



Convention on the Elimination of All Forms of Discrimination against Women

Distr.: General
13 March 2024

Original: English

Committee on the Elimination of Discrimination against Women

Decision adopted by the Committee under article 4 (2) (c) of the Optional Protocol, concerning communication No. 165/2021^{*,**}

<i>Communication submitted by:</i>	S.T.H. (represented by counsel, Stephanie Motz and Lea Hungerbühler)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Switzerland
<i>Date of communication:</i>	20 January 2021
<i>References:</i>	Transmitted to the State party on 22 January 2020 (not issued in document form)
<i>Date of adoption of decision:</i>	16 February 2024

1.1 The communication is submitted by S.T.H., a national of Ethiopia and Eritrea¹ born in 1988. The author claims that her deportation from Switzerland to Ethiopia would violate her rights under articles 2 (b)–(g), 3, 5, 6 and 11 of the Convention on the Elimination of All Forms of Discrimination against Women, owing to the risk that she would face of being subjected to grave gender-based sexual violence and discrimination upon her return to Ethiopia, a risk that has not been substantively assessed by the Swiss authorities, resulting in arbitrary and procedurally unfair decisions. The Convention and the Optional Protocol thereto entered into force for the State party on 26 April 1997 and 29 December 2008, respectively. The author is represented by counsel, Stephanie Motz and Lea Hungerbühler.

* Adopted by the Committee at its eighty-seventh session (29 January–16 February 2024).

** The following members of the Committee participated in the examination of the present communication: Brenda Akia, Hiroko Akizuki, Marion Bethel, Leticia Bonifaz Alfonso, Rangita de Silva de Alwis, Corinne Dettmeijer-Vermeulen, Esther Eghobamien-Mshelia, Hilary Gbedemah, Yamila González Ferrer, Dalia Leinarte, Rosario G. Manalo, Marianne Mikko, Maya Morsy, Ana Peláez Narváez, Bandana Rana, Rhoda Reddock and Elgun Safarov.

¹ The Swiss authorities questioned whether she was a national of Eritrea too, because her birth has never been reported to the Eritrean authorities.



1.2 On 22 January 2021, the Committee, acting through its Working Group on Communications under the Optional Protocol, requested the State party to refrain from deporting the author to Ethiopia pending consideration of her case by the Committee, pursuant to article 5 (1) of the Optional Protocol and rule 63 of the Committee's rules of procedure. On 28 January 2021, the State party informed the Committee that it had requested the competent authority not to take any steps to remove the author while her communication was under consideration by the Committee.

Facts as submitted by the author

2.1 The author was born in Gimbi, Ethiopia, to a mother of Ethiopian nationality and a father of Eritrean nationality. For the first years of her life, except for a short period spent in Addis Ababa, she lived in Gimbi with her mother. After she turned 8 years old, she lived with her uncle in Addis Ababa, where she continued in the third grade at school. In 1998, the author, along with her mother and brother, followed her father to Assab, Eritrea. Her brother was drafted into the Eritrean military and was later killed while in service. Fearing that the same would happen to the author, she returned to Ethiopia with her mother. She continued her schooling in Addis Ababa and, in 2008, became a nurse. From 2009 to 2010, she worked as a nurse in the Ras Desta Hospital. She quit that job in order to support her mother, who worked in Gimbi.

2.2 Two of the author's maternal uncles are well-known members of the Oromo Liberation Front.² As a result, the author and her mother have been suspected of supporting it. They were first taken into police custody in 2012 and were questioned separately about the author's two maternal uncles for about two hours at the police station in Gulele. The author was asked about the reasons for which she had gone to Assab and why she had returned. She was also questioned about her father's relationship with the Oromo Liberation Front. The author was taken into police custody and questioned about the Front another three times (twice in Gimbi and once in Addis Ababa). On the last occasion, the officers beat her mother, causing bleeding, as she did not answer the questions, and the author was also hit because she started to cry. The author was told by one of the police officers that she would have no problems if she began a relationship with him. As she refused and did not provide the answers that the police officers were hoping for, she was heavily insulted and beaten by the police officers with the butts of their pistols. Finally, she and her mother were released, but she could not go out alone without being constantly stopped and harassed by the police on the streets.

2.3 After these incidents, the author decided to flee the country with the help of her mother and a smuggler. She arrived in Switzerland on 25 July 2012 and, on the same day, asked for asylum. Soon after, on 7 August, her first interview took place, led by a male interviewer. On 5 May 2014, the second hearing was conducted – notably, by women only. On 2 July 2015, the State Secretariat for Migration rejected her asylum request, claiming that she was not able to establish a credible fear of persecution and referring specifically to minor discrepancies between her statements in the first and second interviews. Her appeal was rejected by the Federal Administrative Court on 20 August 2015 for the same reasons.

2.4 In April 2016, the author managed to obtain several important documents, namely, an Ethiopian identity card, a birth certificate, a certificate of baptism, four summons orders and a copy of a letter from the Oromo Liberation Front regarding the membership of her mother's brothers in the party. She submitted these documents to the Federal Administrative Court on 3 May 2016, by way of a request for revision of

² The Oromo Liberation Front has been considered a terrorist organization in Ethiopia, and its members and their families have consequently been prosecuted and persecuted.

the previous decision by the Court. The Court, however, dismissed the request, arguing that the deadline for the submission of new documents had passed, since the relevant date remained the date of receipt of the documents and not the date of translation of the documents. On 31 August 2016, the author submitted yet another request for reconsideration on the basis of court summons inviting her mother to provide information about her daughter. Her mother was also arrested, and paid a bond to be released. Her mother could not attend the court hearing since she became severely ill and had to be hospitalized in the summer of 2016; she later died.

