



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. 1062/2021*, **, ***

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| <i>Communication submitted by:</i> | Hana Al Hasani (represented by counsel, MENA Rights Group) |
| <i>Alleged victim:</i> | Osama Al Hasani |
| <i>State party:</i> | Morocco |
| <i>Date of complaint:</i> | 11 March 2021 (initial submission) |
| <i>Document references:</i> | Decision taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on 12 March 2021 (not issued in document form) |
| <i>Date of adoption of decision:</i> | 19 July 2024 |
| <i>Subject matter:</i> | Deportation to Saudi Arabia |
| <i>Procedural issues:</i> | None |
| <i>Substantive issues:</i> | Risk of torture or other cruel, inhuman or degrading treatment if deported to country of origin |
| <i>Articles of the Convention:</i> | 3 and 22 |

1.1 The complainant is Hana Al Hasani, a Moroccan national. She is submitting the communication on behalf of her husband, Osama al Hasani (Osama al Mahrouqi), a citizen of Saudi Arabia and Australia, born in 1978.¹ He is subject to an order expelling him to Saudi Arabia. The complainant claims that the extradition of Mr. Al Hasani would constitute a violation by the State party of article 3 of the Convention. The State party made the declaration under article 22 (1) of the Convention on 19 October 2006. The complainant is represented by counsel.

1.2 On 12 March 2021, pursuant to rule 114 of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, asked the State party not to expel Mr. Al Hasani to Saudi Arabia while the complaint was being considered.

* Adopted by the Committee at its eightieth session (8–26 July 2024).

** The following members of the Committee participated in the examination of the communication: Todd Buchwald, Jorge Contesse, Claude Heller, Peter Vedel Kessing, Maeda Naoko, Ana Racu and Bakhtiyar Tuzmukhamedov.

*** A joint opinion by Committee members Todd Buchwald, Jorge Contesse and Peter Vedel Kessing (dissenting) is annexed to the present decision.

¹ The Red Notice issued in respect of Mr. Al Hasani by the International Criminal Police Organization (INTERPOL) states that he was born on 1 December 1981.



1.3 On 13 March 2021, the State party informed the Committee that it had already extradited Mr. Al Hasani to Saudi Arabia at 2.45 a.m. the same day, before the note verbale containing the request for interim measures had been received by the competent Moroccan authorities.

Factual background

2.1 On 8 February 2021, Mr. Al Hasani was arrested by the Moroccan police in Tangier, in the presence of the complainant and their child. Immediately after the arrest, Mr. Al Hasani was transferred to police headquarters in Tangier, where he found out about the Red Notice that had been issued against him by INTERPOL on 6 December 2016, at the request of Saudi Arabia. On 10 February 2021, the complainant was allowed to visit Mr. Al Hasani. During that visit, the latter told the complainant that he had been pressured to sign an acceptance of surrender to the Saudi authorities, which he had refused to do. The complainant states that she herself was detained for four hours and pressured to convince Mr. Al Hasani to accept extradition. In violation of the Moroccan Code of Criminal Procedure,² Mr. Al Hasani was only granted access to a lawyer when he was brought before the Crown Prosecutor at Tangier Court of First Instance, after having spent three days in police custody. The Prosecutor referred him to the Criminal Chamber of the Court of Cassation on 11 February 2021. The complainant further states that Mr. Al Hasani was never brought before an independent judicial authority competent to examine the legality of the extradition procedure between his arrest and his appearing before the Criminal Chamber of the Court of Cassation.

2.2 On 11 February 2021, the Saudi Attorney General submitted an extradition request for Mr. Al Hasani to his Moroccan counterpart.³ The request stated that he was wanted for a car theft that occurred in February 2015 and involved six other defendants. According to the Saudi authorities, Mr. Al Hasani left the country on 4 July 2015. The extradition request was accompanied by an arrest warrant of the same date, based on an indictment relating to the alleged theft of an unspecified number of cars estimated to be worth more than \$600,000.

2.3 The complainant contends that, on 27 March 2018, well before Mr. Al Hasani's arrest in Tangier, Jeddah Criminal Court had sentenced his co-accused to three months' imprisonment. They were subsequently released in view of the time they had already spent in pretrial detention. During the proceedings, the relevant governor's office and the Prince Sultan Ben Turki Ben Abdelaziz Al Saoud, who is an acquaintance of Mr. Al Hasani, had testified in favour of the co-defendants. According to the complainant, the Prince Sultan, a member of the royal family, is currently a victim of enforced disappearance. In its decision, the Jeddah court did not rule on the case of Mr. Al Hasani as he was abroad. The report setting out the judgment mentions allegations of torture and ill-treatment made by Mr. Al Hasani's co-defendants. The decision was upheld on appeal by the First Criminal Chamber of Mecca on 30 May 2018.

2.4 On 23 February 2021, Mr. Al Hasani was transferred to Tiflet prison, where he received consular assistance from Australia. On 8 March 2021, he was referred to the Criminal Chamber of the Court of Cassation of Morocco. During the hearing, his lawyers highlighted the risk of torture and ill-treatment that he would face and the fear that his right to life would be violated if he was extradited. On 10 March 2021, the Court of Cassation granted the extradition request made by Saudi Arabia.

Complaint

3.1 The complainant alleges that, in the event of Mr. Al Hasani's being returned to Saudi Arabia, where he risks being subjected to torture and other inhuman and degrading treatment, the State party would be in breach of its obligations under article 3 of the Convention. She maintains that the general human rights situation in Saudi Arabia is particularly worrying, and refers in this regard to the Committee's assessment in its concluding observations on the second periodic report of Saudi Arabia that torture and other forms of ill-treatment are

² The complainant notes that article 66 of the Code of Criminal Procedure sets the duration of police custody at 48 hours, with the possibility of an extension of a further 24 hours, subject to the authorization of a public prosecutor.

