



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
15 November 2022
English
Original: French

Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 928/2019^{*, **}

<i>Communication submitted by:</i>	Mohamed Hajib (represented by counsel, Rachid Mesli of Fondation Alkarama)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Morocco
<i>Date of complaint:</i>	30 October 2018 (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 24 April 2019 (not issued in document form)
<i>Date of adoption of decision:</i>	22 July 2022
<i>Subject matter:</i>	Torture in detention
<i>Procedural issues:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Torture and cruel, inhuman or degrading treatment or punishment; measures to prevent acts of torture; systematic monitoring of custody and treatment of prisoners; State party's obligation to ensure that its competent authorities conduct a prompt and impartial investigation; right to file a complaint; right to redress
<i>Articles of the Convention:</i>	1, 2 (1) and (2), 4 (2), 11, 12, 13, 14, 15 and 16

1. The complainant is Mohamed Hajib, a national of Morocco and Germany born on 23 May 1981. He claims that the State party has violated his rights under article 1, and articles 2 (1) and (2), 4 (2), 11, 12, 13, 14 and 15, read in conjunction with article 1, of the Convention and his relatives' rights under article 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 from Fondation Alkarama.

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

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



Facts as submitted by the complainant

2.1 On 1 October 2009, the complainant was arrested in Pakistan while he was participating in religious activities for the Jamaat Al Tabligh (or Tablighi Jamaat), a religious, proselytizing organization that is active and has permission to operate in many countries. He was imprisoned for five days and then transferred to the prison in Quetta, where he was held for four months without being charged. He was released without trial in February 2010.

2.2 On 17 February 2010, the complainant flew to Germany. At Frankfurt Airport, two police officers questioned him for several hours about why he had been deported from Pakistan. He told them that he planned to leave immediately for Morocco, where his family was waiting for him.

Arrest and unfair trial

2.3 At 1 a.m. on 18 February 2010, the complainant was arrested by five officers from the Directorate General of National Surveillance as he was getting off the plane in Casablanca and was immediately taken to El Maarif police station in Casablanca, where he was tortured during the 12 days that he was held in police custody. The complainant's relatives, who were waiting for him at the airport, were not informed of his arrest.

2.4 The police officers blindfolded and handcuffed the complainant and tied up his feet. He was stripped of his clothes and kicked while on the ground. On 1 March 2010, at the end of the period of police custody, he was forced to sign a police report after police officers had threatened to arrest his wife and mother and torture them. The report was backdated to 19 February 2010.

2.5 The criminal investigation police did not acknowledge that the complainant was being detained until four days after his arrest, after his parents had made numerous efforts to find out what had happened to him. He was brought before the prosecutor on 1 March 2010 and charged, under articles 218-1 and 218-4 of Act No. 03-03 relating to counter-terrorism, with establishing a criminal group and financing terrorism. Despite the lack of any physical evidence or proof of his involvement in acts of violence, the complainant was placed in pretrial detention in the Salé prison the same day.

2.6 When he was brought before the court of Salé, the complainant told the investigating judge that he had been subjected to torture at El Maarif police station so that he would sign a document that did not tally with the statement he had made. The investigating judge did not take account of his comments or the obvious marks of torture and ill-treatment. To protest against the arbitrary nature of his arrest and detention, the complainant went on a hunger strike from 10 May to 24 June 2010, the date his trial began.

2.7 The complainant was referred to a trial court on 24 June 2010. He was sentenced to 10 years' imprisonment following a summary trial on a charge of attempting to travel to Afghanistan in order to fight against the United States armed forces. The judges were content to rely entirely on the police reports, in the absence of any material evidence, and did not take account of the statements made by the complainant before both the investigating judge and the court, which contained allegations of torture and ill-treatment during his time in police custody.

2.8 On 11 October 2010, the Rabat Court of Appeal upheld the verdict. However, the Court of Cassation annulled the judgment on 22 June 2011 and sent the case back to the Court of Appeal for reconsideration. On 9 January 2012, the Court of Appeal upheld the decision taken at first instance but reduced the sentence to 5 years' imprisonment.

2.9 The complainant reported the acts of torture that he had been subjected to while in police custody at all stages of the proceedings. However, no investigation was opened.

Torture and ill-treatment in prison

2.10 On 16 May 2011, the complainant and several hundred other inmates at the Salé prison protested against the unfairness of their convictions. In response, the complainant was transferred on 17 May to the Toulal prison, where he remained until 21 May 2011, when he re-entered the Salé prison. The authorities did not notify his relatives of these transfers and

placed him in a type of incommunicado detention comparable to an enforced disappearance for 15 days. His father was worried about what had happened to him and sought clarification from the National Human Rights Council on 18 May 2011. The German Consulate eventually found out where he was, on 31 May 2011, and informed his family about his fate.

2.11 Between 16 and 21 May 2011, the complainant was severely tortured by the guards at the Salé and Toulal prisons. For example, he was subjected to beatings on different parts of his body that caused his right eardrum to burst and his nose to break. He was kept in painful positions for long periods of time and threatened with rape. His psychological state deteriorated considerably as a result of this abuse, to the point that he attempted to commit suicide and was again rushed to hospital in critical condition.

2.12 On 17 May 2011, the day of his transfer from the Salé prison to the Toulal prison, the complainant was tortured in the presence of two officers from the Directorate General of National Surveillance. A lawyer and a representative of the German Consulate visited him at the Salé prison between 31 May and 8 June 2011.¹ The lawyer stated that the complainant had scars on his hands and feet resulting from torture or other ill-treatment.² In a letter dated 30 June 2011, the German Embassy informed the Moroccan Ministry of Foreign Affairs that the complainant had been “the victim of considerable injuries” and that he had stated that he had been subjected to several acts of ill-treatment and physical violence at the Salé and Toulal prisons. Because of the complainant’s participation in the protests of 16 and 17 May 2011, the Salé Court of Appeal sentenced him to a further 2 years’ imprisonment on 10 September 2012.

