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Committee against Torture

Communication No. 391/2009

Decision adopted by the Committee at its forty-eighth session, 7 May–1 June 2012

Submitted by:	M.A.M.A. et al. (represented by counsel, Per Andersson)
Alleged victims:	The complainants
State party:	Sweden
Date of complaint:	7 July 2009 (initial submission)
Date of present decision:	23 May 2012
Subject matter:	Expulsion of the complainants to Egypt
Substantive issue:	Risk of torture upon return to the country of origin
Procedural issue:	Non-substantiation of claims
Articles of the Convention:	3 and 16

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Annex

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

concerning

Communication No. 391/2009

Submitted by:	M.A.M.A. et al. (represented by counsel, Per Andersson)
Alleged victims:	The complainants
State party:	Sweden
Date of complaint:	7 July 2009 (initial submission)

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

Meeting on 23 May 2012,

Having concluded its consideration of complaint No. 391/2009, submitted to the Committee against Torture by Per Andersson on behalf of M.A.M.A. et al. 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 complainants, their counsel and the State party,

Adopts the following:

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

1.1 The complainants are M.A.M.A. (born on 25 June 1956), his wife S.S.Y. (born on 14 April 1960), and their six children, N.M.A.M.A. (born on 15 October 1984), Ah.M.A.M.A. (born on 23 August 1987), S.M.A.M.A. (born on 16 February 1990), K.M.A.M.A. (born on 7 February 1993), J.M.A.M.A. (born on 6 June 1994) and Am.M.A.M.A. (born on 14 July 1995). The family is also named A.-P. in certain submissions to the Swedish Migration Board and the Migration Court. The complainants are all Egyptian nationals and they currently reside in Sweden. They claim that an enforcement of the orders to expel them to Egypt[1] would violate articles 3 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainants are represented by counsel, Per Andersson.

1.2 Under rule 114 of its rules of procedure, the Committee requested the State party, on 8 July 2009, to refrain from expelling the complainants to Egypt while their communication

[1] Egypt acceded to the Convention on 25 June 1986 but did not accept the Committee's competence to receive and consider individual communications in accordance with article 22 of the Convention.

was under consideration by the Committee. On 10 December 2009, the State party informed the Committee that the Migration Board has decided, on 8 July 2009, to stay the enforcement of the decision to expel the complainants to Egypt until further notice.

Factual background

Case of M.A.M.A. (the first complainant)

2.1 According to the first complainant, his grandfather was awarded the title of Prince by the then King of Egypt. These titles were inherited by his sons but were removed officially by the President Gamal Abdel Nasser Hussein. The first complainant trained as an engineer at the University of Cairo. His family members were strong supporters of President Nasser and he had been schooled in nationalism and Arab unification. The first complainant has made a name for himself in the Arab world for his writings, mainly poetry with political and critical undertones. His extended family had prominent positions in the Governments of the Presidents Nasser and Muhammad Anwar al-Sadat. In the early 1980s the first complainant was very active in the students' union, chairing it for a while. He took part in demonstrations and spoke at meetings. As a result, he attracted the attention of the police. He was summoned and questioned but felt secure. He felt that he was fighting for a better Egypt but was not involved in party politics. As a true supporter of President Nasser, he felt that the President al-Sadat's policies were slipping away from his ideals.

2.2 On 6 October 1981, President al-Sadat was killed, allegedly by the first complainant's cousin, Khalid Islambouli, and the situation changed dramatically for the first complainant and his family. Those family members who had held high Government positions fled Egypt and those who stayed were persecuted by the security police. On 12 October 1981, the security police arrested the first complainant while he was visiting his aunt, Khalid Islambouli's mother, in order to console her. He was detained for five days, severely beaten and subjected to torture. The first complainant was interrogated about Khalid Islambouli, his knowledge about the assassination of President al-Sadat and the terrorist group to which Khalid Islambouli was thought to belong.

2.3 Some months after the assassination of President al-Sadat, the first complainant organized a students' demonstration for better health care, social reforms and changes in the foreign policy towards Israel, which they saw as dividing the Arab world. Although the demonstration was peaceful, the police used tear gas, truncheons and rubber bullets to disperse the students. The first complainant was arrested and subsequently detained for 45 days, during which he experienced various forms of torture, including having his hands tied to the ceiling, having to stand for 14 hours per day, sexual and other physical abuse, and verbal insults. A doctor had allegedly regularly examined him to determine how much torture he could still tolerate. The first complainant claims that his torturers always went until he could not take it anymore. For example, they pricked his hand so that blood would drop into a bowl and then made a dog drink from that bowl. The worst part, however, was when the torturers penetrated his anus with bottles, truncheons and metal objects, pulled his testicles and pubic hairs. He was repeatedly questioned about Khalid Islambouli and the Muslim Brotherhood. The police wanted to know whether he was an Islamist and asked the same questions time after time. When the first complainant was finally released, he was forbidden to ever tell anyone about what had happened to him and requested to put an end to his political activities. Despite the 20 years that passed since, the first complainant continues to have nightmares about the torture to which he had been subjected.