2.5 On 2 November 2020, the author was taken into administrative detention. On 17 November, the authorities tried to deport her to Ethiopia, which she resisted for fear of gender-based persecution and violence in Ethiopia. Owing to the developments in Ethiopia at the time and the imminent risk of deportation, she submitted a request for reconsideration to the State Secretariat for Migration on 4 December 2020. On 18 December, her request was rejected. On 11 January 2021, the Federal Administrative Court suspended the execution of the deportation order, but this was withdrawn two days later with the Court arguing that the author's appeal had no prospect for success. On 13 January 2021, the Court lifted the suspension of the execution of the removal order to Ethiopia. Therefore, there is no effective remedy that could prevent the author's imminent forced removal before the delivery of the final judgment.

2.6 The author was in custody at the time of submission of the communication to the Committee, expecting to be forcibly removed from Switzerland on 27 January 2021 on a level 4 special flight, during which she would be fully shackled and immobilized and accompanied by two police officers.

Complaint

3.1 The author claims violation of her rights under articles 2 (b)–(g), 3, 5, 6 and 11 of the Convention. She claims that, owing to her ethnicity (Tigrinya), the origin of her father (Eritrea), the well-known political views and activities of her uncles (Oromo Liberation Front), her lack of a family, social or economic network in Ethiopia and the growing crisis in Ethiopia, with reports of ethnically targeted war crimes, including systematic rape of women, she would be at immense and imminent risk of sexual or gender-based violence if returned to Ethiopia.

3.2 With regard to the Swiss authorities' failures in assessing her asylum request, the author argues that the authorities failed to apply a gender-sensitive approach in her first interview, which prevented her from talking openly about her experiences with the local police and her fears upon removal to Ethiopia. The fact that the State Secretariat for Migration decided to have only female representatives present in the second interview shows that there was a need for a gender-sensitive hearing. Although she was able to slowly open up and talk about the beatings and insults that she experienced at the hands of the police, some minor discrepancies in her statements made during the first and second interviews were held against her, which resulted in the denial of her asylum request. In addition, the Federal Administrative Court, in its latest decision, merely relied on the assumptions of the State Secretariat and failed to conduct an individualized assessment of the author's situation. According to these assumptions, the enforcement of removal to Ethiopia, except to the Tigray region, is considered a reasonable option in general by the Court. The author argues, however, that since the conflict, which is of a political and ethnic nature, goes beyond the Tigray region, the author is therefore at particular risk because of her ethnicity, her origin and her links to the Oromo Liberation Front. With regard to the question of whether the author's removal as a single woman is reasonable these days, the Court, in its decision to lift the interim measures granted two days before, relied on the

considerations of its decision five years ago, which, again, was to a large extent based on the first interview.

3.3 It is submitted that it would be impossible for the author, as a single woman without any family members in Ethiopia – given the death of her brother and mother as well as the disappearance of her father in Eritrea –to reintegrate after leaving the country nearly nine years ago. The only potential surviving family members are her uncles, who are closely affiliated with the Oromo Liberation Front.

3.4 The situation is specifically difficult for female returnees as they usually have no financial means and struggle even more than men to reintegrate economically. Owing to the fact that the Ethiopian social security system does not foresee any benefits for a person such as the author upon return, she would be left on the streets with no means whatsoever to make a living. Such a lack of a social and economic network in Ethiopia would then force her into prostitution.

3.5 In addition, until her mother died in 2016, it is known that the authorities tried to get hold of the author because of a suspicion that she (and/or her family members) were connected with the Oromo Liberation Front (political persecution). Especially during the current violent crisis in the country, political enemies are being observed. Given the author’s history, there is a high probability that she would be exposed again to grave ill-treatment. Owing to the fact that she fled the country and stayed abroad for more than eight years and will be returned by a special flight, it is likely that the authorities will be even more suspicious. The situation for women in detention and under arrest is particularly dangerous, as they regularly become victims of sexual violence in custody.

3.6 Furthermore, persons in Ethiopia, especially vulnerable persons such as single women, face particular risks due to the ongoing civil war. Even though the author did not live in the mostly affected Tigray region, her Tigrinya ethnicity, her (and her family members’) assumed political views as well as the lack of a social network render her particularly vulnerable to attacks.

3.7 Lastly, the special arrangements for her deportation (level 4 deportation) have been heavily criticized by civil society, as well as by international bodies such as the Committee against Torture. Moreover, such treatment of vulnerable and/or traumatized persons – having them shackled for hours, transporting them in wheelchairs and physically restrained and forcing them to wear helmets to control the position of their heads – can only be qualified as inhuman treatment. While these measures must have been put in place in order to keep some returnees who are criminals under control, they were definitely not foreseen to be applied to a young, innocent and non-violent woman who is afraid of returning to her country of origin for valid reasons.

