



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

Distr.: General
17 August 2022

Original: English

Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 862/2018*, **

<i>Communication submitted by:</i>	T.B. (represented by counsel, Tarig Hassan)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	21 February 2018 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on 23 February 2018 (not issued in document form)
<i>Date of adoption of decision:</i>	22 April 2022
<i>Subject matter:</i>	Deportation of the complainant from Switzerland to Ethiopia
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Risk of torture in the event of deportation to country of origin (non-refoulement); prevention of torture
<i>Article of the Convention:</i>	3

1.1 The complainant is T.B., a national of Ethiopia born in 1981. His asylum claim was rejected and he risks deportation to Ethiopia. He asserts that if the State party were to proceed with his deportation, it would violate its obligations under article 3 of the Convention. The State party has made the declaration pursuant to article 22 (1) of the Convention, effective from 2 December 1986. The complainant is represented by counsel, Tarig Hassan.

1.2 On 23 February 2018, pursuant to rule 114 of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, asked the State party not to expel the complainant while the complaint was being considered.

Facts as submitted by the complainant

2.1 The complainant is of Hadiya ethnicity. He lived in Addis Ababa where he worked as a taxi driver. He has been politically active for more than 10 years. In May 2005, he participated in rallies staged by "Kinijit" (the Coalition for Unity and Democracy), during which he was arrested and beaten by the police. He was detained in a dark cell for two weeks

* Adopted by the Committee at its seventy-third session (19 April–13 May 2022).

** The following members of the Committee participated in the examination of the communication: Todd Buchwald, Claude Heller, Erdogan Iscan, Liu Huawen, Maeda Naoko, Ilvija Pūce, Ana Racu, Abderrazak Rouwane, Sébastien Touzé and Bakhtiyar Tuzmukhamedov.



and given little food. The complainant was threatened with imprisonment but after two weeks he was released because the police assumed that he would not continue to be politically active.

2.2 Upon his release, the complainant tried to leave Ethiopia. However, he was again arrested by the police in the city of Gondar. He was placed in a dark cell and subjected to mental torture, including threats of life imprisonment and death. The complainant was released after six months.

2.3 In the period 2008/2009 the complainant became a member of Ginbot 7. He started to distribute Ginbot 7 leaflets in Addis Ababa. In 2012, some of his friends, who also used to distribute leaflets with the complainant, were arrested by the police. Soon after that, the complainant received an SMS from one of his arrested friends, warning him that he was also wanted by the police. A few days later, the complainant fled Ethiopia. He travelled to Sudan on 12 June 2012 and arrived in Switzerland on 18 July 2012.

2.4 In Switzerland, the complainant continued his political activities. He formally joined Ginbot 7 and remained engaged in political activities for the organization. He participated in Ginbot 7 demonstrations and meetings in Switzerland, organized transportation for assemblies, distributed leaflets and recruited new members to the organization. On 11 February 2017, the complainant participated in a Ginbot 7 meeting in Fribourg, Switzerland. The meeting was attended by the Ginbot 7 president, Chekol Getahun, and an online videoconference was organized with the Ginbot 7 founder, Birhanu Nega, who lived in the United States of America and had been sentenced to death in absentia by a court in Ethiopia.

2.5 The complainant also became a member of the organization “Ethiopian Human Rights and Democracy Task Force in Switzerland” and organized transportation for its demonstrations. Finally, he participated in fundraising activities for the channel Ethiopian Satellite Television, which is viewed by the Government of Ethiopia as a propaganda machine for dissident groups.

2.6 The complainant notes that the Federal Administrative Court of Switzerland has on various occasions concluded that *sur place* activities of Ethiopian citizens are monitored by the Ethiopian authorities and that it is probable that political activists identified in this manner would face arrest if returned to Ethiopia. He further notes that according to previous judgments by the Federal Administrative Court, the monitoring is not only focused on high-ranking opposition members but also extends to low-profile activists and that the Ethiopian authorities have recently reinforced the surveillance of political activists abroad. He notes that according to country background reports, the Ethiopian authorities use modern software to monitor the telecommunications of opposition movements abroad, particularly people affiliated with Ginbot 7.