2.4 After 45 days in detention, the first complainant returned to the university to finish his studies. He stopped his political activities and left the students' union. He had a travel ban, even in the country, and had to report regularly to the police. At the end of 1982, the first complainant had to do compulsory military service. He submits that usually individuals

of his social background would get high military ranks, whereas he had to clean toilets for 14 months and sleep in a locked solitary prison cell every night. While the first complainant was doing his compulsory military service, his parents fled to Saudi Arabia.

2.5 After the military service, the first complainant married and settled down in El-Arish near Sinai. In 1984, two months after his first child was born, he was interrogated and tortured again.

2.6 In January 1987, the first complainant drove a hitchhiker to the border with Israel and he was arrested by the police shortly thereafter. He was told by the police officers that they were aware of his opposition to the Government. On this occasion, the first complainant was detained for four months without any formal charges being brought against him. While in detention, he was tortured and interrogated about Khalid Islambouli and the Muslim Brotherhood.

2.7 The first complainant submits that, in total, he was arrested and tortured six times before he fled to Saudi Arabia in 1987. When the police in Egypt realized that he had escaped to Saudi Arabia, his wife was interrogated and their house was destroyed. The first complainant had arranged for his wife and children to join him in Saudi Arabia 15 months later. Meanwhile, his parents returned to Egypt, as they were old and did not want to die abroad. The first complainant submits that his father was arrested and interrogated. He does not know exactly what happened to his father but he had "ended up in hospital badly injured". The first complainant does not exclude that his father had been tortured.

2.8 The first complainant, his wife and their children stayed in Saudi Arabia until 1997. While working in Saudi Arabia, the first complainant reportedly started an organization to defend the rights of migrant workers, which apparently resulted in him having problems with the Saudi Arabian authorities. This was one of the reasons why his contract in Saudi Arabia was not renewed and the family was expelled. The first complainant was forced to leave the country in 1997. He first moved to the United Arab Emirates and later, in June of 1999, to Oman, where he lived with the family until 2007. While working in Oman, the first complainant created a website with information about "prominent people" in the country. When the website was published, he was arrested by the Sultan's security police, who confiscated computers and documents, and banned the website. The first complainant was threatened and allegedly told by the security police that the only "prominent person" in the country was the Sultan. The police kept him under surveillance and his work contract was not renewed, which implied expulsion. He was summoned to a police interview, became very afraid and fled Oman with his family instead of appearing.

Case of N.M.A.M.A. (the second complainant)

2.9 The first child of the family, N.M.A.M.A., was born in Cairo and came to Saudi Arabia with her mother in 1988. Over the years, she attended school in Saudi Arabia, Egypt and Oman. The second complainant returned to Egypt in 2002 to start university, as she was unable to attend a university in Oman. She studied at the university until the summer of 2006. During her studies, the second complainant travelled several times between Egypt and Oman; every time she entered Egypt, she was taken for questioning to a special interview room. She was questioned about her father, the reasons why he had left Saudi Arabia and his contacts in Egypt. The interrogators have consistently treated her in a degrading manner, used sexually offensive and humiliating expressions against her and her family. They made her fear for her life and safety. On three occasions, she was summoned for questioning by the security police. The third time, in spring of 2006, when the second complainant was again questioned about her father by a member of the security police, the police officer took her identity document, locked the door and then grabbed her breasts and genitals and made obscene movements towards and against her body. She was terrified and tried not to annoy him. The harassment continued for at least an hour. Then he sent her out

of the room, threw out her identity document and threatened to "have a lot of contact" with her in the future. The second complainant was terrified and left Egypt with her younger sister to their parents in Oman. She then stayed in her parents' home until the family went to Sweden.

Case of Ah.M.A.M.A. (the third complainant)

2.10 The second child of the family, Ah.M.A.M.A., was born in Cairo and came to Saudi Arabia with his mother in 1988. Over the years, he attended school in Saudi Arabia, Egypt and Oman. The third complainant returned to Egypt in 2004 to start university, as he was unable to attend a university in Oman. Upon his arrival, he was stopped at passport control at the airport, questioned about his father's activities and whereabouts, and some private belongings were taken away from his luggage. The border police requested that he report to the police whenever he changed his address. The third complainant arrived at the airport in the morning and was not released until the evening. When he was released, the border police allegedly told him to inform his father that the police would now be seeing the third complainant frequently. After about two months, the third complainant got his own flat and reported his new address to the police, as requested. After some days, he was summoned to the police. There he was tied up, had a bag put over his head and was taken to a different location. After a day and a half, they started questioning him about his father. Those who questioned him, shouted sexual words, insulted and humiliated him. After being questioned for a few hours, he was released on the street where he lived.

