



# 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. 871/2018\*, \*\*

<i>Submitted by:</i>	Sidi Abdallah Abbahah (represented by counsel, Olfa Ouled)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Morocco
<i>Date of complaint:</i>	9 May 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 17 May 2018 (not issued in document form)
<i>Date of adoption of decision:</i>	24 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; systematic monitoring of custody and treatment of prisoners; obligation of the State party to ensure that the competent authorities conduct a prompt and impartial investigation; right to file a complaint; right to redress
<i>Articles of the Convention:</i>	1, 2, 11, 12, 13, 14, 15 and 16

1.1 The complainant is Mr. Sidi Abdallah Abbahah, a Moroccan national born in Western Sahara in 1975. He claims that the State party has violated articles 1, 2, 11, 12, 13, 14, 15 and 16 of the Convention. The State party made the declaration pursuant to article 22 (1) of the Convention on 19 October 2006. The complainant is represented by counsel, Olfa Ouled.

1.2 On 17 May 2018, pursuant to rule 114 (1) of its rules of procedure, and in the light of the information provided by the complainant, the Committee, acting through its Rapporteur

\* 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, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Peter Vedel Kessing. Pursuant to rule 109, read in conjunction with rule 15, of the Committee's rules of procedure, and paragraph 10 of the guidelines on the independence and impartiality of members of the human rights treaty bodies (the Addis Ababa guidelines), Essadia Belmir did not participate in the examination of the communication.



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 further deterioration in his state of health. In the light of the information provided by the complainant on 1 June, 29 June and 21 September 2018, the Committee restated its request for all the interim measures requested on 17 May 2018. On 21 September 2018, the Committee also requested the State party to respond to the complainant's allegations regarding compliance with the request for interim measures. The State party's responses are contained in paragraphs 6.1–6.5 of this decision.

1.3 On 21 September 2018, at the request of the State party, the Committee, acting through its Rapporteur on new complaints and interim measures, decided to examine the admissibility of the communication separately from the merits. On 5 August 2019, the Committee declared the complaint admissible. It recalled the request for interim measures and asked the State party to facilitate family visits to the complainant and allow the complainant to have regular access to his family and counsel, taking into account the great distance between them. In this respect, the Committee thus asked the State party to transfer the complainant to a prison closer to his family. In the light of the information provided by the complainant, on 16 October 2020 the Committee restated its request for implementation of all the interim measures and requested the State party to respond to the complainant's allegations regarding compliance with the request for interim measures. The State party's responses are contained in paragraph 9.10 of this decision.

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

2.1 Beginning on 9 October 2010, thousands of Saharans living in Western Sahara left their homes to move to temporary camps located on the outskirts of towns, including the Gdeim Izik camp, near Laayoune. The aim of this action was to denounce the discrimination to which Saharans consider themselves to be subjected by the State party. The complainant joined the camp at its inception and was the head of the committee responsible for providing the residents of the camp with supplies.

2.2 On 8 November 2010, members of the Moroccan army, armed with water cannons and tear gas, attacked the Gdeim Izik camp, which was at the time occupied by more than 20,000 Saharans. During the forced evacuation of the camp, clashes broke out between the army and Saharan demonstrators, during which Moroccan soldiers were reportedly killed. This was followed by a violent wave of repression led by the Moroccan security forces and supported by Moroccan civilians residing in Saharan territory.

2.3 On 19 November 2010, the complainant was abducted by the Moroccan authorities at his house, in the company of M.B., who is also currently being held with him in connection with the Gdeim Izik case. The special forces forced both to the ground, beat them, insulted them and threatened to shoot them dead. Despite the fact that the two friends, in a state of shock, did not react, the members of the special forces began raining frenzied blows all over their bodies and faces. This brutal beating was accompanied by insults and threats. They were handcuffed, blindfolded and thrown into vehicles, where they continued to be subjected to violence at the hands of the police until they reached the offices of the Directorate-General of National Security in Laayoune. The complainant was never presented with an arrest warrant.