State party’s observations on admissibility and the merits

4.1 On 20 September 2021, the State party submitted its observations on the admissibility and merits of the communication. The State party first recalled the facts of the case in detail. The State party noted that the State Secretariat for Migration, by its decision of 18 December 2020, classified the author’s request as a request for review under article 111 (b) of the Asylum Act (claiming a subsequent change in the situation with regard to obstacles to enforcement) and not as a multiple request under article 111 (c) of the Asylum Act. It rejected the request for reconsideration and found that the decision of 2 July 2015 had become *res judicata* and was enforceable. It also decided that any appeal would not have suspensive effect (see annex B6.2 to the communication). Article 111 (b) (3) of the Asylum Act provides that the submission of a request for review does not suspend the execution of the removal order. The authority responsible for processing the application may, upon request, grant

suspensive effect if the applicant is in danger in his or her State of origin or provenance.

4.2 The State party further submits that, on 8 January 2021, the author lodged an appeal with the Federal Administrative Court against the decision, requesting a stay of removal. By decision of 11 January 2021, the Court suspended execution of the removal on the basis of article 56 of the Federal Law on Administrative Procedure of 20 December 1968. In its decision of 13 January 2021, the Court annulled the suspension of enforcement of removal and rejected the request for provisional measures. It justified that decision on the grounds that the appeal had no prospect of succeeding. In these circumstances, the public interest in enforcing the decision of the State Secretariat for Migration, which had become *res judicata*, outweighed the author's interest in being able to await the outcome of the proceedings in the State party. Lastly, the Court asked the author to pay an advance of 1,500 Swiss francs in costs up to 28 January 2020.

4.3 Insofar as the author alleges that the cantonal authorities put pressure on the Federal Administrative Court to lift the suspension of the enforcement of removal and that the Court gave way to this pressure, the State party emphasizes that the allegation is unsubstantiated and does not correspond to reality. In her communication to the Committee, the author did not provide any information that might call into question the decisions of the national asylum authorities. On 22 January 2021, following the Committee's request, the Court suspended the enforcement of the removal order. In its ruling of 5 February 2021, the Federal Administrative Court did not rule on the appeal, which it considered to be manifestly unfounded, since the author had not paid the advance on costs. In that ruling, the Court asked the State Secretariat for Migration, for reasons of jurisdiction, to take the measures necessary to suspend the enforcement of the removal order, and asked the cantonal authorities to refrain from enforcing the removal order until the State Secretariat had given instructions on how to proceed.

4.4 The State party submits that the author's claims that her first interview by the Swiss authorities was not conducted with a gender-sensitive approach and that the authorities had not conducted an individualized risk assessment, in violation of her rights under articles 2 (e) and (f) and 3 of the Convention, had not been invoked by the author during the ordinary asylum procedure or in her applications for review or reconsideration of the decision of the State Secretariat for Migration of 2 July 2015 or the judgment of the Federal Administrative Court of 20 August 2015 (her appeals of 29 July 2015 and 8 January 2021). For this reason, the State party maintains that the communication is inadmissible for failure to exhaust domestic remedies.

4.5 The State party also emphasizes that the author had not raised with the national authorities the complaint that her removal by special flight (a level 4 measure) was contrary to the prohibition of inhuman or degrading treatment and gender-based violence, invoking articles 2 and 3 of the Convention. Consequently, the State party invites the Committee to declare that in this regard the communication is also inadmissible for failure to exhaust domestic remedies.

4.6 Furthermore, with regard to the new allegation that the author had been harassed by a police officer, the State party notes that the author did not mention this point during the ordinary asylum procedure. In view of the non-exhaustion of remedies, it invites the Committee not to take this allegation into consideration. Lastly, with regard to the death of the mother, it should be noted that the author did not mention this point during the review proceedings before the domestic authorities. In her request for reconsideration of 3 December 2020, she argued only that she no longer had any contact with members of her family.

4.7 The State party further argues that the author's complaint that the Swiss authorities failed to conduct a gender-sensitive hearing and an individualized risk assessment, in violation of her rights under articles 2 (e) and (f) and 3 of the Convention, is also manifestly ill-founded and not sufficiently substantiated. The author's first hearing concerned personal data. It was conducted by a man, assisted by a female interpreter, approximately two weeks after the asylum application was submitted. As a rule, any gender-specific arguments are not yet known at this point. Moreover, the author did not raise any gender-specific arguments at the first hearing. Nor did she raise any such arguments at the second hearing, which was conducted by a woman. The interpreter at the second hearing was also a woman. The author was able to express herself fully during the asylum procedure. Neither during the hearing nor later did she claim that she had not been able to express herself freely during the two hearings or that the behaviour of the persons involved had been open to criticism. In that connection, the State party points out that the author had confirmed the accuracy of the minutes of the two hearings by signing them and had stated that she had understood the interpreter well.

4.8 Insofar as the author claims that she was unable to speak openly at the first hearing conducted by a man and that the discrepancies between the first and second hearings are due to this fact, the State party stresses that the contradictions found by the national asylum authorities relate to the number of transfers to the police station and hearings by the police and not to gender-specific arguments. These contradictions cannot be explained by the fact that the first hearing was conducted by a man. In addition, the Swiss asylum authorities carried out an individualized assessment of the risk to which the author would be exposed if returned to Ethiopia and took into consideration the arguments put forward by the author as well as the general situation in Ethiopia. As regards the author's identity and housing situation in Addis Ababa, the competent authority carried out on-the-spot checks through the Swiss representation in Addis Ababa.