2.13 On 30 May 2012, the complainant’s father asked the prosecutor to open an investigation into the torture of his son at the Salé and Toulal prisons. The father twice sent a letter to the Ministry of Justice, on 8 June 2012 and 26 May 2014, requesting that the complainant be given an emergency medical examination in order to have a record of the acts of torture in question for a potential criminal complaint.³ Nothing came of these efforts.

2.14 In July 2012, the complainant was transferred to the Tiflet prison, where he remained until his release on 18 February 2017. In late May 2016, he again expressed his condemnation of the arbitrary nature of his detention and his conditions of detention by donning an orange outfit similar to the ones worn by Guantanamo Bay prisoners. Because of that gesture, he was again subjected to torture and ill-treatment by prison guards. In particular, his back was burned with a red-hot iron bar while he was held on the bed in his cell, bound hand and foot and blindfolded. He was able to have his injuries photographed in his cell.⁴ He claims that he was tortured in the presence of the prison governor and the coordinator of the General Delegation for Prison Administration and Reintegration.

2.15 The complainant did not wish to approach the courts about these events because he feared that he would face reprisals as his release date neared. He still bears marks of the torture today, as demonstrated by several photographs taken in Germany following his release.⁵ He was able to have his injuries verified by the Institute of Forensic Medicine in Düsseldorf on 13 April 2017. He was also given a psychological evaluation in Germany, and it was concluded that he was suffering from post-traumatic stress disorder.

Opinion of the Working Group on Arbitrary Detention

2.16 On 26 July 2011, the complainant submitted his case to the Working Group on Arbitrary Detention, which issued an opinion on 31 August 2012 in which it characterized the complainant’s detention as arbitrary.⁶ The Working Group first noted that the complainant’s confessions after his arrest at the airport in Casablanca, while he was in police custody, had been made when he did not have access to a lawyer and in the absence of any

¹ See Amnesty International, “Morocco: Investigate Torture Allegations”, public statement, 17 June 2011.

² Ibid.

³ However, only the letter of 26 May 2014 includes a request for a medical examination.

⁴ A photograph in the file shows scars on his back.

⁵ A more recent photograph of his scars is also in the file.

⁶ [A/HRC/WGAD/2012/40](#).

material evidence. When the complainant appeared before the investigating judge with the assistance of counsel, he rejected all the allegations made against him, as well as the confessions, saying that they had been obtained under torture. In its reply to the Working Group, the Government of Morocco merely denied that any confession had been obtained through torture, without showing that any independent, transparent inquiry had been held into those allegations. The Working Group therefore found violations of article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, in direct connection with articles 9, 10 and 11 of the Declaration and articles 9 and 14 of the Covenant. It considered that the violations of the right to a just and equitable trial to which the complainant had been subjected were sufficiently serious to render his detention arbitrary. The Working Group also referred the case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.⁷

2.17 The State party never acted on the Working Group's recommendations with respect to either the immediate release of the complainant or the granting of adequate compensation pursuant to article 9 (5) of the Covenant. On 19 October 2014, his lawyer filed a request with the Ministry of Justice to have his trial reviewed, citing, *inter alia*, the opinion of the Working Group, but it was denied. Although the complainant was released on 18 February 2017, he received no form of compensation.

Complaint

3.1 The complainant alleges violations of article 1, and articles 2 (1) and (2), 4 (2), 11, 12, 13, 14 and 15, read in conjunction with article 1, of the Convention with regard to himself and of article 16 with regard to his family.

3.2 The complainant states that he has pursued all potential remedies, but they have proved ineffective. At all the stages of the judicial proceedings, he reported the acts of torture to which he had been subjected. He recalls that the Committee has found that it is enough for the victim simply to come forward and bring the facts to the attention of a State authority for the State to be obliged to consider it as an expression of the victim's wish that the facts should be promptly and impartially investigated.⁸

3.3 Since his arrest on 18 February 2010, the complainant had been under the control of the Moroccan authorities; any allegation should therefore have been considered the same as a criminal complaint. However, no action was taken on the allegations of torture that were brought to the attention of judicial officials at each stage of the proceedings.⁹ Thus, the State party cannot claim that he failed to file a complaint regarding the acts of torture committed while he was in police custody.¹⁰

3.4 The complainant reiterates that the authorities took no action in response to the complaints regarding his torture at the Salé and Toulal prisons and that he did not wish to approach the courts about the events at the Tiflet prison because he feared reprisals.

3.5 On the merits, the complainant argues that the treatment he received while in police custody at El Maarif police station and in detention at the Salé, Toulal and Tiflet prisons constitutes torture within the meaning of article 1 of the Convention.

3.6 The complainant was arrested without a warrant and without being informed of the charges against him. He was not allowed to contact his family, nor was he assisted by counsel or brought before a judge until the end of the period of police custody – that is, 12 days after his arrest. During this time, he was deliberately placed outside the protection of the law and was unable to bring legal proceedings to have his allegations of torture considered or to challenge the legality of his detention. Furthermore, he received no independent medical assistance, either while in police custody or after his interviews with the prosecutor and the

⁷ *Ibid.*, para. 53.

⁸ *Thabti v. Tunisia* (CAT/C/31/D/187/2001), para. 10.6.

⁹ In a letter to the head of the Department for Prison Administration and Reintegration dated 25 March 2014, in which the complainant's parents asked that he be taken out of solitary confinement, it was mentioned that the complainant had been forced to sign a confession under torture. The letter is not in the file.

¹⁰ *Jaïdane v. Tunisia* (CAT/C/61/D/654/2015), para. 6.2.

investigating judge. Despite the fact that he reported his torture and incommunicado detention to the judicial authorities several times, no steps were taken to investigate his statements and the acts thus remain unpunished. The authorities' lack of response constitutes a violation of article 2 (1), read in conjunction with article 1, of the Convention.