³ A copy of this request is available in the case file (in Arabic).

commonly practised in Saudi prisons.⁴ The complainant points out that this assessment is corroborated by the conclusions of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.⁵ She adds that the present complaint is similar to the case of *Alhaj Ali v. Morocco*,⁶ concerning the extradition of a Syrian national to Saudi Arabia. In that case, the Committee had found a violation of article 3 of the Convention by Morocco.⁷ She also notes that Saudi law does not contain any definition of torture or any clear provision establishing the absolute and non-derogable prohibition of torture and ill-treatment.⁸ The complainant also asserts that, in Saudi Arabia, under Islamic law, there is no Criminal Code and no specific penalty for theft, which can be punished by amputation or other more severe penalties.

3.2 The complainant maintains that Mr. Al Hasani runs a personal risk of being subjected to torture if he is returned to Saudi Arabia. She recalls that his co-defendants have stated that they were subjected to torture during questioning. She also recalls that the closeness of Mr. Al Hasani to the Prince Sultan Ben Turki Ben Abdelaziz Al Saoud, who is considered a dissident in the Saudi Kingdom, is an additional risk factor, since the latter has spoken out in favour of the defendants in the case concerning Mr. Al Hasani. The complainant also maintains that Mr. Al Hasani suffers from high blood pressure and recently had a heart attack. He thus needs medication to prevent another attack. The complainant asserts that Mr. Al Hasani's family was not, however, allowed to bring him the medication he needed or to share his medical records with the competent authorities.

3.3 The complainant argues that, in Mr. Al Hasani's case, all available domestic remedies have been exhausted as, even if a request to rescind the expulsion order against him could be made, that request would not effectively prevent his extradition, which is contrary to the Committee's general comment No. 4 (2017).⁹ She states that the present complaint has not been submitted for examination by another international body of investigation or settlement.

State party's observations on the merits

4.1 The State party submitted its preliminary observations on the merits of the complaint in a note verbale dated 1 April 2021.

4.2 The State party explains that, on 12 March 2021 at 4 p.m., the Rabat criminal investigation police notified Mr. Al Hasani of the extradition order dated 11 March 2021 issued by the Head of Government in connection with an international arrest warrant issued against him by the Saudi authorities through INTERPOL. The State party indicates that Mr. Al Hasani's extradition was accompanied by all the necessary legal safeguards, in accordance with the Riyadh Arab Convention on Judicial Cooperation, with the cooperation of the national central office in Riyadh and the Arab liaison offices in both countries. The State party adds that Mr. Al Hasani was transferred by the Moroccan police to Rabat-Salé airport, where he was handed over to their Saudi counterparts, and then boarded a special Saudi flight to Riyadh.¹⁰

4.3 Regarding respect for judicial safeguards, the State party explains that, during the judicial proceedings before the Court of Cassation, Mr. Al Hasani enjoyed all his rights, including the right to be assisted by counsel, who had the opportunity to put forward a defence on his behalf. The Court of Cassation finally decided to confirm Mr. Al Hasani's extradition after several postponements requested by his lawyers. The State party also explains that, during his detention in Tangier and Tiflet, Mr. Al Hasani received appropriate medical care and that the last medical examination dated 11 March 2021 established that he was well enough to be extradited. The State party further explains that a delegation from the National Human Rights Council visited Mr. Al Hasani on 5 March 2021 and that he received consular

⁴ CAT/C/SAU/CO/2 and CAT/C/SAU/CO/2/Corr.1, para. 7.

⁵ A/HRC/40/52/Add.2, p. 1.

⁶ CAT/C/58/D/682/2015.

⁷ Ibid., para. 9.

⁸ CAT/C/SAU/CO/2 and CAT/C/SAU/CO/2/Corr.1, para. 5.

⁹ Committee against Torture, general comment No. 4 (2017), para. 18 (e).

¹⁰ As Mr. Al Hasani's passport had expired, the Embassy of Saudi Arabia in Rabat issued a travel document on 12 March 2021 to allow him to make the trip.

assistance in the form of visits to the prison, as well as visits from his lawyers and his wife on 11 March 2021.

Complainant's comments on the State party's observations

5.1 On 19 April 2021, the complainant submitted her comments on the State party's observations. She points out that the latter does not challenge the admissibility of the complaint. On the merits, the complainant maintains that the State party has failed to take into account the human rights situation in Saudi Arabia. She stresses that it has not denied that torture is a common practice in Saudi Arabia.

5.2 The complainant argues that the State party has failed to take into account the personal risks faced by Mr. Al Hasani in Saudi Arabia, since, in the country, the crime of car theft is punishable by corporal punishment and her husband is being prosecuted in a case marked by allegations of torture made during the trial. The complainant adds that, in accordance with paragraph 29 (k) of the Committee's general comment No. 4 (2017), the Moroccan authorities should have carried out an assessment of the risk of the person concerned being subjected to enforced disappearance in the event of extradition.¹¹ She recalls that, in its jurisprudence, the Committee has taken the position that enforced disappearance constitutes for the disappeared person, or could constitute for his or her family and relatives, a form of torture or inhuman treatment contrary to the Convention.¹² The complainant points out that the State party has not indicated that it has sought "diplomatic assurances" from the requesting State to ensure that Mr. Al Hasani is treated in accordance with the conditions set by the sending State and in accordance with international human rights standards.

5.3 With regard to the extradition proceedings concerning Mr. Al Hasani, the complainant stresses that Moroccan extradition law does not meet the requirements of article 3 of the Convention, which establishes the principle of non-refoulement, since it does not allow an appeal to be lodged against the expulsion order before an independent administrative and/or judicial body within a reasonable time frame.¹³ With regard to the conditions in which the extradition was carried out, the complainant points out that the State party has not indicated the precise time at which Mr. Al Hasani was received by the Saudi authorities. She draws attention to the information that Mr. Al Hasani's extradition was carried out by special flight on 13 March 2021 at 2.45 a.m., even though Rabat-Salé airport was closed.¹⁴ The complainant further notes that the State party has not specified any grounds that might have justified Mr. Al Hasani's extradition under such conditions.

