



# 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. 891/2018\*, \*\*

<i>Communication submitted by:</i>	Abdel Jalil Laaroussi (represented by counsel, Olfa Ouled)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Morocco
<i>Date of complaint:</i>	19 October 2018 (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 26 October 2018 (not issued in document form)
<i>Date of adoption of decision:</i>	15 July 2022
<i>Subject matter:</i>	Torture in detention
<i>Procedural issues:</i>	Exhaustion of domestic remedies; abuse of the right of submission
<i>Substantive issues:</i>	Torture and cruel, inhuman or degrading treatment or punishment; measures to prevent acts of torture; systematic monitoring of custody and treatment of prisoners; State party's obligation to ensure that its competent authorities conduct a prompt and impartial investigation; right to file a complaint; right to redress
<i>Articles of the Convention:</i>	1, 2, 11–16

1.1 The complainant is Mr. Abdel Jalil Laaroussi, a Moroccan national born in Western Sahara in 1978. He claims that the State party has violated articles 1, 2 and 11–16 of the Convention. The State party made the declaration pursuant to article 22 (1) of the Convention on 19 October 2006. The complainant is represented by counsel, Olfa Ouled.

1.2 On 26 October 2018, pursuant to rule 114 (1) of its rules of procedure, and in the light of the information provided by the complainant, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party to: (a) suspend all use of solitary confinement against the complainant; (b) allow the complainant to be

\* Adopted by the Committee at its seventy-fourth session (12–29 July 2022).

\*\* The following members of the Committee participated in the examination of the communication: Todd Buchwald, Claude Heller, Erdogan Iscan, Maeda Naoko, Ilvija Pūce, Sébastien Touzé et Bakhtiyar Tuzmukhamedov. Pursuant to rule 109, read in conjunction with rule 15, of the Committee's rules of procedure, and paragraph 10 of the guidelines on the independence and impartiality of members of the human rights treaty bodies (the Addis Ababa guidelines), Abderrazak Rouwane did not participate in the examination of the communication.



visited by a doctor of his choice; and (c) provide the complainant with access to the medical treatment his case requires so as to avoid any irreparable harm.

### **The facts as presented by the complainant**

2.1 Beginning on 9 October 2010, thousands of Saharans living in Western Sahara left their homes to move to temporary camps located on the outskirts of towns, including the Gdeim Izik camp, near Laâyoune. The aim of this action was to denounce the discrimination to which Saharans consider themselves to be subjected by the State party. The complainant joined the camp at the outset.

2.2 On 8 November 2010, members of the Moroccan army, armed with water cannons and tear gas, attacked the Gdeim Izik camp, which was at the time occupied by more than 20,000 Saharans. During the forced evacuation of the camp, clashes broke out between the army and Saharan demonstrators, during which Moroccan soldiers were reportedly killed. This was followed by a violent wave of repression led by the Moroccan security forces and supported by Moroccan civilians residing in Saharan territory. The complainant states that on the day of the dismantling of the camp, he was not in Gdeim Izik, as he was visiting his mother in Boujdour from 7 to 12 November 2010.

2.3 On 12 November 2010, the complainant was abducted from his friend's house in Boujdour by a squad of hooded police officers. These agents are part of a Moroccan special intervention group that always acts with hidden identities. After beating his friend and molesting the women at the scene and slapping them, the officers threatened the complainant by putting a gun to his head, handcuffed him and forced him into their vehicle. On the way to the headquarters of the Directorate-General of National Security in Laâyoune, the squad stopped in a former Spanish military building where, on the orders of the chief of police of Laâyoune, the complainant was tortured, beaten and hung up by the hands and feet. His shoulders were eventually dislocated and he passed out several times. The police woke him up every time he passed out and continued to beat him.

2.4 The complainant was subsequently transferred to an unknown location where he continued to be tortured. A doctor called to the scene warned the police that the complainant could die if the ill-treatment continued. The officers intravenously injected the complainant with an unknown substance. They ripped out his fingernails with pliers, then pulled out hair from his scrotum before subjecting him to electric shocks. The officers forced him to drink their urine and some chemicals of an unknown nature. They also burned him with chemicals.

2.5 The complainant was locked up in a punishment cell of the criminal investigation police, where he was deprived of food and water and again forced to drink urine. The complainant was then placed in a room in the presence of at least three hooded and armed officers and was ordered, on camera, to read a confession of his participation in armed acts committed against law enforcement officers. The complainant refused to sign the confession. When he refused, he was sodomized with light bulbs, which shattered in his anus, until he signed the confession.

2.6 The complainant was then transferred to a building of a phosphate company on the road to Smara, where he was stripped, beaten and sodomized several times. Officers accused him of storing firearms and knives in the building. Back in Laâyoune, the officers placed him in a room with dogs and threatened to have them devour him. The complainant passed out and woke up at the court of first instance in Laâyoune, where he was not presented to any judge. He was once again beaten, then transferred to another place, where he was hung by his hands, beaten on the soles of his feet with an iron bar and punched on the head until he passed out.

2.7 The complainant woke up on an airplane on 16 November 2010, lying on the floor with an officer's boot on his face. The officer threatened to throw him out of the airplane, and he was beaten by masked men. The complainant was terrorized and stated that he wanted to die. The airplane landed in Rabat and the complainant was transported, blindfolded, in a car, escorted by several persons in military uniform. The officers poured chemicals on the complainant. When he was brought to the military court, he was bleeding from his head and feet and was unable to walk. He was informed of the charges levelled against him for the first

time. The complainant reported that he had been forced to make a confession under torture, to which the judge replied that he had “no time for that”.

2.8 The complainant was transferred to Salé prison, where he was forced to run naked and shoeless. He was also “showered” outside his cell with ice water. In his cell, he had to kneel with his head down and his hands behind his back every time a guard said “respect”, under threat of being raped. He was subjected to numerous instances of sexual harassment by the officers. The torture sessions were supervised by the prison authorities, in the presence of the prison nurse, who for his part often administered pills and daily injections without the complainant knowing what they were. His food, mixed with shards of glass, was given to him on the floor after the guards crushed it with their boots. During the first visit from his family members he was not allowed to speak with them. He was finally allowed to see his family on 12 December 2010; he reported to them that he had been tortured and raped, despite the presence of guards.

