



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

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention concerning Communication No. 682/2015^{*,**}

<i>Submitted by:</i>	Rouba Alhaj Ali (represented by Rachid Mesli, Alkarama Foundation)
<i>Alleged victim:</i>	Abdul Rahman Alhaj Ali, the complainant's husband
<i>State party:</i>	Morocco
<i>Date of complaint:</i>	22 May 2015 (initial submission)
<i>Date of decision:</i>	3 August 2016
<i>Subject matter:</i>	Extradition of the complainant's husband to Saudi Arabia
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Extradition of a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture
<i>Articles of the Convention:</i>	3

1.1 The complainant is Rouba Alhaj Ali, a Syrian national living in Morocco who was born on 25 September 1990. She is submitting the complaint on behalf of her husband, Abdul Rahman Alhaj Ali, a Syrian national born on 15 March 1977, who is currently being detained in the civilian prison in Salé, Rabat, Morocco, awaiting extradition to Saudi Arabia. The complainant alleges that her husband's extradition by Morocco to Saudi Arabia would be in violation of the State party's obligations under article 3 of the Convention. She is represented by Rachid Mesli of Alkarama Foundation.

* Adopted by the Committee at its fifty-eighth session (25 July-12 August 2016).

** The following members of the Committee participated in the examination of the communication: Mr. Alessio Bruni, Ms. Felice Gaer, Mr. Abdelwahab Hani, Mr. Claude Heller Rouassant, Mr. Jens Modvig, Ms. Ana Racu, Mr. Sébastien Touzé and Mr. Kening Zhang. Pursuant to rule 109 (1) (c) of the Committee's rules of procedure, Ms. Essadia Belmir did not participate in the consideration of the communication.

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1.2 In accordance with article 22 (3) of the Convention, the Committee brought the complaint to the State party's attention on 28 May 2015. At the same time, in application of rule 114 (1) of its rules of procedure, the Committee asked the State party not to extradite Mr. Alhaj Ali to Saudi Arabia while the complaint was being considered.

1.3 On 6 July 2015, the State party informed the Committee that it had "taken the necessary steps to stay the enforcement of the extradition order against Abdul Rahman Alhaj Ali".

1.4 On 3 October 2015, the State party reiterated that the competent authorities had decided to stay the enforcement of the order to hand over the individual concerned to Saudi Arabia until the Committee had issued a decision on the merits of the case. Noting that Mr. Alhaj Ali had been in pretrial detention that was "prejudicial to his rights" for more than a year,¹ and given the lack of legal provisions allowing the detention order to be lifted, the State party requested the Committee to expedite the issuance of a decision on the case.

The facts as submitted by the complainant

2.1 At 8.30 p.m. on 30 October 2014, Mr. Alhaj Ali was arrested by plain-clothes Moroccan police officers at a café near his home in Kenitra. According to Mr. Alhaj Ali, after being taken to the Kenitra office of the Directorate-General of National Security, he was ill-treated and humiliated by police officers. On arrival at the office, he was dragged through the corridors by the neck, and was surprised to see his former Saudi sponsor (*kafil*), with whom he had had a conflict of interest when he lived in Saudi Arabia. In the presence of the police officers, his former sponsor insulted him and threatened him with death and the worst kind of torture if he returned to Saudi Arabia.

2.2 Upon being informed of her husband's arrest, the complainant went to the police station and asked to see him, but her request was denied.

2.3 Mr. Alhaj Ali was placed in custody at the police station in Kenitra. The following day, he was brought before the Crown Prosecutor of the Court of First Instance in Kenitra, who informed him that he was the subject of an international arrest warrant and that he was being sought by Saudi Arabia for embezzling the amount of 544,192 Saudi riyals. Mr. Alhaj Ali said that he had committed no such offence; he had simply been the owner of a company in Saudi Arabia since 2007. Under Saudi immigration law, he had had to register the company and all its assets in the name of his Saudi sponsor. He also said that, when he left Saudi Arabia, his sponsor had signed a certificate attesting that Mr. Alhaj Ali owed him nothing and had no obligations towards him.

2.4 Despite clear evidence of his accuser's bad faith, the Crown Prosecutor ordered the victim to be held in pretrial detention at Salé prison until the Court of Cassation reached a formal decision on extradition. Accordingly, Mr. Alhaj Ali was placed in detention pending extradition at Salé prison. In early December 2014, he was brought before the Criminal Chamber of the Court of Cassation in Rabat for a ruling on the extradition request. The hearing was postponed, however, because his lawyer was not present.