2.4 At the offices, the complainant was questioned for nine hours, completely naked, with his hands cuffed behind his back and a blindfold over his eyes. He was subjected to all kinds of violent treatment, from being beaten all over his naked body with various implements, including iron bars, to being struck on the testicles with a belt. The officers also forced his legs apart so that they could insert a plastic chair between them. By pulling the complainant's handcuffed wrists down towards the leg of the chair, they made the pain spread throughout his body. The complainant was also subjected to specific forms of torture, including *falaka* (foot whipping) and *poulet rôti* (roast chicken), with the aim of causing him maximum suffering, stopping short of immediate death, in order to force him to confess. He was able to recognize the voice of the former Chief Superintendent, who showed the complainant a photograph of a man and asked the complainant to identify him. When the complainant repeated that he did not know the identity of the individual in the photo, the senior official

became irate and ordered the officers present to step up the torture. The complainant's torturers also subjected him to degrading treatment, including threats of rape and sexual abuse, and urinated on his face, which was covered with open wounds. The purpose of these acts was to force him to identify his friend M.B. in photos and videos in which M.B. did not appear. Despite the demands of the authorities, the complainant refused to say that the photographs in question were of his friend M.B. The officials thus continued to torture him. Later, the torturers removed the blindfold from the plaintiff's eyes to show him a video downloaded onto one of their phones. It showed a man urinating on a corpse, but the complainant denied that this person was his friend M.B.

2.5 The complainant was thrown back into a car, blindfolded and handcuffed, and then taken to the gendarmerie in Laayoune. There, he was left on his knees, blindfolded and handcuffed, facing an outside wall of the police station with his friend M.B., whom he recognized from his cries of pain. After spending some time in this position, the complainant was taken inside the building. His torturers showed him the same photo and video. When he said, once again, that he did not know the identity of the person appearing in them, he was subjected to the same acts of violence and torture while held in a corridor under the supervision of gendarmes. Wearing light clothing on a winter's night, he was then left for more than 24 hours in front of the wall, handcuffed, blindfolded, thirsty, hungry, exhausted and extremely weak from the two days of torture to which he had been subjected. During those 24 hours, the guards continued acts of torture, beating him, urinating on him, pouring oil on his body and filling his airways with lit cigarettes.

2.6 On 21 November 2010, when the 24 hours had elapsed, the complainant was taken to an office in the gendarmerie where he was forced to sign documents whose content was unknown to him. During the legal proceedings, he discovered that the police report dated 20 November 2010<sup>1</sup> that he had signed contained false accusations and answers to questions that he had never answered.

2.7 On 22 November 2010, the complainant was flown to Rabat in order to meet the investigating judge, who was wearing a military uniform. During the journey, the law enforcement officers continued to beat him. During the interview, the complainant pointed out the marks made by the blows and the numerous wounds covering his body. He also reported the torture to which he had been subjected during the two days preceding his meeting with the investigating judge. None of his allegations were recorded and no investigation into them was launched. The investigating judge simply ordered that he should be incarcerated in Salé 2 prison in Rabat from the following day. He was accused of deliberately beating a police officer to death, in collaboration with a criminal gang.

2.8 At Salé 2 prison, the complainant was placed in solitary confinement for over three weeks, during which he had access only to the minimum level of subsistence necessary to survive. He was also subjected to bouts of torture similar to those that he had experienced previously. At the end of these three weeks, on 8 December 2010, the complainant was able to receive a visit of only 5 minutes from his brother, who had learned only a few days earlier that he was in the hands of the authorities and that he was alive.

2.9 On 4 March 2011, the complainant had his first appearance before the investigating judge. He again reported the torture that he had been subjected to, but once again, no investigation was opened. At a second appearance, on 4 November 2011, the complainant reiterated that he had been forced to sign his confession after being tortured, while handcuffed. The investigating judge, who justified the complainant's indictment on the grounds that he had voluntarily made statements, brought the case before the military court in Rabat. The trial of the complainant and his co-defendants took place on 1 February and from 8 to 16 February 2013, in Rabat. On 15 February 2013, the military court in Rabat

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<sup>1</sup> According to the report, the complainant's family was informed of his detention and the date of his appearance before the prosecutor.

rejected the request for an investigation.<sup>2,3</sup> into the acts of torture.<sup>4</sup> On 17 February 2013, the complainant was sentenced to life imprisonment (on the basis of supposed confessions whose validity he contested because he had been tortured) for belonging to a criminal gang, committing acts of violence leading to the premeditated killing of an official in the performance of his duties and desecrating a corpse.

