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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. 810/2017*, **

Draft recommendation proposed by the Rapporteur

Communication submitted by:	Naouel Gharsallah (represented by counsel, Fondation Alkarama)
Alleged victim:	Sami Gharsallah
State party:	Morocco
Date of complaint:	28 February 2017 (initial submission)
Date of decision:	3 August 2018
Subject matter:	Extradition of the complainant's husband to Tunisia
Procedural issues:	Exhaustion of domestic remedies; admissibility — non-substantiation
Substantive issues:	Risk of torture for political reasons upon extradition (non-refoulement)
Article of the Convention:	3

1.1 The complainant is Naouel Gharsallah, a national of Tunisia born in 1970. She has submitted the complaint on behalf of her husband, Sami Gharsallah, a national of Tunisia born in Tunis in 1966. Mr. Gharsallah is currently being held in the Salé 1 prison in Morocco pending his extradition to Tunisia, where, he claims, he is at risk of being subjected to torture. The complainant states that the extradition of her husband, the alleged victim, would constitute a violation by Morocco of its obligations under article 3 of the Convention.[1] She is represented by Fondation Alkarama.[2]

1.2 In her complaint dated 28 February 2017, the complainant asked the Committee to take interim measures. On 6 March 2017, the Committee, pursuant to rule 114 of its rules of

* Adopted by the Committee at its sixty-fourth session (23 July–10 August 2018).

** The following Committee members took part in the consideration of the communication: Felice Gaer, Claude Heller Rouassant, Jens Modvig, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Honghong Zhang.
In accordance with rule 109 of the Committee's rules of procedure, Essadia Belmir and Abdelwahab Hani did not take part in the consideration of the communication.

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

[2] This entity has a power of attorney from the complainant.

procedure, decided to request interim measures by asking Morocco not to extradite the victim to Tunisia while the complaint was under consideration. On 30 June 2017, having informed the Committee that the State party had complied with that request, the complainant requested an additional protection measure consisting of the immediate release of the alleged victim. On 7 August 2017, the Committee acceded to the request by calling on the State party to ensure that the complainant enjoys all the fundamental safeguards necessitated by the state of his health during detention, in particular by considering his release or any other appropriate solution. On 28 September 2017, the State party informed the Committee that the alleged victim remained in detention, assuring it that he enjoyed all the safeguards necessary for the exercise of his rights, particularly in view of the state of his health.

The facts as submitted by the complainant

2.1 At 6 p.m. on 22 September 2016, Mr. Gharsallah was arrested by plain-clothes police officers at his home in Tangier, Morocco, and taken to the headquarters of the National Police in Tangier. The police officers told him that Tunisia had issued an international warrant for his arrest. He was then taken into police custody.

2.2 The next day Mr. Gharsallah was brought before the Crown Prosecutor of the Court of First Instance of Tangier, who formally notified him of the international arrest warrant and stated that it had been issued by the investigating magistrate of chamber No. 19 of the Court of Tunis in response to a criminal complaint filed against him by the National Fact-Finding Commission with regard to alleged crimes of extortion by a public official and corruption. That body,[3] which was established after the change of political regime in 2011, had the stated aim of combating misappropriation and corruption, real or perceived, on the part of members of the former regime. Mr. Gharsallah was transferred to the Salé 1 prison five days later. On 7 November 2016 he was brought before the Criminal Division of the Court of Cassation of Rabat for a ruling on the extradition request.

2.3 During the hearing, Mr. Hichem Haddad, counsel for the alleged victim, argued that the extradition request from the Tunisian authorities was inadmissible on formal grounds and was of a political nature, particularly in view of Mr. Gharsallah's role in the Rassemblement Constitutionnel Démocratique, the former ruling party, and his personal ties with the deposed President, Zine Al Abidine Ben Ali.

2.4 Mr. Haddad also argued, in both his oral pleadings and his written submissions, that the alleged victim was at risk of suffering physical and psychological harm if he was handed over to the Tunisian authorities. The alleged victim also challenged the extradition request by claiming that the arrest warrant issued by the new Tunisian authorities was politically motivated and that he would, if extradited, be at risk of being subjected to torture or ill-treatment.