2.11 In the first year of his studies, the third complainant was arrested for questioning five or six times. On some of these occasions he was held in a dark dungeon for two days and then released without being questioned. After his first academic year, the third complainant went back to his family in Oman for summer holidays. Shortly after his return to Egypt, he was summoned for an interview. Subsequently, the third complainant was detained for a week and questioned about his father all the time. Among other things, the third complainant was asked if he had not heard about the security police. While in detention, he was subjected to physical and mental torture, including rape. Once released, the third complainant was instructed not to tell anyone about what had happened. After between four and five days, he was picked up again, subjected to repeated rape and torture, and released again after between four and five days. In April 2006, the third complainant tried to finish his final exam but due to severe post-traumatic stress, he had to give up. He wanted to leave but could not do so, since he was not given a travel permit.

2.12 At some point, the third complainant contacted a relative, who was a lawyer. The third complainant was told that he must have a medical certificate and he, therefore, visited a public hospital approximately a month after the last rape took place. The doctor said that it was possible to establish rape but that too much time had passed to be able to identify the perpetrator, since the time limit for using sperm for identification was two weeks. The hospital could only start an investigation at the order of the police, which meant that the third complainant would have to report the incident to the police first. Out of fear of the police, he did not dare to report it. Instead, he visited a private hospital that was willing to conduct the investigation. The third complainant was then advised by a lawyer to close the investigation, as it would be too dangerous for him to continue. He followed this advice and visited a psychologist whom he then saw regularly. Meanwhile, the police continued to pick him up once a week and held him for two–three hours each time. They asked the same questions as before. He was not raped but he was assaulted, insulted and humiliated. The third complainant managed to obtain a travel permit by paying a bribe and travelled from Egypt to Oman on 13 May 2006. He was unable to tell his family about the torture to which he had been subjected in Egypt.

Asylum proceedings in Sweden

2.13 The first complainant and family went by car from Oman to Qatar, flew from there to an unidentified country and entered Sweden by car on 13 September 2007. On the same day, the family applied for asylum at the Migration Board's asylum examination unit in Gävle. Their applications included residence and work permits.

2.14 On 14 September 2007, the Migration Board held short application interviews with the complainants. During the application interview before the Migration Board, the first complainant presented his story as summarized in paragraphs 2.1–2.8 above. The third complainant stated that he had been a student at a university in Egypt when his father had told him on the phone to urgently book a ticket. His father explained to him that the family had to leave Oman as soon as possible. The third complainant further stated that his father had had problems in Egypt and was unable to return to that county. He added that he was also wanted in Egypt on account of his father. Every time he entered Egypt, he was stopped at the airport, taken to an interview room and questioned about his father. He was assaulted during the interviews, released and allowed to enter the country. When asked by the Migration Board about the problems his father had in Egypt, the third complainant replied that his father had been arrested several times, because he was a human rights advocate who defended people and dared to stand up to the Government and those in power. During the application interview before the Migration Board, the second complainant stated that her grounds for asylum were related to those of her father.

2.15 On 28 October 2007, the Migration Board appointed Per Andersson, as a legal aid counsel for all family members. On 26 December 2007, the counsel filed petitions, including statements and request for refugee status together with the travel documents for all family members. On 3 June 2008, the Migration Board summoned seven family members (all but the youngest, Am.M.A.M.A.) to separate new application interviews. The family was assisted by their counsel and an interpreter.

2.16 On 24 July 2008, the Migration Board rejected the complainants' applications for residence permits, refugee status and travel documents and decided to expel them to Egypt. In the case of the third complainant, the Migration Board acknowledged his torture but said that it did not believe that the reason for the third complainant's torture was his father. It further stated that his frequent travels to and from Egypt from 2004 to 2007 disclosed that the authorities were not very interested in him. It also noted that the third complainant failed to exhaust any Egyptian domestic remedies with regard to the alleged torture.

2.17 On 29 July 2008, the legal aid counsel, Per Andersson, received powers of attorney from the first, second and third complainants, S.S.Y. and S.M.A.M.A. (the fourth complainant). Thereafter, he was also the legal representative of the family members.