3.7 The complainant, invoking article 2 (2) of the Convention, considers that the acts of torture to which he was subjected were permitted and facilitated by the lack of fundamental safeguards under Act No. 03-03, which established an emergency legal regime on the matter. As early as 2004, the Committee had expressed its concern about the State party's legal framework for fighting terrorism, particularly the considerable extension of the time limit for police custody, the period during which the risk of torture is greatest, both in criminal law and in anti-terrorist legislation.¹¹ In 2011, the Committee expressed its concern that Act No. 03-03 extended the period during which a person may be held in police custody, placing suspects who are being held in custody at greater risk of torture, and recalled that it was precisely while they could not communicate with their families and lawyers that suspects were most vulnerable to torture.¹²

3.8 The failure to implement provisions on the prosecution and punishment of officials who commit acts of torture constitutes a violation of article 4 (2) of the Convention. Such a failure to investigate and prosecute remains an established practice on the part of the authorities, despite the allegations that have repeatedly been brought to the attention of the State party's judicial authorities, the special procedures and the treaty bodies to which the State is a party.

3.9 The complainant recalls, invoking article 11 of the Convention, that he did not enjoy sufficient procedural safeguards while in police custody. In addition, the State party failed to meet its obligation under article 12 to conduct a prompt and impartial investigation into the allegations of torture. It also failed in its responsibility under article 13 to ensure that the complainant had the right to complain to the competent authorities, who would have to respond in an appropriate manner by launching a prompt and impartial investigation. The State party has thus deprived the complainant of the possibility of obtaining redress, under article 14, through a civil lawsuit or criminal proceedings.

3.10 During the preliminary investigation, the complainant was forced to confess, under duress and without his lawyer present, his alleged belief in jihadist Salafist ideology and his intention to fight the United States forces in Afghanistan. He questioned the probative value of the confession signed under torture at each stage of the proceedings against him, without success. Nonetheless, it was used throughout the pretrial and trial proceedings, in violation of article 15 of the Convention.

3.11 Finally, the complainant and his family were subjected to cruel and inhuman treatment within the meaning of article 16 of the Convention throughout the period of his incommunicado detention at the Toulal and Salé prisons between 17 and 28 May 2011. The complainant's relatives waited two weeks to receive information about what had happened to him, as the authorities had deliberately refrained from informing them of his transfer to the Toulal prison, despite all their requests and other efforts. As a reminder, it was the German consular authorities who found out where the complainant was and informed his relatives about his fate.

State party's observations on admissibility and the merits

4.1 In its observations of 24 November 2020, the State party provided, in the first place, clarification regarding the two criminal cases in connection with which the complainant was prosecuted and convicted in Morocco.

4.2 The State party explains that the complainant was interviewed at the criminal investigation police premises in strict compliance with the laws in force and under the effective supervision of the public prosecutor. On the day he was arrested at the airport in Casablanca, he was placed in police custody for a period of 96 hours, which was extended

¹¹ CAT/C/CR/31/2, para. 5 (b).

¹² CAT/C/MAR/CO/4, para. 8.

twice with the authorization of the public prosecutor's office and in accordance with article 66 of the Code of Criminal Procedure. Contrary to what the complainant alleges, he was never held in incommunicado detention. He was informed in detail of the acts of which he was suspected. His family was informed that he had been taken into police custody through his mother, who had been contacted on her mobile telephone. All of these procedural matters were recorded in the report of the interview prepared by the criminal investigation police, the contents of which were not challenged by the complainant or his defence counsel, as they are permitted to do under the law. Contrary to what the complainant alleges, he was able to read the report of the interview and signed it voluntarily. Moreover, his handwriting and the strokes of his signature reveal that there was indeed no duress.

4.3 Regarding the complainant's allegations that he was compelled to sign the report because of the police officers' threats, the State party asserts that his parents never made any statement or allegation to that effect, said that they had been under any pressure or threat from the Moroccan authorities or filed a complaint in this regard.

4.4 The complainant appeared before the prosecutor on 1 March 2010, after the period of police custody had ended, and, on the same day, he was brought before an investigating judge for a preliminary examination in the presence of his lawyer.¹³ A detailed examination took place before the investigating judge on 17 March 2010, also in the presence of the complainant's lawyer.¹⁴ At this examination, the complainant retracted the statements that he had made to the criminal investigation police regarding the charges against him.

4.5 The judicial officer in charge of the case referred it to the Rabat Court of Appeal on 24 May 2010, once the proceedings before the investigating judge were finished. The complainant was then given a trial where the rights of the defence and all fair trial guarantees were respected. He was able to challenge the decisions against him at first and second instance and, on 9 January 2012, the Rabat Court of Appeal reduced his sentence from 10 years' imprisonment to 5.¹⁵ The complainant filed an appeal for review of this decision as well, and the appeal was dismissed on 30 May 2012.

4.6 With respect to the second case, the State party explains that the complainant always stood out during his incarceration at the Salé prison because of his particularly aggressive behaviour towards the prison staff, and he organized several protests there,¹⁶ going so far as to instigate a large riot on 16 May 2011 that endangered the physical integrity of several hundred people, including the inmates themselves. With a dozen inmates, he climbed the roof of the prison, took prison officials hostage and threatened to kill them. During these events, almost 200 staff members were seriously injured, and large-scale material damage was done. For example, cell doors and windows were wrecked and the electrical system and drinking water pipes were destroyed. The country's flag was also ripped up, an attack on a national symbol. The next day, owing to the significant damage done to the Salé prison, the inmates concerned were transferred to other prisons pending the restoration of the premises. The complainant was thus transferred to the Toulal local prison on 17 May 2011.

4.7 Following a disciplinary measure taken against him for his involvement in the events, the complainant was placed in a punishment cell. He was held for only four days at the Toulal prison. On 21 May 2011, he was transferred to the Salé 2 prison to make it easier for him to appear before the Rabat Court of Appeal in connection with the new proceedings that had been initiated against him. In this regard, the State party categorically rejects the allegations regarding a "situation of incommunicado detention comparable to an enforced disappearance" that is said to have lasted 15 days.