2.5 In a decision dated 23 November 2016, the Court of Cassation of Rabat dismissed all the defences raised without addressing them and issued an opinion in favour of the alleged victim's extradition. The Court merely stated that the offences for which Mr. Gharsallah's extradition was being sought were also criminalized under Moroccan legislation and that the acts described in the requesting State's extradition request were not of a political nature or related to a political offence. According to the complainant, however, the Court made no comment on the claim that Mr. Gharsallah might, if extradited to his country of origin, be at risk of torture or ill-treatment, and did not justify its decision in the light of this claim.

2.6 Fearing arrest owing to the political climate prevailing in Tunisia after the removal of former President Ben Ali in 2011 and the subsequent arrest of many of his supporters, Mr. Gharsallah had been forced to leave Tunisia for Morocco, where he obtained an official residence permit.[4] The complainant, having been informed that the National Fact-Finding Commission had filed a criminal complaint against her husband charging him with receiving undue advantages as a result of his ties with former President Ben Ali (including

[3] Established by a decree-law issued on 18 February 2011.

[4] The complainant does not indicate the exact date on which her husband fled from Tunisia to Morocco.

a remission of tax and a 300 m^2 plot of land), offered to resolve the situation with the authorities by repaying the amount of the tax deduction that he had been granted. The complainant also claims that during the criminal proceedings she proved that her husband had received no benefits in kind from President Ben Ali, whereas the National Fact-Finding Commission was unable to provide any evidence in support of its allegations.[5]

2.7 Despite the resolution of the situation through the repayment of the tax deduction granted to Mr. Gharsallah, on 13 October 2011 chamber No. 19 of the Court of Tunis issued an international warrant for the arrest of the alleged victim, pursuant to the complaint filed by the National Fact-Finding Commission.

2.8 Concerning the requirement to exhaust domestic remedies, the complainant alleges that no effective remedy is available to Mr. Gharsallah, as the Court of Cassation of Rabat is the country's highest court and its decisions are final. On 23 November 2016 the Court of Cassation of Rabat ruled in favour of the extradition request submitted by the Tunisian authorities.[6] As the Court's decision is not subject to appeal, it became final and binding once it had been confirmed by order of the Head of Government.[7]

2.9 The complainant indicates that the Moroccan authorities could argue that other remedies are available to the alleged victim, namely an application to an administrative court to set aside the extradition order of the Head of Government on grounds of ultra vires. The complainant emphasizes, however, that while this remedy is available in theory,[8] it may be used only in certain exceptional situations and would not apply in the present case. She submits that this procedure is never warranted in an extradition case to challenge an act of the Head of Government, who has full authority to sign extradition orders within the scope of his prerogatives. The complainant thus maintains that this remedy cannot be seen as a possible avenue of appeal or as a valid remedy within the meaning of article 22 (5) (b) of the Convention, as it is unlikely to bring effective relief to the alleged victim. Lastly, she states that she has not submitted the complaint to any other procedure of investigation or settlement, in accordance with article 22 (5) (a) of the Convention.

The complaint

3.1 The complainant alleges that the extradition of Mr. Gharsallah from Morocco to Tunisia would constitute a violation of his rights under article 3 of the Convention.

3.2 She submits that the human rights situation is particularly troubling in the requesting State, where torture, which had virtually disappeared just after the fall of President Ben Ali's regime, is again being practised by the police and the National Guard. She also alleges that the definition of torture contained in article 101 bis of the Tunisian Criminal Code, as amended in 2011, is still not in conformity with the one set out in article 1 of the Convention. The complainant refers to the concluding observations adopted by the Committee during its most recent review concerning Tunisia, held in June 2016,[9] in which the Committee notes that the persistence of such practices in Tunisia is due, on the one hand, to the absence of domestic legal provisions that would enable the authorities to prevent and punish torture in a manner consistent with their obligations under the Convention, and, on the other, to the fact that past practices in this regard are still in evidence. The Committee also expresses concern about the provision, in article 101 quater of the Tunisian Criminal Code, for the exemption from punishment of public servants and similar officials who report acts of torture "in good faith", as this opens the door to impunity.[10]

[5] The complainant does not attach a copy of any decision related to the proceedings to which she refers.

[6] The complainant indicates that her husband was provided with a copy of the decision, but it is not in the file.

[7] The complainant does not mention whether the extradition order was issued by the Head of Government. Nevertheless, the State party confirms in its note verbale of 8 September 2017 that the order was issued, although it does not specify the date of issuance.

[8] Under article 9 of Act No. 41-90 establishing the administrative courts.

