



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. 775/2016*, **

<i>Communication submitted by:</i>	X (represented by counsel, Roman Schuler)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	24 October 2016 (initial submission)
<i>Document reference:</i>	Decision taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on 25 October 2016 (not issued in document form)
<i>Date of present decision:</i>	5 August 2019
<i>Subject matter:</i>	Deportation to Ethiopia
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Non-refoulement; torture
<i>Article of the Convention:</i>	3

1.1 The complainant is X, a national of Ethiopia born in 1977. He claims that by removing him to Ethiopia, the State party would violate his rights under article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. 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 25 October 2016, the Committee against Torture, acting through its Rapporteur on new complaints and interim measures, requested that the State party refrain from removing the complainant to Ethiopia while his complaint was being considered by the Committee. On 27 October 2016, the State party reported that the complainant's removal had been suspended in accordance with the Committee's request.

The facts as submitted by the complainant

2.1 The complainant grew up in Addis Ababa. His parents worked for the Derg regime of Mengistu Haile Mariam. The complainant's father was killed in 1979 during a dispute with resistance fighters from the Tigray region. Thereafter, the complainant's mother

* Adopted by the Committee at its sixty-seventh session (22 July–9 August 2019).

** The following members of the Committee participated in the examination of the communication: Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé and Bakhtiyar Tuzmukhamedov.



worked for the secret service of the dictatorship. After the fall of the regime, in 1991, the complainant's mother was imprisoned for having worked for the dictatorship. She was tortured for many years in prison, where she died.

2.2 Holding the ruling regime responsible for his parents' death, the complainant became an active opponent of the regime. In 2005, he joined the Kinijit party. His role within the party was to mobilize young voters, recruit new members and distribute flyers. The Kinijit party prevailed in elections held in 2005, but the Government refused to accept the election results. In protest, the complainant threw stones at police officers and set cars on fire. Thereafter, he was persecuted and went into hiding.

2.3 In October 2006, the Ethiopian secret service located the complainant and imprisoned him, first in Maekelawi prison and then in Zone prison. While in prison, he was beaten and subjected to ill-treatment. The beatings left scars on his back. He was released in February 2007 for lack of evidence incriminating him.

2.4 In 2009, the Government banned the Kinijit party. The complainant became a member of the successor underground party, Ginbot 7, which had been founded in May 2008 by Berhanu Nega and Andargachew Tsege, former members of the Kinijit party. Ginbot 7 established a clandestine network of activists both in Ethiopia and abroad. Within Ginbot 7, the complainant resumed the role he had occupied in the Kinijit party. He was taken into police custody several times because of his affiliation with Ginbot 7, but he was released each time for lack of evidence. When his supervisor was imprisoned in 2013, the complainant decided to leave Ethiopia, fearing that his supervisor would be tortured and would reveal information about the complainant. Before leaving Ethiopia, the complainant told his wife to go into hiding with their two children.

2.5 On 26 or 27 May 2013, the complainant left Ethiopia by car, accompanied by a smuggler. They stayed in the Sudan for one month and then flew to Switzerland. On 28 June 2013, the complainant arrived in Switzerland and applied for asylum. On 8 July and 15 August 2013, he was interviewed by the then Federal Office for Migration, which was renamed the State Secretariat for Migration in 2015. On 3 November 2015, the State Secretariat denied the complainant's asylum application. On 14 January 2016, the Federal Administrative Court issued an interim decision rejecting the complainant's application for legal aid, on the ground that the appeal appeared *prima facie* to lack merit. On 30 August 2016, the Court denied the complainant's appeal. No further domestic remedies are available.

2.6 In Switzerland, the complainant has pursued his political activism against the Government of Ethiopia by participating in several events. On 20 November 2013, he participated in a demonstration in front of the Embassy of Saudi Arabia in Bern to protest against violence faced by Ethiopians in Saudi Arabia. On 7 August 2014 and 20 March 2015, he participated in protests in Geneva against the detention of the Secretary-General of Ginbot 7. During the latter protest, the complainant tore up a flag of the ruling Tigray People's Liberation Front party and marched in the front line of the demonstration, next to Afework Agedew, one of the leaders of Ginbot 7. On 3 October 2015, he attended the fifth anniversary celebration of Ethiopian Satellite Television and Radio (ESAT), which was considered by the Government of Ethiopia at the time as a propaganda outlet for dissident groups. During the celebration, the complainant was photographed with a well-known dissident priest. On 25 January 2016, the complainant participated in a protest in Geneva for global solidarity with the Oromos. A video recording of the rally posted on the Internet shows the complainant marching in the front line and kneeling down as if he were a prisoner. On 28 February 2016, he participated in a rally for Ginbot 7 and was photographed with Ephrem Madebo, the leader of Ginbot 7 in the United States of America. On 5 June 2016, the complainant attended a fundraising event for Ginbot 7 and was photographed standing at a lectern next to Mr. Nega. On 16 August 2016, the complainant participated in a public demonstration in Geneva to protest against the crackdown on opposition in Ethiopia. The complainant also provides regular monetary contributions to the Ethiopian Relief and Development Organization in Switzerland.

The complaint

3.1 The complainant asserts that the State party would violate his rights by removing him to Ethiopia, where he would face a substantial risk of being subjected to torture or inhuman or degrading treatment. He claims that he would be arrested because of his dissident activities, most likely at the airport in Addis Ababa, and would be detained, tortured and interrogated by agents of the Ethiopian secret service. Because he was tortured in Ethiopia in the past, it is foreseeable that he would face a risk of being tortured there again.

