



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

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 782/2016*, **

<i>Communication submitted by:</i>	Hany Khater (represented by Mr. Rachid Mesli, Alkarama)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Morocco
<i>Date of complaint:</i>	14 November 2016 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on 15 November 2016 (not issued in document form)
<i>Date of adoption of decision:</i>	22 November 2019
<i>Subject matter:</i>	Extradition of the complainant to Egypt
<i>Procedural issues:</i>	Exhaustion of domestic remedies; admissibility – non-substantiation
<i>Substantive issues:</i>	Risk of torture in the event of extradition on political grounds (non-refoulement); ill-treatment in detention
<i>Articles of the Convention:</i>	3 and 16

1.1 The complainant is Hany Khater, a national of Egypt born on 22 March 1974 in Egypt. Mr. Khater is detained in Salé prison in Morocco¹ pending his extradition to Egypt, where, he claims, he would be at risk of being subjected to torture. The complainant states that his extradition would constitute a violation by Morocco of its obligations under article 3 of the Convention.² He is represented by Fondation Alkarama.³

* Adopted by the Committee at its sixty-eighth session (11 November–6 December 2019).

** The following members of the Committee participated in the examination of the communication: Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé and Bakhtiyar Tuzmukhamedov. Pursuant to rule 109, read in conjunction with rule 15, of the Committee's rules of procedure, and paragraph 10 of the guidelines on the independence and impartiality of members of the human rights treaty bodies (the Addis Ababa guidelines), Essadia Belmir did not participate in the examination of the communication.

¹ The complainant is currently being held in Tiflet 2 prison.

² On 19 October 2006 Morocco declared that it recognizes the competence of the Committee against Torture to receive and consider individual communications under article 22 of the Convention.

³ The complainant does not have access to a lawyer and a power of attorney cannot be obtained from his family, which is in Egypt. Counsel submits that the express request made in writing and confirmed



1.2 In his complaint, the complainant asked the Committee to take interim measures. On 15 November 2016, the Committee, pursuant to rule 114 of its rules of procedure, decided to request interim measures by asking the State party not to extradite the complainant to Egypt while the complaint was under the Committee's consideration.

The facts as submitted by the complainant

2.1 The complainant is a journalist and has been a member of the Egyptian journalists' union since 2005. As a journalist in Egypt, the complainant had published articles on corruption in the country that implicated senior officials, some of whom currently have responsibilities within the Government established by General Al Sisi.

2.2 Since 2010, the complainant had worked as a freelance journalist in Egypt and Morocco. In 2010, he established a media company in Tangier, Morocco, and also a newspaper, *Les Nouvelles du Maghreb*. The complainant indicates that it is because of the articles he published in Egypt that the Egyptian authorities accused him in 2013 of "forgery and use of forged documents" to justify politically-motivated proceedings. He states that in December 2014 he had appeared before the State prosecutor in Cairo, who had notified him verbally that his newspapers were being confiscated. However, he had not been arrested on that occasion, although he had remained under police surveillance; he had therefore been constantly afraid of being arrested and tortured.

2.3 In September 2015, he went to Morocco, where he established a media company. He states that some Arab journalist colleagues entrusted him with opening a local office of an international federation of Arab journalists. The complainant had therefore returned to Morocco with a visa that was valid for two months. However, on 17 February 2017, while he was in a hotel in Casablanca, the complainant was detained by police officers in civilian clothing, who informed him that an international arrest warrant, transmitted to Interpol, had been issued against him by the Egyptian authorities on 12 February 2016 for the alleged offence of "forgery and use of forged documents". According to the complainant, the international arrest warrant had been issued by the Egyptian authorities on the basis of proceedings that had been brought against him in 2013, and had led to him being sentenced to life imprisonment.⁴

2.4 Following his arrest, the complainant was first prosecuted by the Moroccan authorities for "illegal residence" and "forgery and use of forged documents", owing to the fact that his residence visa had expired and he had not correctly registered the local office of the international federation of Arab journalists. Based on those charges, he was referred to the Ain al-Sabaa Criminal Court in Casablanca on 14 February 2016, and on 29 February he was sentenced to 3 months' imprisonment and ordered to pay a fine of 1,000 dirhams for illegal residence and forgery and use of forged documents. It should be noted that the complainant did not have a lawyer during those proceedings. Incarcerated in Salé prison, the complainant was kept in detention after completing his three-month prison sentence, pending extradition on the basis of the international arrest warrant. He now risks being extradited to Egypt at any time.

2.5 The complainant was informed in a communication from the Court of Cassation dated 26 September 2016 that, by a judgment dated 25 April 2016,⁵ it had ruled in favour of the extradition request submitted by Egypt. The complainant challenged his extradition to Egypt on the grounds that he ran the risk of being subjected to torture in his country.