2.18 On 6 August 2008, the decision of the Migration Board was appealed to the Migration Court. Counsel supplemented the appeal with a petition on 11 November 2008, requesting an oral hearing. In a further submission of 8 December 2008, counsel stated who would be examined at the hearing and about what. For example, the first complainant would be examined about what happened when he was arrested by the security police in Egypt, what he was asked about while being subjected to torture and whether in his own view he was still of interest to the security police in Egypt. In addition, he would also be questioned about his family, presenting and going through his family tree from the Internet site geni.com and Facebook correspondence. Before the oral hearing, the Migration Board issued an opinion dated 12 January 2009, in which it considered, inter alia, that the evidence cited by the family before the Migration Court could probably be rejected as superfluous. It argued that the evidence value of pages from Facebook and the Internet site geni.com was neither stronger nor weaker than if the person concerned gave the information directly. The Migration Board was prepared to attest that there were instances

of the Egyptian police committing abuse and the general picture was that there could be instances of torture in Egypt. It stated, however, that this information did not alter the assessment of what individual risks the complainants could face if they were to return.

2.19 The oral hearing in the Migration Court was held on 27 January 2009. The first, second, third and fourth complainants were present together with their counsel. The Court noted that the family members had stated that certain information was covered by secrecy between them and the complainants were examined separately. Counsel submitted a copy of a medical certificate concerning the fourth complainant from the Children and Young Persons' Clinic in Skelleftea, dated 18 December 2008. The certificate stated that the fourth complainant was treated for hyperthyroidism and needed an operation. Counsel also submitted a certificate concerning the third complainant dated 7 November 2008 and issued by a psychotherapist working at the Red Cross Centre for Victims of War and Torture. According to the certificate, the third complainant had been in touch with the psychotherapist since 18 October 2007. The third complainant had described the abuse he was subjected to by the Egyptian security police when he was studying at the University of Cairo in 2004–2007. The bulk of the certificate consisted of the third complainant's description of the abuse and a statement that he had contacted an Egyptian lawyer to seek redress. The certificate also stated that psychotherapy was needed to enable the third complainant to move on.

2.20 On 17 February 2009, the Migration Court rejected the complainants' appeal in four judgments. While acknowledging the probability of the first complainant's torture by the authorities, the Court ruled that the events happened too long ago that the authorities would continue to be interested in the family. It further noted that, in the absence of passports, which the family reportedly left to the smuggler on their arrival to Sweden, it could not confirm their identity. It further maintained that their unproblematic application for passports at the Egyptian embassy in Oman also confirmed that the authorities were not interested in the family. With regard to the second complainant, the Migration Court stated, inter alia, that she has not been able to prove her story using documents or other evidence, although the information she has given was coherent and did not conflict with known facts.

2.21 The complainants appealed the judgments to the Migration Court of Appeal. On 8 March 2009, their counsel presented detailed argumentation as to why the Migration Court of Appeal ought to grant leave to appeal. He argued, inter alia, that the first and third complainants had been subjected to grave torture and severe abuse. The Migration Court had made an incorrect interpretation of the legal rules in assessing that the threats to the first complainant have disappeared, since the abuse took place so long ago. Counsel stated that this assessment had no support in the country information about Egypt and asked the Migration Court of Appeal to provide guidelines as to what facts may be required for previous threats to disappear. The complainants claimed that conditions in Egypt had not changed for 20 years; the same state of emergency was still in force then as in the 1980s.

2.22 Counsel further argued that the events of the 1980s still shaped the behaviour of the Egyptian authorities towards persons who were suspected of involvement with Islamists. The first complainant had been accused of having a link to such a group and had, as a result, been subjected to torture and abuse. The reason was that he had close ties with his cousins Khalid Islambouli, who allegedly killed President al-Sadat, and Mohammed Islambouli, who had fled Egypt and became a well-known person in Al-Qaida. The first complainant belonged to a noble family that was part of the power elite at the time of the Presidents Nasser and Al-Sadat, which reinforced the assumption that the security police was interested in him. Furthermore, the Migration Court had not taken account of the fact that the first complainant fled Egypt in 1987, even though he was required to report to the police and had a travel ban. It was, therefore, probable that he would be of interest again if he were to return. Counsel added that it was rather remarkable that the Migration Court

concluded that the third complainant had not shown that it was probable that the abuse took place because of his father's activities. He argued that the third complainant should have been given the benefit of the doubt, since the only information to emerge was that he was arrested and tortured on account of his father. Moreover, the Migration Court of Appeal should explain how to assess the situation in Egypt in respect of the risk of torture and other inhuman treatment. Counsel noted that emergency laws were in force in Egypt, which permitted torture in certain situations.