2.5 On 31 December 2014, during the rescheduled hearing, his defence raised the issue of double jeopardy, or the *ne bis in idem* principle, in *limine litis*, as he had already been convicted of the same offence in the Syrian Arab Republic and had served his sentence in 2007. Nevertheless, after the hearing, the Court of Cassation ruled in favour of extradition and rejected the defence's arguments, on the grounds that the judgment delivered by the Syrian court did not refer specifically to the acts for which Mr. Alhaj Ali was being prosecuted in Saudi Arabia, even though the proceedings in the Syrian Arab Republic were

¹ [Around 21 months at the time of the Committee's decision.]

instituted on the sole basis of the extradition request and allegations of the Saudi authorities, as is made absolutely clear in the judgment handed down by the Syrian court.²

2.6 On 3 February 2015, Mr. Alhaj Ali's lawyer sent an application for review of the decision of the Court of Cassation in Rabat, which rules at last instance, to the Minister of Justice, in accordance with articles 566 (4) and 567 of the Code of Criminal Procedure. The Minister dismissed the request, however, on the grounds that the application was unfounded.

First request for extradition to Saudi Arabia and conviction in the Syrian Arab Republic

2.7 As mentioned by his lawyers before the Court of Appeal in Rabat, Mr. Alhaj Ali had already been prosecuted in 2007 for the same acts that formed the basis of the extradition request sent to the Government of Morocco. In response to the first extradition request by Saudi Arabia, the Syrian authorities had arrested Mr. Alhaj Ali and sentenced him to 3 months' imprisonment for the acts of which he was accused in Saudi Arabia, even though he had provided proof that there was no material evidence to justify the request by the Saudi authorities.

2.8 Mr. Alhaj Ali had taken up residence in Saudi Arabia in 2007 in order to establish a hotel services company. As required by Saudi legislation, he had ceded a 51 per cent stake in the business to a Saudi sponsor (*kafil*).

2.9 When Mr. Alhaj Ali decided to return to his country of origin, his sponsor gave him a certificate attesting that he had no outstanding financial obligations towards him. Nevertheless, his sponsor subsequently lodged a criminal complaint against him.³ The extradition committee within the Syrian Ministry of Justice, while rejecting the extradition request submitted by the Saudi authorities on the basis of the complaint, ordered him to appear before a Syrian criminal court, which sentenced him to 3 months' imprisonment and ordered him to pay a fine of 100 Syrian pounds.⁴ He served his sentence and was released on 6 September 2007.

2.10 The second extradition request by the Saudi authorities, submitted on the basis of the same acts, was therefore completely unjustified and should clearly have been rejected by the Moroccan Court of Cassation in accordance with the *ne bis in idem* principle.

History of persecution and torture in the Syrian Arab Republic

2.11 During the popular uprisings in the Syrian Arab Republic in 2011, Mr. Alhaj Ali, who was living in rural Damascus at the time, participated actively in the peaceful protests that broke out in the country, which led to his being sought by the Syrian security services.

2.12 On 15 April 2013, Mr. Alhaj Ali was arrested without a warrant by members of Air Force Intelligence and taken to a secret detention centre, where he was held for three months without legal process and subjected to severe torture. He claims to have been interrogated and tortured at length, including by being beaten, suspended head down by his feet for several hours and electrocuted. After finally being released on 17 July 2013, the victim, who suffers from physical and psychological sequelae to this day, continued to be persecuted and to receive threats, including threats to his family, which forced him, along with millions of other Syrian nationals, to flee the country. He settled in Morocco, where he requested asylum with his wife and children.

² The complainant attaches the relevant decision, which was adopted by the Twelfth Criminal Chamber of the Court of First Instance in Damascus on 31 March 2009.

³ Attached to the file.

⁴ Decision attached to the file.

Exhaustion of domestic remedies

2.13 The complainant stresses that Mr. Alhaj Ali has exhausted all available effective remedies. On 31 December 2014, the Court of Cassation in Rabat, ruling at last instance, upheld the extradition request by the Saudi authorities. Since the decision was not subject to an ordinary appeal, it became final and binding once it had been confirmed by decree of the Head of Government. A copy of the ruling was sent to Mr. Alhaj Ali's lawyer.

The complaint

3.1 The complainant claims that the State party would be violating article 3 of the Convention if it extradited her husband, Mr. Alhaj Ali, to Saudi Arabia.⁵

3.2 The complainant points out that Mr. Alhaj Ali has already been prosecuted and convicted in the Syrian Arab Republic, and that he served the resulting sentence.

3.3 She stresses that the human rights situation is particularly troubling in the requesting State, where rights are violated without any regard to the State's international human rights commitments. Saudi Arabia has been condemned on several occasions by international human rights bodies for systematically violating fundamental rights. The Working Group on Arbitrary Detention has condemned the Saudi authorities on many occasions for the widespread practice of arbitrary detention⁶ and for failing to respect guarantees of a fair trial.

3.4 The fundamental rights of citizens are systematically violated, but even worse violations are suffered by foreign nationals, who are the victims of systematic discrimination, particularly as a result of the sponsorship system (*kafala*), which institutionalizes a form of enslavement of migrant workers to their Saudi sponsor (*kafil*), who has the power to prevent them from leaving the country, to expel them from the country and bring a legal action against them.