2.6 The complainant states that this case has not been submitted to any other procedure of investigation or settlement. With regard to the requirement that all available domestic remedies should have been exhausted, the complainant has pursued all possible effective remedies. He has continuously challenged his extradition, recalling that he feared for his life and was in danger of being subjected to torture owing to his activities as a journalist and the critical articles he had published. Even though the judgment of the Court of Cassation in favour of the extradition request is final and not subject to any ordinary appeal, the complainant has continued to challenge his extradition. The complainant, who is being

by telephone should be considered valid authorization for Alkarama to act on his behalf through its legal director.

⁴ The sentence was appended to the initial submission.

⁵ The correct date of the judgment is 25 May 2016.

kept in detention without access to a lawyer, has sent letters to several authorities of the requested State (Morocco), asking not to be extradited and setting out his fears and the serious risks he faced of being subjected to torture and other violations of his fundamental rights if he were to be extradited to Egypt.

2.7 Between August and October 2016, the complainant sent eight letters, including a letter informing the Crown Prosecutor in Casablanca that he had not been notified of the judgment of the Court of Cassation and requesting a copy of the extradition decision, on 4 August 2016; a letter to the government spokesperson on 8 September 2016; a letter to the prosecutor of the Court of Cassation on 8 September 2016; a complaint to the Ministry of Justice and Freedoms on 8 September 2016; a letter to the king on 26 September 2016; a letter to the Prime Minister on 4 October 2016; and a letter to the Director for Criminal Affairs and Pardons on 20 October 2016. Despite his requests, he never received a copy of the judgment of the Court of Cassation on his extradition, or any response to his requests or to the fears he had expressed regarding the risk of being subjected to acts of torture if he were to be extradited to Egypt.

The complaint

3.1 The complainant claims that the State party would be violating article 3 of the Convention if it extradited him to Egypt.

3.2 The complainant states that he faces a substantial risk of being subjected to torture or cruel, inhuman or degrading treatment in Egypt owing to his criticism of the regime as a journalist. Egypt still does not have legislation criminalizing torture pursuant to the Convention.

3.3 He alleges that human rights have been systematically violated in Egypt, including through the widespread practice of arbitrary detention and violations of fair trial guarantees, in particular for journalists. Journalists, activists and human rights defenders are systematically tortured, in retaliation for their activities and to force them to sign self-incriminating confessions, which are then used against them in unfair trials.

3.4 The complainant adds that the Working Group on Enforced or Involuntary Disappearances, in its 2016 annual report, identified 226 outstanding cases of enforced or involuntary disappearance in Egypt, and that this practice is systematic, especially in relation to journalists, activists and political opponents.⁶ Since 2013, the number of persons arrested by the security services and cases of enforced disappearance in Egypt had risen steadily and significantly, as confirmed by several reports on the human rights situation.⁷ According to these reports, incommunicado detention is in itself a form of torture and cruel and inhuman treatment, and also facilitates the practice of torture because the victim remains outside the protection of the law.

3.5 The special procedures mandate holders of the Human Rights Council and the United Nations High Commissioner for Human Rights have on many occasions expressed their concern at the reprisals carried out by the Egyptian authorities and in particular the acts of torture to which journalists have been subjected owing to their critical stance regarding the authorities. Experts have reiterated that this repression has intensified in Egypt over the past two years. In particular, they have referred to the fact that, on 1 May 2016, the security forces of the requesting State stormed the headquarters of the Egyptian journalists' union, of which the complainant is an active member. Many cases of reprisals against journalists for writing articles critical of the Egyptian Government's policies are also corroborated by reports of the Committee to Protect Journalists, according to which Egypt is one of the world's worst jailers of journalists.⁸

3.6 The complainant claims that he published articles on the subject of corruption in Egypt in various sectors, which implicated politicians and members of the current Government. The complainant adds that the legal proceedings brought against him by the Egyptian authorities in 2013 were a form of retaliation, particularly since, in parallel with

⁶ A/HRC/33/51, annex II.

⁷ Amnesty International, "Egypt. Hundreds disappeared and tortured amid wave of brutal repression", 13 July 2016.

⁸ Committee to Protect Journalists, "2015 prison census: 199 journalists jailed worldwide".

the proceedings, the articles that he had published online were removed and the print copies were confiscated by the authorities.

3.7 In conclusion, the complainant requests not to be extradited to Egypt and asks to be released immediately if he is not subject to proceedings on any other grounds justifying his detention.

State party's observations on admissibility and the merits

4.1 The State party submitted its observations on admissibility and the merits of the complaint in a note verbale dated 22 May 2017.

4.2 Concerning the complainant's claims that all domestic remedies have been exhausted, the Moroccan authorities specify that, while the judgment of the Court of Cassation in favour of the complainant's extradition is not subject to any ordinary appeal, it may be subject to an application for revocation, in accordance with articles 563 and 564 of the Moroccan Code of Criminal Procedure.