[9] CAT/C/TUN/CO/3.

[10] Ibid., para. 7.

3.3 The complainant also notes that neither police custody nor decisions of the public prosecutor to extend police custody for up to 12 days may be challenged under Tunisian law, and indicates that this could violate her husband's right to a fair trial if he is extradited. She recalls that the Committee raised this issue in 2015 and that the State party has not yet taken action to address this breach of its international obligations.[11] The complainant submits that the situation is all the more troubling in that the Committee has noted the existence of reports that the judiciary is still subject to considerable influence of the executive branch.[12]

3.4 The complainant further alleges that the extradition request from the Tunisian authorities is politically motivated. The National Fact-Finding Commission, which was established just after the change of political regime in 2011, had the stated aim of combating misappropriation and corruption, real or perceived, on the part of members of the former regime. However, the complainant maintains that the Commission has been used exclusively as an instrument of political repression and that the extradition request from the requesting State is of a political nature. For this reason, she states that she fears that her husband will be in danger of being tried unfairly and subjected to torture or cruel, inhuman or degrading treatment if he is handed over to the Tunisian authorities.

3.5 In view of this information and the political nature of the charges brought against her husband by the requesting State, the complainant alleges that Mr. Gharsallah is in serious danger of being subjected to torture. She also fears that he would be forced to sign a confession under torture to validate the charges against him. In this regard, she notes that, in 2016, the Committee expressed concern at the absence of cases in which courts have declared evidence obtained under torture or duress to be null and void.[13]

State party's observations on admissibility

4.1 On 22 May 2017, the State party submitted its observations on the admissibility of the present communication. Firstly, the State party points out that, under the Moroccan Code of Criminal Procedure, an application for revocation may be filed in respect of the Court of Cassation decision of 23 November 2016 in favour of the alleged victim's extradition.[14] The State party sets out a complete list of the situations in which an application for revocation may be filed:[15] judgments based on false statements made in evidence; judgments vitiated by manifest material errors; failure to rule on a plea; failure to provide a reasoned judgment; and judgments finding that an application is inadmissible or time-barred on the basis of information shown to be false by authentic documents. Accordingly, the State party submits that the complainant has not exhausted all domestic remedies and that the Committee should therefore declare the complaint inadmissible.

4.2 Secondly, the State party argues that the extradition request from Tunisia can by no means be described as political in nature. The arrest of the alleged victim on 21 September 2016 pursuant to a decision taken by the Crown Prosecutor of the Court of First Instance of Tangier on 22 September 2016[16] was entirely lawful, as it was based on an international arrest warrant issued by the Tunisian judicial authorities on 13 October 2011. The State party recalls that the alleged victim had the opportunity to challenge that decision before the Court of Cassation, which rejected his claims. Furthermore, the State party points out that the acts of which the alleged victim stands accused concern a public official's taking advantage of his or her position in order to benefit therefrom and to collect undue interest; these acts are criminalized as breaches of Tunisian criminal law that are not subject to a statute of limitations.

4.3 Finally, concerning the alleged risk of torture that would make extradition a violation of article 3 of the Convention, the State party submits that, during Mr. Gharsallah's hearing before the Crown Prosecutor of the Court of First Instance of Tangier,

[11] See CAT/C/TUN/Q/3, para. 3 (a), and CAT/C/TUN/Q/3/Add.1, para. 3 (a).
[12] See CAT/C/TUN/CO/3, para. 17.
[13] Ibid., para. 23.
[14] Articles 563 and 564 of the Code.
[15] The situations are set out in article 563 of the Code of Criminal Procedure.
[16] The date indicated by the State party is the day after the date of arrest, 21 September 2016.

the alleged victim stated that he had no fear of being tried by the Tunisian judicial authorities. Article 721 of the Moroccan Code of Criminal Procedure provides that the State party's authorities are obliged to refuse to extradite a person where there are substantial grounds for believing that the request for extradition has been made for the sole purpose of prosecuting the person on account of his or her political opinions or any other discriminatory grounds. What is more, the arrest was made under the legal framework for mutual assistance in criminal matters and extradition between Tunisia and Morocco. The State party submits that, in the present case, its authorities did not find that extradition would entail any risk of torture.