2.9 The complainant was tortured every day for five months at Salé prison, without seeing daylight. With his co-defendants accused of the events at the Gdeim Izik camp, he went on several hunger strikes, after which he fell ill. After he saw the prison doctor his situation did not improve. The complainant spent thirteen months in hospital due to constant bleeding from his anus and nose and high blood pressure.

2.10 During his time at Salé prison, the complainant reported the acts of torture on several occasions and unsuccessfully to the Crown Prosecutor in Rabat, the Prosecutor General in Laâyoune and the National Human Rights Council.

2.11 On 22 December 2011, during his trial, the military investigating judge considered that the complainant had confessed to his crimes without any coercion and the case was referred to the military court. The trial of the complainant and of the Gdeim Izik detainees took place on 1 February and from 8 to 16 February 2013, in Rabat. On 15 February 2013, the military court in Rabat rejected the request for an investigation<sup>1, 2</sup> into the acts of torture. On 17 February 2013, the complainant was sentenced to life imprisonment – on the basis of a supposed confession – for belonging to a criminal gang, committing acts of violence leading to the premeditated killing of an official in the performance of his duties and desecrating a corpse.

2.12 After this trial, several international organizations pointed out that evidence was lacking and that no effective investigation into allegations of torture had been carried out.<sup>3</sup> The complainant undertook several hunger strikes, denouncing the fact that the proceedings had been unfair and that no hearing had been held before the Court of Cassation, which had been asked to hear an appeal.

2.13 On 27 July 2016, the Court of Cassation overturned the judgment of the military court and referred the case to the Rabat court of appeal. A new trial began on 26 December 2016.

<sup>1</sup> The court considered that the accused had had the opportunity to file such a request during the preliminary inquiry but had neglected to do so and that a long period had elapsed between the trial and the preliminary inquiry.

<sup>2</sup> In the statement of case addressed to the military court on 31 January 2013, the complainant’s lawyer denounced the fact that the confessions had been signed by the defendants under torture, in violation of article 22 of the Constitution and article 293 of the Code of Criminal Procedure. The court did not take any action. Subsequently, at the hearing held on 8 February 2013, the lawyer denounced the fact that the investigating judge of the military court had not ordered an expert medical examination of any of the defendants, even though some of them showed signs of having been subjected to violent acts. The other defendants’ lawyers made the same complaint against the investigating judge. In its interim order of 8 February 2013, the military court recorded the allegations of torture made by the accused, but it failed to take any action. Neither the military court nor the prosecutor responded to these allegations of torture with an investigation. In its report of 4 August 2014, after meeting 22 detainees tried in connection with the closure of the Gdeim Izik camp, the Working Group on Arbitrary Detention expressed its “concern that the allegations of torture and ill-treatment during the almost two years of pretrial detention have not been investigated” (A/HRC/27/48/Add.5, para. 68).

<sup>3</sup> See, among others, Human Rights Watch, “Just sign here: Unfair trials based on confessions to the police in Morocco”, 21 June 2013, and Amnesty International, “Urgent Action, Sahrawi prisoners on hunger strike”, 31 March 2016.

The allegations of torture were reiterated by the lawyers and defendants. Throughout the trial, the defendants all requested that the court of appeal set aside the police reports that had been signed under torture and remove them from the record of the proceedings.<sup>4</sup> On 25 January 2017, more than six years after the events, the president of the court of appeal agreed to allow the defendants to undergo forensic examinations. However, these examinations were entrusted to three Moroccan forensic doctors who had not been trained in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) and who did not offer sufficient guarantees of independence. The doctors concluded that it could not be confirmed that the complainant had been tortured. These expert reports were then presented by the lawyers of the co-defendants to four doctors of French and Spanish nationality, who produced expert reports countering their conclusions and finding that the Istanbul Protocol had not been respected. They established that the allegations of torture made by the complainant and his co-defendants were credible. During his questioning before the court of appeal, the complainant showed a copy of the complaints he had submitted to the Crown Prosecutor in Rabat, the Prosecutor General in Laâyoune and the National Human Rights Council, but the judge refused to allow him to read them out.

2.14 On 19 July 2017, the Rabat court of appeal sentenced the complainant to life imprisonment. On 29 September 2017, the complainant lodged an appeal in cassation, which was rejected on 25 November 2020 by the Court of Cassation.

2.15 On 16 September 2017, the complainant was transferred from El Arjat prison to Aïn Sebaâ prison. His family and lawyers were not informed of this transfer and he was not able to take his belongings with him. He was subjected to ill-treatment during the transfer and was placed in total isolation. His contacts were limited to two 3-minute phone calls and one 15-minute visit per week, which he did not receive for several weeks on the pretext that the prison telephone was not working. The walls of his cell were damp and covered with green moss, leading to severe lung problems and asthma attacks. For nearly seven months, when he was already in poor health, the complainant was subjected to daily abuse, insults and beatings under the orders of the former head of the guards of the Salé prison, who had also been transferred to Aïn Sebaâ prison. The diapers that he needed every day and that were delivered to prison were never given to him. He was thus forced to wash every hour owing to the uncontrolled loss of blood and excrement. Between 20 and 29 December 2017, the complainant went on a hunger strike to denounce the brutal treatment to which he was subjected. His sister also filed a complaint with the competent authorities, but there was no response. On 9 April 2018, the complainant was transferred to El Arjat prison, where he has continued to be a victim of medical neglect, suffering from asthma, hypertension, bleeding and numerous other physical and psychological sequelae. He is being held in prolonged isolation, with the right to one visit per week from his family members, who are unable to frequently travel due to the long distance between them and El Arjat prison.

### **The complaint**

3.1 The physical abuse to which the complainant was subjected during his arrest, during his interrogation at the Directorate-General of National Security in Laâyoune, at the phosphate company's building and during each trip between interrogations in order to extract a confession from him, as well as the treatment inflicted during his transfer by plane, constitute acts of torture under article 1 of the Convention. The methods known as *falaka* (repeated blows with iron bars on the soles of the feet) and "roast chicken" (hanging a victim upside down from a metal bar by the wrists and knees in a squatting position) are in essence acts of torture. Anal rape with the use of various tools, some made of glass, caused internal and external injuries and rendered the complainant incontinent. Such rapes must be considered as being intended to cause the highest degree of suffering, both physical and moral.

