the victim. States parties have a margin of appreciation in how they achieve this. Neither article 14 nor the Committee's general comment No. 3 exclude the possibility of cooperation between States parties to ensure rehabilitation. All that is required is for the victim to be able to commence a rehabilitation programme as soon as possible after having been evaluated by specialized medical professionals. Victims do not have a right to obtain a specific measure from a service provider of their choice in the State of their choice.

6.3 The complainant has already argued before the domestic authorities that, in Italy, he had not received assistance of any kind from the authorities, that he had been forced to live on the streets without care and that, furthermore, the authorities allegedly confiscated the documents that allowed him to remain in Italy. However, no evidence has been provided to support these claims. They comprise mere assertions and are contradicted by the fact that Italy expressly consented to his readmission on three separate occasions: 22 April 2013, 12 May 2014 and 19 May 2016. Moreover, the reports and other documents cited by the complainant on the situation of refugees in Italy describe general events and do not refer to him explicitly.

6.4 The State party is aware of the problems that Italy is facing in guaranteeing asylum seekers access to accommodation. However, this situation does not amount to a systemic violation of article 3 of the European Convention on Human Rights,[30] even when it involves vulnerable persons facing deportation.[31] The jurisprudence of the European Court of Human Rights thus confirms the decisions taken by the Swiss authorities in this case, according to which the standard of housing alone did not constitute sufficient grounds for his transfer to Italy to be declared inadmissible. The European Court of Human Rights has often recalled that article 3 of the European Convention on Human Rights cannot be interpreted as obliging Contracting Parties to provide everyone within their jurisdiction with a home or financial assistance to enable them to maintain a certain standard of living.[32]

6.5 Italy has significantly increased its reception capacity in recent years. A large number of charities provide material assistance or advice in navigating the administrative procedures put in place by the authorities. Lastly, the complainant was granted refugee status on 1 May 2009 and a five-year residence permit. He may renew the permit in question by virtue of this status.

6.6 Even if his deportation to Italy were to lead to a change in his current standard of living, the complainant has not demonstrated in an objective and concrete manner that he would face a situation of serious precariousness and material deprivation, be permanently deprived of adequate assistance from State or private institutions, be exposed to the risk that his minimum subsistence needs would not be met on a permanent basis or that his living conditions in Italy would become onerous and severe to the point that they would constitute treatment that is contrary to articles 3, 14 and/or 16 of the Convention.

6.7 If the complainant was forced to lead a life contrary to human dignity or if he considered that the country was failing to meet its obligations to assist him, it would be up to him to assert his rights directly before the Italian authorities through the appropriate legal channels and/or, where appropriate, before the Committee by submitting an individual complaint under article 22 of the Convention.

6.8 All persons present in Italy, regardless of their status, have access to basic and emergency medical care. The system for the reception and care of beneficiaries of protection guarantees services comparable to those available to Italian nationals. It should, however, be recognized that the Italian system provides less extensive services than other European States, but the Convention does not oblige Switzerland to remedy the disparities that may exist between its national health system and that of Italy.

[30] European Court of Human Rights, *Mohammed Hussein et al. v. the Netherlands and Italy* (dec.), para. 78.

[31] European Court of Human Rights, *Abubeker v. Austria and Italy* (dec.), No. 73874/11, 18 June 2013, paras. 71 and 72.

[32] *A.S. v. Switzerland*, para. 27.

6.9 According to the medical reports, the complainant's state of health requires a rather complex course of treatment. However, while these health problems are serious, they are not serious enough to lead the State party to conclude that his vulnerability is such that he should not be deported to Italy. Italy has the medical infrastructure necessary to treat the complainant's problems in an adequate manner. It will be up to the Swiss authorities responsible for deporting the complainant to transmit to the Italian authorities all the information necessary to enable the complainant to be provided with such care as soon as he arrives on Italian soil.

6.10 In conclusion, the complainant has failed to provide any information relating to his individual case that might lead it to conclude that there are substantial grounds for fearing that he would run a present and personal risk of being subjected to treatment constituting a violation of articles 3, 14 or 16 of the Convention if he was deported to Italy.

Complainant's comments on the State party's observations on the merits

7.1 On 22 May 2017, the complainant submitted comments as well as a medical report prepared on 12 September 2016.[33] The complainant points out that the State party has not submitted any request for cooperation to the Italian authorities with a view to guaranteeing his effective rehabilitation within the meaning of article 14 if he is deported to Italy. In any event, pursuant to the Committee's general comment No. 3, the State party must not impute to Italy the obligation to guarantee the complainant access to specialized rehabilitation services and programmes for victims of torture who are asylum seekers or refugees.