Complainant's comments on the State party's submission

5.1 On 30 June 2017, the complainant submitted comments on the State party's submission. Firstly, she reports that the State party has not extradited the alleged victim to Tunisia and has thus complied with the request for interim measures made by the Committee on 6 March 2017.

5.2 The complainant goes on to state that what Mr. Gharsallah actually indicated at his hearing before the Crown Prosecutor of the Court of First Instance of Tangier was that he would not agree to appear before a Tunisian court unless his physical safety and an apolitical and fair trial could be guaranteed; in his view, those two conditions had not been met. The complainant recalls that those conditions also formed the basis of the appeal that Mr. Haddad filed with the Court of Cassation on behalf of the alleged victim.

5.3 With regard to the State party's allegation that an application for revocation of the decision of the Court of Cassation could have been filed under articles 563 and 564 of the Code of Criminal Procedure, the complainant submits that this remedy is applicable in exceptional circumstances and constitutes a special remedy. She states that the present case does not qualify as one of these exceptional situations. The complainant adds that this remedy does not, in practice, have suspensive effect, in the absence of any reference in that regard in articles 563 and 564 of the Code of Criminal Procedure. She therefore did not believe it necessary to file an application for revocation, which offered her no guarantee of satisfaction because the existence of such an appeal pending before the Court of Cassation would not have prevented the State party from extraditing the alleged victim. In this connection, the complainant refers to a case considered by the Committee[17] in which the Head of Government of Morocco signed an extradition order validating a decision of the Court of Cassation in favour of extradition even before that Court had ruled on an application for revocation, thus confirming that the decision of the Court of Cassation was not, in practice, open to appeal. Accordingly, she asks the Committee to recognize the futility of domestic remedies and to find that the present communication is admissible, as it meets all the requirements under article 22 (5) of the Convention.

5.4 As to the political nature of the request for extradition made by the requesting State, the complainant maintains that the reason that the National Fact-Finding Commission filed a complaint against the alleged victim was that he belonged to the political party of former President Ben Ali. Moreover, she indicates that the international arrest warrant was issued by chamber No. 19 of the Court of Tunis, despite the absence of any evidence against the alleged victim. She concludes that these proceedings were introduced by an executive body of a political nature that was given exceptional powers under a transitional government.

5.5 With regard to the lawfulness of detention pending extradition, the complainant recalls that article 44 of the Riyadh Arab Agreement for Judicial Cooperation limits the period of detention to 30 days from the date of arrest, in the absence of a request for extension from the requesting State. In the present case, she notes that this time limit has long since been exceeded, as the alleged victim has been in detention since 22 September 2016. Therefore, the complainant submits that her husband's detention can no longer be justified. For these reasons, she is submitting to the Committee a new request for interim

[17] The complainant refers to the case of *Al Hashimi v. Morocco*. However, the consideration of that case was discontinued because Oman withdrew its extradition request and the complainant was released by the Moroccan authorities.

measures consisting of the immediate release of the alleged victim and his continued freedom pending the Committee's decision on the merits of the present communication.

5.6 On 20 July 2017, the complainant transmitted to the Committee a letter from the lawyer who represented the alleged victim in the proceedings held in Morocco, Mr. Haddad, attesting to the deterioration of the mental health of his client, who remains in detention, and stating that the latter was having suicidal thoughts.[18] Mr. Haddad indicates that the authorities of the State party have provided assurances that the alleged victim will be released as soon as the Committee takes a decision to that effect.

State party's observations on the merits and on the complainant's comments

6.1 By a note verbale dated 8 September 2017, the State party submitted its observations on the merits of the present communication. It reiterates its arguments concerning the allegedly political nature of the extradition request by recalling that the arrest was based on an international arrest warrant issued by a Tunisian court in respect of a criminal offence, that the arrest was ordered by the Crown Prosecutor and that it could even have been challenged before the Court of Cassation. The State party goes on to recall that although the extradition order was approved by the Head of Government,[19] the extradition was suspended in response to the Committee's request for interim measures. In that context, the State party reiterates that the extradition request can by no means be described as political in nature.

6.2 As to the claim regarding the risk of torture in the event of extradition to Tunisia, the State party reiterates the arguments it put forward in its previous observations on admissibility. It recalls, inter alia, that the alleged victim stated that he had no objection to appearing before the Tunisian courts and that both Moroccan law[20] and the Agreement on Mutual Assistance in Criminal Matters and Extradition between Morocco and Tunisia of 1964 set forth guarantees that are sufficient to ensure that requests for extradition are refused if they are of a discriminatory or political nature. The authorities of the State party claim that they have not identified any risk of torture in the specific case of the alleged victim. They submit, accordingly, that they have not violated any of the provisions of the Convention.