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<sup>4</sup> This request was rejected by the public prosecutor's office, which did not launch an investigation, in violation of the Criminal Code. Moreover, the court decided to consider the essential matter of whether the records were null and void together with the merits of the case, as can be seen from the judgment. The statements were thus discussed throughout the six months of the trial, as attested by the judgment, and the ruling on their validity was issued only at the end, at the same time as the verdict, despite the fact that a request had previously been made for them to be declared null and void.

These acts were committed in order to force the complainant to “spontaneously” admit his guilt by signing documents whose contents he had not read, in front of a camera. The complainant also reports that he received no medical care. The only nurse who visited him injected him with unknown substances. The abuse was carried out by a special regiment of Moroccan law enforcement, some of whose officers the complainant recognized, and later by the national gendarmerie, and ultimately by prison guards.

3.2 The complainant also reports that he has been in solitary confinement since 16 September 2017, without being advised of the reasons for this measure and without the least medical visits during this isolation. The State party continues to this day to commit acts of ill-treatment, inflicting severe physical and mental suffering on the complainant, intentionally, with the aim of punishing, intimidating or pressuring him. In addition, his detention in damp cells with moss-covered walls gave him asthma, and he was not provided with sufficient water. The conditions of detention have had a detrimental effect on his health, which has deteriorated throughout his detention, and the complainant now suffers from anal incontinence, loss of hearing, loss of consciousness, vomiting, depression and many other physical and psychological sequelae. The acts and treatment to which the complainant was subjected constitute cruel, inhuman or degrading treatment or punishment as set out in article 16 of the Convention. Furthermore, the failure of the Moroccan authorities to establish an effective system to prevent torture constitutes a violation of article 2 of the Convention.

3.3 According to article 11 of the Convention, the State party must keep under systematic review arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, which, in this case, has not been done. International bodies and organizations in their reports have condemned the conditions of detention, citing malnutrition, ill-treatment, abuse and the lack of an effective complaint mechanism for prisoners in Morocco.

3.4 The complainant states that, on 16 November 2010, he appeared, bearing visible signs of torture, before the investigating judge, who did not record these facts or open an immediate investigation. In addition, the military court did not take into account his allegations of torture when deciding on his conviction. The decision of the Court of Cassation did not change this situation, and the complainant is still detained on the sole basis of his coerced confession. The court of appeal in Rabat did not even call for an investigation, despite the repeated statements of the complainant concerning the torture to which he was subjected. It is therefore clear that the State party has failed to fulfil its obligations under articles 12 and 13 of the Convention.

3.5 Despite the signs of physical abuse and the statements made by the complainant before the investigating judge of the military court, the judge ignored his allegations and injuries and did not ask for a medical examination to be carried out. It has moreover been established that the medical examinations ordered by the Rabat court of appeal were not impartial and in any event were not carried out in the context of an investigation into the torture that was reported. That notwithstanding, the requirement for a doctor to check the health of the detainees has been recalled many times by the Committee.<sup>5</sup> In addition, the military court also failed to take the complainant’s allegations of torture into account. The absence of an investigation to date prevents the complainant from receiving rehabilitation, compensation, support and guarantees of non-repetition of the offence, in violation of article 14 of the Convention.

3.6 Despite the statements that the complainant made before the investigating judge during the initial hearing, on 15 October 2011, both the military court and the Rabat court of appeal took the first report, of 15 November 2010, into account, even though it contained alleged confessions that were actually extracted under torture. Despite the fact that the complainant has, through his counsel, unsuccessfully contested the probative value of the confessions signed under torture at various stages of the proceedings against him, the court of appeal found the police reports to be admissible, without ordering an investigation. By failing to carry out any checks, and by using such declarations in the judicial proceedings

<sup>5</sup> See *Asfari v. Morocco* (CAT/C/59/D/606/2014).

against the complainant, the State party manifestly violated its obligations under article 15 of the Convention.

3.7 The complainant considers that the lapse of more than eight years since the events, without any investigation being carried out by the State party despite his repeated allegations before the various Moroccan courts, is proof of the ineffectiveness of domestic remedies. No impartial investigation has been carried out within the meaning of article 6 of the Convention, even though all of the “Gdeim Izik detainees” have reported to the various judicial authorities that they were subjected to acts of torture. The annulment of the military court judgment, and the new judgment of the Rabat court of appeal, did nothing to change this situation. There is still no independent mechanism to address prisoners’ complaints about ill-treatment in detention.

3.8 The Committee has already noted in the case of *Asfari v. Morocco*, which concerned one of the co-defendants, that Mr. Asfari had denounced the acts of torture to which he had been subjected on several occasions before the various Moroccan judicial authorities, without any investigation being carried out, and that the military court had not taken the allegations of torture into account. The Committee also noted that Morocco had exceeded the reasonable time limit for dispensing justice by waiting more than six years to investigate the alleged acts of torture.

3.9 The complainant is calling for his immediate release in view of his state of health, the cessation of all physical and psychological violence against him, an end to his isolation, a visit to the prison by a doctor of his choice from outside the prison and full, adequate and fair compensation for all the violations of the Convention that he has suffered.

#### **State party’s observations on admissibility and the merits**

4.1 On 30 December 2018, the State party contested the admissibility of the complaint on the grounds of non-exhaustion of domestic remedies and abuse of the right to file a complaint.

4.2 The State party indicates that, following the investigations undertaken, the complainant, along with his co-defendants, was brought before the military court, in accordance with Moroccan criminal law, on account of the nature and seriousness of the acts committed against law enforcement officials, in particular the killing of 10 members of the Royal Gendarmerie and the Directorate-General of National Security and the auxiliary forces, and one member of the civil protection service.