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

2.11 On 27 July 2016, the Court of Cassation overturned the judgment of the military court and referred the case to the Rabat Court of Appeal. A new trial began on 26 December 2016. The allegations of torture were reiterated by the lawyers and defendants from the outset of the new trial. On several occasions throughout the trial, the defendants all requested that the Court of Appeal set aside the police reports that had been signed under torture and remove them from the record of the proceedings.<sup>5</sup> On 25 January 2017, more than six years after the events, the President of the Court of Appeal agreed to allow the defendants to undergo forensic examinations. However, these examinations were entrusted to three Moroccan forensic doctors who had not been trained in the Istanbul Protocol and who did not offer sufficient guarantees of independence. The complainant therefore refused to submit to the experts' opinion, out of fear that the conclusions of their report would be falsified and used to confirm the validity of the police reports.

2.12 On 19 July 2017, the Rabat Court of Appeal upheld the life sentence handed down to the complainant, after a trial that once again violated all the basic rules of the right to a defence and a fair trial, and the Court did not allow an investigation for torture to be initiated. On 29 September 2017 the complainant lodged an appeal in cassation, which was rejected on 25 November 2020 by the Court of Cassation.

2.13 On 16 September 2017, the complainant was transferred from El Arjat prison to Kenitra prison. As his family and lawyers were not informed, the complainant was deprived of family visits arbitrarily and for no reason. On 4 December 2017, he was placed in solitary confinement in a toilet facility for 10 days, for no reason.<sup>6</sup> He was also denied the opportunity

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<sup>2</sup> The court considered that the accused had had the opportunity to file such a request during the preliminary inquiry but had neglected to do so and that a long period had elapsed between the trial and the preliminary inquiry.

<sup>3</sup> In the statement of case addressed to the military court on 31 January 2013, the complainant's lawyer denounced the fact that the confessions had been signed by the defendants under torture, in violation of article 22 of the Constitution and article 293 of the Code of Criminal Procedure. The court did not take any action. Subsequently, at the hearing held on 8 February 2013, the lawyer denounced the fact that the investigating judge of the military court had not ordered an expert medical examination of any of the defendants, even though some of them showed signs of having been subjected to violent acts. The other defendants' lawyers made the same complaint against the investigating judge. In its interim order of 8 February 2013, the military court recorded the allegations of torture made by the accused, but it failed to take any action. Neither the military court nor the prosecutor responded to these allegations of torture with an investigation. In its report of 4 August 2014, after meeting 22 detainees tried in connection with the closure of the Gdeim Izik camp, the Working Group on Arbitrary Detention expressed its "concern that the allegations of torture and ill-treatment during the almost two years of pretrial detention have not been investigated" (A/HRC/27/48/Add.5, para. 68).

<sup>4</sup> In a report relating to the in-depth questioning conducted on 4 November 2011 in the presence of his defence counsel, the complainant replied by denying everything outright and affirmed that his statements to the criminal investigation department had been made after he had been tortured and that he had signed them while blindfolded.

<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. The statements were thus discussed throughout the six months of the trial, as attested by the judgment, and the ruling on their validity was issued only at the end, at the same time as the verdict, despite the fact that a request had previously been made for them to be declared null and void.

<sup>6</sup> A complaint that his mother submitted to the prison director on 14 December 2017 went unanswered.

to meet with his French lawyer, who was refused entry to Morocco.<sup>7</sup> Furthermore, he did not see a doctor throughout this period, despite the deterioration in his health. The complainant was placed in a damp and poorly ventilated ground floor cell where, according to a description he gave to his family, the walls were covered in mould and water seepage. On numerous occasions, he was confined to his cell for 22 hours a day or more. The courtyard where he was allowed to walk resembled a small corridor and had a high wall that blocked the sun. The complainant was constantly cold and severely affected by the isolation and lack of light. His situation remains unchanged to this day and his family can no longer visit him every week, since the prison is more than 1,200 kilometres from Laayoune. In addition, phone calls with his family are allowed only once a week, for a few minutes.

