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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. 914/2019*, **

Communication submitted by:	T.A. (represented by counsel, Tarig Hassan)
Alleged victim:	The complainant
State party:	Switzerland
Date of complaint:	13 February 2019 (initial submission)
Document references:	Decisions taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on 15 February 2019 (not issued in document form)
Date of adoption of decision:	28 April 2022
Subject matter:	Deportation to Eritrea of a person who deserted the military
Procedural issues:	None
Substantive issues:	Non-refoulement; refugee; torture
Article of the Convention:	3

1.1 The complainant is T.A., a national of Eritrea born on 1 January 1984. She claims that the State party would violate her rights under article 3 of the Convention by removing her to Eritrea. The State party made the declaration pursuant to article 22 (1) of the Convention on 2 December 1986. The complainant is represented by counsel.

1.2 On 15 February 2019, the Committee, acting through its Rapporteur on new complaints and interim measures, issued a request for interim measures under rule 114 of the Committee's rules of procedure, requesting the State party to suspend the removal of the complainant to Eritrea while the communication was pending before the Committee. On 19 February 2019, the State party informed the Committee that it had complied with the request.

Facts as submitted by the complainant

2.1 The complainant is of Tigrinya ethnicity and grew up in the province of Debub in Eritrea. After her father passed away, she withdrew from school, at the age of 16. She helped her mother with domestic tasks, and then became employed as a domestic worker in Asmara.

2.2 The complainant has not been exempted from the requirement to perform national service. Pursuant to National Service Proclamation No. 82/1995, all nationals of Eritrea

* 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.

between the ages of 18 and 40 years must participate in national service for 18 months. Six months of military training is followed by 12 months of active military service. However, the Government of Eritrea has since extended the statutory national service period from 18 months to an indefinite period. Only individuals with severe, permanent disabilities are permanently exempted from national service. Under article 37 of the Proclamation, draft evasion and desertion are punishable by payment of a fine, or imprisonment of up to five years. Draft evaders and deserters who are caught by the authorities are severely punished.[1]

2.3 In July 2009, during a raid, two soldiers took her and other young women and girls to a fenced tarpaulin-covered camp in Wi'a. There, the complainant was detained and abused. The conditions were unbearable. The weather was hot, and water and food were scarce. After approximately two weeks, the complainant was taken to Sawa, where she completed eight months of military training. She was then transferred to the 47th Unit in Keren, where she worked as a maid for military commanders. Because of the poor conditions and the constant abuse that she endured, the complainant decided to flee the country.

2.4 After fleeing the camp in civilian clothes, the complainant travelled with another woman to Barentu, then to Teseney, and finally to Khartoum, in the Sudan. For three years, the complainant was employed as a domestic worker there. She then travelled to Europe.

2.5 The complainant arrived in Switzerland on an unspecified date. On 1 August 2014, she applied for asylum. To corroborate her identity, she provided her Eritrean identity card, which was issued on 16 April 2012 in Mendefera. On 13 August 2014 and 3 July 2015, the State Secretariat for Migration interviewed the complainant.

2.6 On 12 August 2015, the State Secretariat for Migration rejected the complainant's asylum application. The State Secretariat considered that the complainant's allegations that she had deserted the military and illegally exited Eritrea were not credible, and that there was no reason to conclude that she would be subjected to torture or cruel, inhuman or degrading treatment or punishment in Eritrea. However, at the same time, the State Secretariat ordered the temporary admission of the complainant to Switzerland, because the forced removal of individuals to Eritrea was not considered possible at that time. The complainant did not appeal against the negative asylum decision because she was no longer facing removal from Switzerland.

2.7 On 24 April 2018, the State Secretariat for Migration informed the complainant of its intent to cancel the temporary admission status of the complainant, because the situation in Eritrea had changed. The State Secretariat and the Federal Administrative Court had determined that removals to Eritrea could resume. In its notice dated 24 April 2018, the State Secretariat offered the complainant the right to be heard regarding the notice of intent.