3.2 In decisions issued in 2007, 2010, 2012 and 2016, the Federal Administrative Court noted that the Ethiopian authorities monitored the activities of the diaspora and that political activists thus identified might face arrest upon arrival in Ethiopia, unless they had clearly distanced themselves from their former political activities.

3.3 In its decision on the complainant's asylum application, the State Secretariat for Migration considered that he had not provided detailed answers concerning his political activities and that there were factual discrepancies in his account of relevant events. Moreover, the Secretariat did not find the complainant's account of imprisonment credible. The Federal Administrative Court considered that the complainant did not have a sufficiently high profile to attract the attention of the Ethiopian authorities.

3.4 However, the complainant had informed both the State Secretariat for Migration and the Federal Administrative Court about the torture that he had endured during his imprisonment. He had also provided photographs of the scars on his back. The shape of those scars clearly indicates that the injuries were inflicted by whiplash. Yet, instead of ordering a medical examination, the Court merely stated that the cause of the scars was unknown, and that the photographs did not prove that he had been persecuted. This failure to adequately examine the complainant's claim that he had been tortured in the past demonstrates that the Swiss authorities did not properly assess the risk of torture that he would face upon return to Ethiopia.¹ The complainant does not have the means to undergo a medical examination at his own expense.

3.5 Although the complainant stated during his asylum interview that he had been tortured, his interviewer did not ask any follow-up questions and, instead, changed the subject. The complainant stated that he had been imprisoned and tortured in 2006 and 2007. In response, the interviewer asked him whether there had been any other important, memorable events, apart from the imprisonment. Nor was the complainant asked further questions about the other times when he was taken into police custody.

3.6 The Federal Administrative Court also disregarded a letter issued on 20 November 2015 by a branch of Ginbot 7 in the United States. It is stated in that letter, inter alia, that the complainant is a member of the Ginbot Movement for Justice Freedom and Democracy; that he is actively engaged in the activities of the movement for prevalence of democracy in Ethiopia; and that Ginbot 7 has no doubt that, if Switzerland were to force him to return to Ethiopia, he would gravely suffer in the hands of the agents of the repressive regime that has been spending millions of dollars spying on individuals who have any sympathy for or affiliation with Ginbot 7 organization. It is also stated in the same letter that members of Ginbot 7 are vulnerable and require protection from systematic persecution by the Government of Ethiopia, which uses espionage to observe dissident Ethiopians living abroad. The complainant maintains that, although the Ginbot 7 branch in the United States only provides such letters to long-standing party members and not to mere sympathizers of the movement, the Court did not take into account this crucial piece of evidence in its decision on the complainant's appeal.

3.7 Any adverse inferences drawn from discrepancies between the complainant's statements during the screening interview and the substantive asylum interview must be viewed with caution, because applicants are instructed to keep their explanations brief

¹ The complainant cites *Ali Fadel v. Switzerland* (CAT/C/53/D/450/2011), para. 7.6.

during the former interview.² In any case, the complainant presented a detailed, consistent and credible account of his political activities in Ethiopia and of his arrest, detention and subsequent persecution. He also provided evidence demonstrating that he had a sufficiently high profile as a result of political activities carried out in Switzerland, to attract the attention of the Ethiopian authorities.

3.8 While the Swiss authorities drew adverse inferences from the fact that the complainant had remained in Ethiopia after his release from prison and had travelled to Thailand several times for business purposes, those circumstances do not negatively affect his credibility concerning his imprisonment and persecution. The complainant remained in Ethiopia because he was politically active and wanted to see changes occur in his homeland. He stated several times during his asylum interviews that he had not wanted to leave Ethiopia, despite having encountered problems with the authorities on several occasions. He only left Ethiopia after the arrest of his supervisor, fearing future persecution.

3.9 Contrary to the finding of the State Secretariat for Migration, the complainant did not make vague statements about the source of his problems in Ethiopia. He clearly stated that, in 2005, he had participated in protests against the Government by throwing stones at police officers and setting cars on fire. He also stated that he felt that the Government was responsible for his parents' death. Although he had been a sympathizer of the opposition since his mother's death in 1991, his active fight against the regime had only begun in 2005.

3.10 While the Swiss authorities considered that the complainant had not adequately described the organization and structure of the Kinijit party, the complainant explained in a statement to the Federal Administrative Court that he had not understood the question asked on that point during his asylum interview. The complainant had, however, provided to the interviewer some information about the origins and goals of the party, as well as the names of party leaders.

3.11 Although the Swiss authorities considered that it was not credible that the complainant lacked contacts within Ginbot 7, he had stated twice that his having been in contact only with his supervisor in Ginbot 7 and never having met the other members of his group was standard practice within Ginbot 7, which has a hierarchical structure.

3.12 Finally, the State Secretariat for Migration erroneously considered that the complainant had provided contradictory statements regarding the reason for his departure. Although the complainant had alternately stated during the screening interview that he had left Ethiopia because his supervisor and his friend had been imprisoned, he was in fact referring to the same person.

3.13 Several non-governmental organizations have reported that the Ethiopian authorities have declared Ginbot 7 to be a terrorist organization and that members of dissident groups are surveilled and targeted by the authorities.³ According to the Department of State of the United States, many leaders of the opposition party have been mistreated while in custody.⁴ LandInfo states in a report that, in 2009, many members of Ginbot 7 were arrested under an antiterrorism law and that five of them were sentenced to death.⁵ The complainant asserts that, on 30 June 2014, the Secretary-General of Ginbot 7, Mr. Tsege, was detained in Yemen and extradited to Ethiopia, where he was drugged and tortured by agents of the Ethiopian secret service.⁶ The situation in Ethiopia has become increasingly unstable since August 2016, when at least 100 people were killed during political protests. These reports

² The complainant cites European Court of Human Rights, *M.A. v. Switzerland*, Application No. 52589/13, Judgment, 18 November 2014, para. 60.