6.3 On 28 September 2017, the State party provided clarifications with regard to the Committee's most recent request for interim measures, dated 7 August 2017. It indicates that an investigation conducted by the Moroccan authorities concluded that the conditions in which Mr. Gharsallah is being held are adequate in relation to his state of health, as he is being treated on the same footing, without distinction, as any other person being held in Moroccan prisons. Moreover, the detainee is said to be fully entitled to receive family visits and to correspond with his counsel. With regard to Mr. Gharsallah's state of health, the State party claims that he has been afforded all necessary medical assistance. According to the State party, the alleged victim has been treated for mild respiratory distress. Concerning his vision problems, the State party indicates that a visit to an ophthalmologist accredited to the prison has already been scheduled.

Issues and proceedings before the Committee

Consideration of admissibility

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

[18] Nevertheless, the complainant has not produced a medical certificate attesting to the deterioration of her husband's state of health.

[19] The State party does not specify the date of that decision or attach a copy of it to its correspondence.

[20] The State party refers here to article 721 of the Code of Criminal Procedure.

7.2 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 rule does not apply where remedy procedures exceed a reasonable length of time[21] or are unlikely to bring effective relief to the alleged victim.

7.3 The Committee notes the State party's claim that the complaint should be declared inadmissible under article 22 (5) (b) of the Convention because the complainant has not exhausted all domestic remedies, given that an application for revocation can still be filed against the decision of the Court of Cassation. The Committee also notes the complainant's argument regarding the special nature of this remedy, which does not have suspensive effect and therefore provides no guarantee of satisfaction.[22]

7.4 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 her husband's risk of being subjected to torture in Tunisia.[23] The Committee notes that the State party has not specified how an application for revocation of the Court of Cassation decision of 23 November 2016 could affect Mr. Gharsallah's extradition to Tunisia, as it has not indicated whether that remedy has suspensive effect. The Committee also notes that the State party has not refuted the complainant's allegation that applications for revocation do not have suspensive effect. The Committee recalls that in several of the cases brought before it, an extradition order was signed by the Head of Government even before the Court of Cassation had ruled on an application for revocation.[24] Considering that Moroccan law does not specify whether this remedy has 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 suspensive nature of an application for revocation,[25] the Committee is not in a position to conclude that the fact that the complainant did not submit an application for revocation prevented her from submitting her 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.

7.5 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 from Tunisia was of a political nature. The State party submits that the alleged victim was able to challenge the arrest warrant before the Court of Cassation, which rejected his claims; that the alleged victim stated, during the hearing before the Crown Prosecutor of the Court of First Instance of Tangier, that he had no fear of being tried by the Tunisian judicial authorities; and that the Moroccan authorities have not identified any risk of torture in the event of extradition. The Committee observes that the complainant has argued that extradition would put her husband at risk, jeopardizing his physical safety and his chances of receiving a fair trial in the Tunisian courts. The Committee therefore finds that the complainant has sufficiently substantiated her complaint for the purposes of admissibility.

7.6 The Committee accordingly finds that the complaint is admissible under article 22 of the Convention with respect to the alleged violation of article 3, and proceeds to consider it on the merits.

Consideration of the merits

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

[21] See *Asfari v. Morocco* (CAT/C/59/D/606/2014), paras. 12.2, 8.1 and 8.2.

[22] See the 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.

[23] See *A.R. v. Sweden*, communication No. 170/2000 (A/57/44, para. 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.

[24] See *R.A.Y. v. Morocco* (CAT/C/52/D/525/2012), paras. 6.3 and 6.4.

[25] Ibid., para. 6.3.

