



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. 805/2017*, **

<i>Communication submitted by:</i>	A.L. (represented by counsel, Bruno Vinay, then Emmanuel Daoud and Adélaïde Jacquin)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Morocco
<i>Date of complaint:</i>	5 January 2017 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 115 of the Committee's rules of procedure, transmitted to the State party on 17 February 2017 (not issued in document form)
<i>Date of adoption of decision:</i>	12 November 2021
<i>Subject matter:</i>	Torture
<i>Procedural issues:</i>	Exhaustion of domestic remedies; inadmissibility owing to non-substantiation
<i>Substantive issues:</i>	None
<i>Articles of the Convention:</i>	1, 12, 13, 14, 15 and 16

1. The complainant is A.L., a national of France born on 28 April 1968. He is currently detained in France after being transferred from Morocco, where he was arrested in connection with his alleged involvement in a terrorism case in France. He claims a violation of articles 1, 12, 13, 14, 15 and 16 of the Convention by Morocco, because of the torture and ill-treatment that he allegedly suffered during his arrest and imprisonment in the country. The State party made the declaration pursuant to article 22 (1) of the Convention on 19 October 2006. The complainant is represented by counsel, initially Bruno Vinay and subsequently Emmanuel Daoud and Adélaïde Jacquin.

Facts as submitted by the complainant

2.1 On 21 July 2014, the complainant travelled to Morocco from Tunisia to visit a friend. At around 3 p.m. on 26 July 2014, the complainant was stopped at the port of Tangier on a bus to Spain by five plainclothes police officers. The officers took him to a police station in

* Adopted by the Committee at its seventy-second session (8 November–3 December 2021).

** The following members of the Committee participated in the examination of the communication: Claude Heller, Erdoğan İşcan, Ilvija Pūce, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Peter Vedel Kessing. 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), Essadia Belmir did not participate in the examination of the communication.



Tangier, where he was asked to confirm that he had been convicted in France in a terrorism case linked to Bosnia and Herzegovina.¹ They then asked him the purpose of his visit to Morocco and the names of the people he had seen during his stay. When he refused to cooperate, the complainant was subjected to a great deal of abuse, which included having his genitals electrocuted and being threatened with sodomy while being shown a video.² He was accused of having gone to the Syrian Arab Republic and of being a supporter of a terrorist group. He was then taken, during the night of 26 to 27 July 2014, to Maarif police station of the national brigade of the criminal investigation department in Casablanca.

2.2 During this journey, the complainant was subjected to numerous acts of verbal and physical violence such as slaps and punches. The two police officers flanking him were the most physically violent. He was interrogated for six days at Maarif police station. The interrogations usually took place at night, between 10 p.m. and 4 a.m. Seven plainclothes officers were present during the interrogations, as was a large superintendent who supervised them.

2.3 At 1.30 a.m. on 27 July 2014, the complainant was taken into custody. On the same day, the national brigade of the criminal investigation department informed him of his right to speak to a lawyer. According to the notice of charges, the complainant entrusted the Consulate General of France in Morocco with the task of appointing a lawyer to defend him.³ On 28 July 2014, the complainant was interviewed by the brigade, which informed him of the grounds for his detention, his procedural rights and his rights to remain silent, contact a family member, appoint and consult a lawyer and receive legal aid. The brigade interviewed him for a second time on 30 July 2014.

2.4 On 31 July 2014, after six days of questioning, the complainant was brought before the investigating judge. He immediately reported the torture he had suffered, but the judge made no note of it in the interrogation record. Despite his testimony, the investigating judge did not launch an investigation or order a medical examination, deeming that the complainant had no obvious signs of torture on his body. The investigating judge therefore did not refer the complaint to the Crown Prosecutor, in breach of articles 39 and 49 of the Code of Criminal Procedure.⁴ On the same day, the Crown Prosecutor attached to Rabat Court of Appeal authorized a one-time extension of the complainant's custody for a further 96 hours.

2.5 On 1 August 2014, the police told the complainant that his custody had been lifted and that he could return to France. He was asked to sign two documents in Arabic that he did not understand, as he cannot read Arabic, but that were presented to him as reports required for his release. The complainant signed them, later realizing that they were in fact the two hearing records that sealed his conviction.

