



# 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. 923/2019<sup>\*, \*\*</sup>

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| <i>Communication submitted by:</i>   | M.B. (represented by counsel, Olfa Ouled)  |
| <i>Alleged victim:</i>               | The complainant  |
| <i>State party:</i>                  | Morocco  |
| <i>Date of complaint:</i>            | 14 February 2019 (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 1 April 2019 (not issued in document form)   |
| <i>Date of adoption of decision:</i> | 19 November 2021   |
| <i>Subject matter:</i>               | Torture in detention   |
| <i>Procedural issues:</i>            | Exhaustion of domestic remedies; abuse of the right to submit a complaint  |
| <i>Substantive issues:</i>           | Torture and cruel, inhuman or degrading treatment or punishment; measures to prevent acts of torture or cruel, inhuman or degrading treatment or punishment; systematic monitoring of custody and treatment of prisoners; State party's obligation to ensure that its competent authorities proceed to a prompt and impartial investigation; right to file a complaint; right to redress |
| <i>Articles of the Convention:</i>   | 1, 2, 11, 12, 13, 14, 15 and 16  |

1.1 The complainant is M.B., a national of Morocco born in Western Sahara in 1970. He claims that the State party has violated his rights under articles 1, 2, 11, 12, 13, 14, 15 and 16 of the Convention. The State party has made the declaration pursuant to article 22 (1) of the Convention effective from 19 October 2006. The complainant is represented by counsel, Olfa Ouled.

\* 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 Rodriguez-Pinzón, 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.



1.2 On 1 April 2019, pursuant to rule 114 (1) of its rules of procedure, and taking into account 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 visited by a doctor of his choice; and (c) identify and immediately implement alternative measures to detention, such as house arrest, in order to avoid any deterioration in his state of health. On 2 June 2020, the request for interim measures was reiterated.<sup>1</sup> On 23 October 2020, in the light of new allegations of reprisals against the complainant, the request for interim measures was again reiterated and the State party was asked to adopt new protection measures for the complainant, namely to: (a) conduct a prompt and effective investigation into the complainant's allegations of reprisals; (b) refrain from all acts of intimidation or reprisal against the complainant and adopt all necessary measures to protect him; (c) allow the complainant to meet with his counsel and family by videoconference or telephone in strict confidence and be visited by his counsel, as a matter of urgency, as soon as measures taken in response to the coronavirus disease (COVID-19) pandemic are lifted; and (d) explain why the complainant was temporarily placed in the infirmary of Tifelt 2 prison until his transfer by providing the relevant medical report ordering this placement.<sup>2</sup> On 28 September 2021, in light of the complainant's allegations that the interim measures had still not been brought into effect, the Committee reiterated its request for interim measures to be taken.<sup>3</sup>

### **Facts as submitted by the complainant**

2.1 From 9 October 2010, thousands of Saharans living in Western Sahara moved 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 stresses that he did not participate in the creation of the camp since, at that time, he was in hospital for an operation, and that he went to the camp only on 19 October 2010. On 1 November 2010, he received a surprise visit from a special envoy of the State party who allegedly offered him a job and money in exchange for dismantling the camp.

2.2 On 8 November 2010, Moroccan soldiers armed with water cannons and tear gas attacked the Gdeim Izik camp, which, at the time, was 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.

2.3 On the same day, at around 6 a.m., the complainant, who was accused of being one of the instigators of the creation of the camp, was taken away by the Moroccan authorities. He explains that he was handcuffed, blindfolded and given a violent blow to the head, which caused bleeding, and blows to the legs with a blunt object. He was taken to the gendarmerie of Laâyoune, to an office where he was handcuffed with plastic ties. He was then suspended upside down from a bar placed behind his knees while handcuffed and subjected to electric shocks. He was showered with blows to his legs with an unspecified object for almost 30 minutes, which caused him pain and dizziness. In the afternoon, he was violently slapped, causing him to bleed. In the evening, he was able to eat and drink but was not allowed to go to the toilet. He fell asleep on the floor. The following day, a doctor took his blood pressure and simply gave him a pill. During his four days in detention, he was struck with an object on his back and limbs, resulting in widespread pain and loss of function. He explains that his family was never informed of his detention.

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<sup>1</sup> See the State party's response in para. 6.

<sup>2</sup> See the State party's response in paras. 9.1 and 9.2.