Practice of torture in Saudi Arabia

3.5 Although Saudi Arabia is a State party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, there is a persistent practice of torture and other cruel, inhuman or degrading treatment in the country. During its last universal periodic review, Saudi Arabia received numerous recommendations to criminalize torture and to abolish corporal punishment, which it noted but did not accept. The country still does not have legislation criminalizing torture. Instead, torture is institutionalized through the imposition of corporal punishment by criminal courts, including as a punishment for exercising freedom of expression.⁷

⁵ The complainant also refers to article 41 of the Riyadh Arab Agreement on Judicial Cooperation: "No extradition may be carried out in the following cases: ... (h) if charges relating to any crime have been made in the territory of the requested party, or if a judgment has been passed in respect of the same crime in the territory of a third contracting party."

⁶ The complainant refers to the report of Alkarama Foundation entitled "Saudi Arabia: UN experts declare detention of Yahya Shaqibel arbitrary", 5 February 2014, available at: <http://en.alkarama.org/saudi-arabia/press-releases/1190-saudi-arabia-un-experts-declare-detention-of-yahya-shaqibel-arbitrary>.

⁷ The complainant mentions the recent case of liberal blogger Raif Badawi, in which a final judgment was passed in 2012 sentencing him to 10 years' imprisonment and 1,000 lashes for posting opinions on his website that were deemed too liberal by the Saudi authorities. The young blogger received 50 lashes in January 2015.

Persons found guilty of the offence in question are liable to corporal punishment in Saudi Arabia

3.6 Saudi Arabia does not have a criminal code or an equivalent written law. Saudi criminal law, which is essentially based on an extremely strict interpretation of sharia, remains unwritten and the punishments meted out are basically left to the discretion of judges. For offences such as breach of trust, no penalty is specifically and explicitly provided for by law or case law. Verdicts and punishments are thus at the discretion of judges, who may sentence defendants to amputation, death or flogging if they feel that the case warrants it.

3.7 Theft is generally punishable by amputation of one or more limbs. In early 2015, a young Moroccan man was sentenced to amputation simply for failing to hand in a wallet that he had found during a trip to Saudi Arabia. Robbery, including armed robbery, is punishable by death by beheading, as in the case of seven young persons who were sentenced to death and executed for armed robbery following a particularly rushed and unfair trial.⁸ The complainant concludes that there is an extremely high risk that Mr. Alhaj Ali, who has been accused of breach of trust by his Saudi sponsor, would be subjected to corporal punishment or torture.

Risk of extradition to the Syrian Arab Republic, where Mr. Alhaj Ali has already been the victim of torture

3.8 Mr. Alhaj Ali has also expressed fears through his lawyer that he will be tortured, subjected to cruel, inhuman or degrading treatment or extradited to the Syrian Arab Republic if he is handed over to the Saudi authorities, who have a habit of expelling foreign nationals to their respective countries of origin upon completion of their sentences, even when doing so puts their lives or physical integrity at risk.

3.9 That is what happened to Zakaria Mohamed Ali, a Somali national who was arrested without charge in Saudi Arabia in April 2013 and detained for almost a year without trial and without even being informed of the charges against him. Upon his release on 17 March 2014, without any legal proceedings having been initiated, he was immediately expelled to Somalia, where the human rights situation is known to be particularly troubling, without a court order and without even having the opportunity to appeal the decision.

3.10 The complainant requests that Mr. Alhaj Ali be released immediately, in accordance with article 26 of the Riyadh Arab Agreement on Judicial Cooperation of 22 March 1983 — which provides that “in no circumstances may a period of pretrial detention exceed 60 days from the time of arrest” if the person concerned is not being prosecuted on other grounds that would justify his or her detention — and that he should remain at liberty until the Committee has issued a decision on the merits of the complaint.

State party’s observations on admissibility and the merits

4.1 On 27 July 2015, the State party submitted its observations on the admissibility and merits of the complaint. The State party points out that Mr. Alhaj Ali was arrested in Kenitra on 30 October 2014 pursuant to an international search and arrest warrant issued by the Riyadh office of INTERPOL at the request of the Saudi judicial authorities for breach of trust concerning a sum of 544,192 Saudi riyals.

4.2 The State party adds that, at 11.30 p.m. on 30 October 2014, once his wife had been informed of his arrest, Mr. Alhaj Ali was placed in custody at the police station in Kenitra.

⁸ Alkarama Foundation, “KSA: Official confirms execution of 7 young Saudi[s] to take place tomorrow”, 13 March 2013, <http://en.alkarama.org/saudi-arabia/press-releases/1059-ksa-official-confirms-execution-of-7-young-saudi-to-take-place-tomorrow> (accessed on 7 June 2016).