5.4 The complainant points out that extradition proceedings in the State party are generally lengthy, sometimes lasting several years.¹⁵ She considers that the *modus operandi* employed in the case of Mr. Al Hasani suggests that the facts that prompted his extradition are political in nature. The complainant challenges the State party's assertion that it had handed Mr. Al Hasani over to the Saudi authorities well before it learned of the Committee's request for interim measures. She considers that there are reasonable grounds to believe that the State party either deliberately accelerated the extradition proceedings to avoid having to suspend them or chose to ignore the request for interim measures transmitted on the eve of the extradition. Lastly, the complainant considers that, by proceeding in this way, the State party has deliberately chosen to ignore the context of serious human rights violations in Saudi Arabia¹⁶ and questions the State party's willingness to apply article 22 of the Convention in good faith. Consequently, the complainant requests the Committee to find that

¹¹ See, in particular, bladi.net, "No news from Osama Al-Hasani since his extradition by Morocco", 18 March 2021. The complainant states that Mr. Al Hasani's situation has been referred to the Working Group on Enforced or Involuntary Disappearances, see [A/HRC/WGEID/121/1](#), annex I, paras. 32–49.

¹² *Hernández Colmenarez and Guerrero Sánchez v. Bolivarian Republic of Venezuela* (CAT/C/54/D/456/2011), para. 6.4.

¹³ Committee against Torture, general comment No. 4 (2017), para. 18 (e).

¹⁴ According to the complainant, the airport is closed between midnight and 6 a.m.

¹⁵ See, in this regard, *Alhaj Ali v. Morocco*.

¹⁶ *Ibid.*, para. 8.5.

Mr. Al Hasani's extradition to Saudi Arabia constitutes a violation of articles 3 (1) and 22 of the Convention.

5.5 On 5 May 2021, the complainant submitted to the Committee an affidavit from the Saudi Ministry of Justice, dated 25 September 2019,¹⁷ stating that the six co-accused, together with Mr. Al Hasani, had been cleared of any wrongdoing in the car theft case for which they were being prosecuted in Saudi Arabia, owing to the lack of evidence presented by the prosecutors. The complainant argues that, in accordance with this document, the Red Notice issued in respect of Mr. Al Hasani should be lifted and that, consequently, the extradition carried out on 13 March 2021 was based on a Red Notice that should have been cancelled.

State party's additional observations

6.1 On 19 November 2021, the State party reported that, on 23 March 2018, Mr. Al Hasani had filed a complaint under the name of Osama Talal Abbas al Mahrouqi with the Tangier police regarding the theft of a car registered in Saudi Arabia. When his identity was being verified, Mr. Al Hasani fled the premises of the criminal investigation police. On 8 February 2021, following his arrest on the instructions of the prosecutor's office attached to Tangier Court of First Instance, he was held in police custody until 11 February 2021 at 10 a.m., after an extension of 24 hours.¹⁸

6.2 The State party explains that, contrary to what has been alleged by the complainant, Mr. Al Hasani's arrest took place on the basis of the aforementioned national arrest warrant, as confirmed by the police report detailing his transfer, the warrant for his arrest, the related investigation and his arrest, dated 8 February 2021. The State party also points out that, when Mr. Al Hasani was arrested, he refused to have his identity verified by fingerprinting or the taking of a biological sample, even though he was in possession of several foreign bank cards, one of which was in the name of Osama al Mahrouqi. The subsequent verification of his identity revealed that Mr. Al Mahrouqi was the subject of an international arrest warrant issued on 7 December 2015 by the Bureau of Investigation and Public Prosecution of Saudi Arabia,¹⁹ after which a Red Notice had been issued against him on 6 December 2016 by INTERPOL.²⁰

6.3 The State party indicates that, when Mr. Al Hasani was in police custody, under the supervision of the competent prosecutor's office, all the judicial safeguards to which he was entitled were respected, including the right to be informed of the reasons for his arrest, to remain silent, to notify his family²¹ and to communicate with a lawyer. On 9 February 2021, while in police custody, Mr. Al Hasani was assisted by a lawyer from the Tangier Bar Association²² as part of a confidential consultation.

6.4 The State party adds that Mr. Al Hasani was heard on 11 February 2021 by the Crown Prosecutor at Tangier Court of First Instance, in accordance with article 730 of the Code of Criminal Procedure, and that, at that time, he stated his other identity – Osama Al Hasani, an Australian national, born on 11 December 1978 in Hawiya – as it appears on his Australian passport. After being notified of the international arrest warrant and the extradition request submitted by the Saudi authorities, Mr. Al Hasani stated that he refused to appear before the Saudi judicial authorities and to be extradited, and that he opposed any procedure related to the taking of his fingerprints to verify his true identity. The Crown Prosecutor then placed him in detention pending extradition. The Saudi Arabian and Australian embassies were informed. The State party considers that, by deliberately causing confusion over his identity for several years and seeking to obstruct the establishment of his true identity when he was arrested, Mr. Al Hasani was clearly seeking to evade justice.

¹⁷ See Human Rights Watch, "Saudi Arabia: reveal status of Saudi-Australian", 4 May 2021.

¹⁸ This extension was granted by written authorization No. 11 0 92/2021 issued by the competent prosecutor's office on 9 February 2021.

¹⁹ Warrant No. 2/7/26797.

²⁰ The INTERPOL Red Notice was registered under number A-11101/12-2016.

²¹ In accordance with article 66 of the Moroccan Code of Criminal Procedure and article 9 of the International Covenant on Civil and Political Rights.

