



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

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**Committee against Torture**

**Communication No. 432/2010**

**Decision adopted by the Committee at its forty-ninth session,  
29 October to 23 November 2012**

<i>Submitted by:</i>	H.K. (represented by counsel, T.H.)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	1 September 2010 (initial submission)
<i>Date of decision:</i>	23 November 2012
<i>Subject matter:</i>	Deportation of the complainant to Ethiopia
<i>Substantive issue:</i>	Risk of torture upon return to the country of origin
<i>Procedural issue:</i>	-
<i>Article of the Convention:</i>	3

## Annex

### **Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (forty-ninth session)**

concerning

#### **Communication No. 432/2010**

*Submitted by:* H.K. (represented by counsel, T.H.)  
*Alleged victim:* The complainant  
*State party:* Switzerland  
*Date of complaint:* 1 September 2010 (initial submission)

*The Committee against Torture*, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

*Meeting* on 23 November 2012,

*Having concluded* its consideration of complaint No. 432/2010, submitted to the Committee against Torture by H.K. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

*Having taken into account* all information made available to it by the complainant, her counsel and the State party,

*Adopts* the following:

#### **Decision under article 22, paragraph 7, of the Convention against Torture**

1.1 The complainant is H.K., a national of Ethiopia born on 28 July 1973. The complainant is an asylum seeker whose application for asylum was rejected; at the time of submission of the complaint, she was awaiting deportation to Ethiopia. She claims that her deportation to Ethiopia would constitute a violation by Switzerland of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainant is represented by counsel, T.H.

1.2 On 8 September 2010, under former rule 108, paragraph 1, of the Committee's rules of procedure,<sup>1</sup> the Committee requested the State party not to deport the complainant to Ethiopia while her complaint was under consideration by the Committee.

#### **The facts as presented by the complainant**

2.1 The complainant is originally from Addis Ababa, where she was working as a secretary for a coffee trade company. In December 2004, she became involved with the newly founded Coalition for Unity and Democracy movement (CUD, also known as

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<sup>1</sup> Rule 114, paragraph 1, of the current rules of procedure (CAT/C/3/Rev.5).

KINIJIT or CUDP). She started supporting the movement and helped to organize events and demonstrations. In May 2006, she was arrested by members of the Ethiopian military and imprisoned for one month.<sup>2</sup> After having suffered severe ill-treatment in custody, the complainant was released on bail. She was, however, still under surveillance by the Ethiopian authorities and feared being apprehended again. In June 2007, she was given an opportunity to attend a conference in Geneva as her employer's representative. The complainant seized the opportunity to be able to leave Ethiopia legally and applied for asylum in Switzerland for the first time on 25 June 2007.

2.2 The complainant submits that she continued her political activism in Switzerland. Since October 2007, she has been an active member of KINIJIT and currently holds a position as the cantonal representative of Lucerne for the KINIJIT Support Organization in Switzerland (KSOS), where she plays an active role in arranging meetings, encouraging new members and organizing demonstrations. Moreover, she often speaks at protest events and publishes critical comments and articles on the Internet. The complainant is also a member of the Association des Ethiopiens en Suisse (AES), which often organizes demonstrations against the Ethiopian authorities.

2.3 On 25 July 2007, the Federal Office for Migration decided not to pronounce itself on the merits of the complainant's asylum request and ordered her expulsion from Switzerland. Her appeal against this decision was rejected by the Federal Administrative Court on 11 December 2008.

2.4 On 24 April 2009, the complainant submitted a second asylum request, in which she indicated her political activities in Switzerland and submitted photographs, leaflets, articles written by her, comments added by her on discussion forums, a confirmation letter from KSOS, a letter from AES and a Human Rights Watch report as evidence. The Federal Office for Migration interviewed the complainant on 30 October 2009 and rejected her second asylum request on 12 November 2009. The Federal Office noted that the complainant had not been able to credibly demonstrate any politically motivated persecution by the Ethiopian authorities on the occasion of her first asylum procedure. There was, therefore, no reason to assume that she had been noticed by the Ethiopian authorities as a dissident prior to her departure or that she had been registered in any way as a regime critic or a political activist. Thus, in the opinion of the Federal Office for Migration, there was also no reason to assume that the complainant had been watched by the Ethiopian authorities after her arrival in Switzerland.

