



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

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**Committee against Torture
Thirty-first session
10 – 21 November 2003**

DECISION

Communication No. 199/2002

Submitted by: Ms. Hanan Ahmed Fouad Abd El Khalek Attia
(represented by Mr. Bo Johansson of the Swedish
Refugee Advice Centre)

Alleged victim: The complainant

State Party: Sweden

Date of complaint: 28 December 2001

Date of present decision: 17 November 2003

[ANNEX]

* Made public by decision of the Committee against Torture.

ANNEX

DECISION OF THE COMMITTEE AGAINST TORTURE UNDER ARTICLE 22
OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN
OR DEGRADING TREATMENT OR PUNISHMENT

Thirty-first session

Concerning

Communication No. 199/2002

Submitted by: Ms. Hanan Ahmed Fouad Abd El Khalek Attia
(represented by Mr. Bo Johansson of the Swedish
Refugee Advice Centre)

Alleged victim: The complainant

State Party: Sweden

Date of complaint: 28 December 2001

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

Meeting on 17 November 2003,

Having concluded its consideration of complaint No. 199/2002, submitted to the Committee against Torture by Ms. Hanan Ahmed Fouad Abd El Khalek Attia under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the complaint, his counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention

1.1 The complainant is Ms. Hanan Ahmed Fouad Abd El Khalek Attia, an Egyptian national born on 13 July 1964, currently present in Sweden. She claims that for Sweden to remove her to Egypt would violate article 3 of the Convention. She is represented by counsel.

1.2 On 14 January 2002, pursuant to Rule 108(9), of the Committee's Rules of Procedure, the State party was requested not to expel the complainant to Egypt while her complaint was before the Committee. It was stated that this request could be reviewed in the light of detailed information provided by the State party on the whereabouts of the complainant's husband and his conditions of detention. On 18 January 2002, further to the Committee's request, the Swedish Migration Board decided to stay enforcement of the

expulsion decision until further notice, and, as a result, she remains lawfully in Sweden at the present time.

The facts as presented

2.1 In 1982, the complainant's husband, Mr. A, was arrested on account of his family connection to his cousin, who had been arrested for suspected involvement in the assassination of the former Egyptian President, Anwar Sadat. Before his release in March 1983, Mr. A was allegedly subjected to "torture and other forms of physical abuse". Mr. A, active in the Islamic movement, completed his studies in 1986 and married the complainant. He avoided various police searches, but suffered difficulties, such as the arrest of his attorney, upon bringing a civil claim in 1991 against the Ministry of Home Affairs, for suffering during his time in prison.

2.2 In 1992, Mr. A left Egypt on security grounds for Saudi Arabia, and thereafter to Pakistan, where the complainant and her children joined him. After difficulties with passport non-renewal and confiscation by the Egyptian embassy in Pakistan, the family left for Syria under assumed Sudanese identities. There they were visited by family members from Egypt, who were arrested and had their passports confiscated upon their return to Egypt, in order to determine Mr. A's whereabouts. In December 1995, the family moved to Iran under the same Sudanese identities.

2.3 In 1998, Mr. A was tried for terrorist activity in absentia before a higher military court in Egypt, along with one hundred other accused. He was found guilty of belonging to an Islamic fundamentalist group, Al-Gihad, having intention to overthrow the Egyptian government, and was sentenced, without possibility of appeal, to 25 years' imprisonment. In 2000, concerned that warming ties between Egypt and Iran might result in his being returned to Egypt, Mr. A and his family purchased air tickets under Saudi Arabian identities for Canada, and claimed asylum during a transit stop in Stockholm, Sweden, on 23 September 2000.

2.4 In his asylum application, he claimed that he had been sentenced to "penal servitude for life" in absentia, and that if returned, he would be executed as other accused allegedly had been. The complainant contended that, if returned, she would be detained for many years, on account of her status as Mr. A's wife and corresponding guilt by association. On 23 May 2001, the Migration Board invited the Swedish National Police Board (Special Branch) to submit its opinion in the matter, and the Special Branch subsequently conducted an interview with Mr. A. On 3 October 2001, with legal representation, the Migration Board held a "major inquiry" with Mr. A and the complainant. On 30 October 2001, the Swedish National Police Board (Special Branch) informed the Migration Board that Mr. A. had a leading position in an organisation guilty of terrorist acts and was responsible for activities of the organisation. The case of Mr. A and the complainant was thus remitted, on 12 November 2001, to the Government for decision pursuant to chapter 7, section 11(2)(2) of the Aliens Act. In the Board's view, on the information before it, Mr. A could be considered entitled to refugee status, however the Special Branch assessment, which the Board saw no reason to question, pointed in a completely different direction. The necessary weighing of Mr. A's possible need for protection, as against the Special Branch's assessment, was thus to be made by the Government. On 13 November 2001, the Aliens Appeals Board, to which the case had been forwarded, shared the Migration Board's assessment of the merits and was also of the view that the Government should decide the matter.