2.6 In a preliminary interrogation report dated 1 August 2014, it is mentioned that the investigating judge informed the complainant of the charges against him. In a detailed interrogation report of 16 October 2014, the investigating judge recorded that, after informing him, on 24 September 2014, of the time limit for notifying his defence counsel, the complainant refused to reveal the reason for his refusal to do so, adding that he had been in prison since 1 August 2014 and could not wait any longer. The investigating judge assigned him an ex officio lawyer under the legal aid scheme. The complainant told the investigating judge that he did not speak Arabic and required the services of an interpreter, despite the judge having pointed out to him that he had already given statements in Arabic, both during the pretrial investigation stage and before the investigating judge during the first-instance investigation in the presence of his legal aid lawyer. After the complainant refused to answer,

¹ On 25 May 2004, as part of the so-called "*filières afghanes*" (Afghan networks) proceedings, Paris *Tribunal de Grande Instance* (court of major jurisdiction) sentenced the complainant to 7 years' imprisonment for conspiracy to prepare acts of terrorism committed between 1997 and 2001.

² The video showed a hooded man sodomizing a naked, bound man. The victim was screaming.

³ It is stated in the notice that it was read out in front of the complainant "because he is unable to read Arabic but understands it well" and that he agreed with and signed the notice without making any comments, additions or changes.

⁴ According to these provisions, any civil servant who learns of a crime or offence in the course of his or her duties is required to notify the Crown Prosecutor without delay.

a lawyer of the Rabat Bar Association took on the task of interpreting from Arabic into French and vice versa.

2.7 On 8 October 2014, the complainant's wife submitted a complaint "to the senior investigating judge"⁵ concerning "the abduction and wrongful arrest" of the complainant, who had been "called a dirty Algerian" and told "to confess, or the superintendent would make a big deal of his case".⁶ In the complaint, the complainant's wife also explained that the complainant's lawyer had travelled to Morocco, where he had been received by the authorities and, on inspecting the case file, had found no evidence in the investigation to justify the complainant's arrest.

2.8 At his hearing before the Criminal Chamber of First Instance of Rabat Court of Appeal, the complainant, assisted by his lawyer, requested the annulment of the police custody records. This request was rejected, and, on 22 January 2015, the complainant was sentenced to 5 years' imprisonment. The Court also ruled that the legal time limit for police custody had been respected.⁷ The complainant appealed, arguing, *inter alia*, that the drafter of the records had betrayed him and that he had signed against his will, since he did not have a good command of Arabic, and that, during the six days of questioning, he had been interrogated in French.⁸ On 3 June 2015, Rabat Court of Appeal upheld the first judgment, but reduced his sentence to 2 years' imprisonment, taking into account mitigating circumstances,⁹ and ordered his expulsion from the country. The complainant did not file an appeal in cassation against this judgment, which thus became final.

2.9 On 9 January 2015, the complainant submitted a complaint to the Committee. Immediately after it had been registered, in May 2015, he was pressured by various representatives of the Moroccan authorities, including prison officials, who "advised" him to withdraw it. At the time, the complainant was awaiting an appeal decision. The prison governor, guards and fellow inmates all told him that his sentence would be much harsher if he pursued his complaint before the Committee. As pressure mounted, as did the threat of having his request to be transferred to France rejected, the complainant withdrew his complaint before the Committee on 17 September 2015.

2.10 On 29 June 2016, the Moroccan authorities granted his transfer request. He was transferred to France on the same day and taken into custody. On 19 July 2016, he had his initial hearing before the Paris *Tribunal de Grande Instance* (court of major jurisdiction) for conspiracy to prepare acts of terrorism.¹⁰ The complainant stated that he had been tortured in Morocco and made to sign papers in Arabic, which he reiterated when interrogated on 13 September 2016. On 13 September 2018, the investigating judge of the Paris *Tribunal de Grande Instance* referred the case to the Criminal Court. At a hearing on 6 and 7 March 2019, the Criminal Court convicted the complainant of repeated participation in a criminal conspiracy with a view to preparing an act of terrorism. The complainant's appeal is pending.

The complaint

3.1 The complainant contends that the State party violated his rights under articles 1 and 16 of the Convention by inflicting torture and ill-treatment on him during his interrogation between 26 and 31 July 2014.

3.2 The complainant also claims a violation of articles 12 and 13 of the Convention because the investigating judge and the prosecutor refused to launch an investigation into the

⁵ No information in the complaint to identify the exact authority to which it was addressed or to confirm that it was received by that authority.

⁶ No allegations of torture are included in these assertions.

⁷ There is no mention in the judgment of any allegations by the complainant concerning the torture he suffered. The complainant was assisted by a lawyer and an interpreter.

⁸ There is no mention in the judgment of 3 June 2015 of any allegations of torture by the complainant.

⁹ The Court held that the sentence imposed on the complainant was sufficiently severe in view of the dangerousness of the acts committed and his degree of criminality.