7.2 The State party has not cited any report to support its argument that Italy has the necessary medical infrastructure to treat his medical problems. It merely relied on the judgments of the European Court of Human Rights. Several reports describe the lack of access to housing and medical care for asylum seekers in Italy. According to a regional report by the International Rehabilitation Council for Torture Victims (IRCT), Italy has not put in place specific procedures for the identification of victims of torture.[34]

7.3 Although he is unable to provide evidence to back up his claims that the commune of Grosseto refused to provide him with any kind of support, the complainant provided a very detailed and coherent account to the Swiss authorities of what he had to endure in Italy. The fact that the Italian authorities agreed to readmit him on three separate occasions does not detract from his experience or the information indicating that the Italian reception system is overburdened.

7.4 According to the conclusions of the OSAR report dated August 2016, the Italian reception system is marred by systemic deficiencies. Housing conditions are particularly problematic and the law does not provide for any period of stay in the reception system once international or humanitarian protection has been granted.[35] According to the Special Representative of the Secretary-General of the Council of Europe on migration and refugees, there are insufficient integration programmes for beneficiaries of protection in Italy, housing remains a major problem in the Italian reception system and the fundamental

[33] The report presents the following diagnosis: post-traumatic stress and separation anxiety disorder; major depressive disorder; borderline personality disorder (likely); urinary incontinence as a consequence of torture suffered in prison in Ethiopia; multiple allergies; and multiple somatic complaints, including skin problems, pains in his stomach and oesophagus and migraines, etc. The report stated that the complainant's treatment consisted of pharmacotherapy and psychotherapy, specifically behavioural and cognitive therapy. It also stated that, if he was deported from Switzerland and left without access to adequate medical or health care, the complainant could suffer a relapse, which could pose a danger to himself and to others, given the trauma that he experienced in Ethiopia and the current environmental stressors at play.

[34] IRCT, *Falling through the Cracks: Asylum Procedures and Reception Conditions for Torture Victims in the European Union*, 2016 report.

[35] OSAR, *Reception conditions in Italy: Report on the current situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees, in Italy*. The complainant also cites the 2016 report of the Asylum Information Database, "Country Report: Italy. 2016 Update".

rights of asylum seekers are violated on account of the deplorable living conditions in some reception centres.[36]

7.5 According to reports by Doctors without Borders,[37] many accommodation centres for asylum seekers lack psychological support services. Moreover, the social exclusion of asylum seekers and the lack of interpretation and translation services seriously limit potential access to health-care services. In any event, the medical services provided through the Italian public health system are not specially conceived to treat the conditions typically affecting asylum seekers and refugees, which are completely different from those affecting the Italian population.[38]

7.6 The deficiencies of the Italian reception system are particularly problematic for vulnerable asylum seekers and refugees. On 9 February 2017, the Danish Refugee Council and OSAR published a joint report on the situation of vulnerable persons transferred to Italy under the Dublin III Regulation.[39] Through six case studies, the report clearly demonstrates that persons transferred to Italy are at risk of rights violations and that the manner in which families and vulnerable persons are received by the Italian authorities is very arbitrary.[40]

7.7 As to the cases of *D. v. United Kingdom* and *N. v. United Kingdom* cited by the State party, the complainant notes that the European Court of Human Rights has clarified its jurisprudence on the removal of foreign nationals who are seriously ill.[41] He reiterates that no guarantee of medical care was either sought or obtained from the Italian authorities, in violation of European law. He also refers to a judgment of the Court of Justice of the European Union, in which it considers that a Member State "must also be able to ensure that the asylum seeker concerned receives care upon his arrival in the Member State responsible".[42]

7.8 In conclusion, the State party has not sufficiently assessed the complainant's individual case. He has clearly demonstrated his situation to be "very exceptional" within the meaning of international jurisprudence on account of being a victim of torture in need of special medical care, which he would not be able to access in Italy, and that disrupting the therapeutic relationship that he has established with his doctors in Switzerland would have irreparable consequences owing to the critical state of his health. Given the absence of any guarantee that he will receive medical care and the serious shortcomings affecting access to medical care for asylum seekers and beneficiaries of protection in Italy, he will not be provided with effective rehabilitation. Consequently, his deportation to Italy would constitute a violation of articles 3, 14 and 16 of the Convention.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any complaint contained in a communication, the Committee must decide whether the complaint is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention,

[36] https://rm.coe.int/native/16806f9d70.