2.14 On 1 March 2018, the complainant and the rest of the group in Kenitra went on a 24-hour hunger strike, refusing to eat if they were not moved closer to their families and if they continued to be subjected to harassment every day at the hands of the guards. The prison director informed the prisoners that he had received an official note stating that they would be placed in solitary confinement if they started a hunger strike. Consequently, on 9 March 2018, the complainant and the other prisoners were placed in solitary confinement, until 12 April 2018. During the 33 days of the hunger strike, the complainant was placed in a cell measuring just over 2 square metres 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 beside his head when he slept. Since the end of his period in isolation, the complainant has suffered from respiratory distress.

2.15 On 9 March 2018, the complainant's lawyer challenged this new enforcement of solitary confinement. On 12 March 2018, she submitted a complaint to the Crown Prosecutor for ill-treatment intentionally inflicted by a public official. Although this complaint was resubmitted on 10 April 2018, the Moroccan authorities did not reply.

2.16 On 14 May 2018, the complainant's lawyer informed the Committee that the complainant had since 7 May 2018 once again been in solitary confinement. On 27 June, 27 July and 5 September 2018, the lawyer confirmed that the complainant was still spending 22 hours a day in solitary confinement and had not seen a doctor, despite his deteriorating health. Aside from two visits by family members and one phone call every Friday, lasting a few minutes, the complainant was not allowed any contact with the outside world and was subjected to regular, arbitrary searches.

2.17 The complainant suffers every day from the scars caused by the torture that he underwent. He suffers from insomnia, nightmares, night terrors, memory loss, starts and anxiety attacks and has marks on his hands and legs. He also presents symptoms that he claims not to have experienced before he was imprisoned, including back pain, acute leg pain, asthma, intestinal problems and respiratory distress.

2.18 On 16 January 2021, the complainant asked the public prosecutor at the Khémisset Court of First Instance to ensure the implementation of the protection measures requested by the Committee. Despite the scheduling of a medical appointment for 9 March 2021, the complainant has still not been taken to the doctor. His health remains a concern. His conditions of detention have not changed. He is still in solitary confinement.

### **The complaint**

3.1 The complainant states that he has been deprived of contact with other prisoners and that he has no news from the outside. Furthermore, his unheated cell has no natural light or ventilation. He has been deprived of sufficient water and has been able to shower only very rarely, sometimes at intervals of several months. The conditions of detention have an adverse effect on his health, which has deteriorated throughout his many years in detention, particularly since the solitary confinement in which he was placed for 33 days.

<sup>7</sup> Notification of refusal attached to the file, indicating that the complainant's lawyer went to Casablanca on 12 February 2018 but was barred from entering the country and forced to leave the following day. On 23 December 2016, the lawyer had nonetheless received authorization from the Moroccan Ministry of Justice to represent the complainant.

3.2 The physical ill-treatment to which the complainant was subjected during his arrest, his questioning at the police station and, subsequently, his time at the Laayoune gendarmerie, and the treatment to which he was subjected during his transfer by plane in order to force him to confess, amount to acts of torture under article 1 of the Convention. The methods known as *falaka* and “roast chicken” are in essence acts of torture. The acts and treatment to which the complainant was subjected constitute, at the very least, cruel, inhuman or degrading treatment or punishment as set out in article 16. Furthermore, the failure of the Moroccan authorities to establish an effective system to prevent torture constitutes a violation of article 2 of the Convention.

3.3 Despite the signs of physical abuse and the statements made by the complainant before the investigating judge of the military court, the judge ignored his allegations and injuries and did not ask for a medical examination to be carried out. In addition, the military court also failed to take the complainant’s allegations of torture into account when deciding on his conviction. The absence of an investigation to date prevents the complainant from receiving rehabilitation, compensation, support and guarantees of non-repetition of the offence, in violation of article 14 of the Convention.