He was interviewed and, at 10 a.m. on 31 October 2014, was brought to the public prosecutor's office, where he was questioned by the Deputy Crown Prosecutor of the Court of First Instance in Kenitra, who took the following procedural measures: confirmed his identity; informed him of why he had been brought to the public prosecutor's office; read the international search and arrest warrant issued by the Riyadh office of INTERPOL; and recorded his response to the extradition request, which he did not contest.

4.3 At the end of the hearing, the Deputy Crown Prosecutor ordered his detention pending extradition in the civilian prison in Salé until the commencement of judicial extradition proceedings before the Criminal Chamber of the Court of Cassation, which is the competent authority in such cases.

4.4 In response to a formal request from the Advocate-General asking the Court of Cassation to rule in favour of extradition, and once all relevant procedural steps had been taken, the case was scheduled to be heard on 17 December 2014. At the hearing, Mr. Alhaj Ali appeared under arrest and assisted by his lawyer. After the Advocate-General had made a formal request for extradition, Mr. Alhaj Ali stated that he refused to be handed over to the requesting Saudi authorities. The Court adjourned the proceedings and reserved its decision until a hearing on 31 December 2014.

4.5 At that hearing, the Court of Cassation delivered judgment No. 1699/3, in which it issued a favourable opinion on the handing over of Mr. Alhaj Ali to the Saudi judicial authorities on the grounds that: the extradition request satisfied procedural requirements; the offence in question — breach of trust — was punishable under the law of the requesting State and was not subject to a statute of limitations under the sharia law applicable in Saudi Arabia; the offence was also punishable under Moroccan law, pursuant to articles 547 and 549 of the Criminal Code, which provides for a punishment of between 1 and 5 years' imprisonment; Mr. Alhaj Ali was not a political refugee; the decision of the Twelfth Criminal Chamber of the Court of First Instance in Damascus, dated 31 March 2009, did not mention the facts of the case or include any evidence that breach of trust, which was the subject of the decision, was the offence referred to in the extradition request considered by the Court of Cassation; Mr. Alhaj Ali was not a Moroccan national; and the offence was not political in nature.

4.6 Consequently, the extradition request by the Saudi authorities was considered admissible and was upheld on the merits.

4.7 The State party notes that Mr. Alhaj Ali has never mentioned to the Moroccan authorities that handing him over to the Saudi authorities would put him at risk of torture or other cruel, inhuman or degrading treatment or punishment.

4.8 The State party adds that, during the extradition proceedings, Mr. Alhaj Ali was afforded all the relevant legal safeguards provided for under Moroccan law. In this connection, the record of Mr. Alhaj Ali's hearing before the Deputy Crown Prosecutor of the Court of First Instance in Kenitra on 31 October 2014 disproves the allegations he has submitted to the Committee, because after being notified of the international arrest warrant against him, Mr. Alhaj Ali replied that he did not contest the handover. His statement was spontaneous and unforced. Similarly, when he appeared before the Criminal Chamber of the Court of Cassation for the hearing of 17 December 2014, at which he was assisted by his lawyer, Mr. Alhaj Ali did not express any fear of being tortured if he were to be handed over, but merely raised the issue of the case being time-barred and stated that he had already been tried for the same acts in the Syrian Arab Republic.

4.9 The State party adds that Moroccan law contains provisions that protect extradited persons from the risk of torture. Article 721 of the Code of Criminal Procedure, for instance, establishes that extradition must be systematically ruled out when there are substantial

grounds for the competent authorities to believe that an extradition order issued in respect of an ordinary crime is racially, religiously or politically motivated.

4.10 The State party further notes that, during its consideration of the periodic report of Saudi Arabia, the Committee welcomed the fact that the Saudi Code of Criminal Procedure guarantees every accused person the right to avail himself or herself of the services of a lawyer at all stages of an investigation and trial. The State party adds that the Committee also welcomed the competence of the Saudi Board of Grievances to hear allegations of violations of human rights, the fact that certain medical facilities possess appropriate forensic medical expertise for the examination of alleged victims of torture and the establishment of a standing commission to investigate accusations of torture.

4.11 The competent Moroccan authorities believed that Mr. Alhaj Ali would not be at personal risk if handed over to the requesting judicial authorities, and therefore issued a favourable opinion on the extradition request, in accordance with the Convention, the Riyadh Arab Agreement on Judicial Cooperation and the extradition legislation in force.

4.12 With reference to the Committee's general comment No. 1 (1997) on implementation of article 3 of the Convention in the context of article 22 and to the Committee's jurisprudence,⁹ the State party notes that the burden is on the complainant to present an arguable case that Mr. Alhaj Ali would face a foreseeable, real and personal risk of being subjected to torture, and that such risk is personal and present. According to the State party, in this case, the complainant has not presented an arguable case establishing such a risk, nor has she provided sufficient evidence to allow the Committee to conclude that the extradition of Mr. Alhaj Ali would put him at such risk, as required by article 3 of the Convention.