4.3 Under article 563 of the Code of Criminal Procedure, judgments of the Court of Cassation can be subject to an application for revocation in the following cases: (a) if a decision has been handed down on the basis of documents found or recognized to be forgeries; (b) in order to correct judgments vitiated by a clear error of fact that can be rectified using elements contained in the judgment itself; (c) if the Court has failed to rule on a request presented in the context of the presentation of evidence or has not provided a reasoned judgment; and (d) if a decision of inadmissibility or termination of a case has been issued for reasons arising from elements that were considered to be authentic but are found to be false following the submission of new documents that are equally authentic.

4.4 For this reason, despite the complainant's claims, the provisions of the Code of Criminal Procedure clearly show that he has not exhausted all domestic remedies and that his submission of a complaint to the Committee was premature.

4.5 With regard to the alleged risk that article 3 of the Convention would be violated if the complainant were to be extradited, the State party points out, firstly, that, contrary to the complainant's current assertion, he never claimed before a national authority or court that he would be in danger of torture if extradited. Secondly, it should be noted that the Moroccan Code of Criminal Procedure, pursuant to the terms of the Convention and within a framework of strict compliance with the relevant international standards, provides, in article 721, that the Moroccan authorities have a duty to reject any extradition request for an ordinary criminal offence if they have substantial grounds for believing that the request has been made solely for the purpose of prosecuting or punishing an individual on the grounds of race, religion, nationality or political opinions, or there is a risk of a deterioration in the individual's situation on any of those accounts.

4.6 Furthermore, the Moroccan authorities stress that the complainant's arrest was conducted within a strictly legal framework and in accordance with the provisions of the Agreement on Mutual Assistance in Criminal Matters and Extradition concluded between Morocco and Egypt on 22 March 1989. In short, the complainant has benefited from all relevant legal and judicial guarantees and, in the light of all the above, the Moroccan authorities have not identified any risk that he might be subjected to torture if extradited. For this reason, and in compliance with the law, the Moroccan authorities have not violated any provisions of the Convention.

4.7 With regard to the merits, the State party notes that the complainant was arrested on the basis of an international arrest warrant issued against him by the Egyptian authorities and on the basis of a request made by the competent Egyptian authorities, given that he had been sentenced to life imprisonment following his involvement in a case of forgery of authentic instruments in collusion with a public official. The State party states that the complainant was sentenced in absentia in Egypt: on 14 May 2012 by the Helwan court of first instance to 3 years' imprisonment for misappropriation of funds under case No. 5374/2012; on 28 August 2013 by the Helwan criminal court to life imprisonment under case No. 7286/2013 concerning forgery of authentic instruments in collusion with a public official; and on 14 November 2013 by the Helwan court of first instance to 8 months' imprisonment for misappropriation of funds under case No. 12229/2013.

4.8 The State party emphasizes that the complainant had been arrested in Morocco and brought before the competent public prosecution office on 26 April 2016, that he had been notified of the international arrest warrant issued against him, and that he had stated that he had already been informed of the issuance of the said arrest warrant, but had not mentioned or referred to any danger of being subjected to torture if extradited.

4.9 In addition, the Court of Cassation in Morocco issued a judgment in favour of the extradition request on 25 May 2016. The complainant did not refer to or mention before the Court any concern whatsoever regarding any danger of torture in the event of his extradition. Furthermore, legal proceedings had already been brought against the complainant in Morocco, before the Casablanca criminal court of first instance, for forgery of private business documents, unauthorized and unlawful practice of a regulated profession, and affixing of stamps and seals that could be mistaken for the seals of a foreign State. Accordingly, he had been sentenced on 29 February 2016 to 3 months' imprisonment, a judgment that was confirmed on appeal on 4 July 2016.

4.10 The complainant had also drafted several complaints in which he asserted that he was no longer subject to prosecution. He had attached to those complaints an illegible handwritten statement by the South Cairo Prosecution Office, which, he asserted, proved the validity of his claims. All necessary measures were taken by the Moroccan authorities to ascertain the veracity of the complainant's claims. However, the information obtained from the Egyptian authorities showed and confirmed that the complainant was still the subject of an extradition request. Lastly, it should be noted that the complainant has continued his multiple attempts to commit forgery and use forged documents, whether in Egypt or in Morocco.

4.11 With regard to the merits, the State party concludes that the complaint should be rejected as unfounded, in particular on the grounds that the complainant benefited from all legal and judicial guarantees, that the extradition request by Egypt was not politically motivated and that the complainant would not be in danger of being subjected to torture if he were to be extradited.

Complainant's comments on the State party's observations

5.1 On 10 April 2018, the complainant said that he was being held in Tiflet 2 prison, having been transferred there some time before, pending his extradition to Egypt.