2.8 On 25 May 2018, the complainant objected to the notice of intent. On 24 September 2018, the State Secretariat for Migration proceeded to cancel the temporary admission status of the complainant, and ordered her departure from Switzerland by 20 November 2018. It considered that the general human rights situation in Eritrea had improved, and that in view of the material in the complainant's file, there was no indication that she would face a real risk of treatment or punishment if she were removed to Eritrea. Furthermore, there was no basis to assume that she faced an actual and immediate risk of being forcibly recruited to perform national service in such a manner as to violate her rights.

2.9 On 25 October 2018, the complainant appealed against the latter decision. On 13 December 2018, the Federal Administrative Court rejected her appeal. The complainant has exhausted available domestic remedies to contest her removal to Eritrea.

2.10 Since her arrival in Switzerland, the complainant has made significant efforts towards professional and social integration. She has taken courses in literacy and German, and has participated in various employment programmes. She has always been seeking employment. Approximately one year before the submission of the complaint, the complainant's brother

[1] The complainant cites the 2015 report containing the detailed findings of the commission of inquiry on human rights in Eritrea, para. 1241. Available at https://www.ohchr.org/en/hr-bodies/hrc/co-i-eritrea/report-co-i-eritrea-0.

disappeared, at the age of 32. The complainant's family presumes that her brother was abducted by the authorities and drafted into military service.

2.11 The complainant states that she has not submitted the same matter for consideration by another international mechanism of settlement or investigation.

Complaint

3.1 The complainant submits that the State party would violate her rights under article 3 of the Convention by removing her to Eritrea, where she would face an imminent and real risk of being subjected to torture or to other cruel and degrading treatment owing to her desertion from the military prior to completion of national service and her unlawful exit from the country. Upon her return, the authorities at the airport would immediately note that her departure from Eritrea was unlawful, would thus perceive her to be a political dissident, and would interrogate, detain and harshly punish her. The punishment of deserters in Eritrea is politically motivated and is disproportionally severe. There are substantial grounds to believe that the complainant would risk being subjected to arbitrary punishment, including torture, upon her return. In addition, she would be subjected to slavery or forced labour, also in violation of article 3 of the Convention.

3.2 The State Secretariat for Migration erred in its assessment of the complainant's credibility.[2] During her asylum interviews, the complainant made coherent and consistent statements regarding her military service and desertion. While those statements were brief, their brevity was a result of the complainant's psychological difficulties at the time, and her low level of education. The interview transcripts show that the complainant had difficulty following the proceedings. She repeatedly asked follow-up questions to try and understand the context and exact meaning of the questions put to her. The transcripts also indicate that the complainant sincerely endeavoured to provide answers that were as exact as possible.

3.3 In addition, in its decision of 12 August 2015, the State Secretariat for Migration unfairly drew an adverse conclusion from the complainant's repetitive description of the military training that she underwent in Sawa. That training consisted of repetitive and monotonous activities, namely, marching, saluting and performing drills. The complainant can hardly be reproached for the fact that the military, everyday life in Sawa that she described was not more varied in nature.

3.4 Overall, the complainant's statements about her period of military service were thoroughly consistent, logical and detailed. She discussed her personal experiences and fears, and provided descriptions of the dwelling where she stayed in Wi'a. She also made specific statements about her individual circumstances, such as how she ate during military training, or how, after going to bed, she sometimes had to get up again for a headcount. She displayed emotional reactions and subjective feelings during the interview.

3.5 In its decision of 12 August 2015, the State Secretariat for Migration only identified one contradiction in the complainant's statements regarding her military service. That alleged contradiction related to the designation of the unit to which the complainant was assigned and can easily be resolved. In fact, during her first asylum interview, the complainant spoke of her unit in Sawa and mentioned that she had worked in the kitchen in Keren as a maid. During the second asylum interview, she stated that she had been allocated to the 47th Unit in Keren. It is thus clear that the complainant made consistent statements about her military service in Wi'a, Sawa and Keren.