4.8 The complainant was interviewed by the criminal investigation police on 1 June 2011, and it could be established on the basis of that interview that he was the main instigator of the riot. The prosecutor filed an application to commence proceedings on 2 February 2012

¹³ A copy of the record of this preliminary examination is in the file.

¹⁴ A copy of the record of this detailed examination is in the file.

¹⁵ The complainant was convicted of forming a criminal group to prepare and commit acts of terrorism as part of an organized effort to seriously undermine public order and of handling funds with the intention of applying them in the commission of terrorist acts.

¹⁶ Between 25 and 27 February 2011 and between 17 and 25 March 2011.

and, after the complainant was given a preliminary examination on 8 February 2012 and a detailed examination on 23 February 2012, in the presence of his lawyer, the investigating judge decided that the complainant should be prosecuted.¹⁷ On 24 May 2012, the complainant was referred to the Rabat Court of Appeal, which sentenced him to 2 years and 6 months in prison, which was reduced on appeal on 8 October 2012 to 2 years' imprisonment.

4.9 The State party is astonished by the allegations that the terrorism trial was a "summary" one, as it took place from 1 March 2010 to 30 May 2012. The complainant was transferred to the Tiflet 1 prison on 12 July 2012, after he asked to be closer to his family, and then to the Tiflet 2 prison, which is adjacent to the Tiflet 1 prison, on 15 July 2016. He served his sentence at these two facilities in accordance with the law and enjoyed all the rights afforded to prisoners. He was released on 18 February 2017, after completing his two sentences, and on 22 February 2017 he left Morocco for Germany.

4.10 The State party argues that the complaint is inadmissible for failure to exhaust domestic remedies, as, contrary to what the complainant asserts, neither he nor his defence counsel ever raised any allegations of torture or ill-treatment during the proceedings related to his terrorist activities, either before the investigating judge or before the Rabat Court of Appeal. Nor did he file any complaints with the courts or the competent national institutions. The complainant's defence counsel raised the complainant's allegations of torture and ill-treatment only in connection with the case relating to the riot that he had instigated.

4.11 The State party argues that, although there was a decision to take no further action on the complaints, remedies through which the complainant could assert his rights remained open and available to him, as any such decision is not final to the extent that the person subject to it can adduce new or relevant evidence to allow the courts to assess his or her claims.

4.12 As for the complainant's conditions of detention, the State party points out that he was always held under conditions that were completely normal and that met the relevant international standards. Following the complaints made by the complainant's family about the ill-treatment that he had allegedly been subjected to after the riot that he had caused, the General Delegation for Prison Administration and Reintegration had him undergo a medical examination in August 2011. The examination was performed by a competent doctor who found that the complainant showed no signs of violence or torture. The complainant always received appropriate medical care.

4.13 While he was detained at the Salé 2 prison, the complainant received regular visits from his family and his lawyers.¹⁸ Because he holds German nationality, he was allowed to receive several visits from German consular staff accredited in Rabat. His situation was also closely monitored by the National Human Rights Council. In addition, he was visited twice, on 26 March 2015 and 25 July 2016, by the Regional Commission of Rabat-Salé-Kénitra and again as part of a general visit to the prison. The delegation from the Regional Commission was able to talk to him and examine his conditions of detention. It also made recommendations to the prison governor regarding the length of time the complainant had access to such things as a landline telephone and his correspondence – an issue about which his father had complained.

4.14 At the Tiflet 2 local prison, a modern facility that was opened in 2016 and meets satisfactory prison standards, the complainant was able to exercise all his rights. He was held in a single-person cell meeting all the standards for ventilation, lighting, hygiene and floor area – prison conditions that were the same as the ones in which he had been held prior to his transfer to the Tiflet 2 prison. There, he received his correspondence and newspapers and magazines in Arabic and German. In addition, he had access to the cell next to his own, which

¹⁷ The grounds for the prosecution were the following: holding individuals against their will, destroying buildings and public property, destroying and damaging property intended for public purposes, rebelling and participating in a rebellion with assault and battery.

¹⁸ The State party indicates that the complainant was assisted by four lawyers, the dates of whose visits to him included the following: 31 May, 9 and 24 June, 6, 14 and 28 July, 2 and 19 August, 23 and 30 September, 2 and 11 November and 23 December 2011, as well as 10, 14 and 22 February, 5 April, 9, 16 and 25 May, 5, 19, 26 and 27 June and 5, 9 and 12 July 2012.

was unoccupied, to prepare his meals. Over the period of his imprisonment, he had 44 on-site medical visits for common complaints, for which he received symptomatic treatment; was examined by the prison doctor whenever he requested it; and was given treatment whenever called for because of the state of his health. Regarding the complainant's allegation that he was rushed to hospital, the State party reiterates that it is completely unfounded.

4.15 As to the merits of his complaint, the State party reiterates that the complainant never raised allegations that he was tortured while in police custody, nor did he submit any request for a medical examination, as provided for under article 134 of the Code of Criminal Procedure.

4.16 With respect to the second case, concerning the riot, the State party indicates that, on the basis of press reports regarding allegations of forced confessions and of torture in prisons and after letters were sent about them by the Ministry of Justice to the public prosecutor at the Rabat Court of Appeal on 25 July and 7 September 2011, an investigation was launched on 16 August 2011. In this connection, on 20 September 2011, the public prosecutor's office interviewed the director of prisoner safety, who stated that the complainant had at no time been subjected to ill-treatment, nor for that matter had he ever filed a complaint or expressed any grievance, through either administrative or judicial channels, regarding ill-treatment. The director, who had personally overseen the complainant's transfer, also stated that, during the transfer from the Toulal 2 prison to the Salé 2 prison, he had observed no signs of violence on the complainant. On the basis of the results of the investigation, it was decided on 22 September 2011 to discontinue the proceedings because of a lack of evidence. On 5 March 2013, the prosecutor received, through the Ministry of Justice, a complaint from the National Human Rights Council regarding the same allegations of torture, and it was also decided to take no further action on that complaint because of a lack of evidence.