²² In accordance with article 66 of the Moroccan Code of Criminal Procedure.

6.5 The State party points out that, in the context of the measures taken during the health emergency linked to the coronavirus disease (COVID-19) pandemic, and in order to protect other detainees, Mr. Al Hasani was heard remotely during the judicial proceedings before the Court of Cassation. He was accorded all his rights, including the right to be assisted by counsel, who were given the opportunity to present a defence on his behalf. The State party further indicates that the hearing initially scheduled for 3 March 2021 was finally held on 8 March 2021, following a postponement requested by Mr. Al Hasani's defence counsel, who was able to follow the hearing.

6.6 The State party recalls that article 41 of the Riyadh Arab Convention on Judicial Cooperation provides that extradition cannot be granted if the offence for which extradition is requested is, according to the laws in force in the requesting State, of a political nature, and that article 721 of the Moroccan Code of Criminal Procedure provides that extradition cannot be granted if the State has serious reasons to believe that the extradition request, ostensibly motivated by an ordinary offence, has in fact been made for the purpose of prosecuting or punishing an individual for reasons of race, religion, nationality or political opinion, or is likely to exacerbate the situation of that individual for any of these reasons. In the present case, the State party points out that the Court of Cassation considered that Mr. Al Hasani had not advanced any serious grounds for asserting that the request for his extradition was politically motivated, taking into account the documents in the case file. The State party also rejects the complainant's claim that Mr. Al Hasani had been forced to sign a document by which he agreed to be returned to Saudi Arabia, since, as is clear from the pleadings, Mr. Al Hasani had expressed his refusal to be extradited. The State party stresses that this allegation was never raised by Mr. Al Hasani before the national courts.

6.7 As for the complainant's allegation that Mr. Al Hasani had not been brought before an independent judicial authority empowered to examine the legality of the extradition proceedings between his arrest and his being brought before the Court of Cassation, the State party explains that, under article 734 of the Code of Criminal Procedure, the person concerned was free to request his pretrial release at any time during the proceedings, pending a final decision by the Court of Cassation, in accordance with article 9 (4) of the International Covenant on Civil and Political Rights. The State party points out that, in the present case, the person concerned only lodged an application for pretrial release with the Court of Cassation, which it subsequently found to be baseless and rejected. The State party explains that the proceedings initiated against Mr. Al Hasani in 2018 have been closed and that these proceedings against him are standard extradition proceedings.

Complainant's comments on the State party's additional observations

7.1 On 10 December 2021, the complainant submitted comments on the State party's additional observations. She points out that the report produced by the Tangier police on 8 February 2021, following Mr. Al Hasani's arrest, shows that the authorities were aware of both of Mr. Al Hasani's identities and of the existence of an international arrest warrant against him as early as 23 March 2018, in other words, when he was questioned at the Tangier police station. The complainant points out that the State party has not commented on the affidavit from the Saudi Ministry of Justice dated 25 September 2019, which exonerates Mr. Al Hasani in connection with his alleged involvement in a common law offence and which would invalidate the Red Notice issued against him.²³

7.2 The complainant states that, contrary to the information submitted by the State party, her complaint did not indicate that Mr. Al Hasani had been forced to sign a document by which he agreed to be returned to Saudi Arabia, rather that he had informed her on 10 February 2021 that he had been pressured to sign such a document. The complainant points out that, in its observations, the State party did not comment on the possibility of Mr. Al Hasani's being a national of Morocco,²⁴ given that his father held Moroccan nationality.²⁵

²³ This document was emailed to the Committee on 6 May 2021.

²⁴ This question was raised during the hearing of 8 March 2021 by his defence lawyers.

²⁵ In this respect, the complainant does not rule out the possibility of a violation by the State party of article 721 (1) of the Code of Criminal Procedure, which prohibits the extradition of its nationals.

7.3 The complainant points out that, in its response, the State party makes no reference to its obligations under the Convention, particularly article 3, rather only to compliance with article 41 of the Riyadh Arab Convention on Judicial Cooperation and article 721 of the Code of Criminal Procedure. The complainant also points out that these provisions do not meet the requirements of article 3 of the Convention. She points out that, in its jurisprudence, the Committee has recalled that article 721 of the Moroccan Code of Criminal Procedure does not specifically mention the risk of torture and ill-treatment in the event of extradition.²⁶

7.4 The complainant states that, in May 2021, Mr. Al Hasani's fate and whereabouts were still unknown.²⁷ She further states that, on 5 September 2021, it was reported that the Saudi Specialized Criminal Court had sentenced Mr. Al Hasani to 4 years' imprisonment.²⁸ She recalls that the Committee has already found that this court is not sufficiently independent and that it ignores allegations of ill-treatment during the questioning of detainees.²⁹

7.5 In view of the foregoing, the complainant reiterates that Mr. Al Hasani's extradition to Saudi Arabia constitutes a violation of articles 3 (1) and 22 of the Convention. Lastly, the complainant requests the Committee to call on the State party to grant her full reparation, in view of the seriousness of the violation and the harm suffered in connection with Mr. Al Hasani's extradition, and to provide guarantees of non-repetition, including through legislative reform that takes account of article 3 of the Convention by guaranteeing the right of any person subject to an expulsion order to lodge an appeal suspending its enforcement.³⁰

State party's additional observations

8. On 13 July 2022, the State party submitted additional observations. The State party points out that Mr. Al Hasani had argued in his defence before the Court of Cassation that he held Moroccan nationality, presenting a marriage certificate dated 1442 Hijri (2021) and a birth certificate dated the same year. The State party explains that, after examining the documents submitted, the Court of Cassation concluded that they did not relate to the person concerned, that the name appearing in the documents was Mr. Osama Al Hasani and that the name of the father appearing there was Ahmed ben Selam Al Hasani, whereas, when the identity of the person concerned was verified before the Crown Prosecutor at Tangier Court of First Instance and before the Court of Cassation, Mr. Al Hasani had stated that his father's name was Ali. The State party adds that the checks carried out by the police throughout the proceedings did not at any time reveal that the person concerned might hold Moroccan nationality.