2.5 On 18 December 2001, the Government rejected the asylum applications of Mr. A and the complainant. The reasons for these decisions are omitted from the text of this decision at the State party's request and with the agreement of the Committee. Accordingly, it was ordered that Mr. A be deported immediately and the complainant as soon as possible. On 18 December 2001, Mr A. was deported, while the complainant evaded police custody; her whereabouts remain unknown.

The complaint

3.1 The complainant submits that her case is intimately bound up with that of her husband Mr A., who denies any terrorist links. She alleges she would be of great interest to the Egyptian authorities, as she would be expected to possess valuable information about her husband and his activities. There is thus a clear risk of detention and that Egyptian authorities would try and obtain information from her through physical violence and torture.

3.2 The complainant criticises the lack of information as to the content and sources of the Special Branch's information on Mr. A, observing that in any event the desire of the Egyptian authorities to have him in custody on account of his previous conviction was clear. The complainant questions the value of the security guarantee provided by the Egyptian authorities. Neither its contents nor its author are known to her. In any event, the Egyptian authorities are more likely to pursue their own objectives than respect assurances provided to foreign States. In a subsequent submission, the complainant refers to a statement (urgent action) of 10 January 2002 by Amnesty International considering the complainant to be at risk of torture in the event of a return to Egypt due to her family links. In addition, Amnesty International considered the security guarantee insufficient, as Mr A.'s whereabouts since his arrival in Egypt on 18 December 2002 were unknown and had not been advised to family, counsel or any other.

3.3 The complainant argues that, in contrast to the Convention on the Status of Refugees, the Convention against Torture does not contain any exclusion clause on security grounds and thus its protection is absolute. In addition, the expulsion decision cannot be appealed, while a new application requires new circumstances to be presented, of which there are none.

3.4 Generally, the complainant refers to a report in 2000 of the United States' State Department that respect for fundamental human rights in Egypt is poor. She contends that security forces mistreat and torture persons suspected of terrorist connections, and conduct mass arrests of such persons. A 1997 report of Amnesty International suggests a number of women have been subjected to human rights violations, including arbitrary detention, on account of family links.

The State party's submissions on the admissibility and merits of the complaint

4.1 By submission of 8 March 2002, the State party contests both the admissibility and the merits of the complaint. It regards the claim of substantial grounds to fear torture in the event of a return to Egypt to lack, in light of the security guarantees provided and the

other argumentation on the merits, the minimum substantiation necessary to render a complaint compatible with article 22 of the Convention.¹

4.2 On the merits, the State party sets out the particular mechanisms of the Aliens Act 1989 applicable to cases such as the complainant's. While asylum claims are normally dealt with by the Migration Board and then the Aliens Appeals Board, under certain circumstances either body may refer the case to the Government, appending its own opinion. This constellation arises if the matter is deemed to be of importance for the security of the realm or otherwise for security in general or for the State's relations to a foreign power (chapter 7, section 11(2)(2) of the Act). If the Migration Board refers a case, it must first be forwarded to the Aliens Appeals Board which provides its own opinion on the case.

4.3 An alien otherwise in need of protection on account of a well-founded fear of persecution at the hands of authorities or others on account of reasons listed in the Convention on the Status of Refugees (under chapter 3, section 2, of the Act) may however be denied a residence permit in certain exceptional cases, following an assessment of an alien's previous activities and requirements of the country's security (chapter 3, section 4 of the Act). However, no person at risk of being tortured may be refused a residence permit (chapter 3, section 3 of the Act). In addition, if a person has been refused a residence permit and has had an expulsion decision issued against him or her, an assessment of the situation at the enforcement stage must be made to avoid that an individual is expelled to face, inter alia, torture or other cruel, inhuman or degrading treatment or punishment.