2.5 The Federal Office for Migration also held that the information provided by the complainant during the oral hearing of 30 October 2009 did not suggest that she held a prominent position within KSOS. Moreover, there were no indications that the Ethiopian authorities had noticed the complainant's membership in KSOS or had taken any detrimental measures against her. Furthermore, her activities for AES, an association that declares itself as politically independent and is mostly involved in cultural activities, were of a rather limited scope. The Federal Office for Migration considered as proven that the complainant was, like many of her compatriots, politically active in exile. The evidence submitted by her demonstrated, however – as in numerous other similarly documented asylum requests – that in Switzerland many activities of dissidents in exile take place for only a few months. Subsequently, group photographs that are often arranged and depict hundreds of people are published in the corresponding media. Even though the photographs submitted by the complainant depicted her holding a megaphone in the front row of

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<sup>2</sup> A copy of the document issued by the Addis Ababa City Administration Police Commission was submitted to the Committee by the complainant on 8 September 2010 and is available on file in the original language (Amharic) with an unofficial English translation.

demonstrators, this was not considered sufficient by the Federal Office for Migration to make her appear to be a potentially destabilizing regime critic. The Federal Office pointed out that she had not been the only protester to chant slogans and that her name was not indicated on the photographs published on the Internet. Thus, it could not be concluded that the complainant was more exposed than others.

2.6 As to the political articles published by the complainant on the Internet, the Federal Office for Migration held that in the light of the fact that hundreds of anti-Government articles were published on the Internet, it could not be concluded that she had attracted any particular attention of the Ethiopian authorities. Even if they were informed about the political activities of the nationals in exile, they would be in no position to monitor and identify every single person, considering the high number of Ethiopian nationals living abroad. Moreover, the Ethiopian authorities should be aware of the fact that many Ethiopian emigrants try, for mainly economic reasons, to gain a residence permit in Europe, and particularly in Switzerland, before or after the conclusion of their asylum procedures, therefore dedicating themselves to anti-Government activities, such as participation in demonstrations, publication of photographs and texts, etc.

2.7 The Federal Office for Migration concluded, therefore, that the Ethiopian authorities did not have an interest in singling out a particular person, unless his or her activities were perceived as a tangible threat to the political system. In the complainant's case, there were no indications to suggest that she was active or particularly exposed. The complainant definitely did not belong to the targeted group of hard-core dissident activists in exile who were of interest to the Ethiopian authorities.

2.8 The complainant's appeal against the decision of the Federal Office for Migration was rejected by the Federal Administrative Court on 6 August 2010. Following the latter judgement, the complainant was requested to leave Switzerland by 9 September 2010. The complainant submits that if she fails to leave voluntarily, she will be forcibly returned to Ethiopia.

2.9 In addition to the reasons given by the Federal Office for Migration for rejecting the complainant's second asylum request, the Federal Administrative Court found that the articles published on the Internet could not lead to an unambiguous identification of the complainant by the Ethiopian authorities. On the one hand, the five different signatures would not prove her original authorship. On the other hand, it could not be ruled out that a different person with the same name as the complainant was in fact the author of these articles.

2.10 Overall, the Federal Administrative Court concluded that the complainant did not leave an impression of being a high-profile and potentially destabilizing regime critic who would justify the Ethiopian secret service's interest in her. Thus, she would neither be at risk of political persecution nor of being subjected to torture or other inhumane and degrading treatment if she were returned to Ethiopia.

2.11 The complainant submits that, contrary to the assessment made by the Federal Administrative Court, she has a well-founded fear of having been perceived and registered as a dissident activist by the Ethiopian authorities and she would face a real risk of being subjected to treatment contrary to the Convention if she were deported to Ethiopia, for the following reasons:

(a) The Ethiopian Government is actively and closely monitoring the opposition movement,<sup>3</sup> both within Ethiopia and in exile. Following recently adopted anti-terrorism legislation, the crackdown on political dissidents by the Ethiopian authorities has intensified. A provision of the above-mentioned legislation establishes a penalty of 20 years' imprisonment for "whosoever writes, edits, prints, publishes, publicizes, disseminates, shows, makes to be heard any promotional statement encouraging, supporting or advancing terrorist acts",<sup>4</sup> and one analysis states that "the legislation conflated political opposition with terrorism".<sup>5</sup> The complainant also refers to an analysis by Human Rights Watch, which states that "government opponents and ordinary citizens alike face repression that discourages and punishes free expression and political activity".<sup>6</sup> Publications on the Internet critical of the Ethiopian authorities are of particular concern to the Government, as nationals turn more and more to the Internet for information. In support of her argument, the complainant refers to the Freedom House report "Freedom of the press 2009: Ethiopia", which states that the Ethiopian authorities monitored and blocked opposition websites and blogs, including news websites run by Ethiopians living abroad.