5.2 With regard to the Committee's request for interim measures whereby the State party would not extradite the complainant while his complaint was under consideration, he indicated that the Government of Morocco had agreed to this request, in conformity with its international obligations.

5.3 Concerning the specific facts, the complainant claims that the State party does not challenge the version presented by the complainant and does not respond to any of his claims regarding the real reasons for his arrest and the request for his extradition. The State party merely presents the complainant as a common criminal, who has been given several prison sentences in Egypt for forgery of documents and who, in particular, was sentenced to life imprisonment on 28 August 2013. Contrary to the assertions of the State party, both the complainant at the time of his appearance before the Crown Prosecutor and his lawyer during the hearing before the Court of Cassation drew the attention of the judicial authorities to the complainant's personal, present and serious risk of being subjected to torture if extradited, bearing in mind the current climate of widespread repression in Egypt.

5.4 The State party contests the admissibility of the complaint submitted by the complainant on the grounds that he has not exhausted all domestic remedies. In support of its assertion, the State party, while specifying that the judgment of the Court of Cassation is not subject to any ordinary appeal, claims that, according to articles 563 and 564 of the Code of Criminal Procedure, an application for revocation may be filed against that judgment. In that regard, the complainant asserts that an application for revocation is possible in Moroccan domestic law only in certain exceptional situations established by article 563 of the Code of Criminal Procedure and must meet strict conditions, which have, moreover, been listed by the State party. In the present case, the complainant would not be able to invoke any of the situations provided for in article 563 to file such an application, which is, in any case, an extraordinary remedy.

5.5 Furthermore, as well as being ineffective except in the limited cases provided for by law, an application for revocation does not have a suspensive effect in Moroccan domestic law. Consequently, the Moroccan authorities are legally authorized to proceed with an extradition even if an application for revocation is pending before the Court of Cassation. That is especially true given that in a similar case previously submitted to the Committee, the Head of the Moroccan Government had validated an extradition decision handed down by the Court of Cassation by signing an extradition order even before that Court had ruled on a pending application for revocation, thereby confirming that it held the decision of the Court of Cassation as definitive and as having acquired the authority of *res judicata*.⁹

5.6 The complainant therefore rightly decided not to choose this avenue of appeal, which does not provide any guarantee of effective relief. Article 22 (5) (b) of the Convention provides, moreover, that remedies do not have to have been exhausted when they are unlikely to bring effective relief to the person who is the victim of the violation of the Convention. The complainant therefore considers that he has met the requirement of exhausting all available domestic remedies.

5.7 With regard to the merits, and the grounds cited by the Egyptian authorities to support their extradition request, the complainant submits that a sentence of life imprisonment for the commission of a minor offence, even assuming it had been committed by the complainant, is totally disproportionate and clearly points to the political nature of the proceedings to which he was subject in his country. It should be recalled that the complainant is a journalist and co-founder of an independent journalists' union not recognized by the Egyptian authorities precisely because it is independent.

5.8 While journalists showing even the slightest hint of independence from the authorities were already being prosecuted and subjected to retaliation at the time when the extradition request was submitted by the Egyptian authorities, there has been a worrying deterioration in their situation since then. Egypt ranks 161st out of 180 countries in the 2017 World Press Freedom Index compiled by Reporters without Borders. At least 27 journalists are currently in prison in Egypt on account of their work.¹⁰

5.9 In addition, the authorities regularly disrupt the operation of independent unions by taking disciplinary action against some of their members and hindering their activities. In 2017, the Government proposed amendments to the Labour Act and the Trade Unions Act that would make it more difficult to establish or join an independent union.¹¹ Given the current context, there is no doubt that the extradition request issued by the requesting State is political in nature and that, in view of its real objective, the complainant is at risk of being subjected to an unfair trial.

5.10 The complainant maintains that he faces a foreseeable, personal and real danger of being subjected to torture if extradited to Egypt, bearing in mind the political nature of the proceedings against him and the fact that he is an independent journalist who is critical of the authorities. He refers to the conclusions adopted by the Committee at the seventy-second session of the General Assembly under article 20 of the Convention, in which it described torture as a systematic practice in Egypt.¹²

5.11 The complainant then recalls the *ne bis in idem* principle. As the State party asserts, legal proceedings had already been brought against the complainant in Morocco, before the Casablanca criminal court of first instance, for forgery of private business documents, unauthorized and unlawful practice of a regulated profession, and affixing of stamps and seals that could be mistaken for the seals of a foreign State.

5.12 At the time of his arrest, on the grounds of the extradition request submitted by Egypt, the complainant was in possession of a press identification card issued by the

⁹ See *Al Hashimi v. Morocco* (No. 592/2014). However, the consideration of that case was discontinued because Oman withdrew its extradition request and the complainant was released by the Moroccan authorities.