¹⁰ The hearing was conducted on the basis of a preliminary indictment by the State prosecutor dated 19 December 2013 and supplementary indictments dated 30 January 2015, 6 February 2015, 10 March 2015, 23 June 2015, 27 November 2015 and 19 July 2016.

allegations of torture that he made on several occasions or the pressure to withdraw the complaint that he registered with the Committee in 2015.

3.3 Lastly, the complainant alleges a violation of his rights under article 14 of the Convention in that, by failing to investigate his claims of torture, the judicial authorities denied him the right to obtain redress for the harm he had suffered, including his rights to access to justice, compensation, medical care, including psychological care, and guarantees of non-repetition of the acts of torture.

State party's observations on admissibility and the merits

4.1 On 9 June 2017, the State party challenged the admissibility of the complaint. It asserts that the complainant was arrested by the police on 26 July 2014 on account of his involvement in terrorist activities, which included recruiting and sending volunteers to Jabhat al-Nusrah (renamed Jabhat Fath al-Sham). The complainant was found to have very close links with a number of terrorist entities, particularly in Pakistan, the Syrian Arab Republic and Libya. On 1 August 2014, the national brigade of the criminal investigation department brought the complainant before the investigating judge attached to Rabat Court of Appeal, who ordered that he should be detained in Salé 2 prison on charges of forming a criminal gang with a view to preparing and committing terrorist acts as part of a collective plan to seriously undermine public order. On 14 November 2014, he was transferred to Kenitra prison.

4.2 Regarding the complainant's allegation that he was unlawfully deprived of his liberty, the State party points out that he was held in police custody for five days and eight and a half hours. Beginning at 1.30 a.m. on 27 July 2014, his custody for an initial period of 96 hours was extended only once, with the written authorization of the public prosecutor's office, and ended when he was brought before the Crown Prosecutor attached to Rabat Court of Appeal at 10 a.m. on 1 August 2014 to be prosecuted for participation in a criminal conspiracy with a view to preparing and committing terrorist acts as part of a collective plan to seriously undermine public order through intimidation, terror or violence.

4.3 The State party explains that, following his arrest, the complainant was notified of the reason for his arrest and his rights to remain silent, to be assisted by a lawyer and to inform his family. The French and Algerian consular authorities were notified of his arrest, and the complainant chose to let the Consulate General of France in Morocco handle the appointment of a lawyer.

4.4 As to the alleged torture to which the complainant was subjected, the State party points out that these allegations are contradictory, since they were not mentioned at all in his initial complaint to the Committee. In this regard, it should be noted that neither the complainant nor his counsel raised any allegations of torture and/or ill-treatment before the Crown Prosecutor or the investigating judge, who did not observe anything in particular resembling signs or marks of torture and/or ill-treatment when the complainant appeared before them. Similarly, neither the complainant nor his lawyer raised these allegations in court during the trial.

4.5 Furthermore, the complainant's decision to withdraw his complaint as a result of the pressure allegedly exerted on him when he was detained in Kenitra prison serving his 2-year sentence is proof of the delaying tactics orchestrated by the complainant and his counsel, vainly trying to discredit the intervention of the Moroccan police force that made it possible to catch the complainant, who was seeking to use Morocco as a country of transit in his travels between various hotbeds of tension and places of recruitment of fighters for terrorist groups active in Afghanistan, Bosnia and Herzegovina, the Syrian Arab Republic and Libya.

4.6 Contrary to the allegation that he signed documents in Arabic – a language he claims not to understand – only to learn later that he had signed the hearing records that, in his words, “sealed his conviction”, the complainant had signed the hearing records in the same way as he had done for the statements relating to his custody, the act of informing his family and the notifications of his arrest sent to the French and Algerian consulates in Rabat. This was after his statements – which he had confirmed by voluntarily signing the records at the bottom – had been read out to him in Arabic, a language he understands not only because of his Algerian origins but also because of his frequent visits to Arab countries.

4.7 With regard to the complainant's allegation that he was pressured into withdrawing his first complaint to the Committee, the State party notes that he, like all other detainees in Moroccan prisons, benefited from all the complaint mechanisms made available to him by the General Delegation for Prison Administration and Reintegration. Indeed, there are several channels through which prisoners can lodge complaints, such as their right to express their grievances verbally or in writing to the governor of the establishment, the head of the General Delegation for Prison Administration and Reintegration, the judicial authorities or the provincial prison oversight commission. They may also turn to the House of Representatives, the National Human Rights Council, the Ombudsman and non-governmental organizations. In addition, complaint boxes have been installed in prisons to make it easier for inmates and their families to lodge complaints directly with the head of the General Delegation or another authority without going through the prison administration.