2.7 The complainant’s application for asylum was rejected by the State Secretariat for Migration on 3 August 2016. The State Secretariat for Migration found his statements regarding his arrest and membership of Ginbot 7 while in Ethiopia not to be credible. It noted that in his first interview, he had stated that he distributed leaflets in May 2005, whereas he did not mention this in his second interview. It also noted that in his first interview, he stated that he had been beaten by the police on the way to the prison, while in his second interview, he stated that he had been beaten while at home. It further noted that in his first interview, the complainant had stated that his friend had revealed his name to the police, while he did not mention this claim in the second interview. The State Secretariat for Migration further found his statement regarding his detention and political activities to be lacking in detail. It noted that the complainant was politically active in Switzerland, but it found it unlikely that the Ethiopian authorities would be able to identify him, given the number of people participating in events in Switzerland and his low profile.

2.8 The complainant’s appeal to the Federal Administrative Court was rejected on 20 October 2016 and the findings of the State Secretariat for Migration were upheld. The complainant filed a second application for asylum on 24 February 2017. The State Secretariat for Migration found the application to be without prospect of success and ordered him to pay an advance on costs. When the complainant failed to do so, his application was dismissed by the State Secretariat for Migration on 14 November 2017. This decision was upheld by the Federal Administrative Court on 1 December 2017.

Complaint

3.1 The complainant claims that deportation from Switzerland to Ethiopia would expose him to a real risk of treatment contrary to article 3 of the Convention due to his political activities, previous detention and ill-treatment in Ethiopia. He claims that there is a real risk that he would be arrested, most probably upon arrival at the airport, and that he would be detained, tortured and interrogated by the Ethiopian secret service about his political activities in Ethiopia and in Switzerland. He argues that the discrepancies in his accounts between the first and second interviews are minor and caused by the fact that the first screening interview is aimed at obtaining a summary of the allegations, with asylum-seekers being reminded at the outset of the interview to keep their accounts brief. He argues that the State Secretariat for Migration and the Federal Administrative Court incorrectly concluded that there were discrepancies in his statements as regards his distribution of leaflets during the demonstration in May 2005. He notes that in the first interview, he stated that he was distributing leaflets during the demonstration, while in the second, he clearly stated that he had been arrested because he was holding leaflets and the police concluded that he had been distributing them. Similarly, concerning the alleged ill-treatment by the police, he stated in the second interview that he had been beaten by the police at his home and that this continued on the way to the prison. He further notes that he was interviewed three times, and that the third interview was held almost four years after the first screening interview, explaining any perceived discrepancies. He also argues that he has been consistent and detailed in his statements during the asylum procedure, and that the record of the interviews are lengthy, but that the Federal Administrative Court failed to take these detailed and consistent statements into account in its decision.

3.2 The complainant notes the Committee's 2010 concluding observations on Ethiopia, in which the Committee stated that it was deeply concerned about the numerous, ongoing and consistent allegations concerning the routine use of torture by the police, prison officers and other members of the security forces, as well as the military, in particular against political dissidents and opposition party members, students, alleged terrorist suspects and alleged supporters of insurgent groups.¹ He also notes that reports from various international human rights organizations² confirm that many Ginbot 7 members and other dissidents have been arrested and detained in Ethiopia, that Ginbot 7 has been designated as a terrorist organization by the Ethiopian authorities and that some members have been sentenced to death.

State party's observations on the merits

4.1 On 16 August 2018, the State party submitted its observations on the merits of the complaint. The State party submits that after having heard the complainant three times, in 2012, 2014 and 2016, the State Secretariat for Migration rejected his asylum application on 18 July 2016. On 20 October 2016, the Federal Administrative Court upheld the decision by the State Secretariat for Migration.

4.2 With regard to the complainant's second asylum application, the State party submits that on 27 February 2017, he submitted the second asylum application accompanied by two confirmation letters from Ginbot 7 and Ethiopian Human Rights and Democracy Task Force in Switzerland. In its interim decision, the State Secretariat for Migration found that in his second asylum application, the complainant had failed to provide either the nature or degree of his involvement in the activities of Ethiopian Human Rights and Democracy Task Force in Switzerland. The State Secretariat for Migration further noted that the confirmation letters were, except for their dates, identical to those submitted during the first asylum procedure, and that the complainant had provided very vague details about his political activities in Switzerland, which allegedly have intensified. The State Secretariat for Migration thus considered the asylum application devoid of any chance of success and demanded an advance payment of procedural costs. Since the complainant did not make the payment, the State Secretariat for Migration did not consider the second asylum application. On 1 December

¹ CAT/C/ETH/CO/1, para. 10.