<sup>3</sup> In his comments of 24 September 2021, the complainant emphasizes the complete lack of implementation of the interim measures by the State party. He states that the solitary confinement in which he was being held had been further stepped up and that he has not been able to leave his cell, which measures no more than 5 m<sup>2</sup>, for over three months. He asserts that he is regularly subjected to reprisals and searches.

2.4 On the night of 11 to 12 November 2010, after four days in detention, the complainant was taken to Laâyoune Court of First Instance, handcuffed and blindfolded. He was left to wait for almost four hours in a room with several other detainees. Under duress and while being kicked, he signed a report while still blindfolded, in the presence of a colonel. Subsequently, the criminal investigation department presented the military investigating judge with the interrogation record supposedly signed by the complainant and his co-defendants, containing his confessions, which he was not able to read and has consistently denied. The complainant made a complaint to the investigating judge, but the judge did not take into account his allegations and injuries and did not ask for a medical examination to be carried out. The complainant was then taken back to the gendarmerie.

2.5 The following day, at around 6 a.m., the complainant was flown to Rabat, lying face down and with his ankles tied. On arrival, he was taken by military court officials and placed in a jail, where he was again beaten with a blunt object on his forearms and thighs, causing him pain. He was then placed in detention at Salé prison, where he spent the first night standing, handcuffed to a wire fence. The complainant states that, during the first few months, he was slapped, hit, insulted and humiliated by guards. He was placed in solitary confinement from 18 November 2010 for almost four months. He was not allowed to walk around. He kept asking to see a doctor. He was simultaneously prescribed more than 24 different drugs, some with opposite effects and not recommended for the illnesses from which he suffers.

2.6 Having substantiated the indictment, the investigating judge referred the case to the military court. The trial of the complainant and his co-defendants was held in Rabat, initially on 1 February and then from 8 to 13 February 2013. On 17 February 2013, the defendants all received heavy sentences on the basis of confessions that they disputed, claiming to have been tortured. The complainant was sentenced to 30 years' imprisonment. During the military trial, the complainant reported the acts of torture inflicted on him and requested an investigation. In its interim order of 8 February 2013, the military court recorded the defendants' allegations of torture but did not grant the request for an investigation. After the trial, several international organizations highlighted the lack of evidence and the absence of an effective investigation into the allegations of torture.<sup>4</sup>

2.7 On 27 July 2016, the Moroccan Court of Cassation overturned the 2013 judgment of the military court that imposed a stiff sentence on the complainant without any evidence other than his confession signed under torture. The Court of Cassation referred the case to the Rabat court of appeal, and a new trial began on 26 December 2016. Throughout the trial, all the defendants repeatedly asked the court of appeal to annul the records signed under torture and to remove them from the case file.<sup>5</sup>

2.8 On 19 July 2017, the Rabat court of appeal upheld the complainant's 30-year sentence. The complainant states that, despite his allegations of torture, the court did not initiate a formal investigation. It merely ordered a medical examination by three Moroccan forensic doctors who were not trained in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) and did not provide adequate guarantees of independence. The complainant points out that other co-defendants had refused to undergo a medical examination for this reason. The report of the medical examination concluded that "his current symptoms and the objective findings of our examination are not specific to the various alleged methods of torture". The court therefore considered this as evidence that no acts of torture had occurred. In July 2017, the complainant and his co-defendants lodged an appeal in cassation that is still pending. The complainant notes that his previous appeal had been successful only after three years and that, in any event, the Court of Cassation will once again deal only with matters of law.

<sup>4</sup> Human Rights Watch, Morocco: Tainted Trial of Sahrawi Civilians, 1 April 2013.

<sup>5</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. Thus, the records could be discussed during the six months of the trial, and, despite a request for their annulment, the decision on their validity was handed down only at the end, at the same time as the verdict.

2.9 On 16 September 2017, the complainant was transferred from El Arjat prison to Kenitra prison. His family and lawyer were not informed. During the transfer, he was mistreated. He did not receive either a blanket or his medication on arrival. On 19 and 20 September 2017, the complainant and the other detainees went on a hunger strike against the ill-treatment and the arbitrary transfer to a prison even further away from their families. He was placed in a damp, poorly ventilated cell with mould-covered walls from which water was dripping. He was repeatedly confined to his cell for 22 hours a day. His family was no longer able to visit him every week, as the prison is more than 1,200 kilometres from Laâyoune, and telephone calls with his family were permitted only once per week, for a few minutes.

