



# 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. 736/2016<sup>\*</sup>, <sup>\*\*</sup>

<i>Submitted by:</i>	Lakhdar Guellil (represented by counsel, Rachid Mesli, from the Fondation Alkarama)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Algeria
<i>Date of complaint:</i>	29 January 2016 (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 23 March 2016 (not issued in document form)
<i>Date of decision:</i>	19 November 2021
<i>Subject matter:</i>	Torture; lack of prompt and impartial investigation
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Acts of torture and cruel, inhuman or degrading treatment; use of evidence or confessions extorted under torture; right to redress
<i>Articles of the Convention:</i>	1, 2 (1), 11, 12, 13 and 14

1. The complainant is Mr. Lakhdar Guellil, an Algerian citizen born on 1 January 1945 in Dar Chioukh, in the province (*wilaya*) of Djelfa, in Algeria. He states that the State party has violated articles 2 (1), 11, 12, 13 and 14 of the Convention, read in conjunction with article 1, in connection with his being charged with the offences of setting up an armed terrorist group and criminal conspiracy. The State party made the declaration under article 22 (1) of the Convention on 12 September 1989. The complainant has not requested that the Committee grant interim measures. He is represented by counsel from the Fondation Alkarama, Rachid Mesli.

#### The facts as presented by the complainant

2.1 In May 1996, the complainant, who is a taxi driver, drove five customers from Djelfa to the Sersou region in Algeria, covering a distance of around 100 km. The passengers said

\* 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, Liu Huawen, Ilvija Pūce, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Peter Vedel Kessing.



that they were farm workers who wished to travel to a farm in Sersou. They paid the fare, which came to 900 Algerian dinars.

2.2 On 31 July 1996, officers of the Djelfa gendarmerie arrested the complainant and held him at their facilities on the grounds that the customers he had taken to Sersou were wanted by the police and should have been reported. The next day, the complainant was transferred to the Aïn el Chiekh gendarmerie, where he spent one day, before being taken to the Aïn Oussera gendarmerie. For the first three days of his detention, officers questioned him about his connections with the five suspects. As he did know the suspects personally, he told the officers that he had simply taken them to their destination for a fee, as he did with all his other customers.

2.3 During three days of questioning at the Aïn Oussera gendarmerie, several gendarmes subjected the complainant to a number of torture techniques in the presence of the unit's commanding officer. The complainant was whipped all over his body until he was bleeding, repeatedly tortured with a cloth (i.e., subjected to waterboarding) until he fainted and burned with a blowtorch.

2.4 The acts of torture were carried out over several days despite the fact that the complainant repeatedly lost consciousness. A few days later, he woke up in the hospital in Aïn Oussera, where he had probably been taken by the gendarmes to prevent him from dying on their premises. In the complainant's presence, the hospital doctor explained to the gendarmes that he was unable to treat him. Consequently, on the same day, the gendarmes brought the complainant before the State prosecutor in Aïn Oussera so that a judicial investigation could be initiated. Despite the seriousness of the complainant's condition, the investigating judge made no enquiries about it. On 5 August 1996, the judge ordered the complainant's provisional release.

2.5 On 6 August 1996, the day after his release, the complainant went to the hospital in Djelfa, where the doctor issued him with a certificate attesting to the injuries, bruises and burns that he had sustained and requested that he be transferred, as a matter of urgency, to the Mustapha teaching hospital in Algiers for treatment. On 9 August 1996, the doctors at the hospital in Algiers found that the complainant's left forearm had become completely gangrenous after being burned with a blowtorch and immediately amputated it. The complainant remained in hospital for two months owing to complications arising from the amputation, other injuries that he had suffered, and diabetes that developed as a result of the injuries, which would cause the complainant to develop diabetic retinopathy (total blindness), as diagnosed by an ophthalmologist on 5 April 2006. Two months later, the complainant was allowed to return home, to Djelfa, where he remained in bed for several more months.