3.6 In its decision of 12 August 2015, the State Secretariat for Migration stated that lawful exit from Eritrea was in principle only possible for individuals possessing a valid passport and an exit visa. The process for obtaining exit visas is arbitrary, as the criteria and conditions for granting them are not provided by law and are instead left to the discretion of the Government. In addition, exit visas are only issued after payment of large sums of money, and are only available to a limited group of individuals who are deemed to be loyal. Furthermore, at the time, women under the age of 47 were not eligible for exit visas. Thus, it cannot be assumed that the complainant's departure from Eritrea was legal.

[2] The complainant cites *M.G. v. Switzerland* (CAT/C/65/D/811/2017).

3.7 The complainant had already performed military service for nine months before she deserted the military and left Eritrea without authorization. Her rights under article 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) were violated when she performed forced labour for more than eight months during military training in Sawa, and for one month as a maid in Keren. In its decision of 24 September 2018, the State Secretariat for Migration failed to take that violation into account, and instead focused on the risk of a violation in the future.

3.8 It is well-known that lawful departure from Eritrea is difficult for Eritreans between the ages of 18 and 50, who are eligible to perform national service. Thus, the complainant's statement that she departed Eritrea unlawfully at the age of 27 must necessarily be deemed credible. The authorities in Eritrea consider those who have unlawfully left the country to be serious offenders and traitors. Those individuals face a serious risk of harm in Eritrea. Punishment for the violation of exit rules is imposed on an extrajudicial and arbitrary basis. Furthermore, the determination of the State party's authorities that the complainant has likely already been exempted from national service is purely speculative, and is not substantiated by any evidence.

3.9 Women in Eritrea who have been exempted from performing military service, or who have withdrawn from such service, may "regularize" their status at the age of 27, or may be officially demobilized. However, those exemptions are applied arbitrarily, and exempted women may still be required to perform civilian national service at any time. In reality, only individuals who have spent their entire lives fighting for freedom can be exempted from military service.[3]

3.10 It cannot be assumed that the complainant had already completed her military service when she fled Eritrea. She completed only nine months of military service. There is no reliable information on dismissals from military service.

3.11 In its judgment in *Said v. The Netherlands*, the European Court of Human Rights found that "the treatment meted out to deserters in Eritrea …, which ranges from incommunicado detention to prolonged sun exposure at high temperatures and the tying of hands and feet in painful positions" constituted inhuman treatment.[4] Since the issuance of that decision, the situation of deserters and draft evaders has not improved. According to several credible sources, deserters are subjected to cruel, inhuman and degrading treatment and torture in numerous informal detention and prison centres throughout Eritrea.[5]

State party's observations on the merits

4.1 In its submission dated 2 August 2019, the State party does not contest the admissibility of the complaint, but considers that it is without merit. In her communication, the complainant did not set forth any elements that could cast doubt upon the findings of the domestic migration authorities.

4.2 During the asylum procedure in Switzerland, country information plays a crucial role in the evaluation of cases. In May 2015, the State Secretariat for Migration prepared a report in which it assembled country information from a variety of sources. That report was approved by four partner authorities, a scientific expert and the European Asylum Support Office. In February and March 2016, the State Secretariat conducted a mission to Eritrea in order to review, develop and supplement this information, in the light of other sources that had become available in the meantime. The State Secretariat then published an update on 10 August 2016, based on all the information that it had gathered.[6] In reports published between December 2015 and August 2016, several national authorities – such as those of Norway and

[3] The complainant cites Schweizerische Flüchtlingshilfe, "Eritrea: Nationaldienst – Themenpapier der SFH-Länderanalyse", 30 June 2017.

[4] Application No. 2345/02, Judgment, 5 July 2005, para. 54.

[5] The complainant cites, among others, Amnesty International, *Just Deserters: Why Indefinite National Service in Eritrea Has Created a Generation of Refugees* (2015).