² See, for example, Amnesty International, "Ethiopia – dismantling dissent: intensified crackdown on free speech in Ethiopia", 30 April 2012; and Human Rights Watch, *World Report 2017 – Ethiopia* (2017).

2017, the Federal Administrative Court dismissed the complainant's appeal of the State Secretariat for Migration's decision.

4.3 The State party notes that it is aware that the situation in Ethiopia with regard to human rights remains worrying and that the use of torture seems widespread, in particular against political opponents and alleged members of separatist groups. However, the general situation in the country cannot in itself constitute sufficient grounds to conclude that the complainant would be at risk of being tortured in case of his return to the country. Moreover, the situation in Ethiopia has recently evolved, as the state of emergency declared in February 2018 was officially lifted in June 2018, the Prime Minister Abiy Ahmed concluded a peace agreement with Eritrea, and hundreds of political prisoners were released.

4.4 The State party further notes that the complainant's statements about his political activities in Ethiopia were brief, vague and superficial. This concerns not only his involvement with Ginbot 7 but also the activities he was allegedly involved in prior to joining the group. Similarly, the complainant did not describe in detail either the events surrounding his arrest or the conditions of his detention. The State party notes that the complainant alleges in very general terms that he was tortured during the 2005 detention without providing any details or evidence regarding the detention itself and the ill-treatment he suffered following his failed attempt to flee the country in 2005. Furthermore, with regard to his flight from Ethiopia, the State party notes that the complainant has not been able to provide precise information about the contents of the warning message he received from his arrested friends or explain how they were able to send him text messages while having already been placed under arrest.

4.5 With regard to the complainant's political activities undertaken in Switzerland, the State party notes that not all political activity undertaken in exile is sufficient grounds for believing that there is a substantial risk that a person will be subjected to torture if returned to the country of origin. Such a risk is only justified in the event of ideological and political activities of a particular profile, which is likely to attract the attention of authorities. According to the State party, the complainant has made contradictory statements about his participation in the demonstrations or the nature of his activities for Ginbot 7. The letter of confirmation from Ginbot 7 submitted by the complainant only mentioned that the complainant participated in public demonstrations but did not contain reference to any other activities. Furthermore, the complainant was not able to describe the objectives or the internal structure of Ginbot 7. The State party notes that he was able to explain even less about the task force of Ethiopian Human Rights and Democracy Task Force in Switzerland for which, according to the confirmation letter provided, he organized several activities. Those activities allegedly included the preparation of meetings and documentation and an analysis of policies that the complainant himself was never able to substantiate.

4.6 The State party notes that in his second asylum application, the complainant mentioned his meetings with high-ranking representatives of Ginbot 7; however, he again did not provide more specific information in this regard. The State party submits that it does not exclude that the complainant was present at conferences held by the opposition, that he was with high-ranking members and that he was photographed with them. However, it notes that the complainant has specified neither the activities that he would have carried out during demonstrations, nor the nature of his contacts with senior representatives of the opposition, which is very surprising given that this lack of substance has been specifically noted by the State Secretariat for Migration in its interim decision of 17 October 2017.

4.7 According to the State party, in view of the inconsistencies in the complainant's account and the absence of more precise information concerning his activities and contacts, the Swiss authorities and tribunals have concluded that the complainant's political activities in Switzerland have been too marginal to establish a personal, present and serious risk to him of being subjected to torture in case of his deportation to Ethiopia. His record demonstrates neither an exposed position within Ginbot 7, nor a significant personal commitment, as the number of demonstrations in which he claims to have participated is limited.