2.23 On 20 May 2009, the Migration Court of Appeal issued four decisions, refusing to grant leave to appeal. The Court found that nothing that had emerged in the case constituted grounds to grant leave to appeal.[2]

2.24 On 11 June 2009, the complainants applied for an examination by the Migration Board of impediments to the enforcement of the expulsion orders and requested, inter alia, residence permits, refugee status and travel documents. The Migration Board was also asked to stay enforcement of the expulsion orders and to appoint a legal aid counsel with a technical understanding of the Internet for the family. Among the grounds for examination and a stay of enforcement invoked by the complainants was the claim that the first complainant belonged to a group of intellectuals who thought that the murder of President al-Sadat was a conspiracy staged by President Hosni Mubarak and his faction. He believed that it had not been proven that his cousin, Khalid Islambouli, was the assassin. Since coming to Sweden, the first complainant had run a campaign to get the United Nations to investigate the murder of President al-Sadat and clear his cousin. The first complainant had started several blogs, where he had released information about the murder to which only he had access. The first complainant has checked the visitors' Internet Protocol addresses and found that most of them were from Egypt. One series of Internet Protocol addresses could be traced to the Egyptian authorities. The first complainant believed that it was probably the security police, which was known for searching for dissidents on the Internet. Since the information could be traced to the first complainant, the security police was probably aware that he had posted it. There was, therefore, a strong risk that he would be prosecuted and given a disproportionately severe penalty, probably a capital punishment, for spreading this information. It had not been possible for him to submit this fact earlier, since it had only happened in 2009.

2.25 On 23 June 2009, the Migration Board rejected the requests for a stay of enforcement and for the appointment of a legal aid counsel. On 3 July 2009, the Migration Board decided not to grant residence permits under chapter 12, section 18, of the Swedish Aliens Act (Act) and not to grant a re-examination of the question of residence permits under chapter 12, section 19, of the Act.[3] The Board determined that political activity in the country of flight, directed at the regime in the country of origin, could not provide grounds for asylum, unless it was shown to be probable in the individual case that the activity might lead to persecution or harassment from the authorities of the country of origin upon return. Case-law has established that if the measures taken by an asylum seeker in Sweden have not been assessed as having any purpose other than to influence his or her right to stay in Sweden, it has been considered that this fact alone ought not to be assigned decisive importance in the assessment of the need for protection. Furthermore, a person who

[2] Reference is made to chapter 16, section 12, of the Swedish Aliens Act, under which leave to appeal may be granted in the Migration Court of Appeal if it is of importance for guidance in the application of the law that the appeal is heard by the Migration Court of Appeal or if there are other extraordinary reasons to hear the appeal.

[3] Rules regarding lasting impediments to enforcement of refusal-of-entry and expulsion orders that have become final and non-appealable are laid down in chapter 12, sections 18 and 19, read together with chapter 12, sections 1–3, of the Act.

engaged in political activity in his country of flight before the question of a residence permit had been resolved with final effect did not himself or herself view the risks upon return to his or her country of origin as particularly great.

2.26 The Migration Board further held that the fact that the first complainant was convinced that it was the Egyptian security police that was checking his website was a new fact that had not been cited before. The Board found, however, that no new grounds have emerged that presented impediments to the enforcement under chapter 12, section 18, of the Act. Furthermore, the new facts were not such that there could be assumed to be an impediment to the enforcement of the kind referred to in chapter 12, sections 1–3, of the Act with respect to the family. The Board, therefore, considered that there were no reasons to examine the question of the residence permits under chapter 12, section 19, of the Act.

2.27 On 3 November 2009, the complainants asked for a review by the Migration Board and requested residence permits, refugee status and travel documents. The grounds for the review included the presence of exceptionally distressing circumstances, for the children especially, but also for the rest of the family. The submission to the Migration Board stated that the family had applied to the Committee for a review of the expulsion orders and that the Committee had accepted the communication for review. The complainants added that if the family was granted a residence permit, the communication before the Committee could be withdrawn. On 4 November 2009, the Migration Board found that there was no reason to alter the previously issued decision.

The complaint

3.1 The complainants claim that they remain of interest to the security police because the first complainant's cousin, Khalid Islambouli allegedly assassinated President al-Sadat, that the Muslim Brotherhood linked to this assassination is today named Egyptian Islamic Jihad with links to Al-Qaida and that the first complainant's other cousin, Mohammed Islambouli, is suspected of belonging to this group and of attempting to assassinate President Mubarak in 1995. The complainants maintain that the described family link together with the fact that the first complainant is known to be a "nasserist", who is in opposition to the Egyptian authorities, and a member from an influential family exposes them to a personal risk of being tortured if they were forced to return to Egypt. They argue, therefore, that the enforcement of the orders to expel them to their country of origin would violate articles 3 and 16 of the Convention.

3.2 The complainants further submit that they should be treated as a family, i.e., if the first complainant has enough reasons to be granted asylum, his children should be granted asylum as well. In particular, the second and third complainants state that they have a well-founded fear of persecution and of being subjected to serious abuse, both as a result of the first complainant's previous political activity and of their family relationship with the alleged murderer of President al-Sadat. They add that no protection is available for them in Egypt and they fear being killed, tortured, raped or subjected to other inhuman or humiliating treatment or punishment.