³ The complainant cites, inter alia, Amnesty International, "Dismantling dissent: intensified crackdown on free speech in Ethiopia" (December 2011); and Freedom House, "Ethiopia, Freedom of the Press 2016", September 2016.

⁴ The complainant cites United States Department of State, "2009 country reports on human rights practices: Ethiopia", 11 March 2010.

⁵ The complainant cites LandInfo, Country of Origin Information Centre, "Ethiopia: the Ginbot 7 party" (August 2012), p. 8.

⁶ The complainant cites, inter alia, BBC News, "Ethiopia PM Hailemariam defends Andargachew Tsige arrest", 11 July 2014.

demonstrate that dissident opinions are harshly repressed in Ethiopia and that the complainant faces a real risk of irreparable harm if returned to the country.

State party's observations on the merits

4.1 In its observations dated 25 April 2017, the State party recognizes that the human rights situation in Ethiopia is worrying in many respects. However, this situation does not in and of itself suffice to establish that the complainant would be at risk of being subjected to torture upon return to Ethiopia. The complainant has not provided evidence to establish such a risk.

4.2 Any past torture endured by the complainant should be considered in assessing the risk of torture that he would face if returned to Ethiopia. However, the complainant's allegations concerning the ill-treatment that he suffered are not plausible. First, during asylum proceedings, his description of his political activities was very vague and contradictory. As a result, his allegation that he was detained as a result of those activities is also not credible. The complainant's allegations concerning his detention are contradicted by the fact that, according to his claims during asylum proceedings, he remained in Ethiopia for six years after having been freed without being harassed by the authorities again. Moreover, he claimed to have left Ethiopia several times in 2011 with a valid passport and to have returned to the country without encountering problems with the authorities. Because the origin of the scars on his back is not known, and because his allegations are not credible, the scars do not constitute evidence in support of his claims.

4.3 The State party's authorities did not order a medical examination for signs of torture because the complainant's account was manifestly ill founded and incoherent. According to the jurisprudence of the national authorities, asylum seekers must participate in establishing the facts and, in this case, the complainant did not present a medical report supporting his claims. The complainant is represented by a lawyer and is enrolled in a mandatory health insurance policy. He therefore had the opportunity to present a medical report to the Swiss authorities.

4.4 The complainant's claim that he did not have the opportunity to comment in detail on the ill-treatment that he allegedly suffered is incorrect. After the portion of the asylum interview referred to by the complainant, the interviewer returned to the subject of the complainant's detention and asked him several questions on this topic. At the end of the hearing, the interviewer expressly invited the complainant to complete his narrative. Moreover, if the complainant believed that he had been unable to provide sufficient detail during the interview, he had the opportunity to do so both in his appeal before the Federal Administrative Court and in the present communication, but he did not take it. His narrative is brief, and he does not attempt to describe the ill-treatment that he allegedly endured or the surrounding circumstances.

4.5 Whereas the complainant claims to have been arrested several times following his release from prison in 2007, he stated during asylum proceedings that he no longer feared the authorities after his release because they did not know where he was hiding. This is a clear inconsistency concerning an essential aspect of the author's claims.

4.6 The complainant's description of his political activities in Ethiopia was vague and evasive. When asked to specify the activities that he had conducted for the Kinijit party, the complainant explained that he had participated in numerous demonstrations, mobilized young supporters and led different activities. Such a description is superficial. When asked to describe the structure of the Kinijit party, the complainant initially responded that, when the party was established by Ethiopians living in the United States, he did not know anything about it. Despite being asked several questions on that topic, the complainant was not able to provide a concrete response. He merely stated, when asked about the structure of the party, that an election would take place after the official members arrived from the United States. These imprecise and evasive responses give the strong impression that the complainant did not experience the political activities that he described. While he named the leaders of the party, he was not able to provide a substantive description of the party's structure or of its activities.

4.7 Regarding the complainant's activities for Ginbot 7, the complainant initially claimed to have met members of his group and carried out activities with them. During his second asylum interview, however, he claimed to have had contact with only one member of Ginbot 7. When asked about this apparent contradiction, the complainant explained that he had been misunderstood during the first asylum interview. However, this explanation is not convincing, given that the complainant expressly stated during the first interview that he had acted with his group in Ginbot 7.

4.8 With respect to his political activities in Switzerland, the State party acknowledges that the Ethiopian authorities have recently increased surveillance of political opponents living abroad. However, those authorities focus their attention on individuals who, beyond participating in low-profile political protests abroad, occupy functions or conduct activities indicating that they are serious, potentially dangerous opponents to the regime. The complainant does not, however, fall into that category of dissidents. His participation in protests in Switzerland constitutes marginal activism and does not indicate that he would be considered by the Ethiopian regime as a serious and potentially dangerous opponent. The photographs that he provided of his participation in protests in Switzerland do not show him in a prominent position and do not provide evidence that he engaged in exposed, personal activism. Apart from the participation in those events and his alleged membership in Ginbot 7, the documents that he provided do not demonstrate that he engaged in any particular political activity. The letter that the complainant provided stating that he is a member of Ginbot 7 is a copy; the complainant did not provide the original document and thus did not prove his membership.

4.9 The complainant referred to jurisprudence of the Federal Administrative Court issued in 2016, noting the increased repression and surveillance of Ethiopian activists belonging to the opposition and living abroad. However, the case at issue in that decision was not comparable to the complainant's case. In the case decided in 2016, the complainant had plausibly demonstrated that he would attract the attention of the Ethiopian authorities as a result of his political activities in Ethiopia prior to his departure. This is not the case in the present communication.