4.4 The State party recalls Security Council Resolution 1373 of 28 September 2001, which enjoins all Member States to deny safe haven to those who finance, plan, support or commit terrorist acts, or themselves provide safe haven. The Council called on Member States to take appropriate measures, consistent with international human rights and refugee law, to ensure asylum seekers have not planned, facilitated or participated in terrorist acts. It also called upon Member States to ensure, in accordance with international law, that the institution of refugee status is not abused by perpetrators, organizers or facilitators of terrorist acts. In this context, the State party refers to the Committee's statement of 22 November 2001, where the Committee expressed confidence that responses to threats of international terrorism adopted by States parties would be in conformity with their obligations under the Convention.

4.5 With reference to the specific case, the State party details the information obtained by its security services with respect to Mr. A which led him to be regarded as a serious security threat. At the State party's request, this information, while transmitted to counsel for the complainant in the context of the confidential proceedings under article 22 of the Convention, is not set out in the Committee's present decision, which is publicly available.

4.6 The State party observes that on 12 December 2002, after referral of the case from the Migration and Aliens Appeals Boards, a state secretary of its Ministry of Foreign Affairs met with a representative of the Egyptian government in Cairo, Egypt. At the State party's request and with the Committee's agreement, details of the identity of the interlocutor are not reflected in the text of the present decision. As the State party was considering excluding Mr. A from protection under the Refugee Convention, the purpose of the visit was to determine the possibility, without violating Sweden's international obligations, including

¹ See, for example, Y v Switzerland Case No 18/1994, Decision adopted on 17 November 1994.

those arising under the Convention, of returning Mr. A and his family to Egypt. After careful consideration of the option of obtaining assurances from the Egyptian authorities with respect to future treatment, the State party's government concluded it was both possible and meaningful to inquire whether guarantees could be obtained that Mr. A and his family would be treated in accordance with international law upon return to Egypt. Without such guarantees, return to Egypt would not be an alternative. On 13 December 2002, requisite guarantees were provided by the official interlocutor in question.

4.7 The State party then sets out in detail its reasons for refusing, on 18 December 2001, the asylum claims of Mr. A and the complainant. These reasons are omitted from the text of this decision at the State party's request and with the agreement of the Committee.

4.8 In response to the Committee's request for information on the whereabouts and conditions of detention of Mr. A (see paragraph 1.2 above), the State party informs that he is currently held at Tora prison, Cairo, in pre-trial detention pending a re-trial for which preparations are in progress. The prison is reportedly of a comparatively high standard and he is said to be detained in a type of cell normally reserved for persons convicted of non-violent offences. In accordance with the agreement of Egyptian authorities, the Swedish Ambassador to Egypt met Mr. A on 23 January 2002 in the office of the prison superintendent. He was not restrained by handcuffs or feet chains. He was dressed in ordinary clothes, with hair and beard closely trimmed. He appeared to be well-nourished and showed no signs of physical abuse. He did not seem to hesitate to speak freely, and told the Ambassador that he had no complaints as to his treatment in prison. Asked whether he had been subjected to any abuse, Mr. A made no such claim. When informed that the guarantees issued by the Egyptian authorities precluded his sentence to death or execution, he was visibly relieved.

4.9 On 10 February 2002, the Swedish national radio reported on a visit by one of its correspondents with Mr. A in the office of a senior official at Tora prison. He was dressed in dark-blue jacket and trousers, and showed no external signs of physical abuse. He did have some problems moving around, which he ascribed to a long-term back problem. He complained about not being allowed to read and about lack of a radio, as well as lack of permission to exercise.

4.10 On 7 March 2002, the Swedish Ambassador again visited Mr. A in Tora prison. He showed no signs of having been subjected to torture. He explained that his back problems had been bothering him considerably, and that he had been provided medication for this and a gastric ulcer condition. He had recently put in a request for transfer to a hospital ward in order to receive better medical treatment and hoped this would be granted. At the Ambassador's request, he removed his shirt and undershirt and turned around, showing no signs of torture.

4.11 As to the application of the Convention, the State party refers to the Committee's constant jurisprudence that an individual must show a foreseeable, real and personal risk of torture. Such a risk must rise beyond mere theory or suspicion, but does not have to be highly probable. In assessing such a risk, which standard is incorporated in Swedish law, the guarantees issued by the Egyptian government are of great importance. The State party, in the absence of Committee jurisprudence on the effect of such assurances, refers to relevant decisions of the European organs under the European Convention on Human Rights.