4.9 The author alleges that there is a real and personal risk that she will be confronted with inhuman and degrading living conditions, as well as sexual violence and forced prostitution, if returned to Ethiopia. However, she fails to demonstrate the existence of such a real and personal risk. These are mere allegations, and the reports relied on by the author are general documents that do not concern her in particular. In addition, the author does not respond to the considerations of the internal authorities to the effect that favourable individual factors exist in her case, in particular school and vocational training as well as professional experience. The State party thus considers that the author has not sufficiently substantiated how, for the purposes of admissibility, the asylum procedure led to discrimination on the grounds of gender. There are no grounds for concluding that the Swiss asylum authorities did not carry out a sufficiently thorough examination of the author's asylum application or that the examination of her application, as a woman seeking asylum, could be vitiated by procedural defects.

4.10 As to the author's allegations that her removal by special flight (a level 4 measure) would be contrary to the prohibition of inhuman or degrading treatment and gender-based violence and that the authorities failed to apply a gender-sensitive approach, the State party submits that, in addition to being inadmissible for failure to exhaust domestic remedies, this complaint is also manifestly ill-founded and not sufficiently substantiated. The author relies primarily on the prohibition of inhuman or degrading treatment (art. 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984) and this does not demonstrate that removal by special flight would, in itself, constitute discrimination on the grounds of gender.

4.11 The author's allegations that special flights are organized only for multiple offenders who have been violent towards other people and that the authorities have treated her as a delinquent, violent and very dangerous person are unfounded. In fact, the State Secretariat for Migration organizes a special flight when repatriation by scheduled flight proves impossible. In this case, it is clear from the file that the author refused to board a scheduled flight that had been planned for her return. In these circumstances, a special flight was planned. There was no indication that the competent authorities had treated the author as a delinquent and that the organization of a special flight had resulted in gender discrimination. The two escort officers assigned to the author for the special flight were women. The response officers assigned to the special flight were one woman and one man. The State party authorities' approach was therefore gender-sensitive. The State party considers that the author has not sufficiently substantiated how, for the purposes of admissibility, the return by special flight would have resulted in discrimination on the grounds of gender and hence a violation of the Convention.

4.12 The State party submits that the author essentially contests the way in which the asylum authorities assessed the factual elements of her asylum application and concluded that she could not be granted asylum. It considers that the national authorities gave a full and precise response to all her allegations during the ordinary asylum procedure. They found the allegations of persecution to be inadmissible owing to contradictions and a lack of substance (e.g. general or vague statements), as well as unsubstantiated. In particular, the allegations that the whole family was suspected of supporting the Oromo Liberation Front or that the author was taken to the police station several times and beaten by the police have not been credibly demonstrated. It should also be pointed out that the author left Ethiopia legally by aeroplane using her passport, which speaks against the existence of a relevant asylum or human rights threat situation at the time of departure.

4.13 In addition, the author repeats before the Committee the allegations that she has already made during the extraordinary asylum procedures in 2016. In this regard, the State party refers to the Federal Administrative Court judgment of 16 June 2016. It also points out that the author did not appeal to the Court against the decision of the State Secretariat for Migration of 5 September 2016. In both proceedings, the authorities – although they did not enter into the matter – examined the question of a possible clear threat of violation of international rights and replied in the negative.

4.14 As regards the alleged persecution, the State party notes that it does not fall within the scope of the Convention. The author herself argues that it was political persecution – because of her uncles' alleged membership of the Oromo Liberation Front – and not persecution directed against her because she is a woman.

4.15 Moreover, the author alleged that, as an Eritrean national, she risked being sent back from Ethiopia to Eritrea (chain refoulement). The State party considers that no such risk had been demonstrated and points out that the author is unquestionably of Ethiopian nationality. The State Secretariat for Migration considered that her alleged Eritrean nationality – stemming from the fact that her father had been an Eritrean national – had not been demonstrated and was not credible, since the author had neither sought to acquire Eritrean citizenship nor succeeded in describing the concrete steps involved in acquiring it.

4.16 The State party considers the author's arguments that, as a single woman, she would no longer be able to integrate in Ethiopia and that she would have to live on the streets and work as a prostitute as mere allegations, which were not corroborated by any specific evidence. According to the author, before her departure she had lived alone in Addis Ababa. She has a good school education, vocational training and work experience as a nurse. In addition, she had studied fashion design in Switzerland. In

addition, she does not allege that she was a victim of trafficking in persons as a woman or of exploitation in prostitution. There is nothing to suggest that she cannot find work as a nurse. Lastly, the author did not explain how article 11 of the Convention was applicable to her case. She did not allege that she had been a victim of discrimination in the field of employment. With regard to the reports referred to by the author, the State party points out that they were documents of a general scope, which did not concern her in particular.

4.17 The author lived in Switzerland for eight years and five months. She allegedly no longer has any contact with family members or friends in Ethiopia. She alleges that, since her mother's death in 2016, she has had no social network or contacts and that she has no contact person in Ethiopia. She claimed that her referees had cut off contact with her because of her political persecution. The State party considers that the latter argument was not convincing because her allegations during the asylum proceedings had not been credible. As regards the death of her mother, the author did not present any evidence on this matter and this allegation is based solely on her statements. Moreover, the author did not refer to her mother's death during the review proceedings before the domestic authorities. In her application for review of 3 December 2020, she merely argued that she no longer had any contact with members of her family. In 2019, she told the cantonal migration authority that her mother had died two years earlier (in 2017), which does not tally with the version that she gave in the communication, according to which her mother had died in 2016. Lastly, the author's allegations during the ordinary asylum procedure concerning the circumstances of her life in Addis Ababa could not be verified or confirmed during an investigation by the Swiss representation in Ethiopia.