Issues and proceedings before the Committee

Consideration of admissibility

9.1 Before considering any complaint submitted 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 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

9.2 In accordance with article 22 (5) (b) of the Convention, the Committee shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, as Mr. Al Hasani's appeals were rejected, he was handed down a definitive negative decision concerning the requested stay of his deportation to Saudi Arabia and that the State party has not contested

²⁶ *Bakay v. Morocco* (CAT/C/68/D/826/2017), para. 7.11.

²⁷ See, in particular, Human Rights Watch, "Saudi Arabia: reveal status of Saudi-Australian", 4 May 2021.

²⁸ See Arab Organisation for Human Rights in the UK, "Saudi Arabia: a 4-year prison sentence for academic Osama al-Hasani", 5 September 2021; and Together for Justice, "The verdict against Osama Al-Hasani confirms his extradition from Morocco on political grounds", 7 September 2021.

²⁹ CAT/C/SAU/CO/2 and CAT/C/SAU/CO/2/Corr.1, para. 17.

³⁰ According to the complainant, article 721 of the Code of Criminal Procedure, which deals with the grounds for refusing extradition, should also be amended to fully reflect article 3 of the Convention.

the admissibility of the complaint. The Committee therefore finds that it is not precluded by article 22 (5) (b) of the Convention from considering the present communication.

9.3 As the Committee finds no further obstacles to admissibility, it declares the complaint admissible and proceeds with its consideration of the merits.

Consideration of the merits

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

10.2 In the present case, the issue before the Committee is whether the extradition of Mr. Al Hasani to Saudi Arabia constitutes a violation of the State party's obligation under article 3 of the Convention not to expel or return ("refouler") a person to another State where there are serious grounds for believing that he or she would be in danger of being subjected to torture or other cruel, inhuman or degrading treatment or punishment.

10.3 The Committee must consider whether there are substantial grounds for believing that Mr. Al Hasani would be personally in danger of being subjected to torture if he was returned to Saudi Arabia. In assessing that risk, it must, pursuant to article 3 (2) of the Convention, take into account all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights.³¹ However, the Committee recalls that the aim of this 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.³²

10.4 The Committee recalls its general comment No. 4 (2017), which states, first, that the non-refoulement obligation exists whenever there are "substantial grounds" for believing that the person concerned would be in danger of being subjected to torture in the State to which he or she is facing deportation, either as an individual or as a member of a group which may be at risk of being tortured in the State of destination and, second, that the Committee's practice has been to determine that "substantial grounds" exist whenever the risk is "foreseeable, personal, present and real".³³ It also recalls that the burden of proof is borne by the complainant, who must present an arguable case – that is, submit substantiated arguments showing that the danger of being subjected to torture is foreseeable, personal, present and real. However, when the complainant is in a situation where he or she cannot elaborate on his or her case, the burden of proof is reversed and the State party concerned must investigate the allegations and verify the information on which the communication is based.³⁴ The Committee gives considerable weight to findings of fact made by organs of the State party concerned; however, it is not bound by such findings, as it can make a free assessment of the information available to it in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to each case.³⁵

10.5 The Committee recalls its concluding observations on the second periodic report of Saudi Arabia, in which it expressed concern about the number and seriousness of allegations that it had received relating to acts of torture and ill-treatment inflicted on detainees by law enforcement officials. The Committee also expressed its deep concern about the forms of corporal punishment imposed under Saudi law, which include lashings and amputations, in clear and grave violation of the Convention. In addition, the Committee expressed concern

³¹ Committee against Torture, general comment No. 4 (2017), para. 43.

³² *Kalinichenko v. Morocco* (CAT/C/47/D/428/2010), para. 15.3.

³³ Committee against Torture, general comment No. 4 (2017), para. 11.

³⁴ *Ibid.*, para. 38.

³⁵ *Ibid.*, para. 50.

about the penalties provided for by law, which include such corporal punishment and which the Committee considered to constitute torture and cruel, inhuman or degrading treatment.³⁶

10.6 While noting the prevailing human rights situation in Saudi Arabia described above, the Committee nevertheless points out that there must be additional grounds for believing that the person concerned would be personally at risk. In the present case, the Committee notes the complainant's arguments that the State party breached its obligations under article 3 of the Convention by returning her husband, Mr. Al Hasani, to Saudi Arabia, where he is being prosecuted for theft. The Committee also notes the complainant's allegation that there is no definition of torture or a Criminal Code in Saudi law, and that there is no specific penalty for theft, which can be punished by amputation or more severe penalties.

10.7 The Committee's established jurisprudence is that it is within the purview of the courts of States parties 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 established that the evidence was assessed in a patently arbitrary manner or one that amounted to a miscarriage of justice.³⁷

10.8 The Committee recalls that the torture or ill-treatment to which a complainant claims to have been subjected in the past is a factor to be considered when assessing the risk of being subjected again to torture or ill-treatment that he or she will face in the event of a return to his or her country.³⁸ In the present case, the Committee notes that the complainant has not produced any information on the acts of torture to which Mr. Al Hasani may have been personally subjected in the past.