¹⁰ Reporters without Borders, "Egypt: Revolution anniversary amid new crackdown on opposition media", 29 January 2018.

¹¹ International Trade Union Confederation, "Egypt: New Draft Trade Union Law Suppresses Freedom of Association", 7 November 2017.

¹² *Official Records of the General Assembly, seventy-second session, Supplement No. 44 (A/72/44)*, para. 69.

independent journalists' union, which the Moroccan authorities did not consider to have legal status. The Crown Prosecutor, influenced by the grounds for the Egyptian extradition request, thus considered that the possession of such a union card constituted the offence of forgery and use of forged documents. That is the reason why the complainant was prosecuted and sentenced on 29 February 2016 to 3 months' imprisonment, a ruling confirmed on appeal on 4 July 2016. It cannot be denied that the proceedings brought in Egypt and the criminal conviction handed down by the Casablanca criminal court of first instance were based on the same facts and related to the same criminal offence as the extradition request submitted by the Egyptian authorities. Since the complainant has completed his three-month prison sentence, his prosecution under these circumstances for acts for which he has already been prosecuted and sentenced in Morocco cannot go ahead without violating the *ne bis in idem* principle.

5.13 On 14 March 2018, the complainant announced that he was beginning an open-ended hunger strike to protest against his recent transfer from Salé prison to the high-security wing of Tiflet 2 prison, where he is currently being held. Since then, he has been placed in solitary confinement and is totally cut off from the outside world. The complainant does not have any family or any lawyer who could visit him and his counsel has not heard from him since his last call. He said that the conditions in which he is currently held are usually reserved for convicted prisoners and are in no way justifiable in the present case, given that the complainant has been placed in custody pending extradition.¹³

5.14 In addition, from 1 November 2017, the complainant repeatedly asked to be examined by a doctor, but the prison authorities did not respond to his request. It was not until 28 February 2018 that he was finally taken to the infirmary after his health deteriorated. At that time the doctor ordered urgent radiology examinations and analyses, which, to date, have not been carried out. The complainant considers that the deterioration in his state of health is directly attributable to the inertia shown by the prison authorities. Their refusal to ensure adequate medical attention in itself constitutes particularly cruel, inhuman or degrading treatment, and therefore contravenes article 16 of the Convention.

5.15 In conclusion, the complainant requests the Committee to find that the present communication is admissible, as it meets all the requirements under article 22 (5) of the Convention; to find that the complainant's continued detention pending extradition lacks any legal basis in domestic law; and, accordingly, to request the State party to release him immediately.

Additional information from the complainant

6.1 On 10 January 2019, the complainant reiterated that he was being held at Tiflet 2 prison after being transferred there with a view to his extradition to Egypt, where he would be in danger of being subjected to torture and ill-treatment. He recalled that his health has significantly deteriorated since his transfer to Tiflet 2 prison, where he does not receive appropriate medical care.

6.2 He stated that on 13 September 2018 he filed a complaint against the prison administration for medical negligence, attempted murder and corruption (complaint registered under No. 55/53). He reported in particular having received expired medication unfit for consumption. After filing his complaint, he appeared before the prison governor on 10 October 2018 and the Crown Prosecutor on 10 December 2018.

6.3 Given his worrisome state of health, the complainant asked the Committee to consider his complaint as soon as possible.

State party's additional observations

7. On 11 January 2019, the State party reiterated the arguments set out in its note verbale of 22 May 2017, according to which the complaint should be found inadmissible on the grounds of non-exhaustion of available domestic remedies or, in the alternative, as without merit.

¹³ The complainant fears that this measure is in retaliation for the present complaint before the Committee and that he is being subjected to the same treatment as Mr. Abdul Rahman Alhaj Ali (CAT/C/58/D/682/2015).

Complainant's additional comments

8. On 28 February 2019, the complainant indicated that the State party, in its reply of 11 January 2019, had not provided any substantive response to the complainant's claims and, a fortiori, had not challenged the truth of those claims. Consequently, he did not think he should comment on the Government's response. The complainant maintained that he continues to face a personal, present and serious risk of being subjected to torture if he is extradited to Egypt. Bearing in mind the urgency of his situation, and his detention pending extradition since February 2016, he has requested the Committee to consider his complaint without delay.

Issues and proceedings before the Committee

Consideration of admissibility

9.1 Before considering any claim submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention.

9.2 The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

9.3 In accordance with article 22 (5) (b) of the Convention, the Committee must ascertain whether the complainant has exhausted all available domestic remedies, although this shall not be the rule where the application of the remedies is unreasonably prolonged¹⁴ or is unlikely to bring effective relief to the alleged victim.