2.10 On 1 March 2018, the complainant and the other detainees went on a 24-hour hunger strike, refusing to eat unless they were brought closer to their families and stopped being subjected to daily harassment by the guards. The prison governor informed the detainees that he had received an official note stating that, if they started a hunger strike, they would be placed in solitary confinement. On 9 March 2018, the complainant and the other inmates began another hunger strike and, as a punishment, were placed in solitary confinement and allowed to have only 5 litres of water and no sugar. The complainant's counsel filed a complaint of ill-treatment owing to the prolonged solitary confinement but received no response.<sup>6</sup> During the 33 days of the hunger strike, the complainant was placed in a cell measuring just over 2 m<sup>2</sup> that had no ventilation, was extremely damp, with walls covered in mould, was cold, had no natural light, no bed, and did not meet minimum standards of hygiene. The cell was full of vermin, and the squat toilet was right next to his head when he was sleeping. He did not see his doctor during the entire period of his solitary confinement.

2.11 On 7 May 2018, the complainant was moved to Tifelt 2 prison and then placed in solitary confinement until 11 June 2018 for no reason. His counsel again complained to the authorities about inhuman and degrading treatment but received no response. On 12 October 2018, the complainant was placed in solitary confinement without any justification, in a punishment cell. He went on a hunger strike to protest against his placement in solitary confinement and was moved a few days later to his previous cell, which is in the block for inmates with mental health problems, even though the complainant had not been diagnosed with any such problems. He contends that he was deprived of contact with other prisoners, news from outside and his rights to contact his French lawyer of choice and receive regular visits from his family, and that he was unable to see a doctor from outside the prison. His unheated cell lacks natural light and ventilation. Moreover, he does not receive his beta blocker regularly.

2.12 The complainant ended his hunger strike on 13 November 2018, without any doctor or prison official having approached him. The particularly severe treatment to which the complainant is being subjected is having a disastrous effect on his mental and physical state, particularly in the absence of medical care.

### **The complaint**

3.1 The complainant claims that the State party has violated his rights under articles 1, 2, 11, 12, 13, 14, 15 and 16 of the Convention.

3.2 The complainant argues that the physical abuse he suffered constitutes torture under article 1 of the Convention. He was subjected to the so-called "suspension method" during interrogations and struck repeatedly with a blunt object. He was also deprived of food and water. He considers that this treatment and his solitary confinement also amount to cruel, inhuman or degrading treatment or punishment under article 16 of the Convention. The complainant alleges that he did not have access to regular medical treatment and that he was not seen by a doctor during the first days of his detention or the period of solitary confinement. He also submits that the failure of the Moroccan authorities to put in place an effective system to prevent torture constitutes a violation of article 2 of the Convention.

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<sup>6</sup> A copy of the complaints of ill-treatment addressed by his representative to the Minister of Justice on 9 March 2018 and to the public prosecutor and the Crown Prosecutor General on 19 March 2018 is annexed to the communication.

3.3 With regard to article 11 of the Convention, the facts show that the State party did not 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. The detention conditions in Morocco, malnutrition, ill-treatment, abuse and lack of an effective complaint mechanism for detainees have been described in various reports by international bodies.<sup>7</sup>

3.4 The complainant alleges that the State party has failed to fulfil its obligations under articles 12 and 13 of the Convention. He states that, on 12 November 2010, he appeared, bearing visible signs of torture, before the military investigating judge, who did not record these facts or his allegations of torture 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 complainant submits that, in its report on its 2013 mission to Morocco, the Working Group on Arbitrary Detention highlighted a failure to investigate the allegations of torture of detainees in the context of the events surrounding the dismantling of the Gdeim Izik camp.<sup>8</sup>

3.5 The complainant argues that the medical examination ordered by the court of appeal many years after the alleged events does not amount to opening an official investigation into his allegations of torture, which would have involved recording his statements in separate proceedings. Court-appointed doctors examined the defendants in 2017, almost seven years after the alleged torture. The complainant states that his medical report and those of his co-defendants were submitted to four French and Spanish doctors, who provided second opinions concluding that the Istanbul Protocol had not been respected.<sup>9</sup> These experts thus demonstrated that, despite the a priori conclusion of the expert reports that no torture had taken place, the allegations of torture of detainees remain highly credible.