10.9 The Committee notes that, although the complainant has not alleged that Mr. Al Hasani undertook any political activities in Saudi Arabia, she considers that the expeditious manner in which his extradition was carried out, disregarding the request for interim measures transmitted to the State party the previous day, suggests that the facts which led to his extradition are political in nature. The Committee also notes the information provided by the complainant to the effect that the closeness of Mr. Al Hasani to the Prince Sultan Ben Turki Ben Abdelaziz Al Saoud, who is considered to be at odds with the Saudi Kingdom, is an additional risk factor, since the latter has spoken out in favour of the defendants in the case concerning Mr. Al Hasani. The Committee notes, however, that the complainant has not explained how Mr. Al Hasani's link to the Prince Sultan Ben Turki Ben Abdelaziz Al Saoud alone could be considered a political activity that would be of interest to the Saudi authorities.

10.10 The Committee notes the complainant's allegation that the State party's authorities failed to assess the personal risks faced by Mr. Al Hasani in the event of his extradition to Saudi Arabia, given that he was facing prosecution there for car theft, a crime punishable by corporal punishment, and that the case in which he was involved was marked by allegations of torture made by co-defendants during their trial in Saudi Arabia. The Committee also notes that the complainant argued that the State party had also failed to assess the risk of disappearance to which Mr. Al Hasani could be exposed, and that enforced disappearance could constitute a form of torture or inhuman treatment for the disappeared person and his or her relatives.³⁹

10.11 The Committee notes that, according to the State party, Mr. Al Hasani confused the Moroccan authorities about his identity by presenting himself on the one hand as Osama Talal Abbas al Mahrouqi, born on 1 December 1981 in Saudi Arabia, and, on the other, as Osama Al Hasani, born on 11 December 1978 in Hawiya, Saudi Arabia, and an Australian national. It also notes that, initially, Mr. Al Hasani refused to have his identity verified during his arrest in Tangier on 8 February 2021 and that, eventually, this verification revealed that Mr. Al Hasani was the subject of an international arrest warrant for car theft issued by Saudi Arabia, and then the subject of an INTERPOL Red Notice issued on 6 December 2016. The Committee further notes that, while the complainant has not contested Mr. Al Hasani's two

³⁶ See CAT/C/SAU/CO/2 and CAT/C/SAU/CO/2/Corr.1.

³⁷ *Ktiti v. Morocco* (CAT/C/46/D/419/2010), para. 8.7.

³⁸ Committee against Torture, general comment No. 4 (2017), para. 49 (b), (c) and (d).

³⁹ *Ibid.*, para. 29 (k). See also *Hernández Colmenarez and Guerrero Sánchez v. Bolivarian Republic of Venezuela*, para. 6.4.

identities, she indicates that the police were aware of this information from the time of his arrest in Tangier in 2018.

10.12 The Committee notes that, according to the complainant, it had been reported on 5 September 2021 that Mr. Al Hasani had been sentenced to 4 years' imprisonment by the Saudi Specialized Criminal Court while recalling that the Committee had already indicated that this court was not sufficiently independent and ignored allegations of ill-treatment during the questioning of detainees. The Committee notes that, in her complaint, the complainant had indicated that, on 27 March 2018, Jeddah Criminal Court had sentenced Mr. Al Hasani's co-accused to three months' imprisonment and had then released them, taking into account the time already spent in pretrial detention. The Committee also notes that, on 5 May 2021, the complainant submitted to the Committee an affidavit from the Saudi Ministry of Justice dating from 25 September 2019, according to which the six co-accused, together with Mr. Al Hasani, had been cleared of any wrongdoing in the car theft case for which they were being prosecuted in Saudi Arabia owing to a lack of evidence and that, consequently, the Red Notice issued in respect of Mr. Al Hasani should have been lifted.

10.13 The Committee notes that the complainant was unable to explain, firstly, how Mr. Al Hasani's co-accused had been sentenced by Jeddah Criminal Court to three months' imprisonment and then released on 27 March 2018 and, secondly, how Mr. Al Hasani could have been convicted in Saudi Arabia for acts of which he had reportedly been cleared in 2021, following his expulsion from Morocco. The Committee also notes that the complainant has not demonstrated how the fear that Mr. Al Hasani would be at risk of torture was justified, since she has not indicated whether the detention and sentencing to imprisonment of her husband in Saudi Arabia had been accompanied or followed by torture or ill-treatment.

10.14 The Committee notes the complainant's allegations regarding the failure to respect judicial safeguards prior to the extradition of Mr. Al Hasani, who had been denied access to a lawyer for the first three days following his arrest by the Moroccan authorities. It also notes that, according to the State party, Mr. Al Hasani was visited and assisted by his lawyers during his detention and before the Court of Cassation, where they were able to present their case; that he also underwent a final examination according to which he was fit to be deported; and that he also benefited from consular assistance, including from Australia. The Committee notes that the complainant has not contested the fact that Mr. Al Hasani benefited from these judicial safeguards. It also notes that the complainant stated that Mr. Al Hasani had informed her on 10 February 2021 of the pressure under which he had been placed to sign a document concerning his deportation to Saudi Arabia. The Committee notes that, in its response, the State party indicated that Mr. Al Hasani had never raised this argument before the national courts and that, in any case, the person concerned had expressed his refusal to be extradited.

10.15 The Committee notes that the State party informed it that Mr. Al Hasani was extradited to Saudi Arabia at 2.45 a.m. on 13 March 2021, before the Moroccan authorities were able to consider the request for interim measures. It also notes that, according to the information available, the note verbale including the request for interim measures was submitted electronically to the State party on 12 March 2021 at 2.14 p.m. The Committee notes the complainant's assertion that the State party was indeed aware of the existence of the request for interim measures and that, by refusing to comply with it, it failed in its obligation to apply articles 3 (1) and 22 of the Convention in good faith. The Committee notes the short time that elapsed between the submission of the note verbale and the enforcement of the extradition order, and regrets that the Moroccan authorities did not have time to respond to the request for interim measures sent to the State party. However, in these circumstances and in view of the available evidence, the Committee is unable to conclude that the Moroccan authorities wilfully failed to give effect to the request for interim measures, which was transmitted to them only a few hours before Mr. Al Hasani's extradition.