[6] See *Focus Eritrea: Update Nationaldienst und illegale Ausreise*. Available from https://www.sem.admin.ch/sem/de/home/aktuell/news/2015/2015-06-11.html.

Sweden, and the Home Office of the United Kingdom of Great Britain and Northern Ireland – reached similar conclusions.

4.3 Since January 2017, the Federal Administrative Court has handed down three reference judgments concerning Eritrea (D-7898/2015 of 30 January 2017, D-2311/2016 of 17 August 2017 and E-5022/2017 of 10 July 2018), in which it discusses specific limitations relating to the availability of information on the situation in Eritrea. In its judgment D-7898/2015, the Court examined the extent to which Eritreans who left their country illegally should fear persecution, on that ground, if they returned. The Court summarized its findings in its judgment E-1218/2019 of 16 April 2019. After a thorough analysis of the available information, the Court reached the conclusion that the practice of granting refugee status solely on the grounds of illegal departure from Eritrea could no longer be followed. This assessment is based primarily on the observation that members of the Eritrean diaspora, some of whom left the country illegally, have returned to Eritrea for short stays without being harmed.

4.4 Consequently, individuals who left Eritrea without authorization can no longer be considered, as a general rule, to be at risk of severe punishment and thus eligible for asylum. A major risk of punishment or serious harm within the meaning of article 3 of the Asylum Act can only be accepted in the presence of additional unfavourable factors that make the applicant appear to be undesirable to the authorities in Eritrea. Such factors include having belonged to a group of opponents of the regime, having held a prominent position before fleeing, or having deserted or evaded military service.

4.5 According to the Swiss migration authorities, if the examination of an individual case reveals that the person concerned would not only be punished in order to ensure his or her compliance with military obligations but would also be considered a political opponent and would be subjected to disproportionate punishment and inhuman treatment, the person is considered to be at risk of persecution under international law.

4.6 The Federal Administrative Court has noted that refusal to serve and desertion are severely punished in Eritrea. The penalty that is imposed is generally accompanied by imprisonment in inhumane conditions, and often by torture, since desertion and refusal to serve are considered acts of protest against the regime. As such, the penalty constitutes a form of persecution, and a well-founded fear of being subjected to it leads to the granting of refugee status. However, a fear of that kind is well founded only if the individual concerned has already actually been in contact with military or other authorities for the purpose of recruitment in the near future (for example, if they have received a summons from the army). The mere possibility of receiving a summons at some point in the future does not suffice to demonstrate a well-founded fear. Moreover, the fact that the person may have to do military service is not, in and of itself, determinative.

4.7 The issue of whether the potential enlistment of the complainant in the national service upon her return to Eritrea would constitute treatment that is prohibited by international law relates to the question of whether the removal is lawful and enforceable. The execution of a removal order is unlawful in cases where Switzerland, under public international law, cannot force a foreign national to travel to a given country and where no other State has declared that it is willing to receive the person, in accordance with the principle of non-refoulement. Under domestic law, a removal order is unenforceable if the removal or expulsion of the foreign national to his or her country of origin would actually put him or her in danger, for example if there is a war, a civil war or widespread violence or if the person needs medical treatment.

4.8 Since June 2016, the State Secretariat for Migration has taken the position that the mere fact that a person left Eritrea illegally does not expose that person to certain persecution upon return to the country. Consequently, Eritrean nationals who have not yet been summoned for national military service, who are exempt from service or who have been released from service are no longer recognized as refugees on that basis alone. Nevertheless, the State Secretariat still examines every asylum application carefully. The Federal Administrative Court confirmed and explained this practice in the reference judgments mentioned above.