4.12 In Aylor-Davis v France (judgment of 20 January 1994), it was held that guarantees from the receiving country, the United States, were found to eliminate the risk of the applicant being sentenced to death. The death penalty could only be imposed if it was actually sought by the State prosecutor. By contrast, in Chahal v United Kingdom (judgment of 15 November 1996), the Court was not persuaded that assurances from the Indian government that a Sikh separatist that he “would enjoy the same legal protection as any other Indian citizen, and that he would have no reason to expect mistreatment of any kind at the hands of the Indian authorities” would provide an adequate guarantee of safety. While not doubting the Indian government’s good faith, it appeared to the Court that despite the efforts of inter alia the Indian government and courts to bring about reform, violations of human rights by members of the security forces in Punjab and elsewhere in India was a recalcitrant and enduring problem. The caselaw thus suggests that guarantees may be accepted where the authorities of the receiving State can be assumed to have control of the situation.

4.13 Applying this test, the current case is more in line with Aylor-Davis. The guarantees were issued by a senior representative of the Egyptian government. The State party points out that if assurances are to have effect, they must be issued by someone who can be expected to be able to ensure their effectiveness, as, in the State party’s view, was presently the case in light of the representative’s position. In addition, at the December meeting between the Swedish state secretary and the Egyptian official, it was made clear to the latter what was at stake for Sweden: as article 3 is of absolute character, the need for effective guarantees was explained at length. The state secretary reaffirmed the importance for Sweden to abide by its international obligations, including the Convention, and that as a result specific conditions would have to be fulfilled in order to make any expulsion possible. It was thus necessary to obtain written guarantees of fair trial, that he would not be subjected to torture or other inhuman treatment, and that he would not be sentenced to death or executed. The trial would be monitored by the Swedish embassy in Cairo and it should be possible to visit Mr. A regularly, even after conviction. Moreover, his family could not be subjected to any kind of harassment. It was made clear that Sweden found itself in a difficult position, and that Egypt’s failure to honour the guarantees would impact strongly on other European cases in the future.

4.14 The State party expands on the details of these guarantees. The details have been omitted from the text of the decision by the request of the State party, and with the consent of the Committee. The State party points out that the guarantees in question are considerably stronger than those provided in Chahal and are couched much more affirmatively, in positive terms. The State party also observes that Egypt is a State party to the Convention, has a constitutional prohibition on torture and acts of, or orders to torture, are serious felonies under Egyptian criminal law.

4.15 The State party observes that the complainant fears being subjected to treatment contrary to the Convention as a result of being Mr. A’s wife. She makes no independent claim of political activity, or of detention or mistreatment in Egypt. In this light and in view of the assurances, it was thus determined that she did not qualify for refugee status. However in the light of her close association with Mr. A and the general situation in Egypt, she may be considered in need of the protection extended to her by means of the guarantees obtained. In evaluating the prospects of respect for these guarantees, it is naturally of interest to know the extent of respect for the corresponding guarantee with respect to Mr. A, and, in the light of the experiences monitored with Mr. A, it may be assumed that the guarantees will also be effective with respect to the complainant. The State party points out, in this respect, that the cases of Mr. A and the complainant have garnered wide attention internationally as well as in

Sweden. The Egyptian authorities, being aware of this, must be taken to be sufficiently astute to ensure no ill-treatment would befall the complainant.

4.16 The State party concludes that its efforts in this case fully satisfy its international human rights obligations, including under the Convention, while complying with its commitments under Security Council Resolution 1373. The complainant has not shown, in the circumstances, substantial grounds to fear torture in the event of a return, and thus her expulsion would not be in violation of the Convention.

The complainant's comments on the State party's submissions

5.1 By letter of 20 January 2003, the complainant responded to the State party's submissions. She affirms that Mr. A was not involved in any terrorist activities, and this Resolution 1373 is not applicable. In any event it could not override other international obligations such as the Convention. In Pakistan, he was engaged by the Kuwaiti Red Crescent for humanitarian missions, while in Iran he studied Islamic subjects at university in order to receive a scholarship and thus support his family. She goes on to dispute aspects of the information supplied by the Swedish Special Branch concerning Mr. A's alleged activities.