2.6 On 12 February 1997, the complainant went to the office of the investigating judge to recover his seized vehicle. The investigating judge, finding that the complainant's health had improved, then ordered his immediate arrest and remand in custody. The complainant was held in Djelfa prison for 47 days. On 28 February 1998, his trial began at the Djelfa criminal court. The complainant was charged with setting up an armed terrorist group and criminal conspiracy and was sentenced to 15 years' imprisonment. He spent 8 years in prison, while his health deteriorated, and his untreated diabetes led to his becoming totally blind. On 2 March 2006, he was released in connection with the amnesty provided for in the Charter for Peace and National Reconciliation.

2.7 The complainant alleges that he was subjected to acts of torture at all stages of the judicial proceedings. On 5 August 1996, when he was brought before the State prosecutor, he reported that he had been subjected to such acts at the premises of the National Gendarmerie in Aïn Oussera. On the same day, he told the investigating judge that he had been forced under duress to sign documents that he had not been allowed to read and mentioned the torture that he had suffered. The judge and the prosecutor could see for themselves that the victim had sustained serious bodily injuries. However, neither the prosecutor nor the investigating judge at the Aïn Oussera court found it necessary to have the complainant examined by a forensic doctor or order an investigation into the complainant's highly credible allegations.

2.8 As soon as the trial at the Djelfa criminal court began, in February 1998, the complainant's lawyer, Tayeb Fakkak, requested that the reports drawn up by the National

Gendarmerie using torture be excluded from the proceedings, submitting the medical certificates and the forensic doctor's file to the court as well as the photos taken the day after the complainant's provisional release. These official documents attested to the fact that the complainant had been subjected to severe torture following his arrest by the National Gendarmerie. However, the criminal court judges refused to take these documents into consideration or to initiate a judicial inquiry into the allegations, as they were nevertheless required to do under national law and the Convention. After the complainant's release, on 2 March 2006, he made several applications to the State prosecutors in Aïn Oussera and Djelfa. In that connection, he sent them the medical report certifying that he had been subjected to torture with a view to initiating criminal proceedings against his torturers and obtaining redress for the serious harm that he had suffered. However, the two prosecutors did not take any action in response to these complaints.

2.9 The complainant then wrote to the Minister of Justice on 1 April 2008 and to the President of the Republic on 2 April 2008 to describe the terrible state that he was in as a result of the acts of torture that he had suffered in police custody. A few months later, he was summoned to the Ministry of Justice and informed that his file had been transmitted to the Prosecutor General in Djelfa. When he went to the prosecutor's office, the complainant was again referred to the State prosecutor in Djelfa, who informed him that his complaint had been dismissed. All the other representations that the applicant has since made to the judicial and administrative authorities have failed to obtain any response.

2.10 This matter has not been examined under any other procedure of investigation or settlement, within the meaning of article 22 (5) (a) of the Convention.

### **The complaint**

3.1 The complainant claims to be the victim of torture within the meaning of article 1 of the Convention. He was subjected to severe physical as well as mental suffering, having been severely beaten on his back, face and hands with electric cables.<sup>1</sup> The perpetrators also used a cloth soaked with water and a cleaning product to make the complainant feel as if he were drowning. In addition, a blowtorch was used to cause severe burns to the skin on his left arm. State officials tortured the complainant to force him to sign a report containing a confession so that he could be charged with criminal offences and brought before the State prosecutor on 5 August 1996.