(b) There are numerous and unambiguous reports that the Ethiopian police is applying methods of torture against political opponents and critics.<sup>7</sup> Random arrests and lengthy pretrial detentions are common. Torture is often used to extract confessions and information. The complainant refers to a report by the Human Rights Watch<sup>8</sup> that documents the use of torture by police and military officials in both official and secret detention facilities across Ethiopia.

(c) The quality and content of the complainant's critical articles, in which she harshly criticizes the regime of the Prime Minister of Ethiopia, Meles Zenawi, are of a level that suggests that the Ethiopian authorities would have a vital interest in monitoring her. The complainant is a well-educated intellectual who eagerly follows current political developments. Moreover, she is well connected within the dissident movement in exile, a fact that is demonstrated by the publication of her articles on the well-known dissident website *cyberethiopia.com* and her long-standing membership in KSOS. In addition, the complainant actively engages in online discussions and comments on the other activists' entries. In the light of a well-documented crackdown on opponents in Ethiopia and the authorities' practice of systematically monitoring critical websites and actively trying to identify outspoken critics, it is highly probable that the complainant's identity is known to the Ethiopian secret service.

(d) As to the argument of the Federal Administrative Court that the complainant had not established that she had personally written the articles in question, the complainant submits that the Swiss asylum authorities are best positioned to know whether there is indeed another person of Ethiopian nationality called H.K. in Switzerland, who is active within the Ethiopian dissident movement and publishes articles under the name of H.K. (Switzerland). According to the complainant, this argument amounts to a rather unlikely

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<sup>3</sup> Reference is made to a report of the Committee to Protect Journalists, "Attacks on the press in 2008: Ethiopia", 10 February 2009; United States Department of State, 2009 Country Reports on Human Rights Practices: Ethiopia, 11 March 2010; "Ethiopia arrests 35 suspects in alleged coup plot", *Voice of America*, 26 April 2009.

<sup>4</sup> Reference is made to a report of the Committee to Protect Journalists, "Attacks on the press 2009: Ethiopia" (16 February 2010).

<sup>5</sup> *Ibid.*

<sup>6</sup> Reference is made to Human Rights Watch, *World Report 2009* (New York, 2009), p. 71.

<sup>7</sup> United States Department of State, 2009 Country Reports; Human Rights Watch, *World Report 2010* (New York, 2010), p. 120.

<sup>8</sup> "UK: Ethiopian 'assurances' no guarantee against torture", 17 September 2009.

speculation, since her current country of residence and her e-mail address have been mentioned in the articles, she has submitted an Ethiopian identification card to the Swiss asylum authorities and has thereby proved her identity. If the Ethiopian authorities are aware that a person with the name of H.K. publishes critical articles, it can be deduced that they would suspect the complainant of being that person if she were to be returned from Switzerland to Ethiopia.

### **The complaint**

3. The complainant claims that her forcible deportation to Ethiopia would amount to a violation by Switzerland of her rights under article 3 of the Convention, since she, as an active and outstanding member of the Ethiopian dissident community, risks being subjected to torture or other cruel and inhumane or degrading treatment by the Ethiopian authorities as a result of her political activities in Switzerland.

### **State party's observations on the merits**

4.1 On 24 February 2011, the State party submitted its observations on the merits. It recalls the facts of the complaint and notes the complainant's arguments before the Committee that she would run a personal, real and serious risk of being subjected to torture if returned to her country of origin, because of her political activities in Switzerland, especially those in which she had been engaged after the judgement of the Federal Administrative Court of 11 December 2008. She does not present any new elements that would call into question the decisions of the Swiss asylum authorities, which were made following a detailed examination of the case, but rather disputes the assessment of the facts and evidence by them. The State party maintains that the deportation of the complainant to Ethiopia would not constitute a violation of the Convention by Switzerland.