4.8 Finally, the State party notes that in addition to the inconsistencies and lack of specific information as described above, during the complainant's first asylum procedure, the Swiss authorities concluded that his claims concerning his family were also not credible. During

the hearings, the complainant stated that he had not tried to contact his family or detained friends since his departure for Switzerland. This lack of interest in the fate of his friends, whose detention in 2012 served as the reason for his departure from Ethiopia, was found to be surprising for the Swiss authorities since they would have expected the complainant, at the very least, to attempt to obtain information in this regard.

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

5.1 On 1 February 2021, the complainant submitted his comments on the State party's observations on the merits. With regard to the general human rights situation in Ethiopia, the complainant notes that there has been an escalation of the conflict between the Ethiopian Tigray region and the central Government since November 2020, and the country is currently on the brink of a civil war. He refers to various reports by international organizations and media outlets about displaced persons, attacks on ethnic minorities and repression against political opponents of the central Government.

5.2 The complainant rejects the State party's assertion that he has provided only a superficial account of ill-treatment against him without providing any details or evidence. He submits that in accordance with the Committee's general comment No. 4 (2017), the burden of proof is on the author of the communication. However, when complainants are in a situation where they cannot elaborate on their case, such as when they have demonstrated that they have no possibility of obtaining documentation relating to their allegation of torture or have been deprived of their liberty, 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.³

5.3 The complainant notes that he has presented a detailed, consistent and credible account of his political activities in Ethiopia, his arrest and subsequent persecution, and provided a satisfactory explanation for the alleged discrepancies. He further notes that he does not know why his friend's phone was not confiscated when he was detained by the police; however, he does not consider that he should know this information. The complainant submits that contrary to the State party's submission, he made clear to the Swiss authorities what had been written in the message sent to him by his friend, and he left Ethiopia after receiving that message so that he would not be arrested. He also notes that his subsequent severance of contact with his family should not affect his credibility as an asylum-seeker.

5.4 With regard to his political activities after leaving Ethiopia, the complainant notes that there are two letters of support submitted on behalf Ginbot 7 and Ethiopian Human Rights and Democracy Task Force in Switzerland, and photographs where he is pictured with representatives of Ginbot 7, and that these documents serve as evidence of his active involvement and commitment to Ginbot 7 in Switzerland.

Issues and proceedings before the Committee

Consideration of admissibility

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

6.2 In accordance with article 22 (5) (b) of the Convention, the Committee shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the present case, the State party has not contested that the complainant has exhausted all available domestic remedies. The Committee therefore finds that it is not precluded from considering the communication under article 22 (5) (b) of the Convention.

³ Committee against Torture, general comment No. 4 (2017), para. 38.

6.3 As the Committee finds no further obstacles to admissibility, it declares the communication submitted under article 3 of the Convention and proceeds with its consideration of the merits.

Consideration of the merits

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

7.2 In the present case, the issue before the Committee is whether the return of the complainant to Ethiopia would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return ("*refouler*") a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

7.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Ethiopia. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which the individual would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.⁴

7.4 The Committee recalls its general comment No. 4 (2017), 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 a member of a group that may be at risk of being tortured in the State of destination. The Committee recalls that "substantial grounds" exist whenever the risk of torture is "foreseeable, personal, present and real".⁵ Indications of personal risk may include, but are not limited to: (a) the complainant's ethnic background and religious affiliation; (b) previous torture; (c) incommunicado detention or other form of arbitrary and illegal detention in the country of origin; (d) political affiliation or political activities of the complainant; (e) arrest and/or detention without guarantee of a fair trial and treatment; (f) violations of the right to freedom of thought, conscience and religion; and (g) clandestine escape from the country of origin for threats of torture.⁶

7.5 The Committee recalls that the burden of proof is on the complainant, who must present an arguable case, that is, submit substantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real. However, when complainants are in a situation where they cannot elaborate on their case, such as when they have demonstrated that they have no possibility of obtaining documentation relating to their allegation of torture or have been deprived of their liberty, the burden of proof is reversed, and the State party concerned must investigate the allegations and verify the information on which the complaint is based.⁷ The Committee gives considerable weight to findings of fact made by organs of the State party concerned; however, it is not bound by such findings. The Committee 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.⁸

⁴ See, e.g., *E.T. v. the Netherlands* (CAT/C/65/D/801/2017), para. 7.3; and *Y.G. v. Switzerland* (CAT/C/65/D/822/2017), para. 7.3.