3.4 With regard to the exhaustion of domestic remedies, almost eight years had passed since the events and since the first allegations of torture had been made, and no investigation had been opened. The annulment of the military court judgment, and the new judgment of the Rabat Court of Appeal, did nothing to change this situation. There is still no independent mechanism to address prisoners’ complaints about ill-treatment in detention.

3.5 The Committee has already noted in the case of *Asfari v. Morocco*,<sup>8</sup> which concerned one of the co-defendants, that Mr. Asfari had denounced the acts of torture to which he had been subjected on several occasions before the various Moroccan judicial authorities, without any investigation being carried out, and that the military court had not taken the allegations of torture into account. The Committee also noted that Morocco had exceeded the reasonable time limit for dispensing justice by waiting more than six years to investigate the alleged acts of torture.

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

3.7 The complainant states that, on 22 November 2010, he appeared, bearing visible signs of torture, before the investigating judge, who did not record these facts or open an immediate investigation. On 4 March 2011, he expressly denounced before the investigating judge the torture to which he had been subjected, but no investigation was opened. In addition, the courts also failed to take his allegations of torture into account when deciding on his conviction. It is therefore clear that the State party has failed to fulfil its obligations under articles 12 and 13 of the Convention.

3.8 Lastly, the complainant has always maintained before the national authorities that his conviction was based solely on alleged confessions, even though he claims not to have confessed to anything, but to have been forced, under torture, in handcuffs and blindfolded, to place his fingerprints as a signature on a document whose contents were unknown to him. The Moroccan authorities never investigated to verify his statements. Despite the statements that he made before the investigating judge, the military court and the Rabat Court of Appeal took the first report into account, even though it contained confessions allegedly extracted under torture. Despite the fact that the complainant has, through his counsel, unsuccessfully contested the probative value of the confessions signed under torture at various stages of the proceedings against him, the Court of Appeal found the police reports to be admissible, without ordering an investigation. By failing to carry out any checks, and by using such

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<sup>8</sup> CAT/C/59/D/606/2014.

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

3.9 The complainant requests the end to his solitary confinement and a check-up by a doctor from outside the prison who can objectively confirm whether his state of health is compatible with his detention.

#### **State party's observations on admissibility**

4.1 On 16 July 2018, the State party contested the admissibility of the complaint on the grounds of non-exhaustion of domestic remedies and abuse of the right to file a complaint.

4.2 The State party specifies that the persons arrested during the dismantling of the Gdeim Izik camp were arrested for their involvement in criminal acts that caused the death of 11 unarmed members of the police force. The trial was followed by civil society and by national and international observers and journalists present at the scene. The decision of the military court was quashed and the case was referred to a civilian court, the Rabat Court of Appeal, which upheld the complainant's sentence of life imprisonment. The complainant filed a new appeal in cassation against this decision. Consequently, the State party believes that domestic remedies have not yet been exhausted, particularly as the legal proceedings are still ongoing.

4.3 The filing of the complaint with the Committee came almost eight years after the alleged events. In this context, the State party wonders at the real reasons that led the complainant to wait so many years before taking this step.

4.4 The complainant has never filed a formal complaint relating to the treatment that he allegedly had been subjected to during or after his police custody and has not taken steps to submit such a complaint to any judicial authority or any other national human rights mechanisms, either at the local or national level. In addition, following the allegations of torture raised before the Rabat Court of Appeal, the Court ordered a medical examination to be conducted, but the complainant refused to submit to it.

#### **Author's comments on the State party's observations on admissibility**

5. In his comments of 17 July 2018, the complainant insists that the lapse of more than eight years since the events, without any investigation being carried out by the State party despite his repeated allegations before the various Moroccan courts, is in itself proof of the ineffectiveness of domestic remedies. The appeal that is still before the Court of Cassation cannot be considered an effective remedy, as according to the complainant, 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. Moreover, the State party, while claiming that domestic remedies have not been exhausted, has not provided any details of effective remedies.