9.4 The Committee notes the State party's claim that the communication should be declared inadmissible under article 22 (5) (b) of the Convention on the grounds that the complainant has not exhausted all domestic remedies, given that an application for revocation can still be filed against the judgment of the Court of Cassation. The Committee also notes the complainant's argument regarding the extraordinary nature of this remedy and the fact that it is ineffective except in the limited cases provided for by law, since it does not have a suspensive effect and therefore provides no guarantee of effective relief.¹⁵

9.5 The Committee refers to its jurisprudence and recalls that in the present case, in accordance with the principle of exhaustion of domestic remedies, the complainant was only required to apply for remedies that are directly related to the risk of being subjected to torture in Egypt.¹⁶ The Committee notes that the State party has not specified how an application for revocation of the Court of Cassation's judgment of 25 May 2016 could affect the complainant's extradition to Egypt, given that it has not indicated whether that remedy would under the circumstances be effective in preventing the complainant's extradition and whether it had a suspensive effect. The Committee also notes that the State party has not refuted the complainant's claims that an application for revocation would be ineffective to prevent his extradition outside the limited cases provided for by law and that such an application does not have a suspensive effect. The Committee recalls that in several cases brought to its attention, an extradition order had been signed by the Head of Government even before the Court of Cassation had ruled on an application for revocation,¹⁷ thereby confirming that the Government considered the judgment of the Court of Cassation as definitive and as constituting *res judicata*. Considering that Moroccan law does not specify whether that remedy has a suspensive effect, that the State party merely cites the exceptional circumstances in which an application for revocation may be filed and that the State party has provided no specific examples of jurisprudence clarifying the

¹⁴ See *Asfari v. Morocco* (CAT/C/59/D/606/2014), paras. 8.1, 8.2 and 12.2; and *Gharsallah v. Morocco* (CAT/C/64/D/810/2017), para. 7.2.

¹⁵ Committee's general comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, paras. 13, 18 (e) and 34.

¹⁶ See *A.R. v. Sweden*, communication No. 170/2000, *Official Records of the General Assembly, fifty-seventh session, Supplement No. 44 (A/57/44)*, p. 204 et seq., para. 7.1, and *Kalinichenko v. Morocco* (CAT/C/47/D/428/2010), para. 14.3. See also general comment No. 4, para. 34.

¹⁷ See *R.A.Y. v. Morocco* (CAT/C/52/D/525/2012), paras. 6.3 and 6.4. See also *Ayden v. Morocco* (CAT/C/66/D/846/2017), para. 7.2; *Onder v. Morocco* (CAT/C/66/D/845/2017), para. 6.2; and *Erdoğan v. Morocco* (CAT/C/66/D/827/2017), para. 8.3.

effective nature of an application for revocation,¹⁸ the Committee is unable to conclude that the fact that the complainant did not submit an application for revocation prevented him from submitting his complaint to the Committee. In the circumstances of the present case, the Committee finds that article 22 (5) (b) of the Convention does not preclude it from declaring the communication admissible.

9.6 The Committee also notes that the State party has challenged the admissibility of the complaint on the grounds of insufficient substantiation, since the complainant alleges that the extradition request by Egypt is of a political nature, in view of the complainant's criticism of the regime as a journalist. The State party submits that the complainant was able to challenge the arrest warrant before the Court of Cassation, as an extradition court, which rejected his claims; that the complainant had not made the judicial authorities aware of the risk he faced of being subjected to torture or ill-treatment if extradited; and that the Moroccan authorities had not identified any risk of torture in the event of extradition. The Committee notes the complainant's claim that, contrary to the assertions of the State party, he and his lawyer made the Crown Prosecutor and the Court of Cassation aware of the complainant's personal, real and serious risk of being subjected to torture or ill-treatment for his opinions as a journalist if he were to be extradited. The Committee notes that the complainant fears for his physical security and is afraid that he would have to serve the life sentence handed down against him in 2013, bearing in mind the current climate of widespread repression in Egypt. Moreover, the Committee notes that the complainant has allegedly been detained in the high-security wing of Tiflet 2 prison in solitary confinement, without medical assistance, which is likely to negatively affect his health, and without any contact with his family or his lawyer, in contravention of article 16 of the Convention. The Committee therefore finds that the complainant has sufficiently substantiated his complaint for the purposes of admissibility.

9.7 The Committee finds that the communication is admissible under article 22 of the Convention with respect to the alleged violation of article 3 and article 16, and proceeds with its consideration of the merits.