4.9 In the current case, the removal of the complainant can be enforceable. Eritrea is not in a situation of war, civil war or widespread violence that would automatically make it possible to assume – regardless of the circumstances of the case – that anyone from that country faced real danger. Moreover, the living conditions there have improved, despite ongoing economic problems; the situation has stabilized as regards the state of medical resources, access to water and food, and training conditions. In addition, a large proportion of the population receives substantial remittances from the diaspora. The peace agreement that was signed with Ethiopia on 9 July 2018 put an end to the conflict between the two countries. In this context, removal orders are enforceable unless, owing to specific personal circumstances, the person's life would be in danger if he or she were to be returned to Eritrea; the execution of such orders no longer requires the existence of particularly favourable individual circumstances, as stipulated in earlier case law.

4.10 Furthermore, the removal of the complainant is not unlawful. According to the case law of the Federal Administrative Court, complainants who state that they left their country for fear of being summoned for national service must also demonstrate that it is highly likely that they would be subjected personally – and not simply by an unfortunate coincidence – to measures that are incompatible with international law. In its reference judgment E-5022/2017, the Court examined the lawfulness of enforced removal to Eritrea, in the event of voluntary return, where there is a risk of conscription into the national military or civilian service. In doing so, it considered the objectives of the service, the recruitment system, the duration of the obligation to serve, the group of people concerned and the conditions of service. The Court acknowledged that the numerous sources of information consulted indicated that all Eritrean nationals, men and women, were required to perform national service. According to the information available to the Court, recruitment for the national service is usually done through the school system. In the twelfth grade, all students are assigned to the national military training centre in Sawa, where they receive military training, complete their studies and take their final examination. Those turning 18 who are no longer in school may be instructed directly to report to duty by the local administrative authorities. The basic training to be completed under this scheme may last up to six months before the persons concerned are drafted into military or civilian service for a period of 5 to 10 years. The Court also acknowledged that living conditions were harsh both during basic training and during national service, and that the sources consulted mentioned ill-treatment and sexual abuse. The Court noted that, during their military training, soldiers were subjected to the arbitrary decisions of their superiors, who severely punished undisciplined behaviour, dissenting opinions and attempts to flee. Arbitrariness also prevailed during military service; the same abuses could be observed, although they could not necessarily be considered widespread. As for the civilian service, it was very poorly paid; those who served in it could barely cover their needs with the pay they received.

4.11 Notwithstanding, the Federal Administrative Court did not find that ill-treatment and abuse of conscripts were so widespread that all members faced a real and serious risk of being subjected to such abuse. It therefore cannot be said that the complainant would be at serious risk of being subjected to forced or compulsory labour if she were to perform national service; the same applies to the risk of being subjected to inhuman or degrading treatment.

4.12 According to the Federal Administrative Court, national service in Eritrea should be considered forced labour rather than enslavement. In its judgment E-5022/2017, the Court held, based on available information, that there were no grounds for presuming that national service was a permanent condition so as to support a claim of enslavement within the meaning of international law. On the other hand, insofar as national service in Eritrea is poorly remunerated, has no predetermined duration and can last from 5 to 10 years, it cannot be described as a normal civic obligation; it is a disproportionate burden and could constitute forced labour.

4.13 In its judgment of D-2311/2016, the Federal Administrative Court determined that failed asylum-seekers from Eritrea did not face a generalized risk of being forcibly conscripted into national service upon return to the country. The Court noted that failed asylum-seekers who had left Eritrea after having fulfilled their military obligations had routinely been freed from national service and had no reason to fear being conscripted into the army again upon return. Nor did they have a reason to fear being convicted for refusal to

serve. That was particularly true for women who were married or pregnant, who had children, or who had left Eritrea at the age of 30 or over. According to relevant sources, women are generally demobilized before the age of 30, usually between the ages of 25 and 30.[7] Furthermore, Eritreans who have obtained the status of a member of the diaspora are also exempted from national service if they pay a 2 per cent tax and sign a letter of repentance. There is reason to believe that Eritrean nationals who have spent more than three years abroad have regularized their status with the authorities in Eritrea and are thus members of the diaspora.

4.14 To summarize, the risk of enlistment in the national service can no longer be considered, in itself, an obstacle to the enforcement of a removal order. Individuals who have left Eritrea for fear of being conscripted into national service must establish a high probability that they would be personally and deliberately targeted upon return by measures that are incompatible with applicable international standards.