4.18 In the State party's view, the author's allegations that she had no social network in Ethiopia could legitimately be called into question. On the one hand, these are mere allegations that are general in nature and unsubstantiated.³ On the other hand, it is established that the author had contact with members of her family and friends in Ethiopia, at least until 2016. The author has lived in Ethiopia, in Addis Ababa, for a large part of her life, including for 10 years of schooling, vocational training and professional and private activities. It can be assumed that she has created a network of social contacts that goes beyond the family and on which she can still rely.

4.19 The State party notes that the domestic authorities took account of the general situation in Ethiopia. It points out that the author has no connection with the Tigray region. She comes from Gimbi, Wolega zone, which is in the Oromiya Region, and then lived in Addis Ababa. With regard to the reports cited by the author, the State party points out that these were documents of general scope, which did not concern the author in particular. The Federal Administrative Court takes the situation of single women into account and acknowledges that the socioeconomic situation of single women in Ethiopia is difficult. It requires favourable circumstances to be present in order for the removal to be enforceable (including a social network of relations, secondary education, professional experience and residence in a city). These favourable circumstances are intended to ensure that the single women will not be faced with a situation that threatens their existence once they return to Ethiopia.

4.20 The State party also emphasizes that the human rights situation in Ethiopia has improved. In its recent decision on *T.K.T. v. Switzerland* (CAT/C/71/D/866/2018), of July 2021, the Committee against Torture noted that there had been improvements in the human rights situation in Ethiopia since 2018, including the release of political detainees, the decriminalization of opposition movements and amnesties in Ethiopia for exiled opposition members, journalists and media organizations. The Committee against Torture concluded in that case that the author, a woman claiming political

³ See *H.D. v. Denmark* (CEDAW/C/70/D/76/2014), para. 7.11.

persecution, had not demonstrated the existence of a real, foreseeable and personal risk of being subjected to torture if returned to Ethiopia and that her return would not constitute a violation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

4.21 Overall, in the present communication, the author fails to demonstrate to what extent her removal to Ethiopia would constitute discrimination within the meaning of the Convention. Moreover, she fails to put forward sufficient evidence to support her fear of being subjected to a concrete danger of gender-based persecution or inhuman treatment if returned to Ethiopia. In particular, the persecution invoked by the author is politically motivated. Moreover, there was no indication that the author would face a situation in Ethiopia that would make her removal unenforceable.

4.22 As regards the complaint of a violation of article 5 of the Convention, the State party notes that the author had not given any reasons for her complaint. In these circumstances, the State party considers that the author had not sufficiently substantiated, for the purposes of admissibility, the argument that her return to Ethiopia would expose her to a real, personal and foreseeable risk of suffering serious forms of gender-based violence. Nor has she shown that the assessment made by the national authorities was biased or based on prejudicial gender stereotypes that discriminate against women, was manifestly arbitrary or amounted to a denial of justice.

4.23 The State party considers that, in substance, the author's claims are aimed at challenging the way in which the authorities assessed the circumstances of her case, applied the provisions of legislation and reached conclusions. The Swiss authorities concluded that the author's version of events lacked credibility and was not sufficiently substantiated. No other conclusion can be drawn on the basis of the limited information provided by the author in support of her communication. In view of the foregoing, the State party invites the Committee to declare the communication inadmissible for lack of substantiation, under article 4 (2) (c) of the Optional Protocol.

4.24 The State party's comments on the merits of the author's complaint are therefore subsidiary. The State party is of the view that it has not violated the Convention, for the reasons set out below. Regarding articles 2 and 3 of the Convention, the State party maintains that, in the present case, the authorities have examined the author's asylum application in a manner consistent with the State party's obligations under the Convention, as there was an individualized assessment of her situation and the arguments that she presented were considered by the national authorities. The State party stresses that a special arrangement was made for her deportation because the author refused to board a flight. In addition, the State party took into consideration that the author was a woman and assigned women as her escorting officers and as one of the intervention agents.

4.25 As to the author's claim that her return to Ethiopia constitutes a violation of articles 6 and 11 of the Convention because she would be exposed to a real and personal risk of inhuman and degrading living conditions, prostitution and sexual violence, the State party submits that there is no real, personal and foreseeable risk that the author would suffer severe forms of discrimination or gender-based violence or inhuman treatment if returned to Ethiopia. Therefore, there is no violation of the articles invoked by the author.

4.26 Consequently, the State party considers that it has not violated articles 2, 3, 6 and 11 of the Convention.

4.27 The State party argues that there has been no violation of article 5 as the allegations presented by the author are not sufficiently substantiated, and reiterates

the arguments presented in relation to that article concerning admissibility. For this reason, the State party maintains that it has not violated article 5 of the Convention.

Author's comments on the State party's observations on admissibility and the merits

5.1 In her submission of 27 December 2021, the author contests the State party's challenge to the admissibility of the complaint.