10.16. The Committee is concerned about the numerous reports of human rights violations, including the use of torture and ill-treatment in Saudi Arabia.⁴⁰ It is also concerned about reports of the Moroccan authorities' processing extradition requests without conducting a

⁴⁰ See [CAT/C/SAU/CO/2](#) and [CAT/C/SAU/CO/2/Corr.1](#).

risk assessment, as required by article 3 of the Convention.⁴¹ Nevertheless, in the present case, the Committee recalls that, for the purposes of article 3 of the Convention, the complainant must demonstrate that Mr. Al Hasani ran a foreseeable, real and personal risk of being tortured in the country to which he was being returned. In the light of the above, the Committee believes that such a risk has not been established. The Committee considers that the circumstances of the present case do not allow it to conclude that the State party deliberately failed to comply with the Committee's request for interim measures.

10.17 The Committee refers to paragraph 38 of its general comment No. 4 (2017), according to which the burden of proof is upon the complainant, who has to present an arguable case.⁴² In the light of the above, and in the circumstances of the present case, the Committee considers that the complainant has not discharged the burden of proof, having failed to provide sufficient information to establish that the authorities of the State party have treated her husband in a manner that might be contrary to articles 3 and 22 of the Convention.

11. In the light of the foregoing, the Committee considers that the information submitted by the complainant is insufficient to substantiate her claim that the State party has violated articles 3 and 22 of the Convention or that Mr. Al Hasani would face a foreseeable, present, personal and real risk of torture if he was deported to Saudi Arabia.

12. The Committee, acting under article 22 (7) of the Convention, in view of the information contained in the case file, concludes that the deportation of Mr. Al Hasani to Saudi Arabia does not constitute a violation by the State party of article 3 of the Convention. The Committee nevertheless invites the State party to seek ways of monitoring the conditions under which Mr. Al Hasani is detained in Saudi Arabia, in order to ensure that he is not subjected to treatment contrary to article 3 of the Convention, and to inform the Committee of the results of such monitoring.⁴³

⁴¹ CAT/C/MAR/CO/4, para. 9.

⁴² *T.M. v. Sweden* (CAT/C/68/D/860/2018), para. 12.13; and *S.B. v. Cameroon* (CAT/C/75/D/1034/2020), para. 8.6.

⁴³ *Ayaz v. Serbia* (CAT/C/67/D/857/2017), para. 11.

Annex

[Original: English]

Joint opinion of Committee members Todd Buchwald, Jorge Contesse and Peter Vedel Kessing (dissenting)

1. Respectfully, we find ourselves unable to concur with the Committee's decision in the present case.

2. Pursuant to the Committee's practice, the complainant is generally responsible for putting forward an arguable case that there are substantial grounds for believing that he or she would be in danger of being subjected to torture if extradited. If this is done, the burden shifts to the State party,¹ which – under article 3 (2) of the Convention – is obligated to carry out an independent and impartial review of the facts and an assessment of the risk, taking into account all relevant considerations. When such a case is submitted to the Committee, it becomes the responsibility of the Committee to consider whether the State party has shown that it has conducted such a review and risk assessment. Failure of the State party to do so before extraditing the complainant constitutes a violation of its obligations under article 3 of the Convention.²

3. In the present case, the complainant has put forward a case that is more than simply arguable that there would be substantial grounds for believing that Mr. Al Hasani would be in danger of being subjected to torture, including on the basis of the Committee's own concluding observations on the second periodic report of the State of destination. In those concluding observations, the Committee expressed its deep concern at the numerous reports that torture and other ill-treatment were commonly practised in prisons and detention centres of the State of destination.³ The Committee also expressed concern about the insufficient independence of the Specialized Criminal Court – the Court that had jurisdiction over Mr. Al Hasani's case upon his extradition and that eventually sentenced him⁴ – and about reports that the judges of that Court had repeatedly refused to act on claims made by defendants facing terrorism charges who had been subjected to torture or ill-treated during interrogations for the purpose of compelling a confession.⁵ The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has expressed those same concerns.⁶ In its concluding observations, the Committee also addressed the issue of corporal punishment, stating that:

¹ For example, *A.S. v. Sweden* (CAT/C/25/D/149/1999), para. 8.6. See also European Court of Human Rights, *Saadi v. Italy*, Application No. 37201/06, Judgment, 28 February 2008, para. 129; and Inter-American Court of Human Rights, *Wong Ho Wing v. Peru*, Judgment, 30 June 2015, para. 224.

² Convention against torture and other cruel, inhuman or degrading treatment or punishment, art. 3 (2) ("For the purpose of determining whether there are such grounds [for believing that a person would be in danger of being subjected to torture], the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights"); and general comment No. 4 (2017), para. 27 ("Article 3 (2) of the Convention provides that for the purpose of determining whether there are grounds for believing that a person would be in danger of being subjected to torture, if expelled, returned or extradited, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights") and para. 13 ("Each case should be examined individually, impartially and independently the State party through competent administrative and/or judicial authorities, in conformity with essential procedural safeguards, notably the guarantee of a prompt and transparent process, a review of the deportation decision and a suspensive effect of the appeal").

³ CAT/C/SAU/CO/2 and CAT/C/SAU/CO/2/Corr.1, para. 7.

⁴ Committee's decision, para. 7.4.

⁵ CAT/C/SAU/CO/2 and CAT/C/SAU/CO/2/Corr.1, para. 17.

⁶ A/HRC/40/52/Add.2, highlighting "the large number of reports regarding unfair trials before the Specialized Criminal Court, prolonged periods of detention, the use of torture, coerced confessions and

The Committee is deeply concerned that the State party continues to sentence individuals to and to impose corporal punishment, including flogging/lashing and amputation of limbs – practices that are in breach of the Convention. The Committee is concerned that the penalties provided by law in the State party include these and other forms of corporal punishment, which amount to torture and cruel, inhuman or degrading treatment or punishment under the Convention.⁷

4. These observations are particularly relevant to the present case because of concerns that the car theft charges for which Mr. Al Hasani was sought were punishable by corporal punishment.