[37] Doctors without Borders, *Neglected Trauma. Asylum Seekers in Italy: an Analysis of Mental Health Distress and Access to Healthcare*, July 2016, and *Out of sight. Asylum seekers and refugees in Italy: Informal settlements and social marginalization*, March 2016.

[38] *Le strade dell'integrazione. Ricerca sperimentale quali-quantitativa sul livello di integrazione dei titolari di protezione internazionale presenti in Italia da almeno tre anni*, June 2012, Italian Refugee Council, available at http://briguglio.asgi.it/immigrazione-e-asilo/2012/giugno/rapp-cir-integ-rifug.pdf.

[39] Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

[40] Danish Refugee Council and OSAR, *Is Mutual Trust Enough? The Situation of Persons with Special Reception Needs upon Return to Italy*, 9 February 2017.

[41] *Paposhvili v. Belgium* [GC], No. 41738/10, 13 December 2016.

[42] *C.K., H.F. and A.S. v. Slovenia*, C 578/16 PPU, 16 February 2017, para. 82.

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 (5) (b) of the Convention, it shall not consider any complaint from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. It notes that, in this case, the State party does not contest the exhaustion of all available domestic remedies by the complainant or the admissibility of the communication.

8.3 The Committee observes that the purpose of the complainant in submitting his complaint is to avoid being deported to Italy, as first country of asylum, and that, to this end, he claims that the State party would be in breach of its obligations under article 3 of the Convention if the deportation took place. The Committee understands the complainant's claims under articles 14 and 16 of the Convention not as autonomous claims but as part of his allegations regarding his personal situation which would support his claim under article 3.[43]

8.4 Moreover, it is apparent from the State party's arguments that it contests the admissibility of the complaint *ratione materiae*, inasmuch as the treatment alleged by the complainant falls outside the scope of article 3 of the Convention.

8.5 The Committee notes to begin with that article 25 (3) of the Federal Constitution of the Swiss Confederation stipulates that: "No person may be deported to a State in which he or she faces the threat of torture or any other cruel and inhuman treatment or punishment." The Committee notes that the State party's argument of inadmissibility differs from the provision of its Constitution, which explicitly recognizes the extension of the principle of non-refoulement to cruel and inhuman treatment or punishment. The Committee notes, moreover, that article 25 of the Swiss Constitution is in conformity with the interpretation that prevails in all international conventions ratified by the State party that must be taken into account by the Committee in interpreting article 3 of the Convention.

8.6 The Committee notes that the preamble to the Convention proclaims that any act of torture or inhuman or degrading treatment or punishment is an offence to human dignity. Accordingly, cruel, inhuman and degrading treatment is addressed in the preamble in connection with article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights. These explicit references enabled the Committee, in its general comment No. 2 (2007) on the implementation of article 2 by States parties, to make it clear that obligations under the Convention, including with regard to article 3, extend to both torture and other acts of cruel, inhuman or degrading treatment or punishment, and that, as previously stated by the Committee, article 16 of the Convention is non-derogable.[44] The Committee notes that this interpretation is corroborated by the majority of international conventions which, even though they may draw a terminological distinction between the two concepts, confirm the absolute nature of their prohibition in each case. The Committee notes that the same approach is adopted in the 1949 Geneva Conventions[45] and the first Additional Protocol of 1977.[46] The same applies to the Rome Statute of the International Criminal Court[47] (in the definition of both crimes against humanity and war crimes) and to the Statute of the International Criminal Tribunal for the Former Yugoslavia.[48] The 1951 Convention relating to the Status of Refugees goes even further, since article 33, entitled "Prohibition of expulsion or return ('refoulement')" seeks to prevent any threat to life, thus encompassing both concepts.[49] The Committee further notes that the Convention does not detract from the State party's obligations under other human rights instruments to which it is a party, including the European Convention

[43] See, for example, *J.B. v. Switzerland* (CAT/C/62/D/721/2015), para. 6.4.

[44] General comment No. 2, in particular paras. 1, 3, 6, 15 and 25.

[45] Article 3.

[46] Article 75: Fundamental guarantees.

[47] Articles 7 and 8.

[48] Article 2.