3.2 The photographs taken after the complainant's provisional release show the physical after-effects of the torture, which include burns and injuries to his back, shoulders, arms and sides, as is also made clear in the medical certificate issued on 6 August 1996 by a specialist forensic doctor. According to this certificate, these injuries were caused by the violence inflicted on the complainant from 1 August 1996 onward. Under article 2 (2) of the Convention, no exceptional circumstances may be invoked as a justification of torture. Therefore, the abuse to which the complainant was subjected cannot be justified by the accusations made against him or by the state of emergency in force in Algeria at the time of the alleged events.<sup>2</sup>

3.3 The complainant alleges a violation of article 2 (1) of the Convention insofar as Algerian law contains no provision criminalizing the use of evidence or confessions extracted under torture. This leads members of the security services to resort to torture to obtain statements that are then used in criminal investigations while going unpunished. Furthermore, the complainant states that the Charter for Peace and National Reconciliation prevents legal action from being brought against members of the defence and security forces for offences committed during the so-called national tragedy, thereby promoting impunity and infringing the right to an effective remedy.<sup>3</sup> In addition, the complainant alleges that the State party violated his right to be informed of his rights, his right to have prompt and independent legal

<sup>1</sup> See, inter alia, *Dimitrijevic v. Serbia and Montenegro* (CAT/C/33/D/207/2002), para. 5.3; and *Ben Salem v. Tunisia* (CAT/C/39/D/269/2005), para. 16.4.

<sup>2</sup> Committee against Torture, general comment No. 2 (2007), para. 5.

<sup>3</sup> CCPR/C/DZA/CO/3, para. 7.

and medical assistance and his right to contact his family, in violation of article 2 (1) of the Convention.

3.4 The complainant states that the State party has not taken all necessary measures, in law and in practice, to ensure that all establishments in which persons deprived of liberty are held, including those of the National Gendarmerie, are regularly monitored. The State party has also failed to fulfil the requirement to keep under systematic review methods and practices used during interrogations. The complainant considers that this situation constitutes a violation of article 11 of the Convention, which imposes on States parties the duty to keep under systematic review interrogation rules, instructions, methods and practices with a view to avoiding any cases of torture.

3.5 The complainant has repeatedly denounced the acts of torture to which he was subjected before all judicial bodies, without success. He believes that the State party has violated article 12 of the Convention since it has failed to conduct a prompt and impartial investigation into the allegations of torture. It is also alleged that the competent authorities, after becoming aware of the allegations, failed to examine them promptly and impartially, in violation of article 13 of the Convention. Furthermore, by depriving the complainant of a prompt and impartial investigation, and by failing to initiate criminal proceedings in accordance with his rights, the State party also deprived him of the possibility of obtaining redress, as provided for in the Charter for Peace and National Reconciliation, which also addresses the question of compensation for victims of the national tragedy.<sup>4</sup> The complainant argues that the State party's failure to respect his right to redress constitutes a violation of article 14 of the Convention.

3.6 The complainant also argues that domestic remedies have been exhausted as he has pursued all possible remedies without success. The complainant states that he was subjected to torture at all stages of the judicial proceedings. The day after his provisional release, which took place on 5 August 1996, he submitted medical certificates, the forensic doctor's file and the photographs to the investigating judge. However, neither the prosecutor nor the investigating judge considered it necessary to open a judicial inquiry. Later, he made several applications to the public prosecutors in Aïn Oussera and Djelfa but they proved unsuccessful. The complainant sent a letter explaining his situation to the Ministry of Justice but was subsequently informed that his case had been transmitted to the Prosecutor General in Djelfa and then dismissed without any criminal proceedings being brought. It should be noted that national law does not recognize the right of appeal as the criminal court renders judgments at first instance against which no appeal lies. The complainant claims that all the other representations that he has made to the judicial and administrative authorities since 2006 have failed to obtain any response. In addition, article 45 of the Charter for Peace and National Reconciliation provides that an amnesty must be granted to members of the Algerian security services, leading to widespread impunity.<sup>5</sup> In the context of impunity that prevails in Algeria, there is a higher burden of proof on the State to prove the effectiveness of domestic remedies.

3.7 The complainant considers that, in accordance with article 12 of the Convention, the State party should undertake a full and effective investigation into the abuse that he suffered and report back to the Committee on the results of this investigation as soon as possible. The State party should also initiate criminal proceedings against the persons responsible for the acts of torture committed against the complainant, bring those persons to justice, and punish them with a penalty appropriate to the gravity of the offence, in accordance with article 13 of the Convention. Moreover, the State party should provide the complainant with full and appropriate redress for the serious harm he has suffered, in accordance with article 14 of the Convention.