4.15 In the present case, the State Secretariat for Migration considered that the complainant was not credible. The State party incorporates by reference the arguments contained in that decision. The country reports that the complainant cited in her communication to the Committee do not alter the conclusions drawn regarding the inconsistencies in her testimony during the asylum proceedings. The State Secretariat considered that it was not credible that the complainant had deserted the military. Moreover, the complainant has not claimed that she has been contacted by military authorities in Eritrea, such that she would have a reason to believe that she would be forcibly recruited upon return to the country. In addition, she has not claimed that she belonged to a group of dissidents or occupied a high-profile position before she left Eritrea.

4.16 The Federal Administrative Court noted that the complainant was 27 years old when she left Eritrea. Based on its analysis of the situation in Eritrea, the Court observed that the State Secretariat for Migration had correctly determined that the complainant could have been suspended from national service, had been freed from it, or had already completed it. The Court added that, given that the complainant was 34 years old at the time of her arrest, the risk that she would be forcibly conscripted upon return to Eritrea was low. Citing its judgment D-2311/2016, which also concerned the case of a female national of Eritrea who was over 30 years old, the Court recalled the aforementioned principle that the complainant had to establish a high probability that she would face treatment contrary to international law upon return. The Court considered that the complainant had not established that she would risk being forcibly conscripted, or that she would face a high probability of being subjected to treatment contrary to the Convention if she were returned to Eritrea. The Court also considered that there was no reason to believe that the complainant would face such a risk, including because her allegations relating to her alleged military service and desertion were not credible.

4.17 In her communication, the complainant criticizes various judgments in which the Federal Administrative Court has addressed the situation in Eritrea. However, the complainant does not provide any information that could call into question the conclusions contained in those judgments, or the conclusions of the domestic migration authorities concerning her asylum case. The complainant has not demonstrated why she would personally be exposed to the risks that are described in the reports that she has cited. The migration authorities meticulously examined the risks that the complainant would face, and concluded that there was no concrete indication that she would face treatment contrary to the Convention in Eritrea.

4.18 The complainant's reference to the decision of the Committee in *M.G. v. Switzerland* is misplaced, because the Committee's finding of a violation of article 3 of the Convention in that case was based on procedural grounds. The Committee did not find that the

[7] The State party cites European Asylum Support Office, *EASO Country of Origin Information Report*: *Eritrea Country Focus* (May 2015), p. 34; Country of Origin Information Centre (Landinfo), "Report Eritrea: national service" (20 May 2016), p. 18; and European Asylum Support Office, *Country of Origin Information Report: Eritrea – National Service and Illegal Exit* (November 2016), p. 38.

complainant in that case would face a risk of treatment contrary to the Convention upon return to Eritrea.

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

5.1 In comments dated 24 January 2020, the complainant reiterates her arguments and maintains that she did not have legal representation during her asylum hearing with the State Secretariat for Migration. Thus, the adverse credibility findings regarding her testimony during that hearing should be called into question. Furthermore, the complainant is within the age of conscription; it must therefore be assumed that she left the country unlawfully, as she had no other opportunity to obtain an exit visa.

5.2 The complainant reiterates that acts of torture are widespread and systemic in Eritrea. She refers to a report of the Special Rapporteur on the situation of human rights in Eritrea, in which the latter expressed concern about reports of arbitrary arrest, indefinite detention, death in detention and enforced disappearance in Eritrea. The Special Rapporteur noted that Eritrea continued to hold political prisoners and prisoners of conscience, and expressed concern that individuals continued to be held incommunicado and to be detained indefinitely, in violation of their basic due process rights, including the rights to be informed of the charges against them. According to the Special Rapporteur, the authorities in Eritrea have not engaged in a process of domestic reforms, and returning failed asylum-seekers from Switzerland to Eritrea would expose many of them to arrest, harassment and violence.[8]