3.6 The complainant further alleges that the absence of an investigation prevented him from receiving rehabilitation, reparation, compensation, support and guarantees of non-repetition of the offence, in violation of article 14 of the Convention.

3.7 The complainant has consistently stated before the national authorities that his conviction was based solely on confessions obtained under torture, even though he claims that he did not confess to anything but was forced, while he was handcuffed and blindfolded, to sign a document whose contents were unknown to him. By failing to carry out any checks, and by using such declarations in the judicial proceedings against the complainant, the State party manifestly violated its obligations under article 15 of the Convention.

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

4.1 On 27 June 2019, 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, like other persons involved in the case related to the dismantling of the Gdeim

<sup>7</sup> See, for example, [A/HRC/22/53/Add.2](#).

<sup>8</sup> [A/HRC/27/48/Add.5](#), para. 68.

<sup>9</sup> The complainant submits a document containing the conclusions of the second opinions given by Drs. F.D., S.U., S.R. and P.H. The date on which these second opinions were provided is not indicated. The doctors considered that the findings of the 15 medical reports lacked credibility and did not meet the requirements of the Istanbul Protocol because of: non-compliance with the principles of independence and impartiality of the experts, since they were appointed by the court, whose role was to try the detainees; a failure to take into account the time elapsed between the dates of the alleged torture and those of the medical examinations; the fact that the examinations were carried out in the correctional facility, rather than in neutral venues, with only the medical expert present; the extremely short duration of the interviews; the inadequacy of the evaluation of trauma and psychological harm; the summary, superficial and sometimes erroneous nature of the expert reports (some paragraphs were copied and pasted); a lack of analysis of the detainees' medical files in the prisons; the failure to establish an independent commission of enquiry despite the existence of a pattern of torture; and the fact that the findings of the 15 expert reports were identical, with no indication of the degree of compatibility (specific, typical, highly compatible, compatible, incompatible) of the injuries observed with the abuse reported.

Izlik camp, 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, the Directorate-General of National Security and the Auxiliary Forces, and one member of the Directorate-General of Civil Protection.

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. The complainant was sentenced to 30 years' imprisonment on charges of forming a criminal gang and violence against law enforcement officials intentionally causing death. On 27 July 2016, the military court's decision was quashed, and the case was referred to a civil court: the Rabat court of appeal.<sup>10</sup> The trial took place before the Criminal Chamber from 26 December 2016 to 19 July 2017. Interpretation into Hassānīya, a dialect spoken in southern Morocco, was provided. In addition, interpretation into English, French and Spanish was provided for the foreign observers present. The Court ensured that the evidence was debated in an adversarial hearing in the presence of the defendants, who were assisted by their legal representatives. Observance of all the aforementioned guarantees was confirmed by reports of the National Human Rights Council.

4.4 On 19 July 2017, the Rabat court of appeal confirmed the charges and the resulting sentence against the complainant, namely 30 years' imprisonment. On 29 September 2017, the defendants, including the complainant, submitted an appeal in cassation. 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.

4.5 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 these years.

4.6 On the request for interim measures, the State party indicates that the complainant has been placed in a single room in a clinic and that, contrary to his allegations, he is not subject to any measure or form of solitary confinement. He has the right to regular visits and telephone calls and is receiving appropriate medical care. The State party strongly contests the complainant's allegations of physical and psychological abuse.

4.7 In its comments dated 20 December 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.

4.8 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>11</sup>

4.9 The State party reiterates that the communication is inadmissible because the complainant's appeal to the Court of Cassation is still pending. In the event of a cassation decision and referral by the Court, all the substantive and procedural issues and, inevitably, the matter of the application of the law (including, in the present case, the weight of the confessions allegedly obtained under torture, the process for conducting forensic examinations, and so on) may be raised.

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<sup>10</sup> In its comments of 20 December 2019, the State party indicates that, following recommendations by several organizations and mechanisms, including the Committee, it amended its legislation to ensure that acts committed by civilians are excluded from military jurisdiction (Act No. 108-13 of 10 December 2014 on military justice).

<sup>11</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.

