



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. 1024/2020*, **

<i>Communication submitted by:</i>	N.H. (represented by Centre suisse pour la défense des droits des migrants and subsequently by Caritas Internationalis)
<i>Alleged victim:</i>	The complainant
<i>State Party:</i>	Switzerland
<i>Date of complaint:</i>	17 August 2020 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State Party on 24 August 2020 (not issued in document form)
<i>Date of adoption of decision:</i>	30 April 2025
<i>Subject matter:</i>	Deportation to Eritrea
<i>Procedural issues:</i>	None
<i>Substantive issue:</i>	Risk of torture or other cruel, inhuman or degrading treatment or punishment if deported to country of origin (non-refoulement)
<i>Articles of the Convention:</i>	3 and 16

1.1 The complainant is N.H., a national of Eritrea born in 2000. He applied for asylum in Switzerland, but his application was rejected. He is facing deportation to Eritrea and submits that his deportation would constitute a violation by the State Party of articles 3 and 16 of the Convention. The State Party made the declaration under article 22 (1) of the Convention on 2 December 1986. The complainant is represented by counsel.

1.2 On 24 August 2020, pursuant to rule 114 of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State Party not to deport the complainant to Eritrea while his complaint was being considered.

1.3 On 27 August 2020, the State Party informed the Committee that, in accordance with its established procedure, the State Secretariat for Migration had requested the competent authority to refrain from taking any steps to deport the complainant, who was therefore assured of remaining in Switzerland pending the consideration of his complaint by the Committee.

* Adopted by the Committee at its eighty-second session (7 April–2 May 2025).

** The following members of the Committee participated in the examination of the communication: Todd Buchwald, Jorge Contesse, Claude Heller, Erdogan Iscan, Peter Vedel Kessing, Liu Huawen, Maeda Naoko, Ana Racu, Abderrazak Rouwane and Bakhtiyar Tuzmukhamedov.



Factual background

2.1 Following the separation of his parents, the complainant continued to live with his father, who operated a food storage warehouse. In addition to running this business, his father was a guard for the Eritrean authorities¹ but had informed them that he no longer wished to perform that work on account of his age and state of health. This resulted in his imprisonment. The authorities also closed down the family business as punishment, which plunged the complainant and his family into extreme hardship.

2.2 To protest against the practices of the Eritrean authorities, the complainant – together with three friends whose fathers had also been arrested and imprisoned – wrote a letter. In it, they stated that there was no respect for the law and no justice in the country. They posted the letter in a public place overnight. Their identities were exposed, and two of them were arrested. The complainant and the third friend were able to evade the police and took refuge in the bush for several days before deciding to flee the country for Ethiopia on 20 November 2015. The complainant, who was then aged around 16 years, had to stop attending school in November 2015, during his tenth year of schooling.

2.3 From Ethiopia, the complainant continued his journey via the Sudan, Libya and Italy, where he stayed for around eight months before being granted permission to enter Switzerland as an unaccompanied minor asylum-seeker under the Dublin III Regulation.² The complainant entered Switzerland legally and applied for asylum on 8 February 2018. As his elder sister was present in Switzerland, the State Secretariat for Migration declared itself competent to examine his asylum application. The complainant was interviewed by the State Secretariat for Migration on 15 February and 6 June 2018. During the proceedings, he produced a registration card issued in the Sudan on 25 June 2016.

2.4 On 17 January 2020, the State Secretariat for Migration denied the complainant's asylum application on the basis that his claims were implausible. The State Secretariat noted contradictions in his account concerning key elements of his submission: he had initially stated that the family business had been closed down by the authorities because his father had refused to carry a weapon and work as a guard. The complainant claimed to have spoken with three lower secondary students facing the same situation about the possibility of organizing some kind of protest. At his second hearing, however, the complainant stated that his father had already been working for some time as an armed guard in town and had expressed his desire to stop that work, given that he was elderly and unwell, but that the authorities had not granted his request, had closed down his business twice and had ultimately arrested him on 1 or 5 November 2015. The complainant added that he and three friends had written an anonymous critical letter, which they had posted in public. When asked about these contradictions, the complainant offered no convincing explanation.