4.3 The persons concerned were prosecuted and sentenced by the military court on 17 February 2013, in strict compliance with guarantees of due process. On 27 July 2016, the military court’s decision was quashed, and the case was referred to a civilian court. On 19 July 2017, the Rabat court of appeal confirmed the charges and the resulting sentence against the complainant, namely immediate life imprisonment. On 29 September 2017, the co-defendants submitted an appeal in cassation. The families of the victims also appealed to the Court of Cassation, as a civil party. The State party points out that the court has not yet ruled on the matter and that, in accordance with the Committee’s jurisprudence, mere doubts as to the effectiveness of domestic judicial remedies do not absolve the complainant from the obligation to exhaust them, including, where applicable, the remedy of cassation.<sup>6</sup> The State party thus rejects any assertion that recourse to the Court of Cassation cannot be considered an effective and efficient remedy.

4.4 The State party adds that the complaint was filed almost eight years after the alleged events took place. It expresses its surprise as to the real reasons why the complainant waited all those years.

4.5 The State party specifies that, contrary to the allegations of torture and ill-treatment made by the complainant, no marks or traces of violence, torture or ill-treatment were observed on him during his presentation before the military court, and he never reported his allegations personally or through his lawyer.

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<sup>6</sup> According to the information received by the Committee, the cassation appeal that the complainant filed on 29 September 2017 was rejected by the Court of Cassation on 25 November 2020.

4.6 The State party recalls that, in accordance with articles 73, 74, 88 and 134 of the Code of Criminal Procedure, prosecutors or investigating judges must order a medical examination of a person brought before them if that person requests it or if they find signs of torture or ill-treatment. In this case, no evidence of torture or ill-treatment was found during the complainant's presentation before the Rabat court of appeal, which made it possible to consider the complainant's allegations unfounded.

4.7 Regarding the request for interim measures, the State party strongly contests the complainant's allegations of physical and psychological abuse. It points out that he has been held at the El Arjat local prison since 9 April 2018 and that he is detained in compliance with the provisions of Act No. 23/98 of 25 August 1999 on the organization and functioning of prisons, in conditions that meet international norms and standards. The complainant has been placed in an individual cell in ordinary detention and is not subject to any isolation measures. He has the right to receive visits, to make regular phone calls and to take walks with other inmates and he receives newspapers and magazines on a regular basis. He is continuing with his Master's studies at the Faculty of Legal, Economic and Social Sciences of Mohammed V University in Rabat. Since his incarceration, he has obtained a degree in public law and a degree in sociology. The complainant benefits from appropriate medical monitoring and receives all necessary medical care. Specifically, he has already received 17 inpatient and 5 outpatient consultations.

4.8 In its comments dated 5 August 2019, the State party notes with regret that a common link between this communication and the other cases relating to the dismantling of the Gdeim Izik camp that are before the Committee is that they seek, under the cloak of numerous allegations of human rights abuses, to put forward purely political demands that fall outside the scope of the Committee's mandate.

4.9 It states that the Gdeim Izik camp was dismantled in accordance with relevant legal and regulatory provisions. In the course of the operation, the law enforcement authorities showed professionalism and extreme restraint, despite the attacks and deliberate provocations.<sup>7</sup> In addition to 11 officers who died, 304 persons were injured, including 116 members of the Royal Gendarmerie, 60 of the auxiliary forces, 26 police officers and 10 members of the civil protection service. Given the seriousness of the events that took place, several people were arrested the same day or in the days following the dismantling of the camp. The procedure before the military court is justified by the nature of the acts and is provided for in the former Code of Military Justice.

4.10 The competent authorities ensured that several mechanisms were in place to make it possible to follow the hearings. Interpretation into Hassaniya, a dialect spoken in southern Morocco, was provided. In addition, interpretation into English, French and Spanish was provided for the foreign observers who were present. The Rabat court of appeal ensured that the evidence was debated in an adversarial hearing in the presence of the defendants. The court also ordered the clerk to inform the accused of the proceedings on a daily basis, even when they refused to appear before it. They were assisted by their counsel, and observance of all these guarantees was confirmed by reports of the National Human Rights Council.

4.11 Regarding the "specific" context of the complainant, the State party points out that he was the subject of two wanted notices, issued on 12 and 13 November 2010, as he had actively participated in setting up the camp, and that he and his accomplices created a "secret police", within which the complainant performed the role of "director-general of camp security", in charge of the militia responsible for surveillance of the camp's occupants. On the day the camp was dismantled, the complainant actively participated in acts of public disorder, vandalism, looting, destruction and arson. Following his arrest, on 13 November 2010, the complainant was immediately placed in custody at 4:00 a.m. at the police headquarters in Laâyoune, for a period of 48 hours, so that he would be heard, in accordance with the law, under the effective supervision of the Prosecutor General at the Laâyoune court of appeal. After authorization from the Prosecutor General, the police custody was extended

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<sup>7</sup> The State party attaches a list of the law enforcement officers who lost their lives, along with photos illustrating the atrocities perpetrated in the Gdeim Izik camp and the public order disturbances that occurred in Laâyoune on 8 November 2010.

for 24 hours, for further investigation. His family was notified that he had been arrested and taken into custody. The complainant was not transferred to unknown locations, and during his hearings he clearly admitted to the accusations against him, with no contradictions. On 16 November 2010, he was brought before the military investigating judge, who ordered his placement in pretrial detention at Salé 2 prison. On 18 February 2011, the complainant appeared before the investigating judge. On 22 December 2011, he and his co-defendants were brought before the military court for trial. On 17 February 2013, he was sentenced to life imprisonment and is currently serving his sentence in El Arjat prison.