#### **Additional submissions by the parties**

##### *The State party*

6.1 On 21 September 2018, the Committee invited the State party to comment on the allegations made by the complainant regarding compliance with the request for interim measures requested by the Committee. The State party sent its response on 24 October 2018. It vigorously contests the allegations of abuse reported by the complainant, particularly with regard to the transfer procedures to which the complainant was subjected and the specific monitoring of his health.

6.2 At Kenitra prison, in accordance with article 61 of Act No. 23/98 of 25 August 1999 on the organization and functioning of prison facilities, the complainant was subjected to a 10-day disciplinary measure from 4 to 13 December 2017 for violating the internal regulations of the prison, which formally prohibit the introduction and possession of certain objects in cells (in this case, a mobile phone). He also went on a hunger strike from 9 March to 10 April 2018 with other detainees, who were placed in facilities specifically reserved for hunger-striking detainees to facilitate their monitoring, in particular, monitoring of their health status. The placement of prisoners in such dedicated spaces cannot be considered a

disciplinary measure. Throughout this period, the complainant underwent extensive medical monitoring.

6.3 The State party points out that it was on 5 May 2018 – and not on 7 May 2018, as reported by the complainant’s counsel – that the complainant was transferred to Tiflet 2 local prison, a new facility. He is currently being held in a single-person cell – under a regular detention regime – that meets international standards of detention. The placement of a prisoner in a single-person cell cannot under any circumstances be considered as solitary confinement, which is applied in accordance with criteria that are strictly regulated by law. From 7 to 15 May 2018, the complainant was subjected to a disciplinary measure for a further violation of the prison’s internal regulations.

6.4 The State party submits that the complainant has always received appropriate medical attention and all necessary medical care when required. His medical records contain details of all the care that he has received. His treatment is prescribed on an ongoing basis and is not subject to any restrictions. The ways in which doctors from outside the prison contribute to the care provided to prisoners is determined by prison doctors.

6.5 To date, his health remains completely stable and normal.<sup>9</sup> Contrary to the allegations made, he is not prevented from having any contact with the outside world. He is entitled to visits and receives visits from his family in a regular and completely normal manner and communicates freely with his defence counsel. The National Human Rights Council, a national institution for the protection and promotion of human rights that was awarded category A status by the Global Alliance of National Human Rights Institutions, regularly and closely monitors the complainant’s conditions of detention.

#### *The complainant*

7.1 On 8 November 2018, the complainant was still in solitary confinement in Tiflet 2 prison and was entering his thirty-eighth day of a hunger strike to end the solitary confinement and reprisals against him and to gain access to a doctor. Despite the very clear provisions contained in Moroccan law,<sup>10</sup> he had still not seen a doctor. His state of health is continuing to deteriorate, not only because of the effects of the strike, but also because of his precarious conditions of detention, including cold temperatures and a lack of blankets or any other form of protection against them.

7.2 On 20 December 2018, the complainant informed the Committee that the State party had still not implemented any of the requested interim measures. That notwithstanding, despite the repeated searches of his cell and his lack of access to a doctor, he was allowed to leave his cell for an hour a day.

#### **Committee’s decision on admissibility**

8.1 On 5 August 2019, at its sixty-seventh session, the Committee examined the admissibility of the complaint and found it admissible insofar as it raised issues with respect to articles 1, 2 and 11 to 16 of the Convention. The Committee concluded that the State party had not demonstrated that the remedies available to denounce acts of torture were, in practice, available to the complainant to assert his rights under the Convention.

8.2 The Committee concluded that the delay of one year between the judgment of the Rabat Court of Appeal and the submission of the complaint to the Committee could not be considered as an abuse of the right to submit a complaint, recalling that neither the Convention nor the Committee’s rules of procedure established a time limit for the submission of a complaint.

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<sup>9</sup> The complainant was visited by the Deputy Crown Prosecutor at the Court of First Instance in Tiflet on 2 October 2018 and by the Regional Director for Rabat-Salé-Kenitra of the General Delegation for Prison Administration and Reintegration on 9 October 2018.

<sup>10</sup> See Morocco, Act No. 23/98 of 25 August 1999 on the organization and functioning of prison facilities.