4.17 Finally, the State party points out that the complainant began to raise allegations of torture and ill-treatment only after the riot that he had instigated, while the judicial review of the first decision regarding his involvement in terrorist plots was under way. The allegations of torture and ill-treatment thus became a defence strategy for him aimed at exonerating himself from all the acts of which he has been accused, including those that he had instigated in prison.

Complainant's comments on the State party's observations

5.1 In his comments of 15 April 2021, the complainant again sets out the acts of torture to which he was subjected. He then states that, contrary to what the State party asserts, he was never held in a single-person cell meeting all the standards for ventilation and hygiene, but was kept in total isolation, without the right to fresh air or daylight, throughout the period of his imprisonment at the Tiflet prison. It is for this reason that, as he has already indicated, he again expressed his condemnation of the arbitrary nature of his detention in late May 2016, which led to further abuse being inflicted on him.

5.2 On the merits, the complainant argues that Act No. 03-03 relating to counter-terrorism provides for access to a lawyer only after six days, for a maximum of 30 minutes and with no guarantee of confidentiality. However, no lawyer was able to visit him during the entire 12 days that he spent in police custody, in violation of the Act, which the State party does not contest. In addition, the Working Group on Arbitrary Detention found, during its visit to Morocco in December 2013, that many cases submitted to the courts, particularly terrorism cases, were based solely on confessions by the accused, in the absence of material evidence.¹⁹ Although the Committee recommended that the State party take all steps necessary to ensure that criminal convictions were based on evidence other than the confession of the persons charged, especially when such persons retract their confessions during the trial,²⁰ in practice, in court, a confession still suffices for the accused to be convicted.

5.3 In response to the State party's claims that no complaint of torture was made, the complainant reiterates that he had, from his first examination before the investigating judge, reported the acts of torture that he had experienced at El Maarif police station. With respect

¹⁹ See [A/HRC/27/48/Add.5](#).

²⁰ [CAT/C/MAR/CO/4](#), para. 17.

to the acts of torture at the Salé prison, they had been reported in official documents from the German consular authorities, whereas the complainant had decided to remain silent in the belief that the public prosecutor's office would not, in any event, have fulfilled its obligation and would, as usual, have failed to launch a prompt and impartial investigation.

5.4 In addition, the complainant states that his father had first written to the Ministry of Justice as early as 8 June 2012 to inform it that his son had been subjected to torture at the Salé 2 and Toulal prisons and had described in detail the physical injuries inflicted. In a letter of reminder sent to the Ministry on 26 May 2014, the complainant's father described in detail the acts of torture to which his son had been subjected, named the perpetrators and requested a medical examination and the opening of an independent investigation. This letter was never acted on, for if, as the State party claims, such an investigation had really been conducted, the complainant would have been heard in connection with it and a medical examination would, of course, have been performed to establish the presence of signs or sequelae of the alleged acts of torture – which was not the case.

5.5 On 19 May 2021, the complainant submitted a news article about his case.²¹

Additional submissions by the parties

State party

6.1 On 15 July 2021, the State party condemned the complainant's persistence in trying to exonerate himself from the acts for which he was arrested, prosecuted and convicted in Morocco. It also expressed surprise at the arguments used by the complainant to explain the failure to file a complaint regarding the alleged acts of torture at the Tiflet prison, given that the public prosecutor's office had, beginning in 2011, opened investigations on the basis of several complaints and letters from his parents – investigations that were then closed because of a lack of evidence.

6.2 The State party points out that, after it received a complaint from the complainant's parents on 30 May 2012²² – and not 8 June 2012,²³ as reported by his counsel – stating that the complainant had been tortured at the Salé 2 prison, the public prosecutor at the Rabat Court of Appeal, as an initial step, asked the prison governor to prepare a report on the matter. On 25 July 2012, the governor sent the prosecutor his report, in which he denied the allegations of torture and ill-treatment and underscored the hostile and aggressive behaviour of the complainant towards prison staff. Then, on 3 August 2012, the public prosecutor's office ordered the Tiflet criminal investigation police to interview the complainant.²⁴ On 15 August 2012, the complainant was, contrary to what he claims, indeed interviewed. During the interview, he claimed to have been tortured at the Salé 2 prison in 2011.

6.3 The State party notes that, even though the complainant no longer resides in Morocco, several staff members at the Salé 2 prison who were mentioned in his parents' complaint were interviewed in Salé by the criminal investigation police, on the instructions of the public prosecutor's office. They all denied the complainant's allegations, including that he had been handcuffed. They also stated, with regard to the allegations concerning the placement of the complainant in solitary confinement, that because of his prisoner profile, he had been placed, as permitted by law, in a single-person cell to prevent him from influencing other inmates and avert any further attempts to riot. The public prosecutor's office therefore decided to take no further action on this complaint, as it had with the other complaints, since the results of the investigation conducted had not substantiated the complainant's allegations. His father was informed of the decision to take no further action on the complaint.

6.4 As for the letter from the complainant's father dated 26 May 2014, in which he requested that his son be given a medical examination, the State party points out that no such

²¹ Ali Lmrabet, "Mohamed Hajib: An Investigation into the Moroccan Secret Service's Public Enemy No. 1", *Middle East Eye*, 9 May 2021.

²² The letter dated 30 May 2012, from the complainant's father to the public prosecutor at the Rabat Court of Appeal, is in the file.

²³ The letter dated 8 June 2012, from the complainant's father to the Ministry of Justice, is in the file.

²⁴ A copy of the order in question is in the file.

request was received by the public prosecutor's office and that the complainant had, moreover, refused to keep an outpatient medical appointment.