4.12 Regarding the allegations of torture, the State party indicates that all persons have several judicial and extrajudicial remedies available to them with respect to filing complaints with the public prosecutor's office, the prison administration – if they are in detention – or the National Human Rights Council, which has powers to monitor places of detention.<sup>8</sup>

4.13 The State party observes that the issue of the allegations of torture was raised by the defence during the civil proceedings and that the criminal chamber of the Rabat court of appeal promptly granted the defence's request for a medical examination of the complainant. The court appointed a commission chaired by three doctors, including specialists in traumatology, orthopaedics and psychiatry. They carried out an expert examination and medical tests, in accordance with the principles and guidelines of the Istanbul Protocol. The medical assessment carried out on 20 February and 7 March 2017 *inter alia* included interviews regarding the allegations, examinations, tests and an analysis of his medical record, X-rays, a magnetic resonance imagery (MRI) examination and an electromyogram. The report concluded that the neurological examination showed no motor or sensory deficits or coordination disorders, post-traumatic stress symptoms or psychological disorders. The assessment also included a rectal examination, the result of which was normal. It was therefore established that the complainant's allegations of torture were unfounded.<sup>9</sup>

4.14 The State party refutes the complainant's claim that the forensic examinations were entrusted to three Moroccan forensic doctors who were not trained in the Istanbul Protocol and did not provide adequate guarantees of independence. On the contrary, everything possible was done to ensure that the forensic examinations were carried out by highly qualified, impartial and independent experts who were recognized by the Moroccan courts and were, for that matter, subject to the supervision of the court of appeal.

4.15 The State party reports that the complainant's conditions of detention are regularly monitored by the National Human Rights Council. The complainant had several visits from his attorneys, on 26 November 2010, 15 December 2010 and 19 May 2011. Since his incarceration, and during all the visits made by the National Human Rights Council, the complainant has never filed any complaints of violence or ill-treatment within the prison.

4.16 Regarding the allegation that during the visit of the Working Group on Arbitrary Detention at the invitation of Morocco, in December 2013, the complainant was not able to meet with the experts, the State party emphasizes that he was hospitalized at the Avicenne University Hospital in Rabat, and not "in another place with other criminal-law prisoners".

4.17 Regarding the complaint filed on 27 March 2018 by the complainant's sister with the Prosecutor General at the Rabat court of appeal alleging that he was a victim of poor conditions of detention and medical negligence, the General Delegation for Prison Administration and Reintegration conducted an administrative investigation that refuted those allegations. In addition, the complainant never declared that he was on a hunger strike during his detention at Aïn Sebaâ prison, and on several occasions he refused to be examined by specialists at the Casablanca hospital, preferring for his case to be followed by his own doctor. The prison administration responded favourably to his request for transfer to El Arjat

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<sup>8</sup> Act No. 76-15 on the reorganization of the Council broadened its remit, in particular by designating it the national preventive mechanism, in accordance with the Optional Protocol to the Convention, to which Morocco acceded in 2014.

<sup>9</sup> The State party attaches a copy of the report of the expert medical assessment carried out on 20 February and 7 March 2017 and the doctors' *curricula vitae*.



prison, where he receives good medical care from his cardiologist. Lastly, the complainant was never hospitalized for 13 months, but has had several short hospital stays.<sup>10</sup>

### **Complainant's comments on the State party's observations**

5.1 On 14 October 2019, the complainant submitted his comments on the State party's observations. He argues that the communication is admissible, pointing out that more than eight years had elapsed since the alleged events, without any investigation being carried out by the State party, which is in itself evidence that domestic remedies are not effective.

5.2 The complainant maintains that the appeal that is still before the Court of Cassation<sup>11</sup> cannot be considered an effective remedy because the Court rules only on matters of law and on the basis of the case before it, namely the acts of which the complainant was accused. The Court cannot overturn a substantive decision by Moroccan judges and is not competent to determine whether the complainant's confession was obtained as a result of torture or to order an investigation into allegations of torture.

5.3 With regard to the possibility for the complainant to file a complaint with the National Human Rights Council, the complainant points out that the Council can take up the matter on its own initiative and that, although it was aware of the situation of the complainant and his co-defendants, it never did so. While the Council wrote a report on the trial, it never addressed the issue of the torture suffered by the complainant. Moreover, the Council was established after the trial was held before the military court;<sup>12</sup> it has continued to refer to the complainant and his co-defendants and the allegations of torture<sup>13</sup> in subjective terms, and it has maintained that the assessment by the three doctors was in keeping with the Istanbul Protocol. The complainant submits that the Council cannot be considered a judicial mechanism or an adequate mechanism for investigating allegations of torture. He adds that the State party does not answer the specific points relating to admissibility, namely the failure to open an investigation. The complainant reiterates that he has brought his treatment to the attention of the Moroccan authorities on numerous occasions and, as a last resort, to the attention of the Committee, without any investigation being opened to date.

5.4 As to the merits, the complainant recalls that his complaint concerns the circumstances of his arrest, his time in police custody and the ill-treatment to which he was subjected, and not the reasons for his conviction, since this is not a matter under the Committee's remit. He considers that the State party appears to be deliberately confusing the criminal case with the failure to open an investigation into the allegations of torture.

5.5 The complainant observes that the State party merely asserts that he signed his statements voluntarily. In so doing, it maintains its interpretation of article 291 of the Code of Criminal Procedure, according to which the reports drawn up by the criminal investigation police constitute prima facie evidence. Indeed, the only supporting document submitted by the State party is the record of the confession, which the complainant states was extracted under duress. The State party continues to try to reverse the burden of proof by forcing the complainant to prove that he was tortured.

5.6 The complainant points out that the State party does not indicate that he received any medical examinations during the time of the reported acts, nor that he received prompt and

<sup>10</sup> The State party indicates that the complainant was hospitalized: from 25 April to 10 June 2013, from 9 to 23 December 2013, from 23 February to 18 April 2014, from 23 February to 8 May 2015, from 3 October to 24 November 2015 and from 11 March to 2 May 2016.

<sup>11</sup> According to the information received by the Committee, the cassation appeal that the complainant filed on 29 September 2017 was rejected by the Court of Cassation on 25 November 2020.

<sup>12</sup> The Council was established on 1 March 2011 by Royal Decree No. 1-11-19, while the first appearance of the applicant before the military court took place in November 2010.