### State party's observations on the merits

9.1 On 12 June and 9 September 2020, the State party reiterated that the communication was not admissible. It then commented on the Committee's requests for interim measures and on the complainant's conditions of detention.

9.2 The complainant was never subjected to solitary confinement, contrary to what he continues to allege. It would be improper to consider the complainant's isolation, which was a disciplinary measure carried out in accordance with the legal provisions and strictly limited in time, as continuous solitary confinement. The complainant was indeed unable to receive family visits, but he was visited by a doctor on a daily basis and could see his lawyers. However, no request for family visits was ever made during this disciplinary measure.

9.3 After his transfer to Tiflet 2 prison, the complainant received several visits from the prosecutor.<sup>11</sup> He is being held in a 20 square metre single-person cell that meets the relevant international standards and has blankets and a television set. Incarceration in a single-person cell can in no way be equated with solitary confinement. The complainant has the right to take a one-hour walk per day and to receive family visits, and received 27 visits in total. He communicates with his family through the facility's landline telephone once a week, for 10 minutes. Because of the coronavirus (COVID-19) pandemic, the complainant is allowed four telephone calls per week, of 25 minutes duration.

9.4 Since his transfer to Tiflet, the complainant has received 32 on-site medical consultations, 13 on-site dental consultations and 2 specialized consultations outside the facility. He also had laboratory tests on three occasions, which never showed any abnormalities.

9.5 The complainant had the opportunity to submit complaints to the prosecutor,<sup>12</sup> which were, however, dismissed after his hearing, on the grounds that they were unfounded. The complainant's mother and sister also claimed that the complainant was subjected to ill-treatment, which was refuted respectively by the prosecutor and the General Delegation for Prison Administration and Reintegration. The complainant readily uses his right to file complaints as much as he can with the sole aim of putting pressure on the prison administration to grant him the preferential treatment that he has claimed or to transfer him.<sup>13</sup>

9.6 As to the facts, the State party finds it unacceptable to consider – as stated in the complaint – that the law enforcement agencies “attacked” the Gdeim Izik camp. Dozens of individuals attacked an ambulance, as seen in a video posted on the Internet, stoning a civil protection worker to death, and then attacked a Royal Gendarmerie checkpoint, where they killed a gendarme. One of the assailants was filmed urinating on the body. Once in Laayoune, some individuals committed another act of barbarism, slitting the throat of an auxiliary forces officer in cold blood.

9.7 In the course of the investigation, it was irrefutably established that the complainant was among the main perpetrators of the acts of violence and massacres committed against the law enforcement services. He was arrested on 20 November 2010 and held in police custody until 21 November 2010, on the instructions of the Laayoune public prosecutor's office. His family was informed of his arrest. During his questioning, the complainant voluntarily and without prompting admitted to the acts for which he was accused. Afterwards, he read his statements and signed them, without coercion, putting his thumbprint next to his signature, and even writing his full name. With regard to the account of what the complainant claims to have been subjected to through his “abduction by the Moroccan authorities”, the State party outright rejects all these unfounded assertions, which are pure fiction and have no

<sup>11</sup> The State party does not indicate the reason for these visits.

<sup>12</sup> On 30 September 2019, due to the behaviour of the prison warden (who had failed to keep promises regarding the complainant's medical care, time for walks and transfer), and on 14 October 2019, for harassment by some officials (one of whom had hit him through the cell door and threatened him with violence).

<sup>13</sup> According to the prison director, the complainant's request for transfer was motivated by a desire to group the detainees in the Gdeim Izik case at the same prison so that they could be granted privileges that were not in line with the law.

objective other than to discredit the proceedings and the investigation, and above all to allow the complainant to exonerate himself from the very serious acts of which he has been accused.