5.3 The usefulness of the State party's fact-finding missions to Eritrea is doubtful. Migration offices tend to only interview government representatives, diplomats in Asmara, and other individuals who are dependent on the Government of Eritrea. For example, in 2014, the Office of the United Nations High Commissioner for Refugees criticized a fact-finding mission report of the Government of Denmark for methodological flaws.[9] Foreign countries tend to grant asylum to the vast majority of applicants of Eritrean nationality. For example, in 2018, 98 per cent of all such asylum applications were granted in Denmark. In Norway, in 2019, 202 out of 205 such applications were granted. In 2018, Sweden, only 77 out of 1,051 such applications were rejected.

5.4 The fact that the complainant deserted national service and left the country unlawfully suffices to establish that she would be subjected to treatment contrary to the Convention if returned to Eritrea. In a report issued in 2016, the commission of inquiry on human rights in Eritrea cited witness reports indicating that certain nationals of Eritrea who had been collectively expelled by the Sudan had been arrested and detained upon their return to Eritrea.[10]

5.5 Similarly, the Special Rapporteur on the situation of human rights in Eritrea stated in 2017 that the authorities in Eritrea considered individuals who leave Eritrea without an exit visa to be political opponents akin to traitors. According to the Special Rapporteur, Eritreans living abroad must sign an immigration and citizenship services request form in order to regularize their situation before they can request consular services. By signing the form, individuals admit that they "regret having committed an offence by not completing the national service" and are "ready to accept appropriate punishment in due course". Such a procedure gives the authorities carte blanche to mete out arbitrary punishment.[11]

5.6 The State party did not explain the basis for its conclusion that women over the age of 30 are not likely to be conscripted in Eritrea. The Special Rapporteur on the situation of human rights in Eritrea referred to reports that national/military service conscripts were

[8] The complainant cites A/HRC/41/53, paras. 17, 19 and 74.

[9] The complainant cites a December 2014 report of the Office of the United Nations High Commissioner for Refugees, in which the Office gave its perspective on a fact-finding mission report published by the Danish Immigration Service.

[10] The complainant cites the 2016 report containing the detailed findings of the commission of inquiry on human rights in Eritrea, para. 98. Available at https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/CoIEritrea/A_HRC_32_CRP.1_read-only.pdf.

[11] A/HRC/35/39, para. 41.

subjected to abuse and ill-treatment, and that women and girls bore a particularly negative impact, as sexual abuse and harassment of female conscripts was common, in particular at Sawa military training camp.[12] There are no indications that the complainant, who only completed nine months of military service, was dismissed from such service. There is no reliable information on the duration of military service in Eritrea.

5.7 If the complainant is returned to Eritrea, she will face arbitrary and excessive use of force equivalent to torture or cruel, inhuman or degrading treatment or punishment.

State party's additional observations on the merits

6.1 In its additional observations, dated 9 March 2020, the State party reiterates its position and its argument that the complainant's essential allegations – regarding her arrest during a raid in July 2009, her detention in Wi'a and Sawa, her military training in Sawa, her flight from the military camp in Keren, and her unlawful departure from Eritrea – were not credible.

6.2 In response to the reports cited by the complainant in her comments, the State party informs the Committee that, in principle, when individuals from Eritrea put forth credible allegations that they have deserted the military or have already been in contact with the Eritrean authorities for the purpose of conscription, the State party's migration authorities grant those individuals asylum. On the other hand, nationals of Eritrea who have left the country unlawfully without having had concrete contact with the authorities are generally not granted asylum. The fear of being conscripted does not suffice. Nevertheless, individuals who credibly allege that their conscription was imminent, after having reached the age of majority (and thus the minimum age of conscription), and who unlawfully left the country, are considered to be deserters and are granted asylum.

6.3 On the basis of such a case-by-case analysis, Eritrean asylum-seekers receive protection in Switzerland when they run a personal and real risk of treatment contrary to the Convention in Eritrea. The reports cited by the complainant are of a general nature and do not bear on her personal situation, nor do they call into question the credibility findings of the State party's migration authorities.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim 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.