6.5 With respect to the allegations regarding acts of torture suffered in May 2016, the State party notes that, on the instructions of the public prosecutor at the Rabat Court of Appeal, officers from the criminal investigation department at the Rabat-Salé-Témara-Khémisset police headquarters interviewed the former governor of the Tiflet 1 local prison, the coordinator of the General Delegation for Prison Administration and Reintegration at the Tiflet 1 prison and other staff members who worked at the prison at the same time. On the basis of the interviews, it was determined that, contrary to the complainant's claims, he could not have been handcuffed or even tied up given the type of bed that was in his cell. Furthermore, the State party cannot help but wonder whether a prisoner who, according to his own statements, was blindfolded would be able to say whether a particular person was or was not present.

6.6 The interviews also revealed that the complainant had in reality worn the orange outfit to protest against the decision of the General Delegation for Prison Administration and Reintegration to no longer exclusively reserve a visiting room for the families of inmates convicted under the counter-terrorism law in connection with the management of prisoners of this category. As for the complainant's assertions that he was not the instigator of the 2011 riot at the Salé prison, they have now been publicly contradicted by his own regular, explicit boasts on his YouTube channel that he was the main leader of the riot, which he even describes as an "epic".

6.7 The State party informs the Committee that videos by two of the complainant's fellow inmates that confirm he was a fighter for Al-Qaida have been put online. Given the nature of the complainant's allegations, an investigation was ordered by the public prosecutor – even with the complainant not being present in Morocco – and it is still under way.

6.8 On 24 August 2021, the State party informed the Committee that a video had been posted on social media in which the complainant openly and publicly advocates terrorism and incites hatred of and violence against Morocco and its institutions.

Complainant

7.1 On 6 September 2021, the complainant pointed out that he had no contact with the two individuals who had allegedly been his fellow inmates. As to the State party's claim that the public prosecutor's office had received no request for a medical examination, he noted that his father had repeated his request for a medical examination in the complaint that he had sent to the Ministry of Justice on 26 May 2014 and which had been registered under number 24505.²⁵

7.2 The complainant points out that, between the time of his arrest and his release, his father made a number of efforts regarding him. He first went to the main office of the Moroccan Association for Human Rights, which sent a letter to the Ministry of Justice on 25 February 2010, to ask that an investigation be opened into the circumstances of the complainant's arrest and the conditions of his detention.²⁶ On 18 May 2011, his father contacted the Secretary General of the National Human Rights Council to ask that an investigation be opened into the whereabouts of his son after they had lost all contact with him during his detention at the Salé prison. Finally, his father complained about the acts of torture inflicted on the complainant at the Salé and Toulal prisons.

7.3 The complainant asserts that, although the State party attempts to deny the allegations of torture, several reports by German doctors have demonstrated the impact that the torture has had on his health. For example, a report prepared by a German neurologist and psychiatrist on 25 June 2018 states that the complainant has neurological problems and has been receiving regular psychiatric care since 2017. A report dated 23 October 2018 that was prepared for the German employment agency by a medical expert notes that the complainant will have a disability for the next two or three years and that it cannot be ruled out that he

²⁵ A copy of the complaint is in the file.

²⁶ A copy of the letter is in the file.

will be permanently unable to work.²⁷ Today, the complainant has a 50 per cent disability, as attested to by his disability card, because of the torture he was subjected to while in detention in Morocco.

7.4 On 12 October 2021, in response to the video provided by the State party, the complainant noted that the State party had, on the basis of similar videos, asked the German public prosecutor's office several times to prosecute him for having allegedly called for violent acts of terrorism. The Duisburg public prosecutor had denied the requests on the grounds that the statements identified on the complainant's Facebook page were merely expressions of political opinion. Finally, on 8 February 2021, the International Criminal Police Organization (INTERPOL) Commission for the Control of INTERPOL's Files cancelled an international arrest warrant issued by the State party and found that the data concerning the complainant were incompatible with the rules on the processing of personal data in the INTERPOL information system.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any complaint submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee notes that the complainant's case was brought to the attention of the Working Group on Arbitrary Detention and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in 2012. These extra-conventional procedures or mechanisms do not constitute procedures of international investigation or settlement within the meaning of article 22 (5) (a) of the Convention and the examination of the complainant's case by these procedures therefore does not render the communication inadmissible under this provision.²⁸

8.2 The Committee notes that the State party has contested the admissibility of the complaint on the grounds that domestic remedies have not been exhausted, pointing to the fact that neither the complainant nor his counsel raised the allegations of torture or ill-treatment relating to acts that had occurred while he was in police custody before the prosecutor, the investigating judge or the court during the trial. The complainant responds that he reported these acts of torture at all stages of the proceedings.

8.3 The Committee notes that although the complainant did not have access to a lawyer while in police custody – which is not disputed by the State party – he was assisted by counsel during his examinations before the investigating judge on 1 and 17 March 2010. The complainant claims that he reported to the investigating judge, and also during the trial, that his confession had been extracted by torture. However, the Committee observes that, while the records of the complainant's preliminary and detailed examinations before the investigating judge document that the complainant retracted the statements he had made to the police, no mention is made of an allegation that the confession was extracted by torture. The Committee also observes that the complainant has not contested or commented on the records of the two examinations produced by the State party.

8.4 Furthermore, the Committee notes that the complainant has not produced any copies of any complaints or domestic court judgments to demonstrate that he had indeed, as he claims, reported at all stages of the proceedings that his confession had been extracted by torture. Nor has he given any reason for being unable to produce such copies. Finally, the Committee notes that the complainant claims that his parents indicated in a letter to the head of the Department for Prison Administration and Reintegration dated 25 March 2014 that he had signed his confession under torture, but he has not provided a copy of the letter, although he has provided copies of other requests made by his parents on his behalf. In addition, the

²⁷ Copies of both reports are in the file.

²⁸ *Bendib v. Algeria* (CAT/C/51/D/376/2009), para. 5.1; and *Niyonzima v. Burundi* (CAT/C/53/D/514/2012), para. 7.1.