5. The State party did not contest these concerns, and indeed there is no indication that it even took the human rights situation in the State seeking extradition into account. Nor did the State party contest or address the concerns that Mr. Al Hasani's co-defendants were subjected to torture while being interrogated for what are essentially the same charges of car theft or that the law of the State seeking extradition: (a) lacks a definition of torture; (b) lacks clear legislative provisions guaranteeing the absolute and non-derogable prohibition of torture; and (c) fails to preclude the use of statements obtained through torture as evidence in trials.⁸

6. Meanwhile, the conclusion that Mr. Al Hasani is a person of particular interest to the State seeking the extradition seems virtually inescapable, particularly in the light of the absence of a meaningful explanation by the State party of the remarkable events surrounding his actual transfer. These include the special flight on which Mr. Al Hasani was transported, arranged for 2.45 a.m. on a Saturday from an airport that was otherwise closed, mere hours after Mr. Al Hasani had been notified of the decree ordering his transfer, notwithstanding the pending request for interim measures by which the Committee had requested the State party not to extradite Mr. Al Hasani while the Committee considered the complaint. They also include the subsequent absence of information about the treatment of Mr. Al Hasani after he was convicted by the Specialized Criminal Court in September 2021,⁹ which is similarly left unaddressed by the State party.¹⁰

7. To be clear, none of the elements described above definitively established that Mr. Al Hasani would in fact be subjected to torture. They are clearly sufficient, however, to

the lack of accountability, as well as the failure of Saudi Arabia to provide minimum procedural safeguards during detention and interrogation, and its judicial practice of admitting coerced confessions into evidence" (p. 1).

⁷ CAT/C/SAU/CO/2 and CAT/C/SAU/CO/2/Corr.1, para. 10.

⁸ The Committee noted those deficiencies in its concluding observations (CAT/C/SAU/CO/2 and CAT/C/SAU/CO/2/Corr.1, paras. 5 and 23).

⁹ See Together for Justice, "The verdict against Osama Al-Hasani confirms his extradition from Morocco on political grounds", 7 September 2021, reporting that Mr. Al Hasani was sentenced to four years imprisonment by the Specialized Criminal Court following "about six months of trial in mysterious circumstances, following his extradition from Morocco" and that "he was subjected to enforced disappearance for a long time before being allowed to communicate with the outside world"; and Human Rights Watch, "Joint statement: Hassan al-Rabea's extradition constitutes a grave violation of Morocco's international obligations", 13 February 2023, recalling that "the Specialised Criminal Court, known for its politicized and grossly unfair trials, sentenced al-Hasani to four years' imprisonment".

¹⁰ It is also worth noting that a careful look at paragraph 6.6 of the Committee's decision suggests that the two provisions under which the State party says Mr. Al Hasani's case was assessed – article 41 of the [Riyadh Arab Convention](#) on Judicial Cooperation and article 721 of the Code of Criminal Procedure of Morocco – do not in fact provide for the protection from the risk of torture to which a person is entitled under article 3 of the Convention. Article 41 of the [Riyadh Arab Convention](#) prohibits extradition if the crime of which a person is accused is "of a political nature", whereas article 3 of the Convention requires a State party to protect persons at risk of torture from extradition to another State regardless of whether the crime that the person is accused of committing is political or non-political. Similarly, article 721 of the Code of Criminal Procedure prohibits extradition for the purpose of prosecuting or punishing the person on the grounds of race, religion, nationality or public opinion, whereas article 3 of the Convention requires States parties to protect persons from the risk of torture for any reason, not only if the risk of torture is attributable to race, religion, nationality or public opinion. Thus, even on the face of the provisions that the State party argues were the basis for its decision, the protections required under article 3 of the Convention would not be fully safeguarded.

require the State party to put forward a reasoned explanation of the basis upon which its authorities rejected the contention. Yet no such explanation is provided. On the contrary, the decision simply lists various procedural safeguards that the State party says were afforded to Mr. Al Hasani, such as the fact that he was permitted to be assisted by counsel, that he was provided with medical care, that he received visits from consular authorities and from a delegation of the National Human Rights Council, and that the extradition was carried out in accordance with a mutual legal assistance treaty. Nowhere in the decision, however, does the State party indicate that it even asserted that Mr. Al Hasani would not face the requisite risk of torture, much less set forth the reasoning upon which any such assertion would be based. Nor does the decision include an indication that the authorities ever carried out an assessment of the risk, as they were explicitly required to do under the Convention.

8. If the State party had refrained from extraditing Mr. Al Hasani, pursuant to the Committee's request for interim measures, while consideration of the case was pending, a finding of a violation would not have been necessary. Rather, it would have been appropriate for the Committee to decide that the State party should reassess its decision to extradite Mr. Al Hasani in the light of the considerations set out above, making clear the basis for its conclusion that Mr. Al Hasani would not face the requisite risk of torture upon being extradited. It would not then have been necessary for the Committee to prejudge what the outcome of that reassessment should be, so that even a decision to go forward with the extradition would not necessarily have ended up constituting a violation. Regrettably, such a reassessment is no longer possible as the transfer proceeded, notwithstanding the Committee's request for interim measures. At this point, then, the Committee's choice is simply to find whether the extradition did or did not constitute a violation. It is our view that the Committee should have concluded that, in the absence of further consideration by the State party that took account of the relevant factors described above and a reasoned explanation of its conclusion, the extradition of Mr. Al Hasani did in fact constitute a violation. For these reasons, we dissent from the Committee's decision.