[49] UNHCR: "Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol", para. 19.

on Human Rights, to which the respondent State is a party,[50] which includes no exception and also links the two concepts in the interpretation of article 3. The Committee emphasizes in this context that the European Court of Human Rights systematically highlights the mandatory nature of the principle of non-refoulement and hence of the prohibition of the transfer of an applicant to a State where he is at risk of being subjected to torture and ill-treatment.[51] It is clear from all these rules that international law now extends the principle of non-refoulement to persons exposed to risks other than torture.[52]

8.7 In light of the foregoing, the Committee considers that the State party's plea of inadmissibility of the communication must be rejected and that the complainant has not shown that the facts, as presented by him, raise separate issues under articles 14 and 16 of the Convention. It decides to proceed to its consideration of the merits of the allegations submitted under article 3 of the Convention.

Consideration of the merits

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

9.2 The Committee recalls, at the outset, that the Dublin III Regulation is based on the principle that an asylum application must be examined by the authorities of the Member State of the European Union that received the first asylum application (the application is examined by a single Member State). However, article 3 (2) of the Regulation states that it may be impossible to transfer an applicant for asylum to the "State primarily designated as responsible because there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in that Member State, resulting in a risk of inhuman or degrading treatment". In light of these provisions and article 3 of the Convention, the Committee notes that the scope for the exercise of States' discretion in the context of the application of the Dublin Regulation demands an individual examination of each situation, and rules out the possibility of adopting and implementing individual deportation orders in cases that would expose the person concerned to a real and serious risk of cruel, inhuman or degrading treatment or punishment, or acts of torture. A similar interpretation has been adopted by several human rights bodies. Thus, the Human Rights Committee, in its Views on *Jasin v. Denmark*, concluded that an individual decision taken pursuant to the Dublin Regulation would violate the complainants' rights under article 7 of the Covenant. The Committee also draws attention to the jurisprudence of the European Court of Human Rights which, in a judgment handed down on 21 January 2011 in the *M.S.S. v. Belgium and Greece* case, concluded that a decision concerning expulsion adopted by the State party pursuant to the Dublin Regulation constituted a violation of article 3 of the European Convention on Human Rights. Accordingly, the Committee is entitled to examine decisions adopted by national authorities on the ground that they may violate article 3 of the Convention.

9.3 The Committee must therefore determine in the present case, taking into account the factors set out above, whether the deportation of the complainant to Italy would constitute a violation of 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/she would be in danger of being subjected to torture or to cruel, inhuman or degrading treatment or punishment.

9.4 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture or ill-treatment upon return to Italy. In assessing this risk, the Committee must take into account

[50] See general comment No. 4, para. 26.

[51] See *Saadi v. Italy*, No. 37201/06, 28 February 2008, and *Ramzy v. the Netherlands*, No. 25424/05, 20 July 2010.

[52] See also the Human Rights Committee's interpretation of article 7 of the International Covenant on Civil and Political Rights in its general comment No. 20 (1992): "States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement" (para. 9).

all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights.

9.5 The Committee recalls its general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, according to which the non-refoulement obligation exists whenever there are "substantial grounds" for believing that the person concerned would be in danger of being subjected to torture in a State to which he or she is facing deportation, either as an individual or as a member of a group which may be at risk of being tortured in the State of destination. The Committee's practice has been to determine that "substantial grounds" exist whenever the risk of torture is "foreseeable, personal, present and real".[53] It also recalls that the burden of proof is upon the author of the communication, who must present an arguable case, that is to say, submit substantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real. However, when complainants are in a situation where they cannot elaborate on their case, the burden of proof is reversed and the State party concerned must investigate the allegations and verify the information on which the communication is based.[54] The Committee also recalls that it gives considerable weight to findings of fact made by organs of the State party concerned; however, it is not bound by such findings and will make a free assessment of the information available to it in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to each case.[55]

9.6 The Committee also recalls that States parties should consider whether the nature of the other forms of ill-treatment that a person facing deportation is at risk of experiencing might change so as to constitute torture, before examining the question of non-refoulement.[56] Severe pain or suffering cannot always be assessed objectively in this context. It depends on the negative physical and/or mental repercussions that the infliction of violent or abusive acts has on the individual concerned, taking into account all relevant circumstances of each case, including the nature of the treatment, the sex, age and state of health and vulnerability of the victim and any other status or factors.[57]

9.7 In this case, the Committee takes note of the complainant's claim that, if deported to Italy, he would probably have no access to accommodation or to specialized medical and psychiatric treatment, all of which he requires as a victim of torture. The complainant has provided extensive reports describing the largely deficient reception conditions for asylum seekers in Italy. These include the insufficient capacity of accommodation centres for asylum seekers, including Dublin returnees, the deficient living conditions in those centres, and the very limited access to medical and specialized psychiatric treatment for asylum seekers. This situation is compounded by the lack of adequate procedures to systematically identify victims of torture. Although the State party has stated that it would inform the Italian authorities of the complainant's health condition before proceeding with his deportation, the Committee notes that the request from the Swiss authorities under the Dublin II Regulation, dated 27 September 2012, did not include any information on the complainant's health or on the care he required and did not identify the complainant as a victim of torture.