4.10 The State party recalls that, in accordance with articles 73, 74, 88 and 134 of the Code of Criminal Procedure, the prosecutor or investigating judge 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 request for a medical examination was made by the complainant or his defence, and no signs of torture or ill-treatment were found during his presentation before the military investigating judge in Rabat.<sup>12</sup>

4.11 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 a complaint with the public prosecutor's office, the Prison Service – if they are in detention – or the National Human Rights Council, which has powers to monitor places of detention.<sup>13</sup>

4.12 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 a specialist 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 expert medical examination conducted on 16 February and 13 March 2017 involved interviews regarding the complainant's allegations, apparent symptoms and medical history, a clinical physical examination, additional examinations, analyses of the medical file and the custody register and a forensic interview and study. The expert examination concluded that the marks and complications suffered by the complainant were not the result of torture or ill-treatment. It was therefore established that the allegations of torture were unfounded.<sup>14</sup>

4.13 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, the State party submits that everything possible was done to ensure that the forensic examinations were carried out by highly qualified, impartial and independent experts who were admitted to the Moroccan courts and were, for that matter, subject to the Court's supervision.

4.14 The State party notes that both the complainant's mother and his wife filed complaints with the Prison Service about poor conditions of detention, on 30 March and 10 May 2018, and that investigations by the General Delegation for Prison Administration and Reintegration concluded that all the allegations were unfounded.

4.15 The State party reports that the complainant's conditions of detention are regularly monitored by the National Human Rights Council. The complainant was visited by a delegation from the Council on 28 May 2019 and by the Tan-Tan-Guelmim Regional Human Rights Commission on 18 July 2019. He was also visited by the Deputy Crown Prosecutor at Tifelt Court of First Instance on 21 March and 28 May 2019.

4.16 The State party adds that the complainant is currently detained in Tifelt 2 category B prison and enjoys all his rights in accordance with international standards. He has been placed in the infirmary in an individual cell that meets health and safety standards and has not been placed in solitary confinement as alleged in his communication. He receives appropriate medical attention. Since his incarceration in 2010, he has attended 24 outpatient consultations and 275 inpatient consultations, including 39 since his transfer to Tifelt 2 prison. He has twice refused to go to the public hospital, where appointments had been scheduled, in protest against the wearing of prison uniform. He also enjoys the rights to receive visits and communicate with his family by telephone. He is given his meals and is entitled to shower according to a schedule and take a daily walk. He is in his second year of studying economics and management at the Guelmim Faculty of Economics.

<sup>12</sup> The State party refers to the preliminary hearing reports drawn up by the investigating judge of the military court on 12 November 2010 and 25 February 2011.

<sup>13</sup> Act No. 76-15 on the reorganization of the Council broadened its remit, in particular by designating it the national preventive mechanism pursuant to the Optional Protocol to the Convention, to which Morocco acceded in 2014.

<sup>14</sup> The State party attaches a copy of the report of the expert medical examinations carried out on 16 February and 13 March 2017 and the doctors' *curricula vitae*.

**Comments by the complainant and the State party on the request for interim measures***Complainant*

5. In his communication of 28 May 2020, the complainant submits that the State party has never implemented the interim measures. He does not receive medical care and his health continues to deteriorate. He remains in prolonged solitary confinement in Tifelt 2 prison.

*State party*

6. In its observations of 7 July 2020, the State party indicates that the complainant, who is incarcerated in the Tifelt 2 prison, enjoys all his rights as a prisoner and has never been subjected to solitary confinement, contrary to his allegations. He is detained in completely normal conditions and has the right to take walks, the right to family visits, which has been preserved despite the interim restrictive measures related to the COVID-19 pandemic, and the right to daily telephone calls, including on Saturdays and Sundays. The State party further reiterates that the complainant is receiving appropriate medical care and that the results of the laboratory analyses carried out do not point to any abnormalities.

*Complainant*

7.1 In his comments dated 8 October 2020, the complainant states that, on 21 September 2020, he was transferred to Aït Melloul prison. He says that he cannot leave his cell, that he is therefore confined there 24 hours a day and that the cell does not meet minimum hygiene standards. The complainant explains that he is in a severe state of physical and psychological distress and that, in view of this situation, he has decided to go on a hunger strike the following week. He asks the State party to explain this disturbing information, since these measures are, as they stand, tantamount to reprisals.

7.2 In his comments dated 13 October 2020, the complainant clarifies that he had requested interim measures because he and his co-defendants have been subjected to reprisals following the 2017 judgment of the Rabat court of appeal and the Committee's decision in *Asfari v. Morocco*.<sup>15</sup> He states that he had never been placed in solitary confinement prior to 2017 and that this confinement is ongoing, with no investigation having been opened. He argues that his detention regime amounts to solitary confinement, even though it has not been categorized as such under Moroccan law. He explains that, in October 2019, after his complaint was lodged with the Committee, he was placed in the Tifelt 2 prison infirmary. While there, he could hear the other patients shouting day and night. He explains that, within the prison, he suffers from discrimination and racist insults.