4.2 According to article 3 of the Convention, the States parties are prohibited from expelling, returning or extraditing a person to another State where there exist substantial grounds for believing that he or she would be subjected to torture. To determine the existence of such grounds, the competent authorities must take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.<sup>9</sup> The existence of gross, flagrant or mass violations of human rights is not in itself a sufficient basis for concluding that an individual might be subjected to torture upon his or her return to his or her country, and additional grounds must exist for the risk of torture to qualify under the meaning of article 3 as "foreseeable, real and personal".

4.3 Regarding the general human rights situation in Ethiopia, the State party submits that the elections in Ethiopia in May 2005 and August 2005 have strengthened the representation of opposition parties in Parliament. It recognizes that, although the Ethiopian Constitution explicitly recognizes human rights, there are many instances of arbitrary arrests and detentions, particularly of members of opposition parties. In addition, there is a lack of an independent judiciary. However, being a member or supporter of an opposition political party does not, in principle, lead to a risk of persecution. It is different for persons

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<sup>9</sup> The State party refers to the Committee's general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22 (*Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr.1), annex IX*), paras. 6 and 8, and the Committee's jurisprudence in communications No. 94/1997, *K.N. v. Switzerland*, Views adopted on 19 May 1998, para. 10.2, and No. 100/1997, *J.U.A. v. Switzerland*, Views adopted on 10 November 1998, paras. 6.3 and 6.5.

who hold a prominent position in an opposition political party.<sup>10</sup> In the light of the above information, the competent Swiss asylum authorities have adopted differentiated practices to determine the risk of persecution. Individuals who are suspected by the Ethiopian authorities to be members of the Oromo Liberation Front or the Ogaden National Liberation Front are considered at risk of persecution.

4.4 With regard to monitoring political activities in exile, the State party submits that according to the information available to it, the Ethiopian diplomatic or consular missions lack the personnel and structural resources to systematically monitor the political activities of opposition members in Switzerland. It is, therefore, not surprising that the Immigration and Refugee Board of Canada was unable to find any information proving that such observation indeed existed.<sup>11</sup> However, active and/or important members of the opposition, as well as activists of organizations who are campaigning for the use of violence, run the risk of being identified and registered and, therefore, of being persecuted if returned.

4.5 With reference to the Committee's general comment No. 1 (para. 8 (b)), the State party submits that torture or ill-treatment allegedly suffered by the complainant in the past is one of the elements that should be taken into account in assessing the risk of him or her being subjected to torture or ill-treatment if returned to the country of origin. In this regard, the State party recalls the complainant's claim that she had been ill-treated during her detention in May 2006. It adds, however, that this allegation was not substantiated by the complainant before the Swiss asylum authorities during the first asylum procedure and that the document issued by the Addis Ababa City Administration Police Commission which she had submitted to the Committee<sup>12</sup> does not change the previously made assessment. It is, therefore, not surprising that the complainant did not maintain this claim in her second asylum request of 24 April 2009. The State party is, however, astonished that the complainant raised this claim before the Committee without presenting supporting evidence.

4.6 As to the political activities in which the complainant engaged in her home country, the State party submits that during the first asylum procedure she mentioned, inter alia, that she was politically active in Ethiopia. Although the complainant claimed to be a member of KINIJIT, she could provide only superficial and vague information about the opposition group in question. One would expect, however, more specific knowledge from someone who, like the complainant, received a university education and claimed to be interested in the political life of his or her home country.

4.7 The State party further notes that the complainant left Ethiopia legally approximately a year after her detention. She arrived in Zurich on 4 June 2007 on a passport issued on 8 February 2007 upon her request and without encountering any difficulties, by a direct flight from Addis Ababa to attend a conference in Geneva as a representative of her employer. The complainant seems to have destroyed her passport after her arrival and spent about three weeks with her compatriots before finally applying for asylum on 25 June 2007. Such behaviour appears to be rather surprising in the light of the complainant's claimed political activities and her alleged persecution by the Ethiopian

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<sup>10</sup> The State party refers to the operational guidance note on Ethiopia published by the Home Office of the United Kingdom of Great Britain and Northern Ireland in March 2009, para. 3.7.9.

<sup>11</sup> Reference is made to the Immigration and Refugee Board of Canada, "Éthiopie : information sur l'existence d'éléments prouvant que des agents du gouvernement surveillent les manifestations hostiles à l'Éthiopie en Europe et en Amérique du Nord (2006-février 2007)", 13 March 2007.