5.2 The author rejects the State party's argument that domestic remedies have not been exhausted. She notes that she required an all-female team in order to be able to concentrate when recounting the traumatizing experiences at the police stations in Ethiopia. This was not available to her at her first asylum hearing, thus rendering the contradictions concerning specifics between the first and second asylum hearings irrelevant. She was granted an all-female team for her second hearing. At that hearing, she stated that she had been confused during the first interview, leading to contradicting statements, and she indicated that her first interview had been difficult for her. When reiterating her account of police beatings, she also stated that this had adversely affected her both physically and psychologically. Similarly, she expressly stated that she was still suffering psychologically from the effects of that interrogation. It is the duty of the State Secretariat for Migration to offer the author an all-female team precisely because applicants may otherwise lack the trust to report on their asylum grounds in detail (see art. 17 of the Asylum Act, arts. 5 and 6 of Asylum Ordinance 1 and the State Secretariat guidance).

5.3 At the time of her first asylum procedure, the author had no legal representation, neither at the interview level nor at the appeal level. The failure to undertake a gender-sensitive assessment and the use against the author of statements made at a hearing that was not conducted in a gender-sensitive manner is clearly in violation of the State party's obligations under the Convention. In conclusion, the unrepresented author had therefore sufficiently raised before the State Secretariat for Migration and the Federal Administrative Court that she had felt insecure and confused during the first asylum hearing.

5.4 Furthermore, the State party's submission that the author should have raised the gender-sensitive aspect of her claim in a subsequent review or re-examination application is misleading. According to Swiss law, a re-examination application must be based on either new facts or new evidence, neither of which the complainant had, so it would have simply been dismissed without a formal decision being taken (art. 111 (b) (4) of the Asylum Act). It is unclear how the author could have raised this aspect in a subsequent application.

5.5 The author raised the fact that no individualized risk assessment was conducted in, for example, her appeal dated 8 January 2021 and her re-examination request dated 3 December 2020. The Federal Administrative Court explicitly recognized this claim in its interim decision dated 13 January 2021, stating that the author claimed that the protection grounds had not been assessed individually in the previous proceedings.

5.6 In sum, the author has fully raised her complaints concerning the lack of a gender-sensitive hearing and an individualized assessment to the best of her abilities at the domestic level. It is the authorities that have failed at every stage to accord the author's case the detailed and thorough gender-specific consideration that it required.

5.7 Furthermore, no domestic remedy is known by which the removal by level 4 special flight could have been challenged. The State party fails to set out in its observations which domestic remedy would have been available to the author against the flight. According to Swiss practice, the applicant and his or her counsel are not informed of the method of removal, the level of constraint planned (i.e. level 4 in this

case), the date of a level 4 flight or any other details about the forced return – precisely to prevent any legal action against such removal actions. The State Secretariat for Migration announced the level 4 special flight only to the responsible cantonal authority, but not to the legal representative. The author’s representatives never received a formal decision on this with a possibility to appeal it. Rather, they found out only by chance, when the file was disclosed on 12 January 2021. As a consequence, there is in fact no effective legal remedy available at the national level that the author could have used against the organization of a level 4 special flight removal. By withdrawing the suspensive effect in its interim decision on 13 January 2021, the Federal Administrative Court (at least implicitly) approved the planned removal by way of a level 4 special flight. Even if, in theory, there was a domestic remedy against the applicable level of a forced return, it would have been factually impossible for any such remedy to grant suspensive effect and therewith effective relief within the extremely short time frame available.

5.8 As to the author’s account of being harassed by a police officer, she raised at her first hearing that she had been arrested and interrogated by the Ethiopian police and that she was afraid of the police, since “they are the ones harassing us”. She said that “they use the political upheaval as an excuse in order to bully you” and that that she could not find protection from the police as a result. The author raised the matter of her arrests and interrogations again at her substantive asylum interview and reported being beaten, harassed and insulted regularly by the police. Being asked out by a police officer as a means of blackmail was (rightfully) perceived by the author as an insult and subsumed under this term and the word “harassment”. The author did not feel comfortable elaborating on the sexual nature of the comment at the asylum interview. She also sought to explain the adverse psychological impact that the police interrogations had had on her in her appeal. The harassment by the police had already been raised sufficiently by the author at a very early stage of the proceedings, even if not in every detail. This was due to the stigma and shame attached to sexual abuse, which prevented the author from raising the matter.

5.9 The death of the author’s mother had been known to the Swiss authorities since 31 May 2019. Indeed, it was then expressly noted in the author’s official file that “she no longer has any relatives in her home country since her mother died two years ago”. For procedural reasons the author could not use her mother’s death as new grounds in her proceedings.

5.10 The author further challenges the State party’s assertion that complaints of both a failure to provide a gender-sensitive hearing and a lack of an individualized risk assessment by the authorities are manifestly ill-founded and not sufficiently substantiated. The author claims that the Swiss authorities failed to conduct a gender-sensitive hearing in her first interview on 7 August 2012 (which was conducted by a man, assisted by a female interpreter), which prevented her from articulating the facts of her case freely and without fear. Both in her second hearing with an all-female team and in her appeal dated 29 July 2015, the author expressed the confusion that she had experienced during the first interview when trying to talk about her experience with the Ethiopian police. The Office of the United Nations High Commissioner for Refugees advises that a second or third hearing may often be necessary in order to create an environment of trust that permits the exploration of all relevant grounds for asylum in gender-specific cases.⁴ In her second hearing with an all-female team, the complainant was slowly able to open up about the beatings and insults that she had experienced, which were clearly of a gender-specific nature.