State party's observations on the admissibility and the merits

4.1 By note verbale of 24 February 2010, the State party submits its observations on the admissibility and the merits. As to the admissibility, it states that it is not aware of the same matter having been or being subject to another procedure of international investigation or settlement. With reference to article 22, paragraph 5 (b), of the Convention, the State party acknowledges that all available domestic remedies have been exhausted in the present communication.

4.2 The State party submits that, should the Committee conclude that the communication is admissible, the issue before the Committee on the merits is whether the expulsion of the complainants would violate the obligation of Sweden under article 3 of the Convention, not to expel or return a person to another state where there are *substantial grounds*[4] for believing that he or she would be in danger of being subjected to torture. In this respect, the State party refers to the Committee's jurisprudence,[5] according to which the aim of the determination of whether the forced return of a person to another country would constitute a violation of article 3 of the Convention, is to establish whether the individual concerned would be *personally at risk*[6] of being subjected to torture in the country to which he or she 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 or her return to that country. For a violation of article 3 to be established, additional grounds must exist showing that the individual concerned would be personally at risk.

4.3 As far as the general human rights situation is concerned, the State party submits that Egypt has signed/ratified all key United Nations human rights treaties, including the Convention. It has not, however, ratified or signed the Optional Protocol to the Convention. Since 1996, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has unsuccessfully requested permission to conduct a visit. A national Human Rights Council has been established under the leadership of Boutros Boutros Gali. The State party adds that much remains to be done concerning the treatment of arrestees and detainees and the occurrence of torture at police stations, especially in cases relating to political arrests, and refers to a number of reports assessing the general human rights situation in Egypt.[7]

4.4 The State party states that, while it does not wish to underestimate the concerns that may legitimately be expressed with respect to the human rights situation in Egypt, there can be no doubt that the circumstances referred to in the above-mentioned reports do not in themselves suffice to establish that the complainants' forced return to Egypt would entail a violation of article 3 of the Convention. Against this background, the State party holds that it cannot be said that the situation in Egypt is such that there is a general need of protection for asylum seekers from Egypt. The Committee, therefore, should determine the complainants' personal risk of being subjected to torture, as defined in article 1 of the Convention, following their removal to Egypt.

4.5 The State party submits that the Swedish migration authorities and courts apply the same test in assessing the risk of being subjected to torture when considering an asylum application under the Act, as the Committee would apply when examining a subsequent communication under the Convention. The State party adds that it must be appreciated that the national authority conducting the asylum interviews is in a very good position to assess the information submitted by the asylum seeker and to assess the credibility of his or her claims. In the present case, the Migration Board has conducted a number of interviews with the complainants and there also was an oral hearing before the Migration Court. In view of

[4] Emphasis is added by the State party.

[5] Communication No. 150/1999, *S.L.* v. *Sweden*, Views adopted on 11 May 2001, para. 6.3; and communication No. 213/2002, *E.J.V.M.* v. *Sweden*, Views adopted on 14 November 2003, para. 8.3.

[6] Emphasis is added by the State party.

[7] Reference is made to the UK Border Agency, *Arab Republic of Egypt* (Home Office, 2009); U.S. Department of State, *2008 Country Report on Human Rights Practices – Egypt* (Bureau of Democracy, Human Rights and Labour, 2009); Human Rights Watch, *World Report 2009*; and the Swedish Ministry for Foreign Affairs report on human rights in Egypt in 2007 (2008).

the above, the State party argues that as a general rule, great weight must be attached to the opinions of the Swedish migration authorities.

4.6 The State party notes that, in the present case, both the Migration Board and the Migration Court have generally accepted the statements of facts invoked by the complainants and it has no reason to make a different evaluation in this respect. The assessment of whether the complainants are personally at risk of being subjected to torture in breach of article 3 of the Convention if expelled to their country of origin today should, therefore, be made using the complainants' own statements as a point of departure. In this regard, the State party affirms that it has no reason to question that the first complainant in the present communication has been exposed to the treatment he has described before the Swedish migration authorities and the Committee, or his family relationship with the convicted murderer of President al-Sadat. In view of this, it appears not unlikely that he still would attract the interest of the Egyptian authorities, even though the events took place a long time ago. In addition, his Internet activities in Sweden, questioning whether the real murderers of President al-Sadat were convicted and punished, should also be taken into account in this context.

4.7 As a consequence, the State party considers that it cannot be excluded that the rest of the family would also attract the interest of the Egyptian authorities. It recalls that the second complainant has allegedly been subjected to harsh and unpleasant treatment by the Egyptian security police. In addition, the third complainant has allegedly been repeatedly raped by police officers while in Egyptian custody. He has given an explanation of why he has not been able to provide any medical certificate showing that these rapes have taken place. He has also provided an explanation of why he did not dare to report these events to the Egyptian authorities. The State party notes that it is not possible to fully exclude that he would be exposed to similar treatment if returned to Egypt.