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<sup>4</sup> Algeria, Presidential Decree No. 06-93 of 28 February 2006 relating to the compensation of victims of the national tragedy, *Journal officiel de la République algérienne*, vol. 45, No. 11 (2006).

<sup>5</sup> Article 45 of the Charter reads as follows: "No individual or collective legal proceedings may be brought against members of any branch of the defence and security forces of the Republic for actions undertaken to protect persons and property, safeguard the nation and preserve the institutions of the People's Democratic Republic of Algeria". In addition, section 46 provides that any person who violates this provision of the Charter shall be liable to a term of imprisonment of 3 to 5 years.

### **Additional submissions by the complainant**

4.1 On 31 May 2016, the complainant's lawyer stated that the complainant was subjected to reprisals by gendarmes from the Djelfa unit, who visited his home while he was at a hospital in Blida for a surgical operation scheduled to take place on 1 June 2016.

4.2 The gendarmes telephoned the complainant several times to tell him to go urgently to their unit's premises to be "questioned before his hearing", without specifying which hearing they were referring to. They then asked him specifically whether he had filed a complaint against the State, without giving any further details. The complainant expresses fear that the gendarmes summoned him in order to pay him back and intimidate him because he had submitted a complaint to the Committee. He recalls that he is in a state of extreme physical and psychological vulnerability as he is a blind person with disabilities. He requests the Committee to urge the State party to refrain from applying pressure to him or taking reprisals against him, in accordance with article 13 of the Convention.<sup>6</sup>

4.3 On 31 July 2018, the complainant's lawyer stated that the complainant is an older person whose deteriorating health is a matter for concern. He suffered from severe diabetes and hypertension and has lost his sight. He also lived in poverty, had had to have an arm amputated as a result of the torture he had suffered (the blowtorch burns had caused his left forearm to become gangrenous) and, since the events, could no longer work as a taxi driver.

### **State party's observations on the merits**

5.1 On 23 June 2021, the State party submitted its observations on the merits without contesting the admissibility of the complaint.

5.2 With regard to the allegations, the State party reports that persons living in the Sersou region have claimed that, from 21 to 25 July 1996, they were attacked during the night by unknown men, who broke into their homes and threatened their families with weapons. The assailants stole their money, jewellery and cars. Local police received a report that some local residents had apprehended two persons travelling by car on the suspicion that they had assisted a group of assailants who had previously attacked the residents in their homes.

5.3 The complainant, being a taxi driver, was asked to drive to the town of Aïn Oussera certain persons who were members of a seven-strong criminal gang headed by a well-known element.

5.4 The security forces subsequently arrested the other members of the group, including the complainant, who stated that it was purely a matter of chance that they had been travelling by car together and that he had not been aware of his passengers' criminal activities.

5.5 With regard to the criminal proceedings brought in August 1996, the State prosecutor initiated proceedings and a judicial investigation against the complainant and the rest of the group for setting up an armed terrorist group with the aim of spreading terror among the public and creating a climate of insecurity by attacking people, thereby endangering their lives, freedom and security. The complainant, who was suspected of having engaged in dangerous activities, was sentenced to 15 years' imprisonment by the criminal court on 28 February 1998.

5.6 With regard to the State party's alleged failure to investigate acts of torture reported by the complainant, it states that the complainant did not submit any complaint to the competent judicial authorities. In 2010, however, he submitted a complaint to the Chair of the Algerian League for the Defence of Human Rights, claiming he had not received compensation under domestic laws. Given that he had lost an eye and his left hand and his car had been confiscated after was convicted of terrorist acts, the complainant was received by the prosecutor. According to an official report, the prosecutor took the appropriate legal

<sup>6</sup> On 9 June 2016, the Committee, acting through its Rapporteur on new complaints and interim measures, decided to request the State party to immediately take all measures necessary to protect the complainant's life, safety and personal integrity and to ensure that no irreparable harm is caused to him.

steps to ensure that the complainant received compensation for the harm caused to him by the State authorities.