4.10 Throughout the two asylum interviews, the complainant expressed himself in a very superficial and often evasive manner. When asked to describe the persecution that he had endured, he initially stated that his problems had begun in 2004 or 2005, but was unable to specify the problems in question. Invited to describe how his problems had begun, he merely stated that, without being a member of the ruling party, it was not possible to attend school or university, and that approval of the regime was required in order to obtain a work permit. When asked to explain why he stated that his problems had started in 2004 or 2005, the complainant responded that he had become a dissident because he had lost his parents to the regime. This statement does not explain why his problems began in 2004 or 2005, because, as the complainant stated during his first asylum interview, his parents died in 1979 and 1995, respectively. When invited to describe the problems in question, the complainant claimed to have thrown stones and set cars and buses on fire. The interviewer repeated the question concerning the problems that he had encountered. The complainant responded that the elections had started. The interviewer again repeated the same question. The complainant then responded that he hated the political situation, which had caused his parents' death, and wanted to overturn the regime. It is clear that the complainant was not capable of answering the questions about the problems that he claimed to have encountered.

4.11 Beyond the aforementioned contradictions, the complainant's account of the arrest of his supervisor was also contradictory. During his first interview, he claimed that one of his friends had been arrested and had disappeared. The complainant claimed that his friend had been beaten in detention and had revealed secrets of their organization. When his supervisor was later arrested, the complainant decided to flee Ethiopia. However, during the second interview, the complainant only stated that one person had been arrested. When asked about this contradiction, the complainant stated that he was not speaking about himself. This appears to have been an attempt to evade the question. The interviewer then repeated the question, asking who exactly had been arrested. The complainant responded that a work colleague had also been detained. Invited to clarify this statement, he added that

he had learned about that arrest and left the country. These statements are clearly not credible.

4.12 Similarly, the complainant's statements regarding his family are unconvincing. The complainant was unable to provide information about his wife and children. He stated that, before leaving Ethiopia, he had told his wife to go into hiding and did not know how to contact her thereafter. He was not able to provide any additional details about this. When invited to describe the discussions that he had had with his wife before his departure from Ethiopia, he evaded the question and stated that, at the time, he wanted to save his life and leave Ethiopia as soon as possible. All that he told his wife was that she had to go into hiding. These statements are evasive and not convincing. It is also implausible that the complainant had no idea how to contact his wife.

4.13 The complainant was unable to describe the car trip that he had taken from Addis Ababa to Khartoum, apart from describing a night spent in Gonder, Ethiopia, and his crossing the border on foot. He was also unable to provide any details about the flight that he had taken from Khartoum to Switzerland. He provided to the Swiss authorities an identity card issued on 5 August 2013, after his departure from Ethiopia. He claimed that he had left the card in a video store before leaving Ethiopia, and that friends had gone to look for it there. When invited to clarify these assertions, he responded with very confusing statements.

4.14 In view of the foregoing, there are no grounds for concluding that removing the complainant to Ethiopia would constitute a violation of the State party's obligations under article 3 of the Convention.

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

5.1 In comments dated 7 June 2017, 25 January and 8 June 2018 and 20 March 2019, the complainant stated that, with financial assistance, he had been able to undergo a medical examination for signs of torture. He provides a report dated 10 May 2017 issued by a general practitioner, in which it is stated that the complainant was examined on 2 May 2017. It is also stated in the report that the complainant alleged to have been tortured by being "hit with a butt on the head" and by being hit repeatedly on his back with electric cables. It is also noted that: "one can see 10 restiform scars, which are crossways to the spine and between 10 and 15 cm long. The scars lay between the lower and the middle thoracic spine and are currently not irritated. In addition, there is a small scar at the end of the left shoulder blade as well as a long scar on the left side of the front which stems from the blow with the butt. At the end of the consultation, [the complainant] credibly told that the tortures of 2006 still affect and burden him a lot and that he would like to take care of his wife and children. The specified scars match the description given by [the complainant]. The described back pain cannot be objectified." The report also contains a diagnosis of post-traumatic stress disorder. The complainant maintains that the report substantiates his claims of having been subjected to torture.

5.2 The complainant also provides a second medical report, dated 14 December 2017, and a translation. He asserts that the doctor who prepared the report was a long-time consultant at the Swiss Red Cross for victims of torture and, therefore, an expert in examining signs of torture. According to the translated report, the doctor observed eight curved, palpable and reddish scars between the lower thoracic vertebrae and the sacrum, centred above the spine, of approximately 4 to 6 cm in length and of a maximum width of 5 mm. He concluded that the scars were consistent with a "typical scar pattern after strikes with a cable" and with the complainant's account that he had been "tortured by strikes with electric cables" in 2007. The complainant reiterates that the Swiss authorities did not fulfil their duty to ascertain all the relevant facts, including by ordering a medical examination for signs of torture.

5.3 In response to the State party's assertions regarding the complainant's decision to stay in Ethiopia for six years after his release from detention, the complainant maintains that he was not detected by the authorities during that time because he was in hiding and changed his place of residence several times. He carried out his political activities in secret, so that the regime could not find him. This also explains why the complainant was able to

leave and return to Ethiopia safely several times in 2011. It was only when the head of his group was arrested the same year that the complainant began to fear persecution. Prior to that, the authorities had no evidence against him.