**Complainant's comments on the State party's observations on admissibility and the merits**

8.1 On 12 October 2020, the complainant submitted his comments on the State party's observations. He argues that the communication is admissible, pointing out that the fact that more than eight years having elapsed since the alleged events without any investigation having been carried out by the State party is in itself evidence that domestic remedies are not effective.

8.2 The complainant maintains that the appeal that is still before the Court of Cassation 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 is accused. The Court cannot review a final decision of a court of first instance 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.

8.3 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 having been opened to date. He recalls that

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<sup>15</sup> CAT/C/59/D/606/2014.



prosecutions are the sole preserve of the public prosecutor's office, which has still not exercised its powers to institute criminal proceedings.

8.4 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 for the Committee. He considers that the State party appears to be deliberately confusing the criminal case with the failure to open an investigation into his allegations of torture.

8.5 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 department 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 not tortured.

8.6 With regard to the State party's argument that the complainant could have had recourse to the National Human Rights Council by filing a complaint, he 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. He submits that the Council cannot be considered a judicial mechanism or an adequate mechanism for investigating allegations of torture.

8.7 The complainant observes that the State party does not indicate that he received any medical attention at all during the period of the acts reported in his complaint. The State party's observations are all the more worrying since it seems to believe that the complainant is in perfect health, even though he has had many medical consultations. Besides, it is unlikely that a person in "perfect health" would have to spend several weeks in the infirmary, for which no justification is given. Furthermore, the State party does not prove that he was provided with prompt and independent legal and medical assistance or that he was able to contact his family immediately. The complainant reiterates his claim that the State party violated his rights under articles 2, 11, 12, 13, 15 and 16 of the Convention.

#### **Additional observations by the complainant and the State party on the request for interim measures**

##### *State party*

9.1 In its comments dated 11 December 2020, the State party reiterates that the complainant's claims are unfounded and categorically denounces his approach of deliberately and continuously embroidering a series of false allegations. It repeats its observations of 27 June 2019, 20 December 2019 and 7 July 2020. It states that the complainant was transferred to the local Ait Melloul 1 prison on 19 September 2020 and placed in an individual cell that meets international standards and that this was in no way the result of a solitary confinement measure. It adds that the complainant had 17 telephone calls with his relatives between 21 September and 26 October 2020. It reiterates that the complainant has access to medical care and that the question of whether he can consult a doctor of his choice is inherently inappropriate in view of the nature and functioning of prisons.

9.2 The State party emphasizes that the complainant underwent a medical examination on 21 and 22 September 2020 and is in good general health. It rejects the allegation that, from 5 May 2018 to 19 September 2020, the complainant was placed in a single room in the Tifelt 2 prison infirmary for close medical follow-up immediately after submitting his complaint to the Committee. It states that the complainant did not declare a hunger strike on the above-mentioned dates. The complainant was received by the Governor of Ait Melloul prison on 7 October 2020 and was able to make a number of requests. The State party points out that the complainant has never been subjected to reprisals or any other form of intimidation and that there is no justification for investigating the matter on the basis of the information submitted. It also notes that the complainant is not currently eligible for alternatives to detention.

*Complainant*

10. In his comments dated 20 December 2020, the complainant states that he has been in solitary confinement at Aït Melloul 1 prison for 25 days, that he has not been able to contact his counsel and that he continues to call his family in the presence of prison officials. On 9 April 2021, the complainant reported that he was likely to have to undergo a medical operation.

**Additional observations by the State party**

11.1 On 19 March 2021, the State party submitted additional observations. It points out that, on 25 November 2020, the Court of Cassation dismissed the appeal lodged by the complainant. It again deplores the complainant's manifest intention to use his allegations to exonerate himself from the serious offences of which he was convicted after a fair trial.

11.2 Regarding the complainant's contention that the medical examination ordered by the court of appeal does not satisfy the State's obligation to conduct an investigation, the State party indicates that the complainant seems to have deliberately forgotten that an examination is ordered only if the defence requests one on the basis of the relevant provisions of the Code of Criminal Procedure or if the judge considers there to be reasonable grounds for one. It reaffirms that the commission was impartial, competent and professional.