Committee notes that, in connection with the second case involving him – that is, the riot of 16 May 2011 – the complainant did provide the Committee with copies of complaints made by his father, which bear the stamp of acknowledgement of receipt by the registry of the Ministry of Justice. Furthermore, on 16 August 2011, an investigation was launched into the allegations regarding a forced confession and torture after the riot. The Committee has received no explanation as to why, if the complainant’s lawyer and family had reported the torture to which he had been subjected while in police custody at several stages of the proceedings, the complainant has not been able to prove it, as he has been able to do with respect to the complaints regarding acts of torture after the riot. Moreover, those complaints make no mention of the acts of torture occurring while he was in police custody. Accordingly, the Committee concludes, pursuant to article 22 (5) (b) of the Convention, that the complainant has not been able to demonstrate that he exhausted domestic remedies with respect to his claim under article 12, read in conjunction with article 1, that he was tortured while in police custody and his confession was extracted by torture²⁹ and his claim under article 15 with respect to the use at his trial of a confession obtained by torture. These claims are therefore inadmissible.

8.5 The Committee notes the complainant’s statement that he did not report his torture at the Tiflet prison in May 2016 because he feared that he would face reprisals as his release date neared. However, the Committee also takes note of the State party’s statement that, on the instructions of the prosecutor, the police interviewed the former governor of the Tiflet 1 local prison, the coordinator of the General Delegation for Prison Administration and Reintegration at the Tiflet 1 prison and other staff members who worked at the prison at the same time. Yet, the State party does not indicate what steps were taken to follow up on the investigation or whether the investigating authorities interviewed the complainant, ordered a medical examination or took into consideration the complainant’s medical examinations in Germany. In the absence of any pertinent information from the State party capable of showing that the complainant could have had the benefit of an effective investigation, the Committee concludes that the State party has failed to demonstrate that the existing remedies for reporting the acts of torture that occurred in May 2006 were, in practice, made available to the complainant to enable him to assert his rights under the Convention.

8.6 The Committee takes note of the complainant’s allegations under article 2 (2) of the Convention that the acts of torture to which he was subjected were permitted and facilitated by the lack of fundamental safeguards under Act No. 03-03 relating to counter-terrorism. However, it notes that the complainant has not provided any evidence in that regard and has instead constructed his allegations on the basis of general statements. The Committee therefore concludes that the complainant’s claim under article 2 (2) of the Convention is inadmissible for lack of substantiation, in accordance with article 22 of the Convention and rule 113 (b) of its rules of procedure.

8.7 Finally, the Committee takes note of the complainant’s allegations that the State party has failed to meet its obligations under article 4 of the Convention and that he was placed in solitary confinement, in violation of article 16. However, it is of the opinion that the complainant has failed to substantiate these claims for purposes of admissibility.³⁰

8.8 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 with respect to articles 2 (1) and 11 to 14, read in conjunction with article 1, of the Convention with regard to the complainant and with respect to article 16 of the Convention with regard to his family.

Consideration of the merits

9.1 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.

9.2 The Committee notes the complainant’s allegation that the physical ill-treatment he suffered at the Salé and Toulal prisons following the riot of 16 May 2011 and then at the

²⁹ *A.L. v. Maroc* (CAT/C/72/D/805/2017), paras. 6.2–6.3.

³⁰ *Kirsanov v. Russian Federation* (CAT/C/52/D/478/2011), para. 10.5.

Tiflet prison in May 2016 constitutes torture under article 1 of the Convention: in May 2011, he was, for example, beaten by guards on different parts of his body, causing his right eardrum to burst and his nose to break, kept in painful positions for long periods of time and threatened with rape, and, in May 2016, his back was burned with a red-hot iron bar while he was held on the bed in his cell, bound hand and foot and blindfolded. With respect to the acts of torture that occurred in May 2011, a lawyer and a representative of the German consulate were able to see the scars on his hands and feet. The State party responds that a medical examination conducted in August 2011 established that the complainant showed no signs of violence or torture. However, the State party has not provided a copy of the medical report, nor does it mention the opinion of the expert on the consistency of the complainant's scars with acts of torture. Moreover, the Committee notes that, on 26 May 2014, the complainant's father unsuccessfully requested that the Ministry of Justice have the complainant's left ear examined by an independent doctor, as it was causing him great pain. With respect to the acts of torture that occurred in May 2016, the Committee takes note of the photographs of the complainant's scars and the medical reports issued by the German authorities. 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 detention at the Salé and Toulal prisons in May 2011 and at the Tiflet prison in May 2016 constitute torture within the meaning of article 1 of the Convention.³¹

9.3 With respect to the alleged violation of article 2 (1) of the Convention, the Committee recalls that it expressed concern about allegations of, inter alia, torture, ill-treatment and the extraction of confessions by torture³² in the State party and urged the State party to immediately take substantive steps to investigate acts of torture and to prosecute and punish those who have committed such acts, and also to take all steps necessary to ensure that criminal convictions are based on evidence other than the confession of the persons charged, especially when such persons retract their confessions during the trial. In the case at hand, the complainant was convicted of engaging in terrorist acts solely on the basis of his confession. In the light of the foregoing, the Committee finds a violation of article 2 (1), read in conjunction with article 1, of the Convention.³³

9.4 The Committee also notes the complainant's allegations under article 11 of the Convention that, while he was in police custody: (a) he did not have access to a lawyer; (b) he did not receive medical assistance; (c) he was arrested without being informed of the charges against him; and (d) his family was not informed of his arrest. In addition, he was subjected to torture, ill-treatment and abuse by prison authorities in May 2011 and May 2016 and did not have access to effective remedies against the torture and ill-treatment. The Committee recalls its concluding observations on the fourth periodic report of Morocco, in which it regretted the lack of information on the practical application of basic safeguards such as examination by an independent physician and notification of the family.³⁴ In the present case, the State party provided information on the complainant's conditions of detention, on how his mother was informed about his arrest, on how he was informed of the charges against him, on the medical care he received and on his complaints of ill-treatment in detention only for the period following the riot of 16 May 2011, while he had been in detention since 18 February 2010. In the absence of any supporting information from the State party to show that during the entire period of the complainant's detention – and above all while he was in police custody – his situation was indeed monitored, and in the absence of any evidence as to the effective handling of the complainant's complaints regarding his torture after the riot of 16 May 2011, the Committee finds a violation of article 11 of the Convention.³⁵

9.5 The Committee must also decide whether the State party conducted impartial investigations into the acts of torture of May 2011 and May 2016, as called for by article 12 of the Convention. The Committee takes note of the complainant's allegations that: (a) his

³¹ *Asfari v. Morocco* (CAT/C/59/D/606/2014), para. 13.2.