5.4 The complainant contests the State party's claims that his answers during the asylum interviews lacked sufficient detail. His account of the torture that he endured was detailed, and it was the duty of the Swiss authorities to ask additional questions if they considered his responses to be too brief. In contrast, the authorities did not ask specific questions, but often changed the subject during crucial moments. The complainant also described his political activities in Ethiopia several times but was not asked to provide additional details. Thus, he cannot be criticized for having provided evasive or vague answers on this subject. He provided fairly precise answers concerning the organization of Ginbot 7 and was not able to be more specific because information on the internal organization of the party was not provided to ordinary members such as the complainant. The complainant did not contradict himself; he explained several times that he was an activist and member of Ginbot 7 but did not have direct contact with its head. Ginbot 7 has adopted a hierarchical structure in order to protect its members.

5.5 In response to the State party's comment that the letter attesting to the complainant's membership in Ginbot 7 is merely a copy, the complainant provides a separate, original letter, issued on 11 June 2017 by a representative of the Ginbot 7 branch in the United States.⁷ The representative reiterates that the complainant is a member of Ginbot 7 and is actively engaged in such tasks as attending meetings and demonstrations, fundraising and making financial contributions.

5.6 The complainant claims to have intensified his political activities in Switzerland and asserts that such activities have been so frequent and significant that they have undoubtedly attracted the attention of the Ethiopian authorities. The complainant's tasks within Ginbot 7 include ensuring security, recruiting new members, inviting members to political events, replacing the head of the cantonal party during monthly meetings, participating in discussions and distributing flyers. The complainant has also signed an online petition concerning a legislative bill in the United States supporting the democratization of Ethiopia.

5.7 The complainant provides a letter dated 26 January 2017 from the Secretary of the Ethiopian Human Rights and Democracy Task Force in Switzerland, in which the latter states that the complainant has been an active member since 2015 and has been involved in the holding of various public events. Specifically, on 11 February 2017, he participated in a fundraising meeting for Ginbot 7 and the Ethiopian Human Rights and Democracy Task Force in Fribourg, Switzerland. On 11 February 2017, he also helped to organize a live discussion by Skype with Mr. Nega concerning the current situation in Ethiopia. The complainant arranged for bus transportation, called meeting participants and helped to ensure security during the discussion.

5.8 On 6 May 2017, the complainant appeared at an annual conference held by the Ambassador of Ethiopia to Switzerland at the Ambassador's residence, in Geneva. The purpose of the meeting was to discuss current political issues in Ethiopia, and the Ambassador invited regional representatives of the Tigray People's Liberation Front to attend. While the event was officially open to all Ethiopians, it was made clear that only government supporters were welcome. A group of dissidents, including the complainant, were physically forced to leave the meeting room. Three persons were injured during the disturbance, and the conference coordinators called the police. The police questioned the complainant and eight other dissidents and asked them to provide their personal details and identity documents. The complainant does not know whether the members of the Tigray People's Liberation Front filed a criminal complaint against him following this incident.⁸ The complainant was interviewed on the ESAT radio station on 8 May 2017 in connection with the incident. This Amharic-language interview is available on the Internet, and the complainant provides a transcript of it.

⁷ The complainant also provides the envelope, postmarked in the United States of America on 27 December 2017, that accompanied the letter.

⁸ The complainant provides three photographs allegedly taken at the conference.

5.9 In response to the State party's assertion that the complainant cannot be seen in the video recording of the conference at the Ambassador's residence, the complainant states that he requested a report from the Geneva police in order to establish his presence at that event. He provides the report, dated 28 January 2019, which states that the police were called by a representative of the Consulate of Ethiopia. The complainant was checked for identification, identified by name and escorted from the Consulate to the train station. The complainant also provides another video recording showing him in front of the Consulate on 6 May 2017.

5.10 Because the complainant was identified by staff of the Consulate of Ethiopia as an opponent of the Government of Ethiopia, the Government would not consider him a low-profile dissident, as the State party claims. Under article 241 of the Ethiopian Criminal Code, attacking the political territorial integrity of the State is a crime punishable by 10 to 25 years of imprisonment. The complainant cannot expect to be granted amnesty in such a serious situation, even if the political situation in Ethiopia changed in 2018.

5.11 On 22 May 2017, the complainant helped to organize and coordinate a demonstration held in Geneva in front of the United Nations. The protestors opposed the candidacy of Tedros Adhanom for the position of Director General of the World Health Organization, claiming that he was responsible for the deaths of many innocent Ethiopians.⁹ Videos of the demonstration have been posted on Facebook. After the event, the complainant was interviewed for approximately 10 minutes by the Swiss radio station Kanal K, a local station in the canton of Aargau. An Amharic-language recording of the interview could be provided upon request.

5.12 On 18 June 2017, the complainant and Mr. Nega attended a Ginbot 7 meeting in Bern. The complainant was in charge of security and wore an orange vest to identify himself. He provides a photo allegedly showing him and Mr. Nega. On 4 November 2017, the complainant attended the ESAT annual party, in Basel, Switzerland, and provides a photo allegedly showing him next to a journalist.

5.13 Moreover, in a ruling on a separate case issued on 30 January 2019, the Federal Administrative Court granted asylum to an Ethiopian complainant, concluding that, despite positive developments in Ethiopia, the extent to which the reform processes initiated by the new Prime Minister would be sustainable was currently not foreseeable and that it was by no means certain that the human rights situation and, thus, the treatment of political opponents and politically active exiled persons in Ethiopia had improved in the long-term.¹⁰ The facts of the present case are similar. Both complainants were members of the opposition who were imprisoned and tortured before leaving Ethiopia and who appeared on ESAT while in Switzerland. Thus, the complainant still faces a threat of persecution in Ethiopia.