9.8 Although the Federal Administrative Tribunal did not contest that the complainant had been subjected to torture and conceded that his state of health required a rather complex course of medicinal treatment, as well as support measures, it considered that it did not have sufficient information to establish that Italy would refuse to provide the complainant with adequate medical care. It also considered that the complainant had failed to demonstrate in a concrete manner that he would face a situation of severe precariousness and material hardship or that he would be permanently deprived of adequate assistance from State or private institutions.

9.9 The Committee considers that the State party had a duty to undertake an individualized assessment of the personal and real risk that the complainant would face in

[53] General comment No. 4, para. 11.
[54] Ibid., para. 38.
[55] Ibid., para. 50.
[56] Ibid., para. 28, in conjunction with para. 16.
[57] Ibid., para. 17.

Italy, taking due account of his particular vulnerability as a victim of torture and an asylum seeker, instead of operating on the assumption that he would be able to obtain appropriate medical care.[58]

9.10 The Committee notes that, in Italy, the complainant had to live on the streets for three years and that he subsequently travelled to Norway, where, immediately after his arrival and in view of his poor state of health, he received intensive medical care. Subsequently, although the Norwegian authorities had assured him that he would receive adequate medical care upon his return to Italy, the complainant did not receive any kind of assistance from the Italian authorities. The Committee notes that the State party acknowledges the seriousness of the complainant's health problems, which has been documented in several medical reports submitted during the proceedings. The Committee also takes note of the complainant's argument that, in Italy, his inability to obtain access to accommodation and the specialized medical and psychiatric care that he needs will make it impossible for him, as a victim of torture, to make a full recovery.[59]

9.11 The Committee also notes that the State party, without having analysed the complainant's experience in Italy to date, simply stated that Italy had already agreed to readmit him on three separate occasions and considered that, if need be, the complainant could file a complaint against the receiving State in the event of violation of his rights. In addition, the Committee notes that at no time did the State party take account of the fact that Italy had failed to deliver on the assurances that it had given to Norway when the complainant returned to the country in 2012 and that it had not taken any measures to guarantee him access to rehabilitation services that are tailored to his needs, which would allow him to exercise his right to rehabilitation as a victim of torture. In light of the foregoing, the Committee considers that the State party has not examined in an individualized and sufficiently thorough manner the complainant's personal experience as a victim of torture and the foreseeable consequences of his forced return to Italy. The Committee is therefore of the view that the deportation of the complainant to Italy would constitute a violation of article 3 of the Convention.

10. The Committee, acting under article 2 (7) of the Convention, concludes that the complainant's deportation to Italy would constitute a breach of article 3 of the Convention.

11. The Committee is of the view that, in accordance with article 3 of the Convention, the State party has an obligation to refrain from forcibly returning the complainant to Italy. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee invites the State party to inform it, within 90 days from the date of the transmittal of the present decision, of the steps it has taken to respond to the above observations.

[58] See also the Human Rights Committee's Views on *Jasin v. Denmark*, para. 8.9.

[59] See, for example, *A.N. v. Switzerland* (CAT/C/64/D/742/2016), para. 8.10.

Annex

Individual dissenting opinion of Abdelwahab Hani

1. The complainant demonstrated that the facts raised separate issues under articles 3, 14 and 16. The State party's reasoning is based on former general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22, which is obsolete and has been replaced by general comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22.[1] The Committee has in the meantime expanded the scope of the protection granted by the absolute principle of non-refoulement (art. 3) to persons at risk of cruel, inhuman or degrading treatment (art. 16) and of violations of the right to redress (art.14),[2] by rejecting the argument of inadmissibility *ratione materiae*, based on its general comments Nos. 4,[3] 2[4] and 3.[5]

2. It was therefore unwise to refer to a previous inconsistent and contradictory decision,[6] which was taken under the influence of former general comment No. 1, especially since its conclusion[7] is irrelevant from the standpoint of the baseless and erroneous reference in paragraph 8.3.[8]

3. It is even more erroneous and absurd to expand the scope of the principle of non-refoulement by concluding that there has been a violation of article 3 based on the risk of ill-treatment (art. 16) and infringement of the right to redress (art. 14), without, however, concluding that there has been a violation of those articles, which contain substantial autonomous provisions.