5.2 According to the complainant, the report of the Special Branch did not prove that he was involved in terrorist activities. In any case, there was no information that he had performed any such acts in Sweden. The report was not provided to their counsel, as everything but the opening sentence and the conclusion that he was a threat to national security had been blacked out, and it was thus very difficult to refute the conclusions. Similarly, the decision of 18 December 2001 denying the claim for asylum and ordering expulsion, a decision that was executed with respect to Mr. A the same day and only reached the complainant the following day, did not detail the Special Branch's information.

5.3 As to the assurances provided by the Egyptian authorities, the complainant contends they are not sufficiently explicit, and it is unknown how extensive efforts were on the Egyptian side to guarantee implementation of the assurances, particularly given that they were provided a day after being requested. The complainant points out that the Swedish side did not require either any plans from the Egyptian authorities as to the manner of treatment during and after arrival or any assurance of an ability to visit for inspections regularly. As to the constitutional and legislative prohibitions on torture, the complainant observes that the practical reality is that torture is frequently resorted to by the security agencies.

5.4 As to the radio interviewer's visit with Mr. A, the interviewer notified counsel for the complainant that he had asked Mr. A whether he had been tortured, and he stated that he was unable to answer. In counsel's view, it is thus plausible to assume that he had been, and that he was able to so signal to the interviewer whereas he felt he could not to the Ambassador. In addition, Mr. A's counsel in Egypt is allegedly of the view he has been tortured.

5.5 The complainant disputes the State party's view of the jurisprudence of the European organs. She views her case as closer to that in Chahal, where the guarantees offered by India were not considered adequate. India, in contrast to Egypt, is a democratic State, with an effective judicial system. The security apparatus is generally controlled, and the fear of torture was confined to Punjab, a small area. By contrast, torture is widespread in Egypt and practiced by many agencies, particularly the security services. If the Indian guarantee was not

inadequate, *a fortiori* the Egyptian one cannot be. Moreover, in the complainant's view, the position and responsibilities of the representative providing the assurances reduces the effectiveness of the assurance given. The complainant also considers the assurance provided by the Egyptian government to be comparable to, rather than stronger than, the one at issue in Chahal.

5.6 As to the prophylactic effect of publicity, the complainant argues that despite extensive publicity Mr. A's situation does not appear to have been relieved, and in any event it is unclear for how long such an effect would last. Thus, little store can be placed upon this factor by way of protection for the complainant.

5.7 The complainant concludes that the Egyptian guarantee is inadequate and insufficient, in the light of Mr. A's experience and the monitoring to which he is subject, as well as the realities of the practice of the Egyptian security services. It cannot displace substantial grounds to believe that she, as the wife of an alleged terrorist, would be at risk of torture in Egypt in order to obtain information concerning, or to coerce, Mr. A.

Supplementary submissions of the parties

6.1 By additional submissions of 27 September 2002, the State party updated the Committee on the situation of Mr. A. Subsequent to the visits described above, the Swedish embassy in Egypt continues to visit him once a month, in principle, with further visits taking place on 14 April, 27 May, 24 June, 22 July, and 9 September 2002. For the third visit in April, he was properly dressed and appeared to feel well considering the circumstances. He had no problems moving around and did not seem to have lost weight. When asked whether the Egyptian authorities had reneged on their agreement and maltreated him, he was initially evasive, claiming that the only problem was the lack of information regarding his re-trial. When again asked as to his treatment, he answered he had not been physically abused or otherwise maltreated. His only complaint was about sleeping problems from his bad back. A doctor had seen him the previous day and promised a through examination. When finally asked whether the friendly atmosphere during the visit was a sign he was alright and being treated well, he nodded affirmatively.

6.2 During the fourth visit in May with the Swedish Ambassador, the general circumstances surrounding the visit were similar to those of the previous one; he looked well and healthy. He told embassy staff that he had had a kidney infection and received treatment. His back problems had allegedly improved and he had been promised an X-ray examination. He complained about general prison conditions, such as the absence of proper beds or toilets in the cell. Family members would soon be able to visit him.

6.3 During the fifth visit in June, again by the Ambassador, Mr A. appeared to be feeling well and was able to move without problems. He did not seem to have lost weight. No new information was provided concerning his state of health. He again mentioned his back problems and that he had been promised medical attention. Family members had visited the previous day and a routine of fortnightly visits from family and counsel had been established. He was aware of the Embassy's tasks and appeared to welcome the visits. He knew what the Embassy wished to be informed of and he gave straightforward answers to the Ambassador's questions. Upon leaving, he was observed in seemingly relaxed conversation with two prison guards.