³² CAT/C/MAR/CO/4, paras. 10 and 17. See also CCPR/C/MAR/CO/6, paras. 23–24.

³³ *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.

³⁴ CAT/C/MAR/CO/4, para. 7.

³⁵ *E.N. v. Burundi*, para. 7.6.

father explicitly reported the acts of torture to which the complainant had been subjected in May 2011 to the prosecutor, on 30 May 2012, and to the Ministry of Justice, on 8 June 2012, and, on 26 May 2014, asked the Ministry of Justice to have a medical examination performed; (b) the signs of torture committed in May 2011 were verified by a lawyer and an employee of the German consulate who had visited him; (c) several photographs and reports produced by German doctors in 2018 attest to the acts of torture that had taken place in May 2016 and the impact that they had had on the complainant's health; and (d) he was never interviewed and no medical examination was ordered. With respect to the acts of torture that occurred in May 2011, the State party responds that the prosecutor, as an initial step, asked the prison governor to prepare a report, which was issued on 25 July 2012; that on 3 August 2012, the public prosecutor's office ordered the criminal investigation police of Tiflet to interview the complainant; and that on 15 August 2012, the complainant was, contrary to what he claims, indeed interviewed. With respect to the acts of torture that took place in May 2016, the State party notes that an investigation was opened as a matter of course and that several prison employees were interviewed. The Committee notes that the complainant does not contest the State party's assertions, in particular the fact that he actually was interviewed on 15 August 2012.

9.6 The Committee notes that: (a) the three investigations opened into the allegations of torture in May 2011 were closed because of a lack of evidence; (b) the complainant was interviewed during only one of them; and (c) no medical examination was ordered in any of them, despite the explicit request of the complainant's father on 26 May 2014 and despite the visible signs of torture that the complainant showed, which were observed by his lawyer and a representative of the German consulate. With respect to the investigation opened as a matter of course into the allegations regarding acts of torture suffered in May 2016, the Committee also notes that the complainant was not interviewed and there was no medical examination, despite the marks that were present on the complainant's body, which were, moreover, verified in photographs and by medical examinations performed in Germany after his release. Furthermore, the State party did not inform the Committee of the results of this investigation. In the light of the above, the Committee considers that the manner in which the investigations into the allegations of torture suffered by the complainant in May 2011 and May 2016 were conducted is incompatible with the State party's obligations under article 12 of the Convention to ensure that the competent authorities proceed to a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed.³⁶

9.7 In view of the foregoing, the Committee does not consider it necessary to examine separately the complainant's claims under article 13 of the Convention.³⁷

9.8 Regarding article 14 of the Convention, the Committee notes that the complainant claims that he suffers from physical and psychological sequelae of the abuse to which he was subjected. The fact that the prosecutor did not order a medical examination prevented the complainant from benefiting from rehabilitation, compensation, care and guarantees of non-repetition of the crime. The Committee considers that the failure to conduct a thorough, prompt and impartial investigation denied the complainant any possibility of exercising his right to redress, in violation of article 14 of the Convention.³⁸

9.9 The Committee notes the complainant's allegation that his family was not informed of his transfer to the Toulal prison on 17 May 2011, that it was not until 28 May 2011 that his family received information about his whereabouts and that that information came from the German consular authorities, not the Moroccan authorities. On 18 May 2011, the complainant's father informed the National Human Rights Council that he had lost contact with his son on 17 May 2011 and requested an investigation into his whereabouts but received no response. Finally, the Committee notes that the State party has not contested these allegations. Accordingly, the Committee is of the view that the lack of information for almost two weeks about the complainant's whereabouts caused anguish and distress for his family and that the authorities were indifferent to the family's efforts to ascertain where he was and

³⁶ *Asfari v. Morocco*, para. 13.4.

³⁷ *Aarrass v. Morocco* (CAT/C/68/D/817/2017), para. 8.7.

³⁸ *Niyonzima v. Burundi*, para. 8.6; and *Asfari v. Morocco*, para. 13.6.

what had happened to him after the riot of 16 May 2011. In the absence of an explanation from the State party, the Committee considers that the facts reveal a violation of article 16 of the Convention with regard to the complainant's family.³⁹

10. The Committee, acting pursuant to article 22 (7) of the Convention, concludes that the facts before it disclose violations by the State party of articles 2 (1), 11, 12 and 14, read in conjunction with article 1, of the Convention with regard to the complainant and of article 16 of the Convention with regard to his family.

11. The Committee urges the State party to: (a) initiate a thorough and impartial investigation into the incidents in question, in full conformity with the guidelines of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), with a view to bringing those responsible for the victim's treatment to justice; (b) provide the complainant and his family with fair and adequate compensation, including the means for the fullest rehabilitation possible; and (c) refrain from any form of pressure, intimidation or reprisals likely to harm the physical and mental 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. The State party is also under an obligation to take steps to prevent similar violations in the future.

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

³⁹ *Hernández Colmenarez and Guerrero Sánchez v. Bolivarian Republic of Venezuela* (CAT/C/54/D/456/2011), para. 6.10.