4.13 Regarding the complainant's allegations under the Riyadh Arab Agreement on Judicial Cooperation, the State party stresses that it is article 42 of the Agreement that is relevant to this case, not article 26, which was invoked by the complainant (para. 3.10 above). Article 44 stipulates that the person whose extradition is requested must be released if the requested State does not receive, within a period of 30 days following the date of arrest, the documents listed in article 42 of the Agreement or unless the requesting State submits a request for the extension of pretrial detention, which may in no circumstances exceed 60 days. In the present case, Mr. Alhaj Ali was arrested on 30 October 2014, and the competent authorities received the extradition request and other relevant documents on 13 November 2014, within the legal deadline imposed by the Agreement.

4.14 Regarding the complainant's claim in relation to the *ne bis in idem* principle, the State party reiterates that the same argument was put forward as the main grounds for defence before the Court of Cassation, which rejected it because the decision of the Twelfth Criminal Chamber of the Court of First Instance in Damascus, dated 31 March 2009, did not mention the facts of the case or include any evidence that breach of trust was the offence referred to in the extradition request considered by the Court of Cassation.

Complainant's comments on the State party's observations

5.1 On 19 October 2015, the complainant commented on the State party's observations. She notes, first of all, that the State party does not contest the admissibility of the complaint but finds it without merit.

5.2 According to the complainant, the State party has merely offered a brief overview of its version of events, but has not responded to her detailed conclusions in relation to the violations that her husband, Mr. Alhaj Ali, would be in danger of being subjected to if he

⁹ The State party refers to communication No. 525/2012, *R.A.Y. v. Morocco*, adopted on 16 May 2014.

were extradited to Saudi Arabia and then, no doubt, expelled to the Syrian Arab Republic upon completion of his sentence. The State party maintains that Mr. Alhaj Ali would not be at risk of torture or other ill-treatment because Saudi Arabia has allegedly undertaken reforms aimed at amending its Code of Criminal Procedure. The State party bases its argument on the Committee's consideration of the initial report of Saudi Arabia in 2002, in the knowledge that no significant reforms have been introduced in the country since then. In reality, the practice of torture and ill-treatment remains particularly widespread in Saudi Arabia. There have been many documented cases of torture in the country, as reflected in various reports produced by the Special Rapporteur on the question of torture in recent years. Indeed, Saudi Arabia still does not have binding legislation criminalizing torture.

5.3 The complainant rejects the State party's assertion that she has not presented an arguable case that her husband would face a risk of being subjected to torture if he were handed over to the Saudi judicial authorities. She notes that, as a foreign national accused of breach of trust, Mr. Alhaj Ali faces a high risk of being subjected to corporal punishment. Saudi criminal law remains unwritten, which gives judges a significant degree of discretion. No penalty is specifically provided for in Saudi criminal law for breach of trust. The judge may use analogical reasoning (*qiyas*), as permitted in such cases under sharia law, to sentence the defendant to the penalty for a similar offence such as theft. In the present case, the victim is in danger of being sentenced to amputation, bearing in mind that the Saudi judiciary is not given to clemency when sentencing foreign nationals, as evidenced by the country's jurisprudence.

5.4 Consequently, the complainant reiterates that Mr. Alhaj Ali would face a foreseeable, real and personal risk of being subjected to torture or other ill-treatment in Saudi Arabia, and that such risk goes well beyond mere "theory".

Risk of extradition to the Syrian Arab Republic

5.5 The complainant adds that, in its responses, the Moroccan Government makes no mention of the risk of refoulement from Saudi Arabia to the Syrian Arab Republic upon completion of a sentence, even though the human rights situation is extremely worrying in Mr. Alhaj Ali's country of origin, which is currently in the grip of civil war. The complainant also points out that Saudi Arabia has still not ratified the Convention relating to the Status of Refugees.

5.6 In response to the State party's contention that Mr. Alhaj Ali is not a political refugee since his case file contains no evidence to support that claim, the complainant points out that Mr. Alhaj Ali applied for asylum with the Office of the United Nations High Commissioner for Refugees (UNHCR) in Rabat on 21 January 2015,¹⁰ having fled persecution in his country of origin. The Moroccan authorities are therefore not competent to judge the credibility of Mr. Alhaj Ali's asylum application until UNHCR has reached a decision on the matter. The complainant further notes the history of persecution and torture of Mr. Alhaj Ali by members of Air Force Intelligence on account of his active participation in the peaceful protests that broke out in 2011. Pursuant to article 1 (A) (2) of the Convention relating to the Status of Refugees, there is no doubt that Mr. Alhaj Ali cannot return to his country of origin owing to a well-founded fear of being persecuted on account of his political opinions.