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

#### *Consideration of admissibility*

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

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. This rule does not apply where it has been established that the application of the remedies has been unreasonably prolonged, or that it is unlikely, after a fair trial, to bring effective relief to the alleged victim. The Committee notes the complainant's claim that domestic remedies have been exhausted as he has pursued all possible remedies without success and the Charter for Peace and National Reconciliation prevents legal action from being taken against members of the defence and security forces who committed offences during the so-called national tragedy. It notes that, in the present case, the State party has not contested the fact that the complainant has exhausted all available domestic remedies, nor has it raised any of the conditions for admissibility set out in rule 113 of the Committee's rules of procedure.

6.3 In the absence of any comments from the State party on the admissibility of the complaint and considering that the allegations and claims relating to articles 2 (1), read in conjunction with article 1, and articles 11, 12, 13 and 14 of the Convention have been duly substantiated,<sup>7</sup> the Committee finds the communication admissible and proceeds to its consideration on the merits.

#### *Consideration of the merits*

7.1 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.

7.2 In the present case, the Committee must determine whether the acts of torture suffered by the complainant constitute a violation by the State party of article 2 (1), read in conjunction with article 1, and of articles 11, 12, 13 and 14 of the Convention.

7.3 The Committee notes the complainant's allegation that he was subjected to various torture techniques employed by several gendarmes during three days of questioning at the Aïn Oussera gendarmerie and that these were deliberate acts of torture. He was whipped all over his body with electric cables until he was bleeding, repeatedly tortured with a cloth (i.e., subjected to waterboarding) until he fainted and burned with a blowtorch in order to get him to make a confession. The Committee notes that, during the complainant's hearings, he complained about his treatment, but the investigating judge ignored his allegations and injuries and did not request any medical examination. It also notes the complainant's allegations that these acts of violence, which, as the medical certificates attest, left him with long-term sequelae, including the amputation of his left forearm, constitute a violation of article 1 of the Convention. In this context, the Committee notes the complainant's allegation that his right to be informed of his rights, to receive prompt and independent legal and medical assistance, and to contact his family were not respected, in violation of article 2 (1) of the Convention. The complainant also maintains that the State party has breached its obligations to prevent and punish acts of torture, since national law contains no provisions criminalizing the use of evidence or confessions extracted under torture and the Charter for Peace and National Reconciliation has given rise to impunity and infringed the right to an effective remedy. The Committee further notes the State party's claim that the complainant

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<sup>7</sup> *K.A. v. Sweden* (CAT/C/39/D/308/2006), para. 7.2.

has not submitted a complaint regarding acts of torture to the judicial authorities. However, it observes that the complainant referred to the acts of torture that he had suffered when he was before the investigating judge and the State prosecutor, on 5 August 1996. The Committee recalls its jurisprudence according to which any person deprived of his or her liberty must be given prompt access to independent legal and medical assistance and must be able to contact his or her family in order to prevent torture.<sup>8</sup> In the light of the complainant's claim that he did not have access to any of these safeguards, and in the absence of any information from the State party challenging his allegations, the Committee considers that the physical ill-treatment and injuries that he suffered during his questioning, as described, constitute torture within the meaning of article 1 of the Convention. The Committee also concludes that the State party's failure to provide the complainant with fundamental legal safeguards constitutes a violation of article 2 (1) of the Convention.

7.4 With regard to the alleged violation of article 11 of the Convention, the Committee notes the complainant's claim that the State party has not taken all necessary measures to ensure regular monitoring of the facilities of the National Gendarmerie and has not fulfilled its obligation to keep under systematic review interrogation rules, instructions, methods and practices, with a view to preventing any cases of torture. The Committee also notes that the State party does not dispute the facts as presented by the complainant. In the circumstances, the Committee concludes that the complainant's allegations must be duly taken into account and that the facts, as presented, constitute a violation of article 11 of the Convention.