⁵ General comment No. 4, para. 11.

⁶ *Ibid.*, para. 45.

⁷ *Ibid.*, para. 38.

⁸ *Ibid.*, para. 50.

7.6 In assessing the risk of torture in the present case, the Committee notes the complainant's claim that he would face a risk of treatment contrary to article 3 of the Convention if he were returned to Ethiopia due to his political activities in Ethiopia and Switzerland as a member of Ginbot 7 and Ethiopian Human Rights and Democracy Task Force in Switzerland, including organizing and participating in their meetings and demonstrations. The Committee takes note of the complainant's contention that he was imprisoned and subjected to various forms of ill-treatment before fleeing Ethiopia. The Committee also notes the complainant's claim that the credibility determination by the Swiss asylum authorities was erroneous and that any perceived discrepancies in his statements are explained by the fact that the third interview was held almost four years after the first screening interview.

7.7 On the other hand, the Committee observes that the State party's authorities considered that the complainant's statements about his political activities in Ethiopia were brief, vague and superficial. The Committee notes the State party's assertion that the complainant was only able to describe in very general terms the torture that allegedly occurred during his 2005 detention without providing any details or evidence regarding the detention itself and the ill-treatment he suffered following his failed attempt to flee the country in 2005. It further notes that, with regard to the complainant's political activities undertaken in Switzerland, the State party does not exclude that the complainant was present at conferences held by the opposition, that he was with high-ranking members and that he was photographed with them. However, in view of the inconsistencies in the complainant's account and the absence of more precise information concerning his activities and contacts, it concludes that the complainant's political activities in Switzerland have been too marginal to establish a personal, present and serious risk of being subjected to torture in case of his deportation to Ethiopia.

7.8 Regarding the complainant's assertion that many Ginbot 7 members and other dissidents have been arrested and detained in Ethiopia, that Ginbot 7 has been designated as a terrorist organization by the Ethiopian authorities and that some members have been sentenced to death, the Committee observes that, in June 2018, Ginbot 7 announced that it was abandoning its armed fight against the Government of Ethiopia as a result of the latter's planned reforms. Furthermore, in the same year, the Government of Ethiopia removed Ginbot 7 from its list of terrorist organizations and the President of Ethiopia pardoned Mr. Tsege, the Secretary-General of Ginbot 7, and freed him from detention.⁹

7.9 The Committee recalls that it must ascertain whether the complainant would currently run the risk of being subjected to torture if returned to Ethiopia. The Committee notes that the complainant had ample opportunity to provide supporting evidence and more details about his claims at the national level, but that the evidence provided did not lead the national authorities to conclude that he would be at risk of being subjected to torture or cruel, inhuman or degrading treatment in the event of his return to Ethiopia. The Committee observes that the complainant failed to submit any new information or details during his second asylum application in relation to his allegations of past torture or *sur place* activities, despite the fact that this lack of substance has been specifically noted by the State Secretariat for Migration in its interim decision of 17 October 2017.

7.10 The Committee further notes that the complainant has not submitted any evidence as to his previous arrest or ill-treatment in Ethiopia, nor has he been able to demonstrate that the Ethiopian authorities are looking for him either on the basis of past events or for any other reason. From the materials contained in the case file, it appears that he has not even contacted his family, friends or fellow activists to find out if such interest from the Ethiopian authorities exists.

7.11 In the light of the considerations above, and on the basis of all the information submitted to it by the complainant and the State party, including on the general situation of human rights in Ethiopia, the Committee considers that, in the present case, the Committee cannot conclude that the complainant's return to Ethiopia would expose him to a real,

⁹ See, e.g., *X. v. Switzerland* (CAT/C/67/D/775/2016), para. 8.9; and *T.K.T. v. Switzerland* (CAT/C/71/D/866/2018), para. 8.10.

foreseeable, personal and present risk of being subjected to torture. Furthermore, the complainant has not demonstrated that the authorities of the State party failed to conduct a proper investigation into his allegations.

8. The Committee, acting under article 22 (7) of the Convention, concludes that the complainant's removal to Ethiopia by the State party would not constitute a violation of article 3 of the Convention.