⁴ Office of the United Nations High Commissioner for Refugees, “Guidelines on international protection: gender-related persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees”, para. 36 (viii).

5.11 The author notes that the State party's in-country investigations led by the Swiss representation in Addis Ababa are a highly dubious, legally questionable and extremely risky method of "fact-checking", potentially putting the author at further risk. The details of such investigations are not disclosed to the complainant in full as a matter of constant practice of the State party, which makes it effectively impossible to seriously address any of their findings.

5.12 Furthermore, during the author's second interview, the State party focused most of the questions on identity, biography and nationality and only a few (45 of the 209 questions) on the actual grounds for asylum, which would have offered information on her individual risks. The State party should have given due weight to pertinent facts raised by the author. For instance, in her appeal, the author mentioned for the first time that she has psychological problems and that such problems prevented her from expressing herself. The report of the author's psychotherapist confirms these statements. Overall, it is clearly established that the author had suffered gender-based violence in Ethiopia, and that – even if there were some minor discrepancies in her statements – her statements clearly reflect the traumatic experiences that she suffered. In addition, from a mental health professional's perspective, the patterns of disclosing information about her past are typical for victims suffering from post-traumatic stress disorder. In conclusion, the State party's allegations are incorrect and should be rebutted. In addition, the State party's reference to alleged "favourable factors" is not only erroneous, but also of no relevance if the entire situation is duly taken into account.

5.13 As to the real and personal risk to which she would be exposed, apart from the author, all other returnees were men, and – apart from one or possibly two officers – all officials involved in and present during the flight were male as well. The author would undoubtedly have been the only female deportee, which would in itself be a highly discriminatory factor since level 4 deportation flights do not meet the specific requirements of a highly traumatized woman among a group of men. The sole fact of having a female police officer or officers on the flight by no means guarantees a gender-sensitive approach – on the contrary, when considering the significant number of men, be it deportees or police officers, on the aeroplane in question. The author would have been the sole woman to be handed over to the Ethiopian authorities at the airport, putting her in an extremely vulnerable situation again, and at a very high risk of gender-based discrimination. Mere exposure to such a significant number of male police officers, who often use significant violence against deportees, combined with the author's constant fear of gender-based violence by police officers due to her trauma, can by no means be considered a gender-sensitive approach for return flights.

5.14 The author mentioned from the very beginning that her family had been persecuted owing to its political connections with the Oromo Liberation Front. The persecution that the author had already experienced, based on political views and ethnic background, by way of police searches and arrests, involved severe gender-based discrimination, including sexual insults at the hands of the police officers. Moreover, with the death of her mother, the author not only lost her last living relative in Ethiopia with whom she was able to be in touch, but also her last source of income (selling beverages). The complaint has been sufficiently substantiated also with regard to the real and personal risk of inhuman and degrading living conditions, forced prostitution and sexual violence upon return to Ethiopia and is by no means manifestly ill-founded.

5.15 As to the merits, with regard to articles 2 and 3 of the Convention, the author rejects the State party's argument concerning the individualized assessment of her situation and the adoption of a gender-sensitive approach. She notes that the State failed to ensure her an individualized risk assessment and failed to consider the women-specific aspects in her asylum and return proceedings. The author reiterates

that the special arrangements made for her return would have a retraumatizing effect, as they lack a gender-sensitive approach, and would expose her to a very high risk of gender-based discrimination if returned to Ethiopia.

5.16 As for article 5 of the Convention, the author rejects the State party's argument that there is not a real, personal and foreseeable risk of gender-based discrimination if she is returned to Ethiopia. She claims that her return to Ethiopia would place her at constant risk of sexual and gender-based violence, considering the traditional gender roles in Ethiopia.

5.17 Concerning articles 6 and 11 of the Convention, the author claims that, if returned to Ethiopia, she would face a real risk of gender-based torture and inhuman and degrading treatment, as well as a real risk of being forced into prostitution as the only way to make a living, considering that she is a single young woman with no social and economic network and requires urgent mental health support to treat the trauma suffered owing to the gender-based violence experienced in Ethiopia.

5.18 In view of the foregoing, the author asserts that there is a real risk that she would be subjected to acts of discrimination under the Convention if she were sent back to Ethiopia and concludes that her removal would constitute a violation of articles 2, 3, 5, 6 and 11 of the Convention.

Additional submissions by the parties

6.1 On 4 May 2022, the author drew the Committee's attention to two recent publications, notably the report by humanrights.ch on the inhuman Swiss practice of forced deportation by air⁵ and the position paper by the Office of the United Nations High Commissioner for Refugees on returns to Ethiopia.⁶

6.2 On 7 June 2022, the State party submitted that the new documents provided by the author were of a general nature and did not concern her in particular. Moreover, the author claims that those documents demonstrate a violation of her rights under the Convention against Torture, while her communication concerns the alleged violation of her rights under the Convention on the Elimination of All Forms of Discrimination against Women. The State party observes that the author has not substantiated how the publications demonstrate that she was subjected to gender-based discrimination.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 In accordance with rule 64 of its rules of procedure, the Committee is to decide whether the communication is admissible under the Optional Protocol. In accordance with rule 72 (4), it must do so before considering the merits of the communication.