5.7 As to Mr. Alhaj Ali's alleged consent to being extradited to Saudi Arabia, the complainant maintains that her husband has in fact consistently opposed the measure, as confirmed by the decision of the public prosecutor's office to bring the case before the Criminal Chamber of the Court of Cassation in Rabat. If Mr. Alhaj Ali really had consented

¹⁰ His asylum application is included in the file.

to being handed over to the Saudi authorities, he would never have appeared before the Criminal Chamber of the Court of Cassation. Indeed, the Moroccan Code of Criminal Procedure stipulates that, when a person consents to extradition, copies of the statement expressing their acceptance must be sent to the Prosecutor-General of the Supreme Court and to the Minister of Justice.¹¹ The fact that the present case was referred to the Court of Cassation proves that Mr. Alhaj Ali did not formally consent to being handed over to the authorities of the requesting State for fear of being tortured or subjected to cruel, inhuman or degrading treatment in Saudi Arabia.

The ne bis in idem principle

5.8 Contrary to what was stated by the Moroccan Government in its responses, Mr. Alhaj Ali has already been the subject of a decision by the Court of First Instance in Damascus dated 31 March 2009. The prosecution brought in the Syrian Arab Republic and the ensuing criminal conviction were based on the request by Saudi Arabia for his extradition;¹² that request was itself premised on the same acts as those alleged in the current proceedings before the Moroccan authorities. The complainant argues that, in these circumstances, the prosecution of Mr. Alhaj Ali for acts for which he has already been prosecuted and sentenced can thus not go ahead without violating the *ne bis in idem* principle.

Statute of limitations for the offence under national law in the two States (requested/requesting)

5.9 As a subsidiary argument, the complainant maintains that there is an issue concerning the statute of limitations in the national law of the two States that also renders extradition unlawful. As observed by the State party itself, while the offence of breach of trust is not subject to a statute of limitations in Saudi Arabia, the Moroccan Code of Criminal Procedure provides that sentences become time-barred five years after the date of the judgment. The alleged acts are therefore time-barred under Moroccan law and the Moroccan Government cannot, in the circumstances, agree to the extradition request. Indeed, the decree concerning the extradition of foreign nationals expressly stipulates that extradition to the requesting State is not granted when, under the laws of either the requesting State or the requested State, the time limit for bringing an action has passed before the extradition request is served, or the time limit for the enforcement of the sentence has passed before the arrest of the individual whose extradition is requested, and, generally, whenever the prosecution has lapsed.

Legal nature of the ongoing detention of Mr. Alhaj Ali under the Riyadh Arab Agreement on Judicial Cooperation

5.10 In accordance with article 26 of the Riyadh Arab Agreement on Judicial Cooperation of 22 March 1983, signed by Morocco and 20 other Arab States, which provides that in no circumstances may a period of pretrial detention exceed 60 days from the time of arrest, Mr. Alhaj Ali's ongoing detention cannot be justified. In the present case, the time limit has been greatly exceeded. Consequently, Mr. Alhaj Ali's continued detention pending extradition could be viewed as arbitrary. It should be noted that the State party has acknowledged that Mr. Alhaj Ali's pretrial detention, which has lasted almost a year, is "prejudicial to his rights".

5.11 In conclusion, the complainant requests the Committee: to remind the State party that the facts before the Committee would disclose a violation by the State party of article 3

¹¹ Article 15 of Decree No. 1-58-057 of 25 rebia II 1378, concerning the extradition of foreign nationals.

¹² The Syrian authorities rejected the request to extradite Mr. Alhaj Ali.

of the Convention if Mr. Alhaj Ali were extradited to the requesting State; to find that Mr. Alhaj Ali's continued detention pending extradition lacks any legal basis; and, accordingly, to request the State party to release him immediately.

Additional submission by the complainant

6.1 On 14 June 2016, the complainant submitted additional observations on the admissibility of the complaint. She notes that, according to the State party, Mr. Alhaj Ali never mentioned to the competent Moroccan authorities that handing him over to the Saudi authorities would put him at risk of torture or other cruel, inhuman or degrading treatment or punishment (para. 4.7 above); that he did not make any statement to that effect when he appeared before the Criminal Chamber of the Court of Cassation in Rabat for the hearing of 17 December 2014; and that he has not presented an arguable case that he would face a risk of torture if handed over to the requesting authorities.

6.2 The complainant observes, first of all, that the memorandum prepared by Mr. Alhaj Ali's lawyer to contest the legality of extradition was based primarily on the Riyadh Arab Agreement on Judicial Cooperation. The Agreement, however, does not contain any provisions establishing a risk of torture in the requesting State as a ground for rejecting an extradition request, rendering it contrary to the obligations of the two States parties under article 3 of the Convention, and Mr. Alhaj Ali has therefore based his defence mainly on the *ne bis in idem* principle. The complainant nevertheless notes that, as a subsidiary argument in his speech for the defence at the hearing of 17 December 2014 before the Court of Cassation, Mr. Alhaj Ali's lawyer stated to the judges that extradition would put his client at risk of cruel treatment and "severe" punishment. In their decision, however, the judges did not mention all the arguments raised in the oral pleading.