4. The purpose of the absolute principle of non-refoulement is to "prevent [irreparable damage], not to redress [it] once it has occurred".[9] The same applies to action to prevent any other violation of articles 14 and 16. "[I]t would surely be unreasonable to wait for a violation to occur before taking note of it."[10]

5. The Committee should interpret the Convention "in response to evolving threats, issues and practices".[11] It bases its interpretation, inter alia, on the rules enshrined in the 1969 Vienna Convention on the Law of Treaties.[12] Before seeking other relevant national and international norms,[13] it would have been wiser to begin by interpreting[14] article 16 (1).

6. The "ordinary meaning" in the six authentic languages of the text of the term "in particular" in article 16 (1), which expands its scope to the "obligations contained in articles 10, 11, 12 and 13", is not confined to that list, which is neither exhaustive nor restrictive. The Committee considers that the obligations contained in articles 2 to 15 are equally applicable to torture and ill-treatment.[15]

7. Furthermore, the preamble to the Convention contains four references, all of which can be consulted for interpretative purposes. The Committee can therefore take into account the relevant jurisprudence of the Human Rights Committee. The Committee should also

[1] Paras. 3, 8, 14, 16, 17, 26, 28 and 29.
[2] *A.N. v. Switzerland* (CAT/C/64/D/742/2016), para. 7.3.
[3] Ibid.
[4] General comment No. 2 (2007) on the implementation of article 2 by States parties, paras. 1, 2 and 6.
[5] General comment No. 3 (2012) on the implementation of article 14 by States parties, para. 1.
[6] *J.B. v. Switzerland* (CAT/C/62/D/721/2015).
[7] Ibid., para. 6.4.
[8] Para. 8.3 of the present decision and footnote 43.
[9] *Alan v. Switzerland* (CAT/C/16/D/21/1995), para. 11.5.
[10] *T.P.S. v. Canada* (CAT/C/24/D/99/1997), individual opinion of Guibril Camara, para. 4.
[11] General comment No. 2, para. 1.
[12] Articles 30, 31 and 32.
[13] Article 16 (2), wisely reflected in paragraphs 8.5 and 8.6 of the present decision.
[14] *C. Nivardi*: "Précision et organes institués par des conventions internationales et européennes" in *La Revue des droits de l'homme*, July 2015.
[15] Ibid.

take into account the 1975 Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

8. It is possible through preparatory work to establish the link between torture and ill-treatment when it comes to non-refoulement.[16] Where there is a conflict between the State party's universal treaty obligations and its regional regulatory arrangements, the Vienna Convention on the Law of Treaties refers to the Charter of the United Nations, which states that obligations pertaining to its principles shall prevail,[17] especially those enshrined in article 55, which is mentioned in the preamble to the Convention. The Convention also establishes its primacy over any other extradition treaty concluded or to be concluded between States parties.[18] The Committee has consistently criticized bilateral and regional agreements and regulations that have an adverse impact on the implementation of the Convention.[19]

9. Under article 14, the complainant does not claim that his right to redress has been violated in Switzerland. However, he argues that that there would be a risk of violation by Switzerland if he were to be deported to Italy and he also claims the right to prevention, given his extremely fragile personal situation[20] and the critical circumstances prevailing for asylum seekers, including victims of torture.[21] Switzerland should not relinquish its treaty obligations under article 14 by transferring them to another State party.[22]

10. In these specific circumstances, the State party failed to demonstrate that it had conducted an individual assessment of the complainant's situation, particularly in view of his vulnerability, his past experience and his specific need for redress, or of the relevant circumstances in the country of return. The State party would therefore violate articles 3, 14 and 16 of the Convention if it were to return the complainant to Italy.

11. The Committee should have reached this conclusion without unreasonable ambiguity.

[16] Report of the Secretary-General (A/39/499/Add.1), p. 3, para. 2.
[17] Charter of the United Nations, art. 103.
[18] Article 8 of the Convention.
[19] For example, CAT/C/NLD/7, paras. 11 to 16; CAT/C/SR.1693, paras. 24, 26, 53 and 55; CAT/C/SR.1514, para. 43; CAT/C/SR.1698, para. 43; and CAT/C/CAN/CO/7, paras. 32 and 33.
[20] The complainant submitted 10 medical reports.
[21] CAT/C/ITA/CO/5-6, paras. 24 and 25.
[22] General comment No. 3.