8.2 In the present case, the issue before the Committee is whether Mr. Gharsallah's extradition to Tunisia would constitute a violation of the State party's obligation under article 3 (1) of the Convention not to expel or return ("refouler") a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The Committee 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.[26]

8.3 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 requesting State. However, the aim of such an analysis is to determine whether Mr. Gharsallah runs a personal risk of being subjected to torture if he is extradited to Tunisia. The existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on extradition to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk.[27] Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.[28]

8.4 The Committee recalls its general comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, according to which the non-refoulement obligation exists whenever there are "substantial grounds" for believing that the person concerned would be in danger of being subjected to torture in a State to which he or she is facing deportation, either as an individual or as a member of a group which 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".[29] Indications of personal risk may include, but are not limited to: the complainant's ethnic background; previous torture; incommunicado detention or other form of arbitrary and illegal detention in the country of origin; and clandestine escape from the country of origin for threats of torture.[30] 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.[31]

8.5 The Committee must take the current human rights situation in Tunisia into account and recalls, in this connection, its concluding observations on the third periodic report of Tunisia, in which the Committee expressed concern about reports that confessions made under torture have been admitted as evidence in court in the absence of any investigation into the torture allegations[32] and about consistent reports that torture continues to be practised in the security sector.[33] However, the assessment of the risk of being subjected to torture cannot be based exclusively on the general situation in Tunisia; additional grounds must be adduced to show that the alleged victim would be personally exposed to danger.

8.6 The Committee notes the complainant's allegation that Mr. Gharsallah's extradition to Tunisia would put him at substantial risk of torture because he belonged to the political party of former President Ben Ali. The Committee also notes the State party's observation that the Moroccan courts, during the domestic proceedings, did not identify any risk that Mr.

[26] See the Committee's general comment No. 2 (2007) on the implementation of article 2 by States parties, para. 5.

[27] See *Alhaj Ali v. Morocco* (CAT/C/58/D/682/2015), para. 8.3; *R.A.Y. v. Morocco*, para. 7.2; and *Mugesera v. Canada* (CAT/C/63/D/488/2012), para. 11.3.

[28] See *Kalinichenko v. Morocco*, para. 15.3.

[29] See general comment No. 4, para. 11.

[30] Ibid., para. 45.

[31] Ibid., para. 50.

[32] See CAT/C/TUN/CO/3, para. 23.

[33] Ibid., para. 15.

Gharsallah might be subjected to torture if he was extradited. The Committee recalls its jurisprudence according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion, and it is generally for the complainant to present an arguable case.[34]

8.7 In the present case, the Committee observes that the complainant merely alleges that her husband is in danger of being tortured for political reasons. The Committee notes that the complainant has not shown that Mr. Gharsallah is personally at risk, as she has not indicated whether he was previously subjected to torture[35] in Tunisia, whether he has been threatened with torture, whether he was wanted by the authorities, whether other members of the Rassemblement Constitutionnel Démocratique have been subjected to such treatment since the change of regime in 2011, whether he has been sentenced in absentia[36]or whether the nature of the sentence he faces essentially amounts to torture.[37] As to whether the risk of torture is real, the Committee recalls that Mr. Gharsallah fled Tunisia after the resignation of former President Ben Ali in January 2011 and that the complainant has made no attempt to show that her husband is now, several years after the fact, in danger of being subjected to torture in that country. Finally, the Committee observes that, since the complainant has not shown that the risk is real and personal, there is no basis for finding that Mr. Gharsallah's extradition would expose him to a foreseeable risk of torture.

8.8 The Committee observes that in the present case the authorities of the State party did not have any evidence allowing them to carry out a more accurate assessment of the complainant's general allegation concerning the risk of torture. On the basis of all the information submitted by the complainant, including on the general situation in Tunisia, the Committee finds that the complainant has not provided sufficient evidence to enable it to conclude that the extradition of her husband to Tunisia would expose him to a foreseeable, real and personal risk of being subjected to torture.[38]

9. The Committee, acting under article 22 (7) of the Convention, therefore concludes that the extradition of Mr. Gharsallah to Tunisia would not constitute a breach of article 3 of the Convention.

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[34] See *N.B.-M. v. Switzerland* (CAT/C/47/D/347/2008), para. 9.9, and *R.A.Y. v. Morocco*, para. 7.5.

[35] See *Ktiti v. Morocco* (CAT/C/46/D/419/2010), para. 8.6.

[36] See *Agiza v. Sweden* (CAT/C/34/D/233/2003), para. 13.4, and *Fadel v. Switzerland* (CAT/C/53/D/450/2011), para. 7.8. See also general comment No. 4 (2017), para. 45.

[37] See *Alhaj Ali v. Morocco*, para. 8.8. See also general comment No. 4, para. 29 (f).

[38] See *R.A.Y. v. Morocco*, para. 7.5.