6.3 The complainant adds that Mr. Alhaj Ali's lawyer raised the argument again, and for the first time in writing, in an application for review sent to the Minister of Justice on 3 February 2015,¹³ in which he expressed his concern that Mr. Alhaj Ali "might be subjected to treatment that was cruel or inconsistent with human dignity or to inhuman punishment". The application was rejected by the Minister.

6.4 The complainant recalls that, following his arrest, Mr. Alhaj Ali was taken to the Kenitra office of the Directorate-General of National Security, where, according to his testimony, his former Saudi sponsor (*kafil*) threatened him, in the presence of police officers, with death and with the "worst kind of torture" upon his return to Saudi Arabia.

6.5 Secondly, the complainant notes that Saudi judges may, by analogy, assimilate the offence of breach of trust, for which Mr. Alhaj Ali is being prosecuted in Saudi Arabia, to that of theft, which is punishable by corporal punishment or even amputation. According to the complainant, the State party authorities are not unaware of the high risk that Mr. Alhaj Ali, as a foreign national accused of breach of trust, faces of being subjected to such punishments. Indeed, Saudi criminal law is unwritten, which gives judges a significant degree of discretion. With regard to breach of trust, the complainant recalls that Saudi judges may use analogical reasoning (*qiyas*), as permitted in such cases under sharia law, to sentence defendants to the penalty for a similar offence such as theft — a fortiori in the case of foreign workers.

6.6 The complainant adds that, in its ruling of 31 December 2015, the Court of Cassation explicitly states that "the acts for which Abdul Rahman Alhaj Ali is being prosecuted in Saudi Arabia amount to a breach of trust, to which sharia law applies, and that such acts are not time-barred under sharia law". According to the complainant, although the ruling contains an implicit reference to the applicable punishment through its

¹³ Attached (in Arabic) to the file.

mention of sharia as the applicable law, the judge did not qualify corporal punishment as a form of torture, despite being aware of the applicable punishment and of the State party's obligations under the Convention. The complainant adds that, when it last considered a report submitted by Saudi Arabia, the Committee established unequivocally that corporal punishment, including flogging and amputation of limbs — which is relevant to the present case — is a form of torture or other cruel, inhuman or degrading treatment.

6.7 The complainant concludes that, having accepted that the penalties laid down in Saudi Arabia for breach of trust are those imposed under sharia law, the Moroccan judge should have raised the risk of torture faced by Mr. Alhaj Ali *ex officio* and rejected the request for extradition to Saudi Arabia. Consequently, the complainant requests the Committee to find that all available remedies have been exhausted and to grant the requests made in her initial submission.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any complaint submitted in a communication, 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 (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.

7.2 The Committee notes that the State party maintains that Mr. Alhaj Ali never mentioned to the Moroccan authorities that handing him over to the Saudi authorities would put him at risk of torture or other cruel, inhuman or degrading treatment or punishment, which raises issues under article 22 (5) (b) of the Convention.

7.3 The Committee notes the complainant's arguments that, before the Court of Cassation on 17 December 2014, Mr. Alhaj Ali's lawyer stated orally that extradition would put his client at risk of cruel treatment and "severe" punishment; and that the risk of being subjected to treatment that was cruel or incompatible with human dignity or to inhuman punishment was cited explicitly in the application for review sent by Mr. Alhaj Ali to the Ministry of Justice on 3 February 2015. The Committee concludes that the State party authorities were not unaware of the real risk faced by Mr. Alhaj Ali. The Committee further notes the complainant's argument that the risk of torture, of which the judge was aware given that he acknowledged the applicability of sharia law to the offence in question in Saudi Arabia, should have been raised *ex officio* by the judge and taken into account in his ruling as grounds for refusing extradition.

7.4 Under the circumstances of the present case, the Committee considers that article 22 (5) (b) of the Convention is not an obstacle to the admissibility of the communication and, accordingly, finds the communication admissible and proceeds to its consideration of the merits.

Consideration of the merits

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

8.2 The Committee must determine whether the extradition of Mr. Alhaj Ali to Saudi Arabia 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 would be in danger of being subjected to torture.

8.3 In assessing whether there are substantial grounds for believing that Mr. Alhaj Ali would be in danger of being subjected to torture, the Committee recalls that it must take into account all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the requesting State. However, the aim of such an analysis is to determine whether Mr. Alhaj Ali runs a personal risk of being subjected to torture in Saudi Arabia. Consequently, the existence in the country of a pattern of gross, flagrant or mass violations of human rights does not as such constitute sufficient grounds for determining that he would be in danger of being subjected to torture on extradition to that country; additional grounds must exist to indicate that the individual concerned would be personally at risk.