<sup>12</sup> See footnote 2 above.

authorities. Furthermore, she presented the transport documents and referred to the conference only towards the end of her first asylum procedure.<sup>13</sup>

4.8 The State party submits that the assessment made by the Swiss asylum authorities during the complainant's first asylum procedure is not altered by the document confirming her detention<sup>14</sup> that was presented by the complainant to the Committee on 8 September 2010 and that had previously been examined by the Federal Administrative Court.<sup>15</sup> According to this document, the complainant had been *convicted*<sup>16</sup> by a federal court, whereas she did not mention the existence of such a conviction either before the Swiss asylum authorities or in her complaint to the Committee. The State party also notes that the document in question is contradictory, because the first paragraph states that the complainant is charged and, according to the second paragraph, she was sentenced to one month in prison. In the light of all these elements, the State party seriously questions the authenticity of the said document. It concludes by endorsing the conclusion of the Federal Administrative Court<sup>17</sup> that the complainant had no political profile prior to her departure from Ethiopia.

4.9 As to the complainant's political activities in Switzerland, the State party notes that the complainant claims to have participated in numerous demonstrations against the Ethiopian authorities, written articles and contributed to the cyberethiopia.com forum, as well as held positions within two political movements in exile. The State party notes that the Federal Office for Migration and the Federal Administrative Court made a detailed assessment of whether there was a risk for the complainant to be subjected to torture or to inhuman or degrading treatment on the account of her alleged activities if returned to Ethiopia. In relation to the complainant's claim of being a member of AES, the State party argues that according to the commercial registry, AES is a politically neutral organization which is involved exclusively in cultural activities. Therefore, the complainant is not at risk of being persecuted on account of her membership in that organization.

4.10 In relation to the complainant's claim of being the cantonal representative of Lucerne for KSOS, the State party notes that her role in this organization was the subject of the asylum interview by the Federal Office of Migration on 30 October 2009. After having been unable to describe her concrete role as the cantonal representative, the complainant finally admitted that there was no hierarchical structure in the canton of Lucerne. The State party adds that it is also apparent from the minutes of the interview that the role of the complainant in two events that she attended in 2009 was indistinguishable from that of many other participants. The complainant was also involved in raising money and participated in a meeting organized by the Zurich KINIJJIT/CUDP.

4.11 As to the articles allegedly published by the complainant on the Internet, the State party points out that they have also been the subject of a detailed assessment by the Federal Office for Migration and the Federal Administrative Court. The Federal Office for Migration took into account the explanations given by the complainant during the asylum interview and held that, given the number of comparable articles, the articles written by the complainant would not have attracted any particular attention of the Ethiopian authorities. The fact that she could provide only superficial and vague information about her political activities in Ethiopia during the first asylum procedure is yet another element that brings

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<sup>13</sup> Reference is made to the judgement of the Federal Administrative Court of 11 December 2008.

<sup>14</sup> See footnote 2 above.

<sup>15</sup> See footnote 13 above.

<sup>16</sup> Emphasis added by the State party.

<sup>17</sup> See footnote 13 above.

into further question the complainant's authorship of these articles, in addition to the reasons put forward by the Federal Administrative Court.<sup>18</sup>

4.12 The State party concludes that it is unlikely that the Ethiopian authorities have taken note of the complainant's recent activities. The Ethiopian authorities are focusing all their attention on individuals whose activities go beyond "the usual behaviour", or who exercise a particular function or activity that could pose a threat to the Ethiopian regime. However, the complainant did not present such a profile, be it political or otherwise, when she arrived in Switzerland and the State party deems it reasonable to exclude that she has subsequently developed such a profile. The State party maintains that the documents produced by the complainant do not show activity in Switzerland able to attract the attention of the Ethiopian authorities. The fact that the complainant is identified in photographs and video recordings is not sufficient to demonstrate a risk of persecution if returned.

4.13 In this regard, the State party maintains that numerous political demonstrations attended by the complainant's compatriots take place in Switzerland and in other countries, that photographs or video recordings showing sometimes hundreds of people are made publicly available by the relevant media and that it is unlikely that the Ethiopian authorities are able to identify each person, or that they even have knowledge of the affiliation of the complainant with the above-mentioned organizations.

4.14 The State party submits that there is no evidence that the Ethiopian authorities have opened criminal proceedings against the complainant or that they have adopted other measures against her. Accordingly, the Federal Office for Migration and the Federal Administrative Court did not deem convincing the complainant's claim that she has a function within the Ethiopian diaspora in Switzerland able to attract the attention of the Ethiopian authorities.<sup>19</sup> In other words, the complainant has not established that if returned to Ethiopia she would run a risk of ill-treatment because of her political activities in Switzerland.