2.5 The State Secretariat for Migration then examined the complainant's claims that he feared being sent to perform military service in the event of arrest and that he had left his country illegally. Citing previous decisions, the State Secretariat recalled that fear of being punished for refusal to serve or desertion was well founded when a person had actually come into contact with the Eritrean military authorities, which had clearly not happened in this case. Furthermore, the State Secretariat referred to a coordination judgment by the Federal Administrative Court according to which it was highly unlikely that Eritrean nationals who had left their country illegally would be subjected to punishment that constituted serious harm within the meaning of the Asylum Act on the grounds of its severity and political motivation.³ The State Secretariat also noted that the complainant's file did not contain any other elements that were likely to cause the Eritrean authorities to view him as *persona non grata*.

¹ According to the complainant, his father still performs this work today.

² Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

³ Federal Administrative Court, judgment D-7898/2015, 30 January 2017.

2.6 The complainant filed an appeal and requested, among other things, partial legal aid⁴ and the appointment of a legal representative. In an interim ruling of 5 March 2020, the Federal Administrative Court first recalled that a party who does not have sufficient resources and whose submissions do not appear bound to fail from the outset is exempted from paying legal costs.⁵ The Court therefore carried out a summary examination of the facts and arguments presented, with a view to determining the likely outcome of the proceedings. In particular, it observed that the complainant's fear of being arrested and imprisoned simply for having co-authored an anonymous letter that was critical of the Eritrean authorities was mere supposition, based solely on information obtained from third parties, and did not appear to be supported by any concrete evidence or proof. In the Court's view, it seemed unlikely that the aforementioned letter had given rise to a search for the complainant and that such efforts were still ongoing, especially since his father had apparently been released from prison. Thus, following a prima facie examination of the complainant's arguments and the decision of the State Secretariat for Migration, the Court found that the claims set out in the appeal must be considered bound to fail from the outset and that the conditions for granting legal aid had thus not been met. It therefore asked the complainant to pay 750 Swiss francs (SwF) to cover legal costs.

2.7 On 19 March 2020, the complainant requested the Federal Administrative Court to review its decision of 5 March 2020 and to waive the required advance payment of costs, or, alternatively, to extend the deadline for payment. The complainant invoked a decision taken by the Committee in a case he considered to be similar to his own.⁶ In a judgment dated 30 March 2020, the Court ruled that the decision of the Committee that had been invoked did not represent a new element – given that it had been issued over a year earlier – or evidence that was likely to call into question the validity of the interim ruling of 5 March 2020. It therefore declared the complainant's appeal inadmissible on grounds of failure to pay the advance costs.

Complaint

3.1 The complainant claims that his deportation to Eritrea would constitute a violation of his rights under articles 3 and 16 of the Convention. He contends that he is at risk of being subjected to torture or to a situation amounting to cruel, inhuman and degrading treatment there for having criticized the Eritrean regime and left his country illegally while still of conscription age.

3.2 The complainant states that he has presented coherent, credible and consistent claims that he would be subjected to treatment prohibited under article 3 of the Convention, but that because of the requirement to pay advance costs – despite his proven indigence – he has been denied the right to an effective remedy, as the Federal Administrative Court did not carry out a thorough and diligent examination of his file.

3.3 Furthermore, the complainant evaded the Eritrean military authorities by illegally leaving the country when he was of conscription age – which he still is – and, for that reason, is at risk of punishment and detention in the event of deportation. Moreover, he would be conscripted into national service, where he would be subjected to forced labour and slavery. In addition, he draws the Committee's attention to the prevalence of gross and systematic human rights violations in Eritrea, in the light of which it is likely that he would face the risk of treatment contrary to article 3 of the Convention. The complainant criticizes the tightening

⁴ The complainant produced a certificate relating to his social assistance status, dated 17 February 2020, confirming that he has been fully dependent on social assistance since 19 February 2018, in a monthly amount of SwF 320.