6.4 During the sixth visit in July, by the Ambassador, Mr. A looked well and was dressed cleanly and had no problems of movement. The atmosphere was relaxed, with prison conditions allegedly the same as previously. Nothing new transpired regarding his health and treatment. He stated that he was not badly treated, and a family visit was expected later in the day. The seventh visit, in September, also with the Ambassador, was again relaxed. Mr. A's state of health was unchanged, having received an X-ray examination early in the month and awaiting results. The conditions of detention were unchanged. He was able to receive family visits fortnightly. He had been questioned a month previously, but had not heard further news as to his re-trial.

7.1 On 22 October 2002, the complainant responded to the State party's supplementary submissions. On 23 January 2002, her parents-in-law had visited Mr. A at Tora prison, with an Egyptian lawyer. Her mother-in-law alleges that he walked with difficulty and was supported by a prison officer. He seemed pale, weak, seemingly in shock and near breakdown. His eyes, cheeks and feet were allegedly swollen, with his nose larger than usual and bloodied. He told that he had been tied and hung upside down while transported to the prison, and then being constantly blindfolded and subjected to advanced methods of interrogation, including electric shocks. He said he was told the guarantees provided to the Swedish government were worthless. This visit was then allegedly interrupted by the arrival of the Swedish Ambassador.

7.2 Mr. A's parents made these observations public. They pursued efforts to meet with him to no avail, and were informed that this depended on their behaviour. On April 16, at short notice, they again visited him in prison. He allegedly whispered to his mother that he had been further tortured by electric shocks after the January visit, and held in solitary confinement for about ten days. His arms and legs were tied behind his back and he could not relieve himself. He said he had told the Swedish Ambassador about the torture, and that prison officers had urged him to decline further visits from the Ambassador. He stated that officers had told him his wife would be returned soon, and they threatened to assault her and his mother sexually. He said he remained in solitary confinement, in a cell measuring two square meters, without windows, heat or light and that, while not tied, he could only visit the toilet once every 24 hours, which caused him kidney problems.

7.3 From April, the parents were able to make monthly visits, and from July fortnightly, in a location different from where the Swedish Ambassador met Mr. A. Often, further visits were declined for various reasons. Officials had allegedly urged the parents not to disclose publicly information about Mr. A, and to encourage the complainant to return. The parents allegedly cannot provide further information for fear of adverse effects on Mr. A.

7.4 While conceding that there are contradictions between the State party's accounts of the visits with those of the parents, the complainant points out there are some commonalities, for example in detention conditions and certain evasiveness in Mr. A's replies. Necessarily, diplomatic contacts are formal, and Mr. A would be reluctant to disclose elements within earshot of supervising officers which could reflect negatively on him. Rather, international standards in such situations require private and unsupervised contact with a prisoner, and qualified medical staff must be able to examine a prisoner suspected of torture. Failure to comply with such standards reduces the value of the State party's observations. According to the complainant, the State party's diplomatic representatives are not medically trained to determine signs of torture, and may skew their interpretations in favour of their Government. By contrast, parents and family are much more familiar with their son's

manners and he can whisper to them out of earshot of officials. As to the visit of the Swedish radio correspondent, he was only able to see Mr. A's face and hands. In any event, he complained of back pains and walked with difficulty, providing no comment to a direct question whether he had faced torture.

7.5 As a result, the complainant argues that the State party has not discharged its burden of proof of showing Mr. A has not been tortured. Plainly, the interests of the State security agencies in obtaining information, if necessary by torture, outweigh broader foreign policy interests to abide by their international assurances. As Mr. A remains under investigation in these circumstances, allegedly for attacks on the Egyptian Embassy in Islamabad, Pakistan, in 1995 and on a tourist bus in Luxor, Egypt, in 1997, it is said to be likely that she will be detained, interrogated and tortured to obtain information from her or to induce her husband to co-operate with the investigators.