4.15 The State party submits that, in the light of the above, there are no substantial grounds for fearing that the complainant's return to Ethiopia would expose her to a foreseeable, real and personal risk of torture, and invites the Committee to find that the return of the complainant to Ethiopia would not constitute a violation of the international obligations of Switzerland under article 3 of the Convention.

#### **The complainant's comments on the State party's observations**

5.1 On 5 May 2011, the complainant commented on the State party's observations. She notes that, according to recent reports, the Ethiopian authorities have increased their efforts to control the expression of dissent over the Internet<sup>20</sup> and that they indeed try to identify opposition activities by analysing photos and video recordings of demonstrations, at least within Ethiopia.<sup>21</sup> The complainant also refers to the worsening human rights situation in Ethiopia and to the authorities' efforts to restrict freedom of expression.<sup>22</sup> She submits that the State party did not address the reports cited in her complaint to the Committee that

<sup>18</sup> Reference is made to the judgement of the Federal Administrative Court of 6 August 2010.

<sup>19</sup> Reference is also made, inter alia, to communications No. 375/2009, *T.D. v. Switzerland*, decision adopted on 26 May 2011; No. 393/2009, *E.T. v. Switzerland*, decision adopted on 23 May 2012; and No. 414/2010, *N.T.W. v. Switzerland*, decision adopted on 16 May 2012.

<sup>20</sup> Reference is made to the United States Department of State, 2010 Country Reports on Human Rights Practices: Ethiopia, 8 April 2011, and Freedom House, *Freedom on the Net 2011*, pp. 132-140.

<sup>21</sup> United States Department of State, 2010 Country Reports.

<sup>22</sup> Reference is made to Reporters Without Borders, "Newspapers and journalists face threats and legal pressure", 21 March 2011; and Human Rights Watch, *One Hundred Ways of Putting Pressure: Violations of Freedom of Expression and Association in Ethiopia* (2010).

suggest that the Ethiopian authorities were indeed monitoring different forms of dissent very closely. The country of origin information request referred to by the State party<sup>23</sup> was published in early 2007 and it cannot, therefore, be considered a reliable source to refute her claim that she would be subjected to persecution on the account of her political activities if she were to be forcibly returned to Ethiopia.

5.2 The complainant notes that, according to the State party's asylum law, a new asylum request must contain evidence that incidents which *have occurred since the last asylum decision*<sup>24</sup> are relevant to the determination of a refugee status. The reasons for seeking asylum that have already been presented during the earlier asylum procedure may only be invoked through a request for revision, in which case new evidence substantiating these grounds must be presented. In this regard, she maintains her claims of having been imprisoned and severely ill-treated in May 2006. The complainant argues that, contrary to the State party's appreciation, it is not surprising that she did not make these claims on the occasion of the second asylum request. The Swiss asylum authorities did not deem this allegation credible when she presented it during the first asylum procedure and she could not present any new evidence substantiating her claims during the second asylum procedure. Filing a request for revision without being able to present new evidence would have been a futile and costly endeavour.

5.3 As to her political activities within Ethiopia, the complainant reiterates that she was a member of KINIJIT prior to her arrival in Switzerland. She submits that during the asylum interview in relation to the first asylum request, she had answered all questions about KINIJIT correctly but had not been asked to explain the organization's ambitions or structure in more detail. Furthermore, the interview lasted for only two hours, including interpretation into Amharic. She argues, therefore, that the alleged inability to provide information cannot be held against her. The complainant adds that she has never been asked by the Swiss asylum authorities whether or not she had been convicted. Furthermore, the translation of the document confirming her detention<sup>25</sup> was done by the complainant herself and she is not a professional translator.

5.4 In relation to her political activities in Switzerland, the complainant reiterates that she has been a member of KSOS since October 2007 and is a cantonal representative. She states that she has published many well-informed and critical articles against the regime of Meles Zenawi and regularly contributes to the blogs. In support of her claims the complainant submits copies of an article and eight blog entries that have been written by her since she submitted her complaint to the Committee.