⁵ Federal Act on Administrative Procedure, 20 December 1968, art. 65 (1): "Once the appeal is filed, a party who does not have sufficient resources and whose submissions do not appear to be bound to fail from the outset shall, at the party's request, be exempted by the appeal authority, its chair or the investigating judge from covering the legal costs."

⁶ *M.G. v. Switzerland* (CAT/C/65/D/811/2017 and CAT/C/65/D/811/2017/Corr.1).

of Swiss practice in relation to Eritrean asylum-seekers between 2016 and 2018 in the absence of reliable information that the country had undergone significant change.⁷

3.4 The complainant states that the fact that he evaded his obligation to perform military service and left the country without authorization makes him guilty of violating the National Service Act of 1995 and, consequently, an opponent of the regime.⁸ Upon his arrival in Eritrea, it is indisputable that he will be arrested, interrogated and punished for his actions.⁹ In addition, the complainant is at risk of being forced to perform military service for an indefinite period, during which he would be subjected to forced labour in violation of his fundamental rights. According to several human rights organizations, the human rights situation in Eritrea remains dire and is exacerbated by indefinite compulsory military service.¹⁰ The Eritrean authorities use lethal force against any person attempting to resist them, flee the army or leave the country clandestinely. Torture is commonly used during arrests or detentions, including against deserters.

3.5 The Human Rights Council commission of inquiry on human rights in Eritrea and the Office of the United Nations High Commissioner for Refugees (UNHCR) have documented the situation in the country and the treatment of returned asylum-seekers.¹¹ The Human Rights Committee also found a violation of article 7 of the International Covenant on Civil and Political Rights in the light of the failure of the State concerned to take due account of the fact that, because of his inability to prove that he had left Eritrea legally, the author of the communication was at risk of being designated as a failed asylum-seeker and a person who had not completed his military service requirement in Eritrea, and thus ran a real risk of being subjected to treatment contrary to the requirements of article 7.¹²

3.6 The complainant notes that the Swiss authorities did not call into question his illegal departure from the country but left the matter open. He points out that he has never held a passport, which he would have needed to leave his country legally. He also takes issue with the fact that, since 2016, the State Secretariat for Migration and the Federal Administrative Court no longer consider the mere fact of having left Eritrea illegally to be sufficient grounds for recognition of refugee status.¹³ According to the Court, the measures in question are insufficiently severe and lack political motivation. However, the complainant reiterates that he will be considered an opponent of the regime and suffer punishment because he left his country of origin illegally.

⁷ [A/HRC/38/50](#), paras. 27 and 98–100; and Swiss Refugee Council, “Analyse des durcissements de la pratique suisse à l’égard de requérant-e-s érythréen-ne-s”, 13 December 2018.

⁸ Eritrea, Proclamation on National Service, Act No. 82/1995, 23 October 1995; see also Office of the United Nations High Commissioner for Refugees (UNHCR), “UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea”, 20 April 2011, p. 11; Tanja R. Müller, “Bare life and the developmental state: implications of the militarisation of higher education in Eritrea”, *The Journal of Modern African Studies*, vol. 46, No. 1 (2018), pp. 111–131, at p. 115; and Human Rights Watch, *Service for Life: State Repression and Indefinite Conscription in Eritrea*, April 2009, p. 27.

⁹ Human Rights Watch, *Service for Life*, pp. 27–29, 68, 70, 72 and 74; Amnesty International, *Eritrea: 20 Years of Independence, but Still no Freedom*, May 2013, pp. 30 and 31; Gaim Kibreab, “The open-ended Eritrean national service: the driver of forced migration”, working paper for the European Asylum Support Office meeting on practical cooperation in Eritrea, held in Valletta, 15 and 16 October 2014, pp. 12–14; UNHCR, “UNHCR Eligibility Guidelines”, p. 11; and [A/HRC/26/45](#), paras. 44 and 45.