7.2 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 the complainant, following the rejection of her appeal, obtained a negative, final decision on her application for asylum, and that the State party has not contested the admissibility of the complaint. Consequently, the Committee considers that it is not precluded by article 22 (5) (b) of the Convention from examining the complaint.

7.3 As the Committee finds no further obstacles to admissibility, it declares the complaint admissible and proceeds to consider it on the merits.

Consideration of the merits

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

[12] A/HRC/41/53, paras. 28–29.

8.2 The issue before the Committee is whether the forced removal of the complainant to Eritrea 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 that person would be in danger of being subjected to torture.

8.3 In the present case, the Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally at risk of being subjected to torture upon return to Eritrea. 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.[13] However, the Committee recalls that the aim of the determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned.[14] 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.[15]

8.4 The Committee recalls its general comment No. 4 (2017) on the implementation of article 3 of the Convention 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 that may be at risk of being tortured in the State of destination. The Committee also recalls that "substantial grounds" exist whenever the risk of torture is "foreseeable, personal, present and real".[16] Indications of personal risk may include, but are not limited to: (a) ethnic background and religious affiliation; (b) previous torture; (c) incommunicado detention or other form of arbitrary and illegal detention in the country of origin; and (d) political affiliation or political activities of the complainant.[17]

8.5 The Committee also recalls that the burden of proof is on complainants, who must present an arguable case – that is, submit substantiated arguments showing that the danger that they will be subjected to torture is foreseeable, present, personal and real.[18] However, when complainants are unable to elaborate on their case, such as when they have demonstrated that they are unable to obtain documentation relating to their allegations 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.[19] The Committee further 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. It follows that 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 of the circumstances relevant to each case.[20]

8.6 In the present case, in order to determine whether the complainant would face a risk of being subjected to torture upon return to Eritrea, the Committee refers to a report issued in 2021 by the Special Rapporteur on the situation of human rights in Eritrea. According to the report, asylum-seekers who are returned to Eritrea reportedly face severe punishment upon their return, including prolonged periods of incommunicado detention, torture and ill-

[13] See, for example, *X v. Switzerland* (CAT/C/67/D/775/2016), para. 8.3.
[14] See, among others, *E.T. v. Netherlands* (CAT/C/65/D/801/2017), para. 7.3.
[15] *Y.G. v. Switzerland* (CAT/C/65/D/822/2017), para. 7.2.
[16] General comment No. 4 (2017), para. 11.
[17] Ibid., para. 45.
[18] See, among others, *E.T. v. Netherlands*, para. 7.5.
[19] General comment No. 4 (2017), para. 38.
[20] Ibid., para. 50.

treatment.[21] The Committee also notes that the Special Rapporteur previously expressed concern that the voluntary return of 56 individuals from Switzerland to Eritrea in 2019 could place individuals at risk given that their conditions of return could not be adequately monitored.[22] The Committee notes that in a statement to the Human Rights Council presented on 4 March 2022, the Special Rapporteur noted that recent developments in Eritrea continued to evidence a lack of progress in the human rights situation in the country.[23]

8.7 Accordingly, the Committee cannot conclude that, in the present case, the complainant does not face a foreseeable, real, present and personal risk of being subjected to torture if she is returned to Eritrea. The Committee therefore considers that her forced return to Eritrea would constitute a violation of article 3 of the Convention.

9. In the light of the foregoing, the Committee, acting under article 22 (7) of the Convention, concludes that the return of the complainant to Eritrea would constitute a breach of article 3 of the Convention.

10. 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 Eritrea.

11. Pursuant to rule 118 (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.

[21] A/HRC/47/21, para. 52.

[22] A/HRC/44/23, para. 83.

[23] See https://www.ohchr.org/en/press-releases/2022/03/human-rights-council-holds-separate-interactive-dialogues-human-rights.