<sup>13</sup> According to the Council's summary report on the observation of the trial relating to the events at Gdeim Izik, the prisoners were chanting "slogans against the territorial integrity" of Morocco, and the medical examinations were carried out "because of the allegations of torture made by the defendants to justify the contents of the judicial police reports"; see National Human Rights Council, "Observation of the trial relating to the events at Gdeim Izik", available at: [http://cndh.org.ma/sites/default/files/rapport\\_synthetique\\_sur\\_lobservaion\\_du\\_proces\\_de\\_gdeim\\_izik.pdf?msckid=1618a948d0ff11ecbdb551f504b6c6a1](http://cndh.org.ma/sites/default/files/rapport_synthetique_sur_lobservaion_du_proces_de_gdeim_izik.pdf?msckid=1618a948d0ff11ecbdb551f504b6c6a1).

independent legal and medical assistance or that he was able to make immediate contact with his family. Despite the fact that the complainant presented visible signs of torture before the military investigating judge on 16 November 2010, the State party has failed to show that the investigating judge took into account his allegations and injuries and called for an investigation to be initiated, or at least for a medical examination to take place. The complainant reiterates his claim that the State party violated his rights under articles 2, 11, 12, 13, 15 and 16 of the Convention.

5.7 The complainant stresses that his current situation remains as described in his initial communication and that, despite numerous appeals by some non-governmental organizations,<sup>14</sup> his detention conditions constitute at the very least inhuman and degrading treatment. He adds that the measures requested by the Committee to ensure that he has access to adequate treatment to avoid irreparable harm have not been implemented by the State party.

#### **Additional observations by the complainant**

6. On 15 January 2021, the complainant's counsel stated that in October 2019 the complainant had undergone knee surgery but no follow-up had been done after the operation, such as rehabilitation, so that he would be able to walk. In January 2021, the complainant was reportedly transferred to Tan-Tan prison, without his counsel or family being informed of the transfer. The complainant was eventually able to briefly communicate with his family, indicating that he was deprived of contact and was unable to give any concrete news about his current state of health. On 12 May 2022, counsel for the complainant pointed out that the State party's objection to the admissibility of the complaint was no longer relevant, as the appeal to the Court of Cassation had been dismissed by a final judgment.<sup>15</sup>

#### **Issues and proceedings before the Committee**

##### *Consideration of admissibility*

7.1 Before considering any complaint contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (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 contested the admissibility of the complaint on the grounds of non-exhaustion of domestic remedies and abuse of the right to file a complaint.<sup>16</sup>

7.3 With regard to the question of the exhaustion of domestic remedies, the Committee notes the State party's arguments that the complainant did not formally raise the allegations of torture before the competent authorities and that the appeal in cassation is reportedly still pending. In this regard, the Committee observes that the State party had initially indicated that the appeal before the Court of Cassation, which was lodged by the complainant and his co-defendants on 29 September 2017, was still pending and that domestic remedies had thus not been exhausted. However, it also takes note of the information that, on 25 November 2020, the Court of Cassation ultimately rejected the complainant's appeal. The Committee concludes that the State party's challenge to the admissibility of the complaint is no longer relevant, since a judgment has already been handed down on the appeal before the Court of Cassation and it is therefore no longer necessary for the Committee to rule on the effectiveness of this remedy in the present case.

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<sup>14</sup> See, in particular, Amnesty International, "Urgent Action: Morocco. 'Sahrawi prisoner's health dangerously deteriorates'", 11 December 2017.

<sup>15</sup> *M.B. v. Morocco* (CAT/C/72/D/923/2019), para. 12.2.

<sup>16</sup> Although the State party does not expressly raise the issue of abuse of the right of complaint, the Committee considers that the State party is essentially alleging abuse of that right when it points out that eight years passed since the time of the alleged events and that "it wonders at the real reasons that led the complainant to wait so many years before submitting his complaint to the Committee".

7.4 The Committee notes that, in its observations, the State party indicates that the complainant could have raised the allegations of torture by filing complaints with the public prosecutor's office, the prison administration or the National Human Rights Council. It also notes that the complainant states that he reported the acts of torture that he had suffered when he was brought before the military investigating judge on 16 November 2010, and that these same allegations were raised before the military court, which rejected the request for an investigation on 15 February 2013, and that at no time did the authorities initiate an investigation. The Committee further notes that the complainant, during his questioning before the court of appeal, showed a copy of the complaints he had submitted to the Crown Prosecutor in Rabat, the Prosecutor General in Laâyoune and the National Human Rights Council, but that the judge refused to allow him to read them out. In addition, the Committee notes that the complainant did not have access to a doctor of his choice providing sufficient guarantees of independence from the prison system.

7.5 In the absence of any pertinent information from the State party in this regard, the Committee concludes that the State party's objection to the admissibility of the complaint is not relevant in the present case, as it has failed to demonstrate that existing remedies for reporting acts of torture were, in practice, made available to the complainant to enable him to assert his rights under the Convention.

#### *Consideration of the merits*

8.1 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.

8.2 The Committee notes the complainant's claim that the physical abuse he suffered during his arrest, his various transfers and his interrogation at the gendarmerie of Laâyoune and the treatment to which he was subjected during his transfer by plane constitute acts of torture under article 1 of the Convention. It also notes that the complainant was brought before the investigating judge of the military court on 16 November 2010 bearing visible signs of torture and that he expressly denounced this torture on that day, and later before the military court, which, on 15 February 2013, rejected the request for an investigation into the allegations of torture. The Committee further notes the complainant's allegations that he was subjected to the so-called *falaka* and "roast chicken" methods, which are in essence acts of torture. According to the State party, the complainant did not formally raise the allegations of torture before the competent authorities. The Committee also notes the State party's argument that, in view of the allegations of torture made by the complainant and his co-defendants in the civil proceedings, the Rabat court of appeal appointed three doctors with the task of performing a medical assessment, which was carried out on 20 February and 7 March 2017. The Committee notes that the medical assessment concluded that the allegations of torture were unfounded. The Committee observes the State party's argument that the medical assessment demonstrated that the marks and complications suffered by the complainant were not the result of torture or ill-treatment. Nevertheless, the Committee also notes the complainant's allegation that the assessment was not conducted in accordance with the Istanbul Protocol. In this regard, the Committee notes that the findings of the medical assessments of the complainant and his co-defendants were presented to international doctors for second opinions, with the conclusion that the Istanbul Protocol had not been respected, in particular owing to a failure to comply with the principles of independence and impartiality of the experts who carried out the assessment, the very short duration of the interviews, the inadequacy of the evaluation of trauma and psychological harm and the fact that the findings of all the expert reports were identical, with no indication of the degree of compatibility of the injuries observed with the abuse that had been reported. The Committee notes that the State party attests to the impartiality, competence and professionalism of the experts. However, it considers that the State party does not provide any relevant explanation to confirm that the medical assessment was carried out in accordance with the Istanbul Protocol as part of an official investigation into the complainant's allegations of torture. The Committee further notes that this medical assessment was carried out more than six years after the reported events and that the time between the reported acts and the medical examinations was apparently not taken into account. The Committee recalls its jurisprudence, according to which any persons deprived of their liberty must be provided with prompt and