Additional observations by the State party

6.1 In further observations dated 27 November 2017, 15 February 2018 and 7 March 2019, respectively, the State party considered that the first medical report provided by the complainant merely indicated that the complainant had experienced trauma, but did not establish the circumstances of those traumatic events. Trauma is not necessarily caused by acts of torture or ill-treatment. While the complainant's scars are noted in the first report, indicia of torture can only be established by specialists in forensic medicine. The doctor who authored the first report is a general practitioner and not a specialist or a psychiatrist; thus, the report has limited probative value. The State party reiterates its position concerning the superfluity of performing a medical examination during asylum proceedings in the light of the inconsistencies in the complainant's narrative. Moreover, even if the scars in question resulted from wounds inflicted by individuals, this would not suffice to indicate proof of ill-treatment by State actors or quasi-State actors. The second medical report submitted only establishes that the complainant endured ill-treatment at an unspecified

⁹ The complainant provides photographs allegedly showing him in front of the protestors.

¹⁰ The complainant cites Federal Administrative Court, decisions D-6079/2015 and D-6086/2015, 30 January 2019, para. 7.6.

moment in time. It does not establish that the ill-treatment was inflicted upon him by the Ethiopian authorities. Nor does the diagnosis of post-traumatic stress disorder establish that the complainant was subjected to ill-treatment.

6.2 The State party reiterates that the complainant was able to remain safely in Ethiopia for six years after his alleged detention and torture in 2006 and 2007 and that he left Ethiopia in 2011 several times but chose to return to it. In view of those circumstances, there is no reason to conclude that the complainant would run a risk of being tortured in Ethiopia.

6.3 While the complainant mentions several political activities that he has recently engaged in in Switzerland, these activities do not in and of themselves justify a well-founded fear of persecution in Ethiopia. The State party reiterates that the complainant has not demonstrated “particularly exposed political activities” justifying a finding that he may have attracted the attention of the Ethiopian authorities and be perceived as a concrete danger for the current regime. The letter provided by the Ethiopian Human Rights and Democracy Task Force is a letter of convenience and does not, even considered in conjunction with the photographs, demonstrate an “exposed” type of political engagement. The complainant’s alleged participation in meetings of Ginbot 7 on 7 and 18 June 2017 and in the ESAT annual party on 4 November 2017 do not rise to the level of exposed political engagement. The ESAT and Kanal K radio programmes were relatively short and featured a large number of interviews with various individuals. The complainant did not distinguish himself from the other individuals interviewed on ESAT, and it is unlikely that he would have attracted the interest of the Ethiopian authorities as a result of this appearance. It is also unlikely that the Ethiopian authorities would have been aware of the Kanal K programme, which was broadcast on a local Swiss radio station. In addition, the complainant did not provide proof that he was interviewed during the Kanal K programme.

6.4 The complainant is not visible on the video recording of the conference held at the Ambassador’s residence on 10 May 2017. It is therefore not certain that he participated in that event. He has not submitted any evidence that he was identified by the police in Geneva, or by the security personnel of the Embassy.

6.5 The new letter regarding membership issued by Ginbot 7 appears to be a letter of convenience and does not prove that the complainant is a member of Ginbot 7. Falsified documents of this nature are often produced. Furthermore, the date when the complainant joined the party is not stated in the letter, nor are his activities within the party described in detail. The new letter also differs significantly from the letter issued by Ginbot 7 on 20 November 2011 in several important respects, namely, the logo, the designation of the party and the email address.

6.6 The police report dated 28 January 2019 only indicates that the Geneva police are aware of the complainant’s identity. It does not demonstrate that the Ethiopian authorities are aware of the same. Similarly, the video recording provided by the complainant does not provide evidence of his allegations.

6.7 Even if the Ethiopian authorities were aware of the complainant’s identity, recent political developments in the country signal that, if returned there, the complainant would not face treatment contrary to article 3 of the Convention. Since taking office in April 2018, Prime Minister Abiy Ahmed has led or announced reforms in many areas, including the treatment of dissidents. The Government of Ethiopia has called upon exiled dissidents to return to Ethiopia and participate in the political process, and dissidents, former rebels and journalists have been returning to Ethiopia since April 2018. A well-known example is Feyisa Lilesa, who had applied for asylum in the United States after engaging in political protests at the Olympic Games of 2016, in Brazil. On 21 October 2018, he returned to Ethiopia and was welcomed at the airport by the Minister of Foreign Affairs of that country, among other people. Since the end of the state of emergency in June 2018 and the reinstatement of access to Internet sites, radio stations and television channels that are critical of the Government, the political space in Ethiopia has opened up. In June 2018, the Government authorized access to 264 websites that had previously been blocked, including the ESAT website, which is run from the United States.

6.8 Since April 2018, thousands of political prisoners have been freed, and Maekelawi prison, notorious for being a place where acts of torture used to be committed, has been closed. Mr. Ahmed, formerly a high-ranking official in the Information Network Security Agency, has carried out reforms to modify the Agency's practices and structure. In June 2018, the Directory of the National Intelligence and Security Service was dismissed. On 12 November 2018, arrest warrants were issued for 36 national security officials, and the defendants had to appear before the Federal High Court in Addis Ababa to respond to accusations of having subjected detainees to ill-treatment. Moreover, the Minister of Justice, Berhanu Segaye, announced that the former management of the National Intelligence and Security Service was responsible for conducting an attack on the Prime Minister on 23 June 2018. On 15 November 2018, Yared Zerihun, the former Acting Director of the National Intelligence and Security Service, and Gudeta Olana, the head of the security division at State-owned Ethio Telecom, were arrested.

6.9 The leader of Ginbot 7, Mr. Tsege, who had been detained since 2014 and was on death row, was pardoned and freed in May 2018, together with 575 other detainees. Mr. Tsege then returned to the United Kingdom of Great Britain and Northern Ireland, where his family lives. Similarly, the death sentence issued against Mr. Nega, who lives in exile, was quashed.