5.5 The complainant notes that the State party essentially refers to the decision of the Federal Office for Migration and states that she is not likely to have been identified as a regime critic by the Ethiopian authorities. She argues, however, that this decision was taken in November 2009 and that since then she has become one of the most active members of the Ethiopian dissident movement in Switzerland. She has published several articles on the political developments in Ethiopia and takes a leading role in the course of demonstrations. The complainant concludes that, given the increased efforts of the Ethiopian authorities to control the expression of criticism, she would be at risk of being apprehended and detained upon her return to Ethiopia.

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<sup>23</sup> See footnote 11 above.

<sup>24</sup> Emphasis added by the complainant.

<sup>25</sup> See footnote 2 above.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

6.1 Before considering a claim contained 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, paragraph 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 The Committee recalls that, in accordance with article 22, paragraph 5 (b), of the Convention, it shall not consider any communications from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that in the instant case the State party has recognized that the complainant has exhausted all available domestic remedies. As the Committee finds no further obstacles to admissibility, it declares the communication admissible.

### *Consideration of the merits*

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

7.2 The issue before the Committee is whether the removal of the complainant to Ethiopia would violate the State party's obligation under article 3 of the Convention not to expel or to return (*refouler*) a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Ethiopia. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would return.

7.3 The Committee recalls its general comment No. 1, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being "highly probable" (para. 6), the Committee notes that the burden of proof generally falls on the complainant, who must present an arguable case that he or she faces a "foreseeable, real and personal" risk.<sup>26</sup> The Committee further recalls that in accordance with its general comment No. 1, it gives considerable weight to findings of fact that are made by organs of the State party concerned,<sup>27</sup> while at the same time it is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.

7.4 In assessing the risk of torture in the present case, the Committee notes the complainant's claims that she had been imprisoned and severely ill-treated by the Ethiopian military in May 2006. It further notes the State party's argument that this allegation was not

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<sup>26</sup> See, inter alia, communications No. 203/2002, *A.R. v. Netherlands*, decision adopted on 14 November 2003; and No. 258/2004, *Dadar v. Canada*, decision adopted on 23 November 2005.

<sup>27</sup> See, inter alia, communication No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May 2010, para.7.3.

substantiated by the complainant before the Swiss asylum authorities during her first asylum procedure and that it was not invoked by her in the second asylum request. The Committee also notes that the State questions the authenticity of the document confirming her detention that was allegedly issued by the Addis Ababa City Administration Police Commission. The Committee also takes note of the information furnished by the complainant on these points. It observes in this regard that she has not submitted any evidence supporting her claims of having been severely ill-treated by the Ethiopian military prior to her arrival in Switzerland or suggesting that the police or other authorities in Ethiopia have been looking for her since. The complainant has also not claimed either before the Swiss asylum authorities or in her complaint to the Committee that any charges have been brought against her under the anti-terrorism law or any other domestic law.

7.5 The Committee further notes the complainant's submissions about her involvement in the activities of KSOS and AES. It notes, in particular, that she claims to be one of the most active members of the Ethiopian dissident movement in Switzerland, regularly publishing critical articles against the Ethiopian authorities on the Internet and contributing to the opposition blogs. It also notes that the State party questions the complainant's authorship of the articles and blog entries in question. The Committee further notes the complainant's claim that the Ethiopian authorities use sophisticated technological means to monitor Ethiopian dissidents abroad, but observes that she has not elaborated on this claim or presented any evidence to support it. In the Committee's view, the complainant has failed to adduce sufficient evidence about the conduct of any political activity of such significance that would attract the interest of the Ethiopian authorities, nor has she submitted any other evidence to demonstrate that the authorities in her home country are looking for her or that she would face a personal risk of being tortured if returned to Ethiopia.

7.6 The Committee concludes accordingly that the information submitted by the complainant, including the unclear nature of her political activities in Ethiopia prior to her departure from that country and the low-level nature of her political activities in Switzerland, is insufficient to show that she would personally be exposed to a risk of being subjected to torture if returned to Ethiopia. The Committee is concerned at the many reports of human rights violations, including the use of torture in Ethiopia,<sup>28</sup> but recalls that for the purposes of article 3 of the Convention the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he or she is returned. In the light of the foregoing, the Committee deems that such a risk has not been established.

8. In the light of the above, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the decision of the State party to return the complainant to Ethiopia would not constitute a violation of article 3 of the Convention.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

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<sup>28</sup> The Committee notes that Ethiopia is also a State party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and recalls its 2011 concluding observations (CAT/C/ETH/CO/1), paras. 10-14.