9.8 On the merits of the communication, the State party recalls that, following the allegations of torture and ill-treatment raised before the Rabat Court of Appeal, a medical examination was ordered by the court, however, the applicant refused to submit to it. By this refusal, the complainant clearly demonstrates his bad faith and lack of interest in establishing the facts and the truth. This refusal in itself also confirms that the complainant knows that his allegations are false. The court had appointed a tripartite commission chaired by an associate professor of forensic medicine and composed of a doctor specializing in trauma and orthopedics and a psychiatrist and judicial expert working for the Rabat Court of Appeal. The State party thus refutes the claim that the forensic examinations were entrusted to three forensic doctors who were not trained in the Istanbul Protocol and did not provide adequate guarantees of independence.

9.9 Contrary to the allegations made by the complainant, according to which Moroccan courts systematically hand down convictions based largely on confessions obtained by the judicial police, it should be pointed out that the Code of Criminal Procedure establishes that reports drawn up by judicial police officers on offences and misdemeanours serve as prima facie evidence of the facts, while the reports drawn up by the police in the context of crimes merely serve as information subject to the judge's sovereign discretion. In reaching its decision, the Court of Appeal cited evidence other than the statements of the accused, including the testimony of prosecution witnesses, video footage and photographs of the crime scenes and recordings of telephone communications.

9.10 On 24 November 2020, the State party expressed its surprise at being seized again with regard to interim protection measures and denounced the false and recurrent nature of the allegations reported by the complainant's counsel. The complainant's conditions of detention are and remain entirely normal. He had indeed complained on several occasions about his conditions of detention, but his allegations have been proven to be unfounded. Since he has been at Tiflet 2 prison, no lawyer representing him has come to the prison or asked to speak to him on the telephone, which would have been registered by the prison administration. For his part, the complainant has not requested a meeting with a lawyer. Lastly, the complainant's state of health is currently satisfactory.

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

10.1 In his comments dated 21 December 2020, the complainant noted that the State party continues to attempt to reverse the burden of proof. The courts and prosecutors failed to comply with the obligation to initiate an investigation *ex officio* when there were reasonable grounds to believe that his confession had been obtained through torture and ill-treatment, and they failed to immediately order an independent medical examination.

10.2 The State party's submissions on the merits do not provide any evidence of compliance with articles 1, 2 and 11 to 16 of the Convention. The State party does not indicate that the complainant was provided with any medical examination during the period of the denounced acts, with prompt and independent legal and medical assistance, or with immediate contact with his family. On the contrary, the record shows that he was unable to contact his family or counsel. In the absence of information from the State party challenging these allegations, the State party should be considered to have failed to comply with its obligations under articles 2 (1) and 11 of the Convention.

10.3 The State party does not demonstrate that the investigating judge or the military court took account of his allegations of torture and injuries and requested an investigation or at least an expert medical examination, even though such violence caused the complainant severe suffering. The authorities failed to carry out an investigation in a manner consistent with the State party's obligation under article 12 of the Convention. By failing to do so, the State party also failed to meet its responsibility under article 13 to ensure the complainant's right to complain.

10.4 The complainant's statements, which, it has been established, were obtained through torture, were used as evidence in the proceedings. It is clear from the Court of Appeal's decision that the complainant's confession was a decisive factor in the conviction, even

though the State party failed to meet its obligation to carry out an immediate and impartial investigation into the allegations of torture. The Court of Appeal did not seriously take the allegations of torture into consideration when convicting the complainant on the basis of his confession, even denying that such allegations had been made during the proceedings.

10.5 It has moreover already been established that the expert medical examinations ordered by the Court of Appeal were not impartial and that, in any event, they were not carried out in the context of an investigation into the torture. Thus, the fact that the complainant refused to undergo such examinations cannot be held against him. On the basis of these elements, the State party should be considered to have failed to fulfil its obligations under article 15 of the Convention.

10.6 As for the complainant's current situation, the prosecutor never notified him that his complaint cases had been closed without further action. The State party does not provide any evidence that all the complaints have been addressed. The complainant's counsel does not have authorization to communicate with him, despite repeated requests. Lastly, the number of medical consultations is so high that it could not possibly be considered that the complainant's health condition is "satisfactory".

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

#### *Consideration of the merits*

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

11.2 The Committee notes the complainant's allegation that the physical ill-treatment to which he was subjected during his arrest, his questioning at the police station