Consideration of the merits

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

10.2 In the present case, the issue before the Committee is whether the extradition of the complainant to Egypt would constitute a violation of the State party's obligation under article 3 (1) of the Convention not to extradite 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 recalls that the prohibition of torture is absolute and non-derogable and that no exceptional circumstances whatsoever may be invoked by a State party to justify acts of torture.¹⁹ The principle of "non-refoulement" of persons to another State where there are substantial grounds for believing that they would be in danger of being subjected to torture, set out in article 3 of the Convention, is similarly absolute.²⁰

10.3 In assessing whether there are substantial grounds for believing that the alleged victim would be in danger of being subjected to torture, the Committee recalls that, under article 3 (2) of the Convention, States parties must take into account all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the country to which he or she would be returned. In the present case, the Committee must determine whether the complainant runs a personal risk of being subjected to torture if he is extradited to Egypt. The existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that the complainant would be in danger of being subjected to torture if extradited to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk.²¹ Conversely, the

¹⁸ *R.A.Y. v. Morocco*, para. 6.3.

¹⁹ General comment No. 2 (2007) on the implementation of article 2 by States parties, para. 5.

²⁰ General comment No. 4, para. 9.

²¹ *Alhaj Ali v. Morocco* (CAT/C/58/D/682/2015), para. 8.3; *R.A.Y. v. Morocco*, para. 7.2; and *L.M. v. Canada* (CAT/C/63/D/488/2012), para. 11.3.

absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.²²

10.4 The Committee recalls its general comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, according to which the non-refoulement obligation exists whenever there are “substantial grounds” for believing that the person concerned would be in danger of being subjected to torture in a State to which the person is facing deportation, either as an individual or as a member of a group that may be at risk of being tortured in the State of destination. The Committee’s practice in this context has been to determine that “substantial grounds” exist whenever the risk of torture is “foreseeable, personal, present and real”.²³ Indications of personal risk may include, but are not limited to: (a) the complainant’s ethnic background; (b) political affiliation or political activities of the complainant or his or her family members; (c) previous torture; (d) incommunicado detention or other form of arbitrary and illegal detention in the country of origin; and (e) clandestine escape from the country of origin following threats of torture.²⁴ The Committee also recalls that it gives considerable weight to findings of fact made by organs of the State party concerned; however, it is not bound by such findings and will make a free assessment of the information available to it in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to each case.²⁵

10.5 In the present case, the Committee notes the complainant’s claim that, in the event of his extradition, he would face a serious risk of torture or cruel, inhuman or degrading treatment in Egypt because of his criticism of the regime as a journalist. In this regard, the Committee notes that the complainant is subject to an arrest warrant because he received sentences in absentia in three different cases in Egypt, including a life sentence handed down on 28 August 2013 following his involvement in a case of forgery of authentic instruments in collusion with a public official. The Committee also notes that, according to the reports added to the case file, arbitrary detention, torture, violations of the right to a fair trial and reprisals against journalists are commonly used against journalists, a practice that is exacerbated by the absence of legislation criminalizing torture in accordance with the Convention (see paras. 3.4, 3.5, 5.8 and 5.10 above). Furthermore, the Committee notes the complainant’s claim that the Court of Cassation did not apply article 721 of the Code of Criminal Procedure and did not verify whether the request for the complainant’s extradition was of a political nature. The Committee also notes that, according to the State party, Moroccan criminal law is in line with the Convention, since it establishes that no person may be extradited if it is likely that he or she will be subjected to persecution for reasons of race, religion, political opinions or personal status, or if that person may be in danger for any such reasons.

10.6 The Committee must take into account the current human rights situation in Egypt, including arbitrary detentions, torture and enforced or involuntary disappearances, especially of journalists, activists and human rights defenders,²⁶ in retaliation for their activities and to force them to sign self-incriminating confessions. Since the Committee has not recently considered a periodic report by Egypt on its implementation of the Convention,²⁷ the Committee refers to the conclusions that it adopted at the seventy-second session of the General Assembly under article 20 of the Convention, in which it describes torture as a “systematic” practice in Egypt. Although Egypt did not agree to the Committee’s request to conduct a visit as part of its confidential inquiry,²⁸ the Committee noted that “torture appears to occur particularly frequently following arbitrary arrests and is often carried out to obtain a confession or to punish and threaten political dissenters. Torture occurs in police stations, prisons, State security facilities, and Central Security Forces facilities. Torture is perpetrated by police officers, military officers, National Security officers and prison guards. However, prosecutors, judges and prison officials also facilitate torture by failing to curb practices of torture, arbitrary detention and ill-treatment

²² *Kalinichenko v. Morocco*, para. 15.3.

²³ General comment No. 4, para. 11.

²⁴ *Ibid.*, para. 45.

²⁵ *Ibid.*, para. 50.

²⁶ A/HRC/33/51, annex II. See also footnotes 11 to 13 above.

²⁷ The Committee adopted its most recent concluding observations regarding Egypt on 14 November 2002 (CAT/C/CR/29/4).

²⁸ A/72/44, para. 61.

or to act on complaints.”²⁹ Nevertheless, the assessment of the risk of being subjected to torture cannot be based exclusively on the general situation in Egypt; additional grounds must be adduced to show that the alleged victim would be personally exposed to danger.