¹⁰ Human Rights Watch, *World Report 2015: Events of 2014*, 2015, pp. 218–222; Amnesty International, *Report 2014/15: The State of the World’s Human Rights*, 2015, pp. 172 and 173; and Swiss Refugee Council, *Analyse pays – Érythrée, mise à jour février 2010*.

¹¹ See the 2015 and 2016 conference room papers of the commission of inquiry on human rights in Eritrea, available on the commission’s webpage (www.ohchr.org/en/hr-bodies/hrc/co-i-eritrea/commissioninquiryonhrin-eritrea), especially p. 19 of the 2016 paper; and UNHCR, “UNHCR Eligibility Guidelines”, pp. 14, 33 and 34.

¹² *X v. Denmark* ([CCPR/C/110/D/2007/2010](#)), para. 9.3.

¹³ Federal Administrative Court, judgment D-7898/2015, 30 January 2017, para. 5.1.

State Party's observations on the merits

4.1 On 20 April 2021, the State Party submitted its observations on the merits, reiterating the arguments made by the Swiss asylum authorities. While it acknowledges that the human rights situation in Eritrea is a cause for concern in many respects, it argues that the overall situation is not sufficient to conclude that the complainant would be at risk of being subjected to torture on his return to Eritrea. It notes that, in the case of *M.O. v. Switzerland*, the European Court of Human Rights found that the general human rights situation in Eritrea did not prevent the interested party's removal per se.¹⁴

4.2 The State Party points out, with respect to internal practice regarding the processing of asylum applications from Eritrean nationals,¹⁵ that the Federal Administrative Court has found that refusal to serve and desertion are severely punished in Eritrea. However, such a fear is justified only if the person in question has already been in actual contact with the military or other authorities, insofar as such contact is a sign of forthcoming recruitment (for example, the receipt of a summons from the army). It is not enough for there to be merely a possibility that the person may receive a summons at some point in the future. Moreover, the fact that the person may have to do military service is not, in itself, decisive under the Asylum Act.¹⁶ The State Party adds that, 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 within the meaning of the Asylum Act. The Court has confirmed and explained this practice.¹⁷ In addition, the State Party explains that it is important to differentiate military service performed in the army from military service performed for a civilian employer or administration. It submits that the chances of being assigned to a civilian sector are significantly higher, as the vast majority of people perform their national service within the framework of the planned State economy.

4.3 The State Party submits that there has been no violation of the complainant's right to an effective remedy. It recalls that, under domestic law, the conditions for legal aid, namely that the complainant is indigent and that his or her claims do not appear to be bound to fail, are cumulative. In the present case, it is clear from the interim ruling of 5 March 2020 that the Federal Administrative Court found, after a prima facie examination of the case file, that the submissions set out in the appeal appeared to be bound to fail from the outset and that, consequently, the conditions for the provision of legal aid were not met. For this reason, it requested the complainant to pay advance costs of SwF 750.

4.4 In the State Party's view, this way of proceeding cannot in itself be contrary to article 3 of the Convention, since, according to the Committee's practice, the right to an effective remedy presupposes a plausible allegation calling into question the State Party's respect for this provision. However, an allegation can only be plausible if it is not bound to fail from the outset. In the case of allegations that are bound to fail from the outset and therefore cannot be described as plausible, article 3 does not guarantee access to an effective remedy, nor can it require that the interested party be granted legal aid in such cases. Furthermore, the authorities cannot determine whether the relevant condition has been met without a prima facie examination of the file.

4.5 The State Party argues that the present case differs from that of *M.G. v. Switzerland* in several respects. In the latter case, the hearings had taken place in a language other than the author's native language, despite the author's express request to the contrary, and the domestic authorities had based their reasoning on challenging the authenticity of the documents submitted by the author without any measures being taken to verify it. These circumstances do not apply in the present case. The complainant was able to express himself

¹⁴ European Court of Human Rights, *M.O. v. Switzerland*, application No. 41282/16, judgment, 20 June 2017, para. 70.