11.3 The State party reiterates that the complainant has never been subjected to solitary confinement in any of the prisons in which he has been held and that his imprisonment has always been in line with relevant international standards. With regard to the concern expressed about the number of medical consultations, it underlines that this number, which the complainant considers to be high, in itself demonstrates the willingness of the General Delegation for Prison Administration and Reintegration to ensure that prisoners have optimal access to medical care. As to the right to receive visits, it points out that, in order to combat the spread of COVID-19 in prisons, the General Delegation had to suspend all visits to prisons from March 2020. The complainant has regular telephone conversations twice per week with his mother and his wife. Lawyers' visits were still allowed despite the measures related to the pandemic, but no lawyer for the complainant went to meet him.

11.4 Moreover, the State party indicates that the National Human Rights Council is a constitutional institution for the protection and promotion of human rights that was created in 1990, has been working in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) since 2001 and has been accredited with A status for more than 20 years. It claims that the Council has never received a complaint from the complainant nor been informed of any possible acts of torture or ill-treatment against him, which would enable it to take up the case on its own initiative.

**Issues and proceedings before the Committee***Consideration of admissibility*

12.1 Before considering any complaint contained 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.

12.2 The Committee notes that the State party has contested the admissibility of the complaint on the grounds of non-exhaustion of domestic remedies. 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 from the State party 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.

12.3 With regard to the State party's allegation that the present complaint constitutes an abuse of the right to submit a complaint, the Committee recalls that neither the Convention nor its rules of procedure establish a time limit for submitting a complaint. In any event, a period of one year and seven months elapsed between the handing down of the judgment of the Rabat court of appeal and the submission of the complaint to the Committee, which in this case cannot serve as grounds for concluding that the right to submit a complaint is being abused.

12.4 With reference to article 22 (4) of the Convention and rule 111 of the Committee's rules of procedure, the Committee finds no other obstacle to the admissibility of the complaint and proceeds with its consideration of the merits.

#### *Consideration of the merits*

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

13.2 The Committee notes the complainant's claim that the physical abuse he suffered during his arrest 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. 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 to carry out a medical examination on 16 February and 13 March 2017. The Committee notes that the medical evaluation concluded that "his current symptoms and the objective findings of our examination are not specific to the various alleged methods of torture". The Committee observes the State party's argument that the medical examination 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 examination was not conducted in accordance with the Istanbul Protocol. In this regard, the Committee notes that the findings of the medical examinations of the complainant and his co-defendants were presented to international doctors, who provided second opinions concluding 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 examination, 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 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 examination 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 the medical examination was carried out more than six years after the alleged events and that the time elapsed between the two does not seem to have been taken into account. The Committee recalls its jurisprudence according to which any person deprived of his or her liberty must be given access to prompt and independent legal and medical assistance and must be able to contact his or her family in order to prevent torture.<sup>16</sup> Taking account of the complainant's assertion that he did not have access to any of these safeguards during his pretrial detention, 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 that he suffered during his arrest, interrogation and detention constitute torture within the meaning of article 1 of the Convention.<sup>17</sup>

13.3 The Committee considers that all the treatment that the complainant alleges was inflicted on him during his detention, that is: (a) being suspended upside down and given

<sup>16</sup> General comment No. 2 (2007) on the implementation of article 2 by States parties.

<sup>17</sup> *Asfari v. Morocco*, para. 13.2.

electric shocks, repeatedly beaten and insulted; (b) the insanitary conditions of his various detention cells; (c) the long periods of solitary confinement without being able to be seen by a doctor of his choice; and (d) the restricted access to his lawyer and family; also constitutes a violation of article 1 of the Convention. Accordingly, the Committee does not consider it necessary to examine separately the claims under article 16 of the Convention.<sup>18</sup>

13.4 The complainant also invokes article 2 (1) of the Convention, pursuant to which the State party should have taken 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>19</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 State 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 view of the above, the Committee finds a violation of article 2 (1), read in conjunction with article 1, of the Convention.<sup>20</sup>