8.4 The Committee refers to its general comment No. 1, which states that, in light of the obligation to determine whether there are substantial grounds for believing that the individual concerned would be in danger of being subjected to torture were he to be expelled, returned or extradited, the Committee must assess the risk of torture on the basis of elements beyond mere theory or suspicion. However, it is not necessary to demonstrate that the risk is highly probable, although it must be personal and real. In previous decisions, the Committee has ruled that the risk of torture must be foreseeable, real and personal.

8.5 The Committee must consider the actual human rights situation in Saudi Arabia and recalls that, in its concluding observations on the second periodic report of Saudi Arabia issued during its fifty-seventh session (CAT/C/SAU/CO/2), it expressed concern at the many serious allegations it had received of cases of torture and ill-treatment inflicted on detainees by law enforcement officers. The Committee also expressed deep concern at the imposition under Saudi law of corporal punishment, including flogging and amputation, which are grave and flagrant violations of the Convention. The Committee furthermore expressed concern at the punishments provided for by law, which include corporal punishments that the Committee considered to constitute torture or cruel, inhuman or degrading treatment. The Committee further noted that migrant workers were especially at risk of torture or ill-treatment, particularly as a result of the *kafala* system. The Committee recalled that Saudi Arabia had no law to regulate and guide expulsion proceedings or to ensure, inter alia, that the principle of non-refoulement was applied, and that it had not ratified the 1951 Convention relating to the Status of Refugees. Lastly, the Committee expressed deep concern at the use of the death penalty in Saudi Arabia, and noted in this regard that migrant workers account for a particularly large and disproportionate number of victims of executions in the country.¹⁴

8.6 While taking note of the actual human rights situation in Saudi Arabia as described above, the Committee recalls that additional grounds must exist to show that the individual concerned would be personally at risk. In the present case, the Committee notes the complainant's argument that her husband, Mr. Alhaj Ali, who has been in pretrial detention in Morocco since October 2014, is facing imminent extradition to Saudi Arabia on charges of breach of trust, for which he was reportedly prosecuted in the Syrian Arab Republic and sentenced to 3 months' imprisonment, which he served in 2007. In this connection, the Committee notes that, in determining the existence of a foreseeable, real and personal risk of torture under article 3 of the Convention, it expresses no opinion as to the veracity of the criminal charges that are or may have been made against the individual concerned.

8.7 The Committee confirms that it is within the purview of the courts of the States parties to the Convention to assess the facts and evidence in a case. The appeal courts of States parties are responsible for reviewing the conduct of a trial, unless it can be

¹⁴ Of the 2,208 persons executed between January 1985 and June 2015, at least 1,072, or 48.5 per cent, were foreign nationals, with the majority being migrant workers (Amnesty International, A/HRC/30/NGO/147, 9 September 2015).

established that the evidence was assessed in a patently arbitrary manner or one that amounted to a miscarriage of justice.¹⁵

8.8 The Committee notes that, when the Court of Cassation in Rabat authorized the extradition, it failed to assess the risk of torture that such a measure would entail for Mr. Alhaj Ali, bearing in mind the situation in Saudi Arabia, particularly for foreign workers, and the specific risk faced by the individual concerned, given that persons found guilty of breach of trust are liable to corporal punishment in Saudi Arabia. Although the State party put forward the general argument that the Moroccan authorities “believed that Mr. Alhaj Ali would not be at personal risk if handed over to the requesting judicial authorities” (para. 4.11), no explanation was provided as to how that risk was assessed in order to ensure that the extradition of Mr. Alhaj Ali would not put him at risk of treatment contrary to article 3 of the Convention.

8.9 The Committee recalls that the prohibition against torture is absolute and non-derogable, and that no exceptional circumstances whatsoever may be invoked by a State party to justify acts of torture [see the Committee’s general comment No. 2 (2007) on implementation of article 2 by States parties]. In light of all the above, and given the nature of the punishment of which Mr. Alhaj Ali is at risk if he is extradited, the Committee concludes that the complainant has sufficiently demonstrated that Mr. Alhaj Ali would face a foreseeable, real and personal risk of torture if extradited to Saudi Arabia, in violation of article 3 of the Convention.

9. The Committee, acting under article 22 (7) of the Convention, concludes that the extradition of Mr. Alhaj Ali to Saudi Arabia would constitute a breach of article 3 of the Convention. Since he has been in pretrial detention for almost 2 years, the State party is obliged to release him or to try him if charges are brought against him in Morocco.

10. The Committee urges the State party, in accordance with rule 118 (5) of its rules of procedure, to inform it, within 90 days of the date of transmittal of this decision, of the steps taken in response to this decision.

¹⁵ See communication No. 419/2010, *Ktiti v. Morocco*, decision adopted on 26 May 2011, para. 8.7.