¹⁵ *M.G. v. Switzerland*, paras. 4.4–4.6.

¹⁶ See, for the Federal Administrative Court, judgment E-1218/2019, 16 April 2019, para. 3.2; judgment E-6507/2016, 24 June 2019, para. 6.4; judgment E-7046/2017, 26 July 2019, para. 7.1; and judgment D-7898/2015, 30 January 2017, para. 5.1, and references.

¹⁷ Federal Administrative Court, judgment E-5022/2017, 10 July 2018, para. 4.

in his native language and did not claim that there had been any shortcomings in the conduct of the hearings, nor did he include any documents of controversial authenticity in the file.

4.6 The State Party points out that, contrary to the complainant's assertion, the assessment of the plausibility of his statements made by the Federal Administrative Court in the prima facie examination of his appeal did not differ from that of the State Secretariat for Migration. On the contrary, the Court even referred explicitly to the State Secretariat's analysis in its interim ruling of 5 March 2020 and formulated additional arguments pointing to the implausibility of the complainant's statements. The State Party further notes that the complainant has a close relative who is a resident and has become a naturalized citizen of Switzerland. There is thus reason to believe that, if he had wanted the Court to rule on his appeal even though it had refused him legal aid, he could have obtained the necessary means, despite the fact that he himself was indigent.

4.7 The State Party notes that the complainant does not claim to have been subjected to torture or ill-treatment before leaving Eritrea. Furthermore, the complainant has provided no explanation – either in his appeal or in his communication to the Committee – that would call into question the Swiss authorities' assessment regarding the lack of credibility of his account. There is thus no reason to believe that the complainant would have attracted the attention of the Eritrean authorities before his departure from that country.

4.8 As regards the complainant's illegal departure, the State Party refers to recent sources indicating that Eritrean nationals who have been abroad for three years or more may regularize their status with the Eritrean authorities by paying the diaspora tax and, for those who have failed to honour their obligations to perform national service, by signing a letter of regret. These persons can then return to Eritrea and stay there temporarily under this status, and do not risk being exposed to sanctions solely on account of their illegal departure from Eritrea. As a general rule, after an uninterrupted stay in Eritrea of one to three years at most, these persons lose their diaspora status and are again subject to national service obligations, as well as those relating to leaving the country.¹⁸

4.9 According to the State Party, there is little current, accurate and factual information in respect of the treatment by the Eritrean authorities of persons returning to Eritrea after leaving the country illegally. Furthermore, the sources do not always distinguish explicitly between voluntary return and forced return. The State Party refers to the Norwegian Country of Origin Information Centre (Landinfo), which noted in December 2018 with regard to the Eritrean authorities' response to the illegal departure of Eritrean nationals from the country that none of the sources contacted within or outside Eritrea knew of anyone who had been punished for their illegal departure by being imprisoned or fined. According to Landinfo, it was the context of the illegal departure that could lead to reprisals upon return to Eritrea, and not the (illegal) departure itself.¹⁹ In the State Party's opinion, it is no longer the circumstances of the departure from Eritrea, but rather the profile of the person in question that is likely to be of interest to the Eritrean authorities.

4.10 As regards national service, the State Party notes that the complainant does not claim to have been called up for military service or to have been contacted by the authorities in this regard. In the State Party's view, the return of Eritrean nationals cannot automatically be considered contrary to the Convention whenever there is a possibility that the person concerned could be called up for national service. According to a reference judgment by the Federal Administrative Court, and in the light of the information available, it is scarcely possible to make a prediction about the risk of a returning Eritrean national's immediately

¹⁸ Landinfo, *Eritrea: Utreise*, 2 April 2019, available at <https://landinfo.no/land/eritrea/> (Norwegian only); Kingdom of the Netherlands, Ministry of Foreign Affairs, *Algemeen Ambtsbericht Eritrea*, 21 June 2018, sect. 6.4 (Dutch only); Swedish Migration Agency, *Lifosrapport: Eritrea. Familjemedlemmars kontakt med eritreanska beskickningar i utlandet*, 26 April 2018, sect. 5.2 (Swedish only); and Immigration and Refugee Board of Canada, "Eritrea: Situation of people returning to the country after they either spent time, claimed refugee status, or were seeking asylum abroad (July 2015–May 2017)", 14 June 2017.