4.8 The State party concludes that, in the light of the first complainant's background and the nature of the other complainants' allegations, it leaves it to the Committee to assess whether an enforcement of their expulsion orders would amount to a violation of articles 3 and 16 of the Convention.

The complainants' comments on the State party's observations

5. On 17 June 2010, the complainants submit that, judging from the observations on the admissibility and the merits, they confirm with satisfaction that the State party has understood their case correctly. In particular, the State party concludes that it appears not unlikely that the complainants would attract the interest of the Egyptian authorities and that it is not possible to fully exclude that the third complainant would be exposed to torture or similar treatment if returned to Egypt. Therefore, the complainants do not wish to add anything to the State party's observations, except from submitting a number of recent reports that support their claims and show that the situation in Egypt for persons considered to be connected with the Muslim Brotherhood is dangerous.[8] The complainants conclude

[8] Reference is made to Human Rights Watch, *World Report 2009*; Research Response prepared by the Research and Information Services Section of the Refugee Review Tribunal (Australia) on the attitude of the Egyptian authorities towards the Muslim Brotherhood, dated 30 June 2009; Amnesty International, *Egypt – Systematic abuses in the name of security* (London, 2007); International Federation for Human Rights, *Egypt: Counter-terrorism against the background of an endless state of emergency* (2010); Human Rights Watch, "Egypt: Free Arbitrarily Detained Brotherhood Members", 10 February 2010; and U.S. Department of State, *2009 Country Report on Human Rights Practices – Egypt*, (Bureau of Democracy, Human Rights and Labour, 2010).

that the State party supports their case and that it is clear that they have been subjected to a violation of the Convention.

The complainants' further submission

6.1 In a further submission dated 26 October 2011, the complainants submit that, despite political changes, they consider the situation in Egypt still to be extremely dangerous for them. Even if President Mubarak and his Government had to leave, the military and security police are still the same organizations as before the revolution. Since the complainants have been interrogated and tortured by the military police, it cannot be excluded that they would be exposed to similar treatment if returned to Egypt. They add that the Egyptian authorities consider the first complainant to be connected with the Islamist terror groups. Therefore, he and his family would still attract the interest of the Egyptian authorities.

6.2 The complainants recall that the first complainant is an active blogger and has criticized the military regime in Egypt. The Supreme Council of the Armed Forces has warned news organizations that it was illegal to criticize the military in the press. A military court sentenced a blogger, Maikel Abil, to three years' imprisonment for insulting the military. Others have criticized the Supreme Council over press reports that female detainees in military custody were subjected to "virginity tests" by doctors. Military police has occasionally clashed with protestors, leading to one death on 8 April 2011 and hundreds of arrests.[9] The complainants argue, therefore, that it cannot be excluded that the first complainant would be exposed to similar treatment if returned to Egypt.

6.3 Finally, the complainants emphasize that the first complainant's cousin, Khalid Islambouli, was found guilty of killing President al-Sadat in 1982 and this fact alone makes the first complainant a well-known suspect for the military and security police for life. For this reason, he will be of interest for them whenever he enters Egypt.

State party's further submission

7.1 In a further submission dated 3 January 2012, the State party notes, like the complainants, that major developments took place in Egypt during 2011. However, it cannot find that the general situation in Egypt calls for a change of position as far as the present case is concerned.

7.2 The State party adds that, on 13 September 2011, the Migration Board decided to reject a request from the complainants for a re-examination of their case pursuant to chapter 12, sections 18 and 19 of the Swedish Aliens Act (Act).[10] The complainants submitted that there were impediments to the enforcement of their expulsion orders, inter alia, in the light of the significant deterioration of the situation in Egypt. However, the Board was of the view that the general situation as such did not prevent the enforcement of the expulsion orders. Nor did it give rise to a significant change of the previously made individual assessments regarding the possibility of the complainants' return to Egypt. Consequently, the conditions for granting a re-examination of their case were not met, as no "new circumstances" within the meaning of the Act were considered to be at hand. On 7 November 2011, the Migration Court rejected the complainants' appeal against the decision of the Migration Board, essentially on the basis of the Board's line of reasoning.

[9] Reference is made to the Congressional Research Service, 17 June 2011.
[10] See footnote 3.

7.3 Finally, the State party notes that, since 14 September 2011, there is a separate case regarding impediments to the enforcement of the expulsion order in relation to J.M.A.M.A. pending before the Migration Board.

Issues and proceedings before the Committee

Consideration of admissibility

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

8.2 The Committee recalls that, in accordance with article 22, paragraph 5 (b) of the Convention, it shall not consider any communications from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the instant case, the State party has recognized that the complainants have exhausted all available domestic remedies.