13.5 According to the complainant, the State party violated article 11 of the Convention because it failed to properly monitor the treatment he received during his detention. 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 his poor 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>21</sup> In the present case, the Committee notes that the State party has provided general information on the complainant's conditions of detention and his medical care without giving relevant explanations to demonstrate that it carried out the necessary monitoring. Moreover, the Committee notes that, aside from indicating the number of medical consultations that the complainant allegedly had, the State party has not provided any explanation of his conditions of detention during the period between November 2010 and February 2019, when his complaint was submitted to the Committee. In the absence of any information from the State party to demonstrate that the complainant was indeed placed under its supervision throughout his detention, and of any evidence that his complaints were handled properly and that he received effective medical care, the Committee concludes that there was a violation of article 11 of the Convention.<sup>22</sup>

13.6 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 takes note of the complainant's allegations that he appeared before the military investigating judge on 12 November 2010 bearing visible signs of torture and that he reported the torture to the judge, but no investigation was carried out. The Committee notes the State party's argument that the complainant did not raise the allegations of torture with the competent authorities. It 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

<sup>18</sup> *Ramiro Ramírez Martínez et al. v. Mexico* (CAT/C/55/D/500/2012), para. 17.4.

<sup>19</sup> CAT/C/MAR/CO/4, para. 12. See also CCPR/C/MAR/CO/6, paras. 23 and 24.

<sup>20</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>21</sup> CAT/C/MAR/CO/4, para. 7.

<sup>22</sup> *E.N. v. Burundi*, para. 7.6.

complainant underwent a medical examination ordered by the court. In this connection, it notes the complainant's claims that the medical examinations 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 examinations, it considers that the State party does not provide any relevant explanation to demonstrate that the examination 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 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 above, 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 its competent authorities proceed to a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed.<sup>23</sup>

13.7 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>24</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 enough for the victim simply to bring the facts to the attention of an authority of the State for the State to be obliged to consider it as a tacit but unequivocal expression of the victim's wish that the facts should be promptly and impartially investigated, as required by this provision of the Convention.<sup>25</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.

13.8 Regarding the complainant's allegations under article 14 of the Convention, the Committee recalls that this provision recognizes the right of the victim of an act of torture to fair and adequate compensation and requires States parties to ensure that he or she obtains redress for all injuries suffered. Redress must cover all the harm suffered and encompass restitution, compensation and guarantees of non-repetition, taking into account the circumstances of each individual case.<sup>26</sup> In the present case, the Committee notes the complainant's allegation that the ill-treatment he suffered had a disastrous 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 examination 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 therefore considers that the failure to conduct a prompt and impartial investigation denied the complainant any possibility of exercising his right to redress, in violation of article 14 of the Convention.<sup>27</sup>

13.9 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 confessed to nothing but to have been forced, while handcuffed and blindfolded, to sign a document whose contents were unknown to him. 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

<sup>23</sup> *Asfari v. Morocco*, para. 13.4.

<sup>24</sup> *Bendib v. Algeria* (CAT/C/51/D/376/2009), para. 6.6.

<sup>25</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.

<sup>26</sup> *Bendib v. Algeria*, para. 6.7.

<sup>27</sup> *Niyonzima v. Burundi* (CAT/C/53/D/514/2012), para. 8.6; and *Asfari v. Morocco*, para. 13.6.

torture.<sup>28</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 questioned 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 examination ordered by the court of appeal, which was not carried out in accordance with the Istanbul Protocol, and by using such statements in the judicial proceedings against the complainant, the State party manifestly violated its obligations under article 15 of the Convention. The Committee recalls that, in its concluding observations on the fourth periodic report of Morocco,<sup>29</sup> it expressed concern about the fact that, under the State party's current system of investigation, confessions are commonly used as evidence for purposes of prosecution and conviction, thus creating conditions that may provide more scope for the torture and ill-treatment of suspects.<sup>30</sup>

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

15. The Committee urges the State party to: (a) provide the complainant with fair and adequate compensation, including the means for the fullest rehabilitation possible; (b) 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; (c) return the complainant to the group regime in a prison closer to his family; (d) conduct a prompt and effective investigation into the complainant's allegations of reprisals and 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 in 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.

16. 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 transmittal of the present decision, of the steps it has taken to respond to the above observations.

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<sup>28</sup> *P.E. v. France* (CAT/C/29/D/193/2001), para. 6.3; and *Ktiti v. Morocco* (CAT/C/46/D/419/2010), para. 8.8.

<sup>29</sup> CAT/C/MAR/CO/4, para. 17.

<sup>30</sup> *Asfari v. Morocco*, para. 13.8.