¹⁹ Landinfo, *Eritrea: Utreise*, 19 December 2018, p. 5, available at <https://www.ecoi.net/de/dokument/1455787.html> (Norwegian only).

being assigned to strictly military national service, rather than to civilian service.²⁰ This also applies to people who have not completed basic military training owing to their young age when they left the country. Although the Court admits that ill-treatment is frequent in the context of national service – and more so in the military than in the civilian sector – it cannot be said to be systematic, in both the military and civilian sectors, to the extent that one would have to anticipate a real risk, for every Eritrean national returning to Eritrea, of being subjected to such treatment solely because they might be forced to perform national service.²¹

4.11 However, the State Party points out that Switzerland has not forcibly returned Eritrean nationals to Eritrea since the country's independence because Eritrea does not accept such measures in respect of its own nationals residing de facto in Switzerland. It is thus impossible, in the absence of a readmission agreement between the two States, for the complainant to be forcibly returned. If forced returns were to become possible again in the future, the complainant could request the domestic authorities to re-examine the risks to which he would be exposed by such a measure.

Complainant's comments on the State Party's observations

5.1 On 2 October 2024, the complainant submitted his comments, in which he contests the State Party's arguments and reiterates his allegations and claims. In support of his fears regarding his possible return to Eritrea, he refers to recent reports by the Special Rapporteur on the situation of human rights in Eritrea and the Swiss Refugee Council²² on the human rights situation in that country, particularly in relation to military service. In his view, Swiss practice with regard to Eritrean nationals has been tightened, without a notable change in the situation in Eritrea having been observed and objectively justifying this about-turn.

5.2 The complainant quotes the Special Rapporteur on the situation of human rights in Eritrea, who recognizes that merely deserting or evading military service results in the persons concerned being considered disloyal to Eritrea and regarded as traitors. Such persons face harsh punishments, such as prolonged arbitrary detention, torture and inhuman or degrading treatment.²³ Moreover, according to the Special Rapporteur, the circumstances under which Eritreans are forced to work as part of their national service amount to forced labour and slavery.²⁴

5.3 The complainant contends that, contrary to the State Party's assertions, his claims – at least as regards the risk of ill-treatment owing to the fact that he is an Eritrean national of military age who left Eritrea without authorization from the regime – are more than plausible. By pointing out that he could have sought help from his relatives in Switzerland, the State Party has acknowledged the precariousness of the complainant's financial situation. The Federal Administrative Court was thus obligated to undertake a thorough examination of his appeal in order to uphold his right to an effective remedy, as the Committee noted in the case of *M.G. v. Switzerland*.

5.4 As for the alleged lack of credibility, the complainant maintains that the issue at hand is not whether he is known to the Eritrean authorities, but whether he meets the criteria for military service in terms of his age and state of health. He points out that, in the most recent report of the European Asylum Support Office (EASO), it is clearly stated that the severe penalties for illegal departure apply even in the absence of prior contact with the Eritrean authorities,²⁵ which stands in contradiction with the Swiss practice in relation to Eritreans.

5.5 The question of what risk the complainant faces in the event of voluntary return does not arise, as he is opposed to returning to his country of origin because there is a risk, in the

²⁰ Federal Administrative Court, judgment E-5022/2017, 10 July 2018, para. 6.1.5.1.

²¹ Federal Administrative Court, judgment E-2076/2017, 22 November 2018, para. 4.3.7; and Federal Administrative Court, judgment E-5022/2017, 10 July 2018, paras. 5.2.1–5.2.3, 6.1.5.2 and 6.1.6.