6.10 On 22 June 2018, Ginbot 7 declared that, it was laying down its arms following the reforms announced by the new Government. In early July 2018, Ginbot 7 and two other organizations were removed from the list of terrorist organizations established by the Government of Ethiopia, and in September 2018, Mr. Nega stated that Ginbot 7 would henceforth pursue its political objectives through peaceful means.

6.11 At the end of August 2018, the Government of Ethiopia announced having entered into an agreement with different opposition parties, including Ginbot 7, and the creation of a State entity charged with coordinating the disarmament, demobilization and reintegration of former combatants. In early September 2018, several media outlets reported that hundreds of former Ginbot 7 combatants had left their base in Eritrea and had returned to Ethiopia, where they had been welcomed by local authorities and communities.

6.12 On 9 September 2018, Mr. Nega returned to Ethiopia, where he was welcomed by a minister and other government representatives. Thousands of people, including supporters of Ginbot 7, gathered in central Addis Ababa and in the national stadium to celebrate his return. Mr. Nega announced that discussions would be held throughout the country to define peaceful means of action for the future.

6.13 The return of the leaders of Ginbot 7 occurred without violence. In Oromiya State, thousands of people welcomed the leaders of the party while waving the former Ethiopian flag, which had been used during protests against the former regime. No harm came to the participants, whereas in March 2018, 12 activists had been arrested for having brandished that flag. Mr. Nega himself stated that the situation in Ethiopia had fundamentally changed since the nomination of Mr. Ahmed as Prime Minister. Accordingly, there is no risk of torture or ill-treatment for members or sympathizers of Ginbot 7 in Ethiopia, or for those returning to the country.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claims 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, in the present case, the State party has not challenged the admissibility of the communication.

Consequently, the Committee finds no obstacle to admissibility and declares the communication admissible.

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.

8.2 The issue before the Committee is whether the forced removal of the complainant to Ethiopia would constitute a violation of the State party's obligation under article 3 of the Convention not to expel, return ("refouler") or extradite 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 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.¹¹ 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.¹² 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.¹³ 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.¹⁴

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 recalls that "substantial grounds" exist whenever the risk of torture is "foreseeable, personal, present and real".¹⁵ Indications of personal risk may include, but are not limited to: (a) ethnic background; (b) political affiliation or political activities of the complainant; (c) arrest without guarantee of a fair treatment and trial; (d) previous torture; (e) incommunicado detention or other form of arbitrary and illegal detention in the country of origin; (f) clandestine escape from the country of origin following threats of torture; (g) religious affiliation; and (h) violations of the right to freedom of thought, conscience and religion.¹⁶

8.5 The Committee also recalls that the burden of proof is on the complainant, who must present an arguable case, that is, submit circumstantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real.¹⁷ 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.¹⁸ The Committee further recalls that it gives considerable weight to findings of fact made by organs of the State party concerned;

¹¹ See, inter alia, *E.T. v. the Netherlands* (CAT/C/65/D/801/2017), para. 7.3.

¹² *E.T. v. the Netherlands*, para. 7.3.

¹³ *Y.G. v. Switzerland*, (CAT/C/65/D/822/2017), para. 7.2.

¹⁴ *Ibid.*

¹⁵ General comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, para. 11.

¹⁶ *Ibid.*, para. 45.

¹⁷ See, inter alia, *E.T. v. the Netherlands*, para. 7.5.

¹⁸ General comment No. 4 (2017), para. 38.

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 the circumstances relevant to each case.¹⁹

8.6 The Committee notes the complainant's claim that he fears being arrested upon arrival in Ethiopia and being tortured, given his political involvement with Ginbot 7 and its predecessor, the Kinijit party. It also notes the complainant's allegations that he was imprisoned in October 2006 and tortured as a result of his activities within the Kinijit party, before being released in February 2007. It further notes the complainant's claims that he was taken into police custody several times because of his activities within Ginbot 7 and that he left Ethiopia in 2013 for fear of being reported to the police by his supervisor. The Committee notes the complainant's assertions regarding his continued activities within Ginbot 7 while in Switzerland. It also notes the complainant's claims that the credibility determination of the Swiss asylum authorities was erroneous because his description of relevant events was detailed and consistent; that the Swiss authorities should have ordered a medical examination for signs of torture, given that he had provided photographs of the scars on his back; that the Ethiopian authorities have declared Ginbot 7 a terrorist organization and target members of dissidents groups; and that he has a sufficiently high profile to attract the attention of the Ethiopian authorities. Lastly, it takes note the various documents that the complainant has provided to substantiate his claims, including medical reports, letters from Ginbot 7 and photographs of his political activities.

8.7 Furthermore, the Committee notes the State party's position that the complainant's account of having been imprisoned and tortured was vague and evasive and is therefore not credible. It also notes the State party's observation that the complainant claimed to have left Ethiopia several times in 2011 with a valid passport and was able to return to that country without encountering problems with the authorities. It further notes the State party's position that the complainant's activities in Switzerland do not establish that he would face a risk of torture upon return to Ethiopia. The Committee notes that, according to the State party, conditions for dissidents in Ethiopia have vastly improved since Mr. Ahmed became Prime Minister, in April 2018. In this regard, it also notes the State party's observation that, in 2018, the Government of Ethiopia lifted the ban on Ginbot 7 and welcomed exiled dissidents back to the country.