8.1 On 29 January 2003, the complainant supplied a briefing note dated January 2003 from Amnesty International, in which it expressed the view that the complainant would be at risk of torture in the event of being returned, and that the guarantees provided were not effective. Amnesty International also refers to other relatives of political prisoners who had been allegedly detained and subjected to ill-treatment. The complainant also refers to advice obtained from Thomas Hammarberg, Secretary-General of the Olof Palme International Centre, who was of the personal view that the monitoring of Mr. A's situation had been problematic.

9.1 On 26 March 2003, the State party updated on its contacts with Mr. A since its previous submission. Since the visit in September 2002, the Swedish Embassy continued to monitor his condition, visiting him in November 2002, January 2003, and March 2003. At the eighth visit, on 4 November 2002 with the Ambassador and other officials, Mr. A had no problems moving around and gave a healthy impression, informing that his back had been examined that morning. He was scheduled to be later examined by a specialist. In his own view, opportunities to obtain medical attention had improved as a result of the Embassy visits. He confirmed he had not been subjected to physical abuse, complaining that, as a convicted person, he was held in a part of the prison for unconvicted persons. He had not received information about his retrial. In the Ambassador's assessment of the meeting, he concluded there was no indication that the Egyptian authorities had breached their agreement, while the detention was admittedly mentally trying.

9.2 The ninth visit, by the Ambassador and staff, took place on 19 January 2003. Mr. A appeared well, and had observed Ramadan to the extent possible. Since December, he was no longer kept apart from other prisoners. Prisoners were able to move around rather freely during the days, being locked up overnight between 4pm and 8 am. He appreciated the ability to walk in the prison courtyard. While the cell was crowded at night, the situation had generally improved. Further back examinations had been scheduled at the prison hospital. No further information had been provided on his retrial, and his lawyer had only visited him once. His family however visited every two weeks. The Ambassador's assessment was that he was more open and relaxed. Uncertainty regarding a future re-trial and sentencing appeared to weigh most heavily upon him.

9.3 The tenth visit, this time by a senior official from the Ministry of Foreign Affairs, Stockholm, as well as the Ambassador and Embassy staff, took place on 5 March 2003 and lasted over an hour in a relaxed atmosphere. The prison superintendent informed the

visitors that Mr. A was detained in that section of the prison for convicted persons serving sentences of 3 to 25 years. Mr. A seemed glad to be visited again. He looked well and appeared to be able to move without problems. He said he had been moved in January 2003 as a result of his health problems, and had had an MRI examination of his back. As a trained pharmacist, he could administer his own medication. He said he was treated as other prisoners. As far as legal representation was concerned, he had changed to a new lawyer, who aimed to have his sentence reduced.

9.4 The State party goes on to detail certain allegations made by Mr. A, the actions it took by way of response thereto and invites the Committee to draw a variety of inferences from the circumstances described. At the request of the State party and with the Committee's agreement, details of these matters have been deleted from the text of the present decision.

9.5 In the context of the case, the State party draws the Committee's attention to the interim report² submitted in July 2002 by the Special Rapporteur of the Commission on Human Rights on the question of torture and other cruel, inhuman or degrading treatment or punishment, submitted in accordance with resolution 56/143 of 19 December 2001. In that report, the Special Rapporteur appealed to all States "to ensure that in all appropriate circumstances the persons they intend to extradite, under terrorist or other charges, will not be surrendered unless the Government of the receiving country has provided an unequivocal guarantee to the extraditing authorities that the persons concerned will not be subjected to torture or any other forms of ill-treatment upon return, and that a system to monitor the treatment of the persons in question has been put into place with a view to ensuring that they are treated with full respect for their human dignity" (paragraph 35). The State party argues, in the light of the information presented, that it has acted in the manner recommended by the Special Rapporteur. Prior to the decision to expel Mr. A, guarantees were obtained from the very person in the Egyptian administration best placed to ensure their effectiveness. The guarantees given correspond in content to the requirements specified by the Special Rapporteur. In addition, a monitoring mechanism was put into place and has been functioning for over a year.

9.6 The State party concludes that since the guarantees concerning Mr. A have served their purpose, it may be assumed that the assurances for the complainant will protect her from torture by the Egyptian authorities. Thus, the complainant has not substantiated her claim that there are substantial grounds for believing she would be in danger of torture if returned. An enforcement of the expulsion order would accordingly not, in the present circumstances, constitute a violation of article 3.