²² [A/HRC/56/24](#), para. 2; and Swiss Refugee Council, "Factsheet Érythrée", September 2024, available at https://www.osar.ch/fileadmin/user_upload/Publikationen/Factsheets/240918_ERI_Factsheet_FR_web.pdf.

²³ [A/HRC/56/24](#), para. 33.

²⁴ *Ibid.*, para. 30.

²⁵ EASO, *Eritrea: National Service, Exit, and Return*, September 2019, p. 53.

light of his age, of his being conscripted into the Eritrean army. The complainant categorically refuses to submit to the obligation to perform military service because he considers that it would constitute forced labour.²⁶

5.6 The complainant is also opposed to signing a “letter of regret” and paying a 2 per cent tax²⁷ in order to enjoy the privileged status of “diaspora”. It is his view that if he signed this letter, he would implicitly acknowledge that he had committed an offence by leaving Eritrea and would accept any penalties that might be imposed on him for that reason. The EASO report of May 2015 on Eritrea states that the above-mentioned letter and 2 per cent tax provide no guarantee against punishment and that signing the letter of regret implies directly confessing to an offence and declaring a willingness to accept the relevant punishment.²⁸

5.7 Lastly, the complainant refers to the Committee’s jurisprudence on the possibility of draft evaders and those who have left the country illegally being subjected to torture on their return, and on the scarcity of available and reliable information on the extent of this risk,²⁹ to conclude that the mere fact of having deserted or failed to perform national service gives rise to a risk of torture.

Issues and proceedings before the Committee

Consideration of admissibility

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

6.2 In accordance with article 22 (5) (b) of the Convention, the Committee may not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the present case, the State Party has not contested that the complainant has exhausted all available domestic remedies, nor has it contested the admissibility of the complaint.

6.3 In the absence of any other obstacle to the admissibility of the present communication, the Committee proceeds with its consideration of the merits of the claims submitted by the complainant under articles 3 and 16 of the Convention.

Consideration of the merits

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

7.2 In the present case, the complainant submits that he has presented credible and coherent claims that he would be subjected to treatment prohibited under article 3 of the Convention if he was returned to Eritrea, but that because of the requirement to pay advance costs – despite his proven indigence – he has been denied the right to an effective remedy, as the Federal Administrative Court did not carry out a thorough and diligent examination of

²⁶ According to UNHCR, the absence of the possibility of refusing to serve on grounds of conscience is the basis of the need for international protection when the person concerned would be exposed to inhuman conditions while performing military service; see Guidelines on International Protection, No. 10 (HRC/GIP/13/10), para. 31.

²⁷ A 2 per cent tax on foreign income, known as the “diaspora tax”. The levying of this tax was strongly condemned by the Security Council in paragraph 10 of its resolution 2023 (2011) of 5 December 2011.

²⁸ EASO, *EASO Country of Origin Information Report: Eritrea Country Focus*, May 2015, p. 44. See also Upper Tribunal of the United Kingdom, *MST and Others (national service – risk categories) (CG)*, [2016] UKUT 443 (IAC), para. 334, in which the Tribunal held that there was no evidence to suggest that the letter of regret and the payment of the tax would enable draft evaders and deserters to reconcile with the Eritrean authorities.

²⁹ *Y v. Switzerland* (CAT/C/72/D/916/2019), para. 8.8.

his file. The State Party responds that not only did the Court's assessment of the plausibility of the complainant's grounds for appeal not differ from that of the State Secretariat for Migration, but the Court even formulated additional arguments pointing to the implausibility of the applicant's statements. The State Party also points out that the complainant has a close relative who is a resident and has become a naturalized citizen of Switzerland and that he could therefore have obtained the necessary means to pay the legal costs if he had wanted the Court to rule on his appeal.

7.3 The Committee recalls that the right to an effective remedy contained in article 3 of the Convention requires, in this context, an opportunity for effective, independent and impartial review of the decision to expel or remove, once that decision is made, when there is a plausible allegation that article 3 issues arise.³⁰ In the present case, the State Party did not give the complainant the opportunity to demonstrate the risks he would face in the event of forced return to Eritrea. The Federal Administrative Court only carried out an early and summary assessment of the complainant's arguments while questioning the veracity of his statements.