4.8 The State party submits that the complainant, who was familiar with these different mechanisms, having used them on several occasions for various complaints, could have turned to the head of the General Delegation for Prison Administration and Reintegration, the Crown Prosecutor, the President of the National Human Rights Council or the Consulate General of France in Morocco. Yet he never mentioned any pressure or intimidation. In this respect, the State party wonders why the complainant had to wait almost 10 months after leaving Morocco before making such accusations.

Complainant's comments on the State party's observations

5.1 On 18 May 2020, the complainant submitted that the State party's observations were a series of sweeping statements that were not based on any solid evidence. Concerning the unlawful deprivation of his liberty, he asserts that, from the time of his arrest until he was brought before the national brigade of the criminal investigation department and placed in police custody, he was taken by police officers to an undisclosed location and tortured for almost 10 hours. He was thus arbitrarily detained for that period. In addition, although he had indicated that he wanted to be assisted during his hearings, the complainant was heard without a lawyer.

5.2 Regarding his allegations of torture, the complainant considers that the fact that he did not mention these matters in his initial complaint before the Committee has no bearing on the veracity of the complaint. He stresses that many national and international bodies point out that it is very difficult to prove torture. Moreover, he made the claims in a very precise manner in the French proceedings, more specifically, in a letter to the investigating judge written at Villepinte remand prison on 17 October 2016. The complainant's statements, which are detailed and precise, establish that he was the victim of acts of torture involving electric shocks to his genitals and rape threats. His statements must be considered as clear evidence of the acts of torture to which he was subjected and that cannot be called into question. In addition, the credibility of his statements is attested to and confirmed by all the reports of international organizations on the widespread use of torture in Morocco in the context of criminal proceedings.

5.3 The complainant then alleges numerous procedural irregularities: (a) he was arrested at around 1 p.m. but was not placed in police custody until 1.30 a.m. the following day; (b) even though he entrusted the Consulate General of France in Morocco with the task of appointing a lawyer, he did not have a lawyer at either his first or his second police custody hearing;¹¹ and (c) when brought before an investigating judge and assisted by a lawyer, the complainant went back on his previous statements and maintained throughout the proceedings that his confession had been extracted under torture, yet these statements were used during the proceedings, in violation of article 15 of the Convention. The convictions handed down by the Moroccan courts were thus based solely on the statements and comments made by the complainant in the absence of a lawyer.

¹¹ During these two hearings, the complainant allegedly admitted having joined a brigade affiliated with Jabhat al-Nusrah, where he underwent paramilitary training, and indicated that he had received instructions from an emir to recruit prospective new jihadists.

5.4 In the complainant's view, the State party's assertion about his understanding of Arabic has no bearing on the acts to which he was subjected. Furthermore, with regard to the various complaint mechanisms mentioned by the State party and the claim that he was familiar with and had used them, the complainant notes that none of this is corroborated by a document or any other evidence.

5.5 Lastly, the complainant claims that the facts deemed incriminating in the Moroccan proceedings were again identified as evidence against him in the French proceedings.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any complaint submitted in a communication, the Committee must decide whether the complaint 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.

6.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. It notes that, in the present case, the State party argues that the complainant has not exhausted all available domestic remedies, pointing to the fact that neither the complainant nor his counsel raised the allegations of torture and/or ill-treatment before the prosecutor, the investigating judge or the court during the trial. It also notes the complainant's arguments: (a) that it is difficult to prove torture; (b) that he made reference to torture during his trial in France; (c) that his statements must be considered as clear evidence of the acts of torture to which he was subjected; and (d) that reports from international organizations attest to the widespread use of torture in Morocco in criminal proceedings. Lastly, the Committee notes that the complainant has not filed an appeal in cassation against the decision of Rabat Court of Appeal of 3 June 2015.

6.3 The Committee observes that the complainant does not claim to have raised his allegations of torture before the State party's authorities. Although the complainant asserts that he was not always assisted by counsel in the preliminary stages of the proceedings, the Committee notes that he was assisted by counsel during the domestic court proceedings. However, the judgments at first instance and on appeal contain no mention of the allegations of torture or ill-treatment raised by the complainant and his counsel. Lastly, the Committee notes that the complainant does not claim to have presented clear signs of torture to the State party's authorities, which would have triggered their obligation under article 12 of the Convention to proceed to a prompt and impartial investigation. As to the other allegations of procedural flaws, the Committee notes that the complainant has not filed an appeal in cassation against the outcome of his appeal, nor has he explained the reasons for not having done so. As a result, the Committee concludes that, pursuant to article 22 (5) (b) of the Convention, the communication is inadmissible because domestic remedies have not been exhausted.

7. The Committee therefore decides:

- (a) That the communication is inadmissible under article 22 (5) (b) of the Convention;
 - (b) That the present decision shall be communicated to the complainant and to the State party.
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