8.8 The Committee recalls that it must ascertain whether the complainant would currently face a risk of being subjected to torture in Ethiopia.²⁰ While noting the complainant's assertion that he was detained and tortured in that country from late 2006 to early 2007 because of his activities within the Kinijit party, the Committee also notes that the complainant was able to leave and return to Ethiopia safely several times in 2011. The Committee recalls that, when complainants request a medical examination to prove allegations that they have been tortured, such an examination should, in principle, be conducted regardless of the authorities' assessment of the credibility of the allegation. This ensures that the authorities deciding on a case of forcible return are able to complete the assessment of the risk of torture objectively, based on the results of the medical examination, without any reasonable doubt.²¹ However, the Committee also recalls that, although ill-treatment suffered in the past is one element to consider, the principal aim of its assessment is to determine whether the complainant currently runs the risk of being subjected to torture if returned to Ethiopia.²² In the particular circumstances of the present case, the Committee notes that, approximately 6.5 years elapsed between the time of the alleged torture and the request for the medical examination in 2013, and it does not necessarily follow that, after that period of time, the complainant would still have been at risk of being subjected to torture if returned to Ethiopia.

8.9 Regarding the complainant's assertion that his activities within Ginbot 7 would place him at risk of being arrested by the secret service upon return and tortured, the Committee observes that, in June 2018, Ginbot 7 announced that it was abandoning its

¹⁹ Ibid., para. 50.

²⁰ See, inter alia, *G.B.M. v. Sweden* (CAT/C/49/D/435/2010), para. 7.7.

²¹ See, inter alia, *S.S.B. v. Denmark* (CAT/C/60/D/602/2014), para. 8.7.

²² *S.S.B. v. Denmark*, para. 8.7.

armed fight against the Government of Ethiopia as a result of the latter's planned reforms. It notes that, in July 2018, the Government of Ethiopia removed Ginbot 7 from its list of terrorist organizations.²³ The Committee observes that, in May 2018, the President of Ethiopia pardoned Mr. Tsege, the Secretary-General of Ginbot 7, and freed him from detention.²⁴ While noting the complainant's claims that the Government of Ethiopia arrests exiled dissidents upon their return to the country, the Committee observes that, in 2018, the Government granted amnesty to exiled Ethiopians who had been considered terrorists and political opponents and that the Prime Minister invited them to return to the country and pursue political life in a peaceful manner.²⁵ The Committee takes note of reports indicating that thousands of prisoners have been pardoned under the amnesty law²⁶ and that concrete steps have been taken to ensure accountability for human rights violations by State officials.²⁷ While noting the complainant's fears that he would be targeted by the Ethiopian authorities because he had been photographed alongside Ginbot 7 leader Mr. Nega, the Committee observes that the latter returned to Ethiopia in September 2018 after all charges against him had been dropped and that he was welcomed back to the country by high-ranking government officials.²⁸ While noting also the complainant's claim that his radio interviews on ESAT would place him at risk of persecution in Ethiopia, the Committee notes that, in 2018, the Government dropped all pending charges against bloggers, journalists and diaspora-based media organizations, including ESAT, which reopened in Addis Ababa in June 2018.²⁹

8.10 The Committee notes the author's argument that, in January 2019, the Federal Administrative Court upheld the asylum appeal of an individual who had claimed to have been imprisoned and tortured in Ethiopia because of dissident activities within the All Amhara People's Organization and who had continued political activities against the Government of Ethiopia while in Switzerland. The Committee also notes that the Court concluded that, despite promising government reforms in Ethiopia, the situation in Ethiopia might become unstable again and that the future situation of political activists in the country was therefore unclear. However, the Committee recalls that it must examine whether the complainant currently faces a foreseeable risk of personal harm in Ethiopia. The Committee does not base its assessment on a hypothetical risk that individuals in the complainant's situation could face if the regime, which has been in power for more than one year, destabilizes the political situation in the future. The Committee further notes that, in a separate decision also issued in January 2019, the Court denied the asylum application of an Ethiopian national who had alleged that he would face a risk in Ethiopia as a member of Ginbot 7 and because of his related political activities in Switzerland.³⁰ In that decision, after examining relevant reports, the Court considered that the situation in Ethiopia had fundamentally changed under the new Government.

8.11 Taking into account the aforementioned changes in the specific situation of members of Ginbot 7 in Ethiopia and the fact that the complainant was able to safely leave Ethiopia and return to it several times in 2011, the Committee considers that the information that the complainant provided does not suffice to establish substantial grounds for believing that, if returned to Ethiopia today, he would face a foreseeable, personal, present and real risk of being subjected to torture.

²³ See, inter alia, Human Rights Watch, "Ethiopia", in *World Report 2019: Events of 2018* (New York, 2019).

²⁴ See BBC News, "Ethiopia frees abducted Briton Andargachew Tsege on death row", 29 May 2018.

²⁵ See, inter alia, Reuters, "Ethiopia offers amnesty to recently freed political prisoners", 20 July 2018; and International Crisis Group, "Managing Ethiopia's unsettled transition", Report No. 269, 21 February 2019.

²⁶ See, inter alia, Reuters, "Abiy's Ethiopia pardons 13,000 accused of treason or terrorism", 22 January 2019.

²⁷ See, inter alia, Amnesty International, "Ethiopia: arrest of dozens of security officials a first step towards accountability", 12 November 2018.

²⁸ See, inter alia, Reuters, "After years in exile, an Ethiopian politician returns home with hope and fear", 7 November 2018.

²⁹ See, inter alia, Human Rights Watch, "Ethiopia", in *World Report 2019: Events of 2018*; and Freedom House, *Freedom in the World 2019*, "Ethiopia".

³⁰ Switzerland, Federal Administrative Court, decision E-4254/2017, 8 January 2019.

9. On the basis of the above, and in the light of the material before it, the Committee considers that the complainant has not provided sufficient evidence to enable it to conclude that his forcible removal to Ethiopia would expose him to a foreseeable, real, present and personal risk of torture within the meaning of article 3 of the Convention.

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