independent legal and medical assistance and must be able to contact their families in order to prevent torture.<sup>17</sup> The Committee also notes the solitary confinement imposed on the complainant on several occasions and recalls its position on the subject, specifically, that solitary confinement may constitute torture or inhuman treatment and that it should be regulated so as to be a measure of last resort, to be applied in exceptional circumstances, for as short a time as possible, under strict supervision and with the possibility of judicial review.<sup>18</sup> Taking account of the complainant's assertion that he did not have access to any of these safeguards during his pretrial detention and solitary confinement, and in the absence of convincing information from the State party challenging these allegations, the Committee considers that the physical ill-treatment and injuries that the complainant says he suffered during his arrest, interrogation and detention constitute torture within the meaning of article 1 of the Convention.<sup>19</sup>

8.3 The Committee considers that all the treatment allegedly inflicted on the complainant during his detention also constitutes acts of torture, i.e.: (a) the insanitary conditions in his various cells, (b) the long periods of solitary confinement without the ability to be seen by a doctor of his choice; and (c) the restricted access to counsel and to his family. Accordingly, the Committee does not consider it necessary to examine separately the claims under article 16 of the Convention.<sup>20</sup>

8.4 The complainant also invokes article 2 (1) of the Convention, according to which the State party should have enacted effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. The Committee recalls its concluding observations on the fourth periodic report of Morocco, in which it expressed its concern about events in Western Sahara and allegations of, inter alia, torture, ill-treatment and the extraction of confessions under torture<sup>21</sup> and called on the State party to take urgent and substantive steps to prevent all acts of torture and ill-treatment and to announce a policy that would produce measurable progress towards the eradication of all torture and ill-treatment by State officials. In the present case, the Committee notes the complainant's allegations about the treatment inflicted on him by State officials while he was in police custody, without being able to contact his family or have access to counsel or a doctor. The authorities did not take any steps to investigate the acts of torture suffered by the complainant and, if appropriate, punish the perpetrators, despite his visible signs of torture and the complaints he submitted in this regard to the military court. In the light of the foregoing, the Committee finds a violation of article 2 (1), read in conjunction with article 1, of the Convention.<sup>22</sup>

8.5 Regarding article 11 of the Convention, the Committee notes the complainant's allegations that he was subjected to ill-treatment during his detention, had no access to a doctor of his choice despite the deterioration of his state of health, was kept in solitary confinement and was deprived of regular visits from his family. The Committee notes that the complainant repeatedly complained about his conditions of detention without having effective remedies to challenge the ill-treatment. The Committee recalls its concluding observations on the fourth periodic report of Morocco, in which it expressed regret at the lack of information on the practical application of basic safeguards, such as examination by an independent physician and notification of the family.<sup>23</sup> In the present case, the State party provided information on the complainant's conditions of detention, his medical monitoring and his complaints of ill-treatment in detention only for the period after his transfer in April 2018 to the El Arjat prison, while he had been in detention since November 2010. In the absence of any evidentiary information from the State party to show that during the entire period of the complainant's detention his situation was indeed monitored, and in the absence

<sup>17</sup> Committee against Torture, general comment No. 2 (2007).

<sup>18</sup> CAT/C/51/4, para. 32.

<sup>19</sup> *Asfari v. Morocco*, para. 13.2; *M.B. v. Morocco*, para. 13.2; and *Abbahah v. Morocco* (CAT/C/72/D/871/2018), para. 11.2.

<sup>20</sup> *Ramírez Martínez et al. v. Mexico* (CAT/C/55/D/500/2012), para. 17.4.

<sup>21</sup> CAT/C/MAR/CO/4, para. 12. See also CCPR/C/MAR/CO/6, paras. 23 and 24.

<sup>22</sup> See, for example, *Ndarisigaranye v. Burundi* (CAT/C/62/D/493/2012 and CAT/C/62/D/493/2012/Corr.1), para. 8.3; and *E.N. v. Burundi* (CAT/C/56/D/578/2013), para. 7.5.

<sup>23</sup> CAT/C/MAR/CO/4, para. 7.

of any evidence as to the effective treatment of the complainant's complaints and his medical follow-up prior to his transfer to El Arjat prison, the Committee finds a violation of article 11 of the Convention.<sup>24</sup>

8.6 The Committee must also decide whether the fact that no investigation has been opened into the allegations of torture that the complainant submitted to the judicial authorities constitutes a violation by the State party of its obligations under article 12 of the Convention. The Committee notes the complainant's allegations that: (a) he presented himself on 16 November 2010 with visible signs of torture – that he was bleeding from his head and feet and was no longer able to walk – before the investigating judge of the military court, and that he reported that he had been forced to make a confession under torture, but that the investigating judge did not record this in the minutes; (b) he also expressly denounced, before the military court, the torture that he had suffered, in the presence of the prosecutor; (c) during his interrogation before the court of appeal, he showed copies of the complaints filed with the Crown Prosecutor in Rabat, the Prosecutor General in Laâyoune and the National Human Rights Council, but the judge refused to allow him to read them out; and (d) at no time did the prosecutor initiate an investigation. The State party argues that the complainant did not formally raise the allegations of torture before the competent authorities. The Committee also notes that, after the case was referred to the Rabat court of appeal and the complainant and his co-defendants made allegations of torture, the complainant underwent a medical assessment ordered by the court. In this connection, it notes the complainant's claims that the medical assessments ordered by the court were not impartial and were not carried out as part of an investigation into the torture he suffered, as they ought to have been, pursuant to the Istanbul Protocol. The Committee reiterates that, while it notes that the State party attests to the impartiality, competence and professionalism of the experts who conducted the medical assessment, it considers that the State party does not provide any relevant explanation to demonstrate that it was carried out in accordance with the Istanbul Protocol.