10.7 In the present case, the Committee notes that the complainant claimed to have been a member and co-founder of an independent, and therefore unrecognized, union of Egyptian journalists since 2005, having published articles about corruption in Egypt that implicate senior officials. The Committee notes that, according to the complainant, the proof that he is subject to political persecution lies in the fact that he was sentenced to life imprisonment on 28 August 2013 following his involvement in a case of forgery of authentic instruments (“forgery and use of forged documents”) in collusion with a public official, after which his newspapers were confiscated, while he was not detained, as well as the fact that he remained subject to police surveillance and therefore feared that he could be arrested and tortured at any moment. The Committee also notes the complainant’s claim that a life sentence for committing a minor offence, even if it had been committed by the complainant, is totally disproportionate and that the situation of journalists in Egypt has worsened since the extradition request was submitted by the Egyptian authorities. Furthermore, the Committee notes that, on 29 February 2016, the complainant had already been sentenced by the Casablanca criminal court of first instance to 3 months’ imprisonment for forgery of private business documents, unauthorized and unlawful practice of a regulated profession, and affixing of stamps and seals that could be mistaken for the seals of a foreign State, in respect of which the complainant recalls the *ne bis in idem* principle.

10.8 The Committee notes that, in authorizing the complainant’s extradition, the Court of Cassation made no assessment of the risk of torture that extradition would entail for him as an independent journalist, in view of the situation in Egypt. However, no explanation was given as to how the State party had assessed the risk of torture faced by the complainant, in order to make sure he would not be at risk of treatment in violation of article 3 of the Convention upon his return to Egypt. The Committee recalls that the primary aim of the Convention is to prevent torture.³⁰

10.9 In the light of the foregoing, the Committee considers that the State party had a duty to undertake an individualized assessment of the personal and real risk that the complainant would face in Egypt, particularly given that the complainant had been sentenced to life imprisonment for a minor offence. The Committee also considers that article 721 of the Moroccan Code of Criminal Procedure does not specifically mention the risk of torture and ill-treatment in the event of extradition, but only the risk of a deterioration in the personal situation of individuals who are the subject of extradition requests on the grounds of their race, religion, nationality or political opinions, if the offence in respect of which extradition is requested is considered by the State party to be a political offence or to be connected with such an offence. The Committee concludes that, in the present case, the assessments by the Court of Cassation do not rebut the argument that there is a foreseeable, present, personal and real risk that the complainant will be subjected to torture if extradited to Egypt, in violation of article 3 of the Convention.

10.10 With regard to the complainant’s assertion that the conditions in which he is being held have caused him physical harm, in violation of article 16, the Committee notes the absence of any clarification by the State party intended to refute the complainant’s claims that, since his transfer to Tiflet 2 prison, he has been held in the high-security wing, in solitary confinement, without medical assistance, which is likely to have negatively affected his health, and without any contact with his family and his lawyer. In this regard, the Committee recalls its jurisprudence concerning certain basic guarantees that must be applied to all persons deprived of their liberty, in order to prevent them from being subjected to torture or ill-treatment. Among those guarantees is the right for detainees to benefit promptly from independent medical and legal assistance and to contact their family. In the circumstances of the present case, the Committee considers that the complainant’s detention in solitary confinement, his limited contact with his family and his lawyer and his irregular access to health care constitute a violation of article 16 of the Convention. The Committee therefore considers that the conditions in which the complainant is being held disclose a violation by the State party of its obligations under article 16 of the Convention.

²⁹ *Ibid.*, para. 69.

³⁰ *Alan v. Switzerland* (CAT/C/16/D/21/1995), para. 11.5.

11. The Committee, acting under article 22 (7) of the Convention, concludes that the extradition of the complainant to Egypt would constitute a violation of article 3 of the Convention, and that the complainant's conditions of detention disclose a violation by the State party of article 16 of the Convention.

12. The Committee is of the view that the State party has an obligation to:

(a) Refrain from extraditing the complainant to Egypt and consider the request for his extradition taking into account its obligations under the Convention – which include an assessment of the risk of torture and ill-treatment in the event of extradition – and the present decision;

(b) Release the complainant, given that he has been held in custody with a view to his extradition for almost three years, and compensate him for the conditions of his detention in violation of article 16 of the Convention;

(c) Ensure that similar violations do not occur in the future, by conducting an individual assessment of the real risk of torture and ill-treatment, including by taking account of the general human rights situation in the country of return, whenever it considers an extradition request under an extradition agreement or in relation to extradition proceedings; providing fundamental legal safeguards; and refraining from placing individuals in solitary confinement during their detention pending a decision on the extradition request.

13. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee invites the State party to inform it, within 90 days from the date of transmittal of the present decision, of the steps it has taken to respond to the above observations.