7.2 In accordance with article 4 (2) (a) of the Optional Protocol, the Committee is satisfied that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.3 In accordance with article 4 (1) of the Optional Protocol, the Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted, unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief. The Committee notes

⁵ humanrights.ch, "Vols spéciaux: la pratique suisse menace les droits humains", 4 April 2022. Available at: www.humanrights.ch/fr/nouvelles/rapatriements-aerienne-pratique-suisse-menace-droits-humains.

⁶ Office of the United Nations High Commissioner for Refugees, "Position on returns to Ethiopia", March 2022. Available at: www.refworld.org/docid/623079204.html.

that the author claims to have exhausted all domestic remedies, while the State party has challenged the admissibility of the communication on this ground.

7.4 The Committee notes the author's claims that Switzerland would violate her rights under articles 2 (b)–(g), 3, 5, 6 and 11 of the Convention if she were deported to Ethiopia as, owing to her ethnicity, the origin of her father, the well-known political views and activities of her uncles and the growing crisis in Ethiopia, she would face, as a single woman, a risk of gender-based violence and forced prostitution. The Committee also notes the author's argument that she has lost her family and social network and has no economic network to support her. The Committee notes, in particular, the author's contention that she has fully raised her complaints concerning the lack of a gender-sensitive hearing and an individualized assessment to the best of her abilities at the domestic level.

7.5 The Committee notes that the State party rebuts the author's assertion and argues that she failed to exhaust domestic remedies because she did not bring the claims that she presented to the Committee before the competent national authorities. The Committee recalls that, in accordance with article 4 (1) of the Optional Protocol, authors must use all available domestic remedies. It also recalls its jurisprudence, which establishes that authors must have raised the claims that they wish to bring before the Committee in substance at the domestic level⁷ in order to give the domestic authorities and courts an opportunity to take a decision thereon.⁸

7.6 In the present case, the Committee notes that the author has raised in substance and to the best of her ability her claims concerning the alleged lack of a gender-sensitive hearing and an individualized and gender-specific assessment, including the matter of police harassment, albeit not in full detail from the beginning of the domestic proceedings, thereby giving the national authorities the opportunity to examine those claims. The Committee therefore considers that article 4 (1) of the Optional Protocol does not constitute a barrier to the admissibility of the communication.

7.7 The Committee notes the author's allegations that the first hearing by the authorities was not conducted in a gender-sensitive manner and that the authorities did not conduct an individualized risk assessment, in violation of her rights under articles 2 (e) and (f) and 3 of the Convention. The Committee also takes note of the author's complaint that her removal by special flight would be contrary to the prohibition of inhuman or degrading treatment and gender-based violence, invoking articles 2 and 3 of the Convention.

7.8 The Committee, however, notes the State party's argument that the author's complaints are manifestly ill-founded and not sufficiently substantiated as the national authorities carried out an individualized risk assessment, while the author failed to demonstrate any procedural defect in the examination of the asylum application and the original asylum grounds. It notes that the first hearing concerned personal data and was conducted by a man, assisted by a female interpreter, while the second hearing was conducted by a woman. The Committee notes the State party's contention that in neither hearing did the author raise any gender-specific arguments. It takes note that the author was able to express herself freely, had understood the interpreter well and had confirmed the accuracy of the minutes. The Committee further notes that the contradictions in the author's narrative did not relate to gender-

⁷ See *Kayhan v. Turkey* (CEDAW/C/34/D/8/2005), para. 7.7, and *M.A. v. Switzerland* (CEDAW/C/80/D/145/2019), para. 6.7.

⁸ See *N.S.F. v. United Kingdom of Great Britain and Northern Ireland* (CEDAW/C/38/D/10/2005), para. 7.3, and *M.A. v. Switzerland*, para. 6.7.

specific arguments and cannot be attributed to the fact that the first hearing was conducted by a man.

7.9 The Committee notes the State party assertion that the author failed to demonstrate that she would be exposed to a real and personal risk, including of chain refoulement to Eritrea, if returned to Ethiopia. It also notes that the State party asylum authorities examined thoroughly the author's application, at both the ordinary and extraordinary asylum procedure stages, and found not to be credible her allegations that she and her family were suspected of supporting the Oromo Liberation Front and arrested and beaten by the police owing to political (not gender-based) persecution. Moreover, the authorities found favourable individual factors in her case, such as her school and vocational training, and professional experience as a nurse. The Committee notes that the author has not claimed to be a victim of trafficking in persons as a woman or of exploitation in prostitution, and that she lived in Addis Ababa for a large part of her life. The Committee also notes that the author left Ethiopia legally by aeroplane using her passport.

7.10 In these circumstances, the Committee considers that the author has not sufficiently substantiated her claim or developed the facts and arguments put forward, for the purposes of admissibility, to demonstrate that she, as a single woman, would face a real, personal and foreseeable risk of inhuman and degrading living conditions, sexual violence and forced prostitution if she were removed to Ethiopia. Accordingly, the Committee concludes that the communication is inadmissible under article 4 (2) (c) of the Optional Protocol. The Committee trusts that the State party will take the appropriate measures to ensure that the author's removal is conducted in a gender-sensitive manner.

8. The Committee therefore decides:

- (a) That the communication is inadmissible under article 4 (2) (c) of the Optional Protocol;
 - (b) That this decision shall be communicated to the State party and to the author.
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