8.3 The Committee notes that the complainants have invoked a violation of their rights under article 16 of the Convention, without however submitting any arguments or evidence in substantiation of this claim. It concludes, therefore, that this claim has not been substantiated for the purposes of admissibility. This part of the communication is thus inadmissible.

8.4 Accordingly, the Committee finds no further obstacles to the admissibility and declares the communication admissible. Since both the State party and the complainants have provided observations on the merits of the communication, the Committee proceeds immediately with the consideration of the merits.

Consideration of the merits

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

9.2 The issue before the Committee is whether the expulsion of the complainants to Egypt would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return (*refouler*) a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

9.3 The Committee notes the complainants' assertion that they should be treated as a family, i.e. if the first complainant has enough reasons to be granted asylum, his family members should be granted asylum as well, and decides to examine first his claims that he faces a personal risk of being subjected to torture if forced to return to Egypt due to his previous political activity and his close family relationship with the alleged murderer of President al-Sadat. To this end, the Committee must evaluate whether there are substantial grounds for believing that he would be personally in danger of being subjected to torture upon return to his country of origin. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that 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 return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. 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.

9.4 The Committee recalls its general comment No. 1 (1996) on the implementation of article 3, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being "highly probable",[11] the Committee recalls that the burden of proof generally falls on the complainant, who must present an arguable case that he faces a "foreseeable, real and personal" risk.[12] The Committee further recalls that, in accordance with its general comment No. 1, it gives considerable weight to findings of fact that are made by organs of the State party concerned,[13] while at the same time it is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.

9.5 In the present case, the Committee notes that the State party has acknowledged and taken into account the fact that much remained to be done in Egypt concerning the treatment of arrestees and detainees and the occurrence of torture at police stations. However, while not underestimating the concerns that may legitimately be expressed with respect to the human rights situation in Egypt, the State party held that it could not be said that the situation in Egypt at the time of consideration of the first complainant's case by the national authorities was such that there was a general need of protection for asylum seekers from Egypt.

9.6 As to the State party's position in relation to the assessment of the first complainant's risk of being subjected to torture, the Committee notes that the State party has accepted that it appeared not unlikely that he would still attract the interest of the Egyptian authorities due to his family relationship with the convicted murderer of President al-Sadat, even though the events took place a long time ago. Furthermore, his Internet activities in Sweden, questioning whether the real murderers of President al-Sadat were convicted and punished, should also be taken into account in this context. Finally, the State party has accepted that it could not be excluded that the rest of the family would also attract the interest of the Egyptian authorities. It specifically pointed out that the second complainant had allegedly been subjected to harsh treatment by the Egyptian security police and the third complainant had allegedly been repeatedly raped by police officers while in Egyptian custody. Consequently, it was not possible to fully exclude that he would be exposed to similar treatment if returned to Egypt.

9.7 The Committee acknowledges the fact that, owing to the first complainant's background and the nature of the other complainants' allegations, the State party leaves the assessment of whether an enforcement of their expulsion orders would amount to a violation of the Convention to the Committee. In the light of the State party's acceptance that it was likely that the first, second and third complainants would attract the interest of

[11] The Committee's general comment No. 1 (1996) on the implementation of article 3 of the Convention, *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44* (A/53/44 and Corr.1), annex IX, para. 6.

[12] Ibid. See also, communication No. 203/2002, *A.R.* v. *The Netherlands*, Views adopted on 14 November 2003, para. 7.3.

[13] See, inter alia, communication No. 356/2008, *N.S.* v. *Switzerland*, decision adopted on 6 May 2010, para. 7.3.

the Egyptian authorities, taken together with the first complainant's background and the nature of his allegations, the Committee concludes that the first, second and third complainants have established a foreseeable, real and personal risk of being tortured if they were to be returned to Egypt at the time of submission of the communication.

9.8 The Committee further notes that, in its further submission of 3 January 2012, the State party has acknowledged that although major developments took place in Egypt during 2011, they did not call for a change of its position, as far as the present case was concerned. Consequently, the Committee concludes that the first, second and third complainants have established a foreseeable, real and personal risk of being tortured if they were to be now returned to Egypt.

10. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Inhuman or Degrading Treatment or Punishment, therefore concludes that the enforcement of the order to expel M.A.M.A., N.M.A.M.A. and Ah.M.A.M.A. to their country of origin would constitute a violation of article 3 of the Convention.

11. As the cases of M.A.M.A.'s wife and their four children, who were under age at the time of the family's asylum application in Sweden, are dependent upon his case, the Committee does not find it necessary to consider these cases individually.

12. 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 the transmittal of this decision, of the steps it has taken in accordance with the above observations.

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