8.7 The Committee further notes that no medical examination was requested by the investigating judge of the military court, even though the complainant bore clear signs of physical abuse, and no investigation was carried out in this regard. Furthermore, the military court did not take into account the complainant's allegations of torture when deciding on his conviction, and the State party denies that such allegations were made during the proceedings. The Committee further notes that the State party has far exceeded the reasonable length of time for dispensing justice in the complainant's case and that, 11 years after the events and the submission of the first allegations of torture, no investigation in accordance with the Istanbul Protocol has been carried out. In the light of the foregoing, the Committee considers that the absence of any investigation into the allegations of torture in the complainant's case is incompatible with the State party's obligation under article 12 of the Convention to ensure that the competent authorities carry out a prompt and impartial investigation whenever there is reasonable ground to believe that an act of torture has been committed.<sup>25</sup>

8.8 The Committee further notes the complainant's claim that the State party has also failed to comply with its obligation under article 13 of the Convention to ensure his right to lodge a complaint, which implies that the authorities must provide a satisfactory response to such a complaint by launching a prompt and impartial investigation.<sup>26</sup> The Committee notes that article 13 does not require the formal lodging of a complaint of torture under the procedure laid down in national law, nor does it require an express statement of intention to bring a criminal case. It is sufficient for victims simply to come forward and bring the facts to the attention of a State authority for the State to be under an obligation to consider this as a tacit but unequivocal expression of their desire to have an immediate and impartial investigation initiated, as required by this provision of the Convention.<sup>27</sup> In view of the foregoing, the Committee concludes that the facts of the present case also constitute a violation of article 13 of the Convention.

<sup>24</sup> *E.N. v. Burundi*, para. 7.6.

<sup>25</sup> *Asfari v. Morocco*, para. 13.4.

<sup>26</sup> *Bendib v. Algeria (CCPR/C/51/D/376/2009)*, para. 6.6.

<sup>27</sup> *Parot v. Spain (CAT/C/14/D/6/1990)*, para. 10.4; *Blanco Abad v. Spain (CAT/C/20/D/59/1996)*, para. 8.6; and *Ltaief v. Tunisia (CAT/C/31/D/189/2001)*, para. 10.6.

8.9 Regarding the complainant's claims under article 14 of the Convention, the Committee recalls that this article recognizes the right of torture victims to fair and adequate compensation and also requires States parties to ensure that they obtain redress for all damages suffered. The redress must cover all the harm suffered and should encompass restitution, compensation and guarantees of non-repetition of the violations, taking into account the circumstances of the individual case.<sup>28</sup> In the present case, the Committee notes the complainant's allegation that the ill-treatment he suffered had an impact on his mental and physical well-being. The failure of the military investigating judge to order an investigation into the allegations of torture and the fact that the medical assessment ordered by the court of appeal was not carried out in accordance with the Istanbul Protocol and as part of such an investigation prevented the complainant from receiving rehabilitation, compensation, support and guarantees of non-repetition of the crime. The Committee thus considers that the failure to conduct a prompt and impartial investigation has deprived the complainant of the possibility of availing himself of his right to redress, in violation of article 14 of the Convention.<sup>29</sup>

8.10 The complainant also claims to be a victim of a violation of article 15 of the Convention because he was convicted on the basis of confessions obtained through torture. He claims to have been forced, after being sodomized with light bulbs, to sign a document whose content he had not read. The Committee recalls that the general nature of the provisions of article 15 derives from the absolute nature of the prohibition of torture and therefore implies an obligation for any State party to verify that statements included in proceedings under its jurisdiction were not obtained through torture.<sup>30</sup> In the present case, the Committee notes that, according to the complainant, the statements that he signed as a result of torture served as a basis for his prosecution and conviction, and that he contested the probative value of the confession signed under torture at various stages of the proceedings against him, without success. The Committee notes that the court of appeal did not give due consideration to the allegations of torture when sentencing the complainant on the basis of his confession. By failing to verify the substance of the complainant's claims other than through the medical assessment ordered by the court of appeal, which was not carried out in accordance with the Istanbul Protocol, and by using such statements against the complainant in the judicial proceedings, the State party manifestly violated its obligations under article 15 of the Convention.

9. The Committee, acting under article 22 (7) of the Convention, decides that the facts before it reveal a violation by the State party of articles 2 (1), 11, 12, 13, 14 and 15, read in conjunction with article 1, of the Convention.

10. The Committee urges the State party to: (a) initiate a thorough and impartial investigation into the incidents in question, in full conformity with the guidelines of the Istanbul Protocol, with a view to bringing those responsible for the victim's treatment to justice; (b) provide the complainant and his family with fair and adequate compensation, including the means for the fullest rehabilitation possible; (c) return the complainant to a group regime in a prison closer to his family; (d) refrain from any form of pressure, intimidation or reprisals likely to harm the physical and moral integrity of the complainant, which would otherwise constitute a violation of the State party's obligations under the Convention to cooperate with the Committee in good faith for the implementation of the provisions of the Convention; and (e) enable the complainant to receive visits from his family, his counsel and a doctor of his choice in prison. The State party is also under an obligation to take steps to prevent similar violations in the future.

11. Pursuant to rule 118 (5) of its rules of procedure, the Committee invites the State party to inform it, within 90 days from the date of the transmittal of the present decision, of the steps it has taken to respond to the above observations.

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<sup>28</sup> *Bendib v. Algeria*, para. 6.7.

<sup>29</sup> *Niyonzima v. Burundi* (CAT/C/53/D/514/2012), para. 8.6; and *Asfari v. Morocco*, para. 13.6.

<sup>30</sup> *P.E. v. France* (CAT/C/29/D/193/2001), para. 6.3; and *Kiiti v. Morocco*, (CAT/C/46/D/419/2010), para. 8.8.