7.4 The Committee notes, however, that the State Party concedes that there is little current, accurate and factual information in respect of the treatment by the Eritrean authorities of persons returning to Eritrea after leaving the country illegally. Secondly, the State Party accepts the likelihood that the complainant would be required to perform military service in Eritrea but argues that it is impossible to say whether a returning Eritrean national would be assigned to strictly military national service, rather than to civilian service. However, the State Party admits that ill-treatment is frequent in the context of national service and more so in the military than in the civilian sector, although it cannot be described as systematic.

7.5 The Committee also notes the State Party's reference to sources which, it asserts, indicate that Eritrean nationals who have not performed their national service and who have been abroad for more than three years may regularize their status by paying a diaspora tax and signing a letter of regret. However, the Committee observes that the State Party has not considered the advisability of requiring the complainant to take either of these measures, in view of the Security Council's condemnation of the Eritrean Government's use of the "diaspora tax" on the Eritrean diaspora and its call on States to prevent the collection of this tax.³¹

7.6 In this regard, the Committee takes note of the 2018 report of the Special Rapporteur on the situation of human rights in Eritrea, which concludes that the overall human rights situation in Eritrea remains grim for, among other reasons, the following: the military/national service, which the commission of inquiry on human rights found reasonable grounds to believe constituted no less than the enslavement of a whole population, a crime against humanity, remains indefinite; torture and other inhumane acts continue to be committed; and detainees are especially vulnerable to human rights violations, including torture, as legal procedures and safeguards, such as access to family members, lawyers and doctors, are denied.³² Moreover, according to the 2024 report of the holder of the same mandate, the human rights situation in Eritrea continues to be dire.³³

7.7 In these circumstances, the Committee considers that the risks that the complainant would face in the event of forced return to Eritrea merited a more thorough examination than a simple summary assessment by the Federal Administrative Court. Thus, the requirement to pay legal costs when the State Party in fact admitted that the complainant was facing financial hardship denied him the opportunity to apply to have his appeal examined by the judges of the Court. In this regard, while the Committee recalls the State Party's statement that, under its legislation, an indigent complainant is eligible for legal aid only if his or her claims do not appear to be "bound to fail", it also recalls its concluding observations on the eighth report submitted by the State Party under article 19 of the Convention, in which it notes that nearly one third of the appeals filed without the assistance of a legal aid lawyer are ultimately

³⁰ *Agiza v. Sweden* (CAT/C/34/D/233/2003), para. 13.7.

³¹ Security Council resolution 2023 (2011), paras. 10 and 11.

³² A/HRC/38/50, para. 108 (b), (c) and (h).

³³ A/HRC/56/24, para. 2.

successful.³⁴ In the present case, therefore, on the strength of the information before it, the Committee concludes that the absence of an effective, independent and impartial review of the decision of the State Secretariat for Migration to deport the complainant constitutes a failure to meet the procedural obligation required by article 3 of the Convention.³⁵

7.8 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 without examination of his appeal against the decision of the State Secretariat for Migration would constitute a procedural breach of article 3 of the Convention. Having reached that conclusion, the Committee does not consider it necessary to examine the claim of a substantive violation of articles 3 and 16 of the Convention.

8. The Committee considers that the State Party is required by article 3 of the Convention to consider the complainant's appeal in the light of its obligations under the Convention and the present observations. The State Party is also requested to refrain from deporting the complainant while his application for asylum is being considered. Pursuant to rule 118 (5) of its rules of procedure, the Committee invites the State Party to inform it, within 90 days of the date of transmittal of the present decision, of the steps it has taken to respond to the above observations.

³⁴ [CAT/C/CHE/CO/8](#), para. 23.

³⁵ Committee against Torture, general comment No. 4 (2017), para. 13.