7.5 As to the alleged violations of articles 12 and 13 of the Convention, the Committee notes the complainant's claim that neither the State prosecutor nor the investigating judge informed him whether an inquiry into the allegations of torture that he made was under way or had been carried out in the 12 years following the submission of his initial complaint on 5 August 1996. The Committee also notes the complainant's claims that: (a) in August 1996, he appeared before the investigating judges bearing visible signs of torture; (b) neither the prosecutor nor the investigating judge at the Aïn Oussera court found it necessary to order an examination by a forensic doctor or an ex officio investigation into his highly credible allegations; (c) he explicitly informed the investigating judge that he had been subjected to acts of torture, submitting medical certificates, the forensic doctor's file and photos taken the day after his provisional release, in August 1996, but the judge did not order an investigation; and, (d) in 2008, the State prosecutor in Djelfa informed the complainant that his complaint had been dismissed. The Committee further notes the State party's argument that the complainant did not inform the competent authorities that he had been subjected to torture. However, it observes that the State party has far exceeded the reasonable length of time for dispensing justice in the complainant's case: nearly 25 years have elapsed since the events in question and the submission of the first allegations of torture and no investigation has been initiated. The complainant was kept in detention on the basis of mere suspicions and confessions extracted under torture that he was forced to sign. In the light of the foregoing, the Committee considers that the absence of any investigation into the allegations of torture made by the complainant is incompatible with the State party's obligations under article 12 of the Convention to ensure that a prompt, independent and impartial investigation is carried out whenever there is reasonable ground to believe that an act of torture has been committed.

7.6 Under the circumstances, the State party has also failed to fulfil its responsibility under article 13 of the Convention to guarantee the complainant's right to lodge a complaint, which implies that the authorities provide a satisfactory response by launching a prompt, independent and impartial investigation. The Committee notes that the State party has not produced any information that might serve to refute this part of the complaint and concludes that these acts constitute a violation of article 13 of the Convention.

7.7 Regarding the alleged violation of article 14 of the Convention, the Committee notes the complainant's claim that the State party has deprived him of any possibility of obtaining redress, as provided for in the Charter for Peace and National Reconciliation, by failing to act on his complaint and by not proceeding to conduct an investigation. The Committee recalls that article 14 of the Convention not only recognizes the right to fair and adequate compensation, but also requires States parties to ensure that the victim of an act of torture

<sup>8</sup> Committee against Torture, general comment No. 2 (2007), paras. 13 and 19.

obtains redress. The Committee considers that redress should cover all the harm suffered by the victim, including restitution, compensation, rehabilitation of the victim and measures to guarantee that there is no recurrence of the violations, while always bearing in mind the circumstances of each case. Given the length of time that has elapsed since the complainant attempted to initiate compensation proceedings at the national level, and the absence of any information from the State party concerning any compensation awarded to him, the Committee concludes that the State party is also in breach of its obligations under article 14 of the Convention.

8. The Committee, acting under article 22 (7) of the Convention, is of the view that the facts before it disclose violations of article 2 (1), read in conjunction with article 1, and of articles 11, 12, 13 and 14 of the Convention.

9. The Committee urges the State party: (a) to promptly open an investigation into the incidents in question with a view to bringing to justice the persons responsible for the treatment inflicted on the complainant; (b) to provide the complainant with compensation; and (c) to amend or derogate from article 45 and 46 of the Charter for Peace and National Reconciliation considering that these provisions are incompatible with the Convention insofar as they exclude the possibility of investigating and prosecuting agents of the State party who have committed the crime of torture.

10. In accordance with 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 this decision, of the steps it has taken to respond to the above observations, including compensation for the complainant.

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