10.1 By letter of 23 April 2003, the complainant, while acknowledging the visits that have taken place, argues that conclusions that Mr. A is being treated well are not justified, as the monitoring was not performed in accordance with generally accepted international standards. In particular, the visits were not in private and no medical examinations have been performed; thus, he would be reluctant to speak freely. Mr. A allegedly told his mother that he had, in January 2003, realized that ill-treatment would continue whether or not he tried to veil it, and thus he had been forthcoming. According to the complainant, this incident also shows that the testimony of Mr. A's parents is not exaggerated and closer reflects the real conditions of detention. In support of these submissions, the complainant refers to matters raised by the State party in paragraph 9.4 above.

² A/57/173, 2 July 2002.

10.2 The complainant states that no information is available as to the time of an eventual retrial. It remains uncertain whether the allegations against Mr. A can be proved in a court procedure affording due process guarantees. In the complainant's view, it is not surprising that the Egyptian officials denied torture. However in the complainant's view, it is difficult to understand why a lie detector was used if evidence obtained by it cannot be admitted in court. While the State party refers to medical examinations that have taken place, they have not been provided, and their objectivity would have to be questioned.

10.3 In terms of the reference to the Special Rapporteur's call for "unequivocal guarantees", the complainant argues that the information on ill-treatment provided demonstrates that the guarantees have not been adequate, as called for by the Special Rapporteur. Thus, the complainant, who is closely linked to her husband, followed his activities in exile and will be inevitably associated with his activities, is at a high and well-founded risk of torture. Her removal to Egypt would thus violate article 3 of the Convention.

Issues and proceedings before the Committee

11.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. In terms of the State party's argument that the complaint is insufficiently substantiated, for purposes of admissibility, the Committee considers that the complainant has demonstrated a sufficiently arguable case for determination on the merits. In the absence of any further obstacles to the admissibility of the complaint advanced by the State party, the Committee accordingly proceeds with the consideration of the merits.

12.1 The issue before the Committee is whether removal of the complainant to Egypt would violate the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected by the Egyptian authorities to torture. In so doing, the Committee refers to its consistent practice of deciding this question as presented at the time of its consideration of the complaint, rather than as presented at the time of submission of the complaint.³ It follows that intervening events transpiring between submission of a complainant and its consideration by the Committee may be of material relevance for the Committee's determination of any issue arising under article 3.

12.2 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Egypt. It follows from this framing at the issue that the Committee is not asked to decide whether or not Mr. A's expulsion from Sweden violated its obligations under article 3, or any other articles of the Convention, much less whether he has or has not endured torture at the hands of the Egyptian authorities. In assessing the risk to the complainant, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of the determination

³ See, for example, H M H I v Australia Case No 177/2001, Decision adopted on 1 May 2002.

is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he would be returned. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

12.3 In the present case, the Committee observes that the complainant's husband, Mr. A, was returned to Egypt in December 2001, almost two years prior to the Committee's consideration of the case. The Committee observes that Mr. A's detention has since been monitored by regular visits from the State party's ambassador, Embassy staff and high-level representatives of the State party, as well as his family, and that his medical care and conditions of detention were reported to be adequate. The Committee observes that the complainant founds her allegation of a risk of torture solely on her relationship with her husband, Mr. A, and contends that she will be exposed to torture as a result of this link. The Committee refers in this respect to its previous jurisprudence where it rejected a claim of torture arising by virtue of a family relationship to the leadership of an allegedly terrorist organization – such family ties, of themselves, are generally insufficient to ground a claim under article 3.⁴ In light of the passage of time, the Committee is also satisfied by the provision of guarantees against abusive treatment,⁵ which also extend to the complainant and are, at the present time, regularly monitored by the State party's authorities *in situ*. It is also relevant to the Committee's consideration of the case that Egypt, a State party to the Convention, is directly bound properly to treat prisoners within its jurisdiction, and any failure to do so would be a breach of the Convention. In the light of the above circumstances, the Committee considers that there is not, at this time, a substantial personal risk of torture of the complainant in the event of her return to Egypt.

13. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, considers that the complainant has not substantiated her claim that she would be subjected to torture upon return to Egypt, and therefore concludes that the complainant's removal to that country at the present time would not constitute a breach by the State party of article 3 of the Convention.

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

⁴ See, for example, *M V v The Netherlands* Case No 201/2002, Decision adopted on 30 May 2003.

⁵ The Committee against Torture has viewed and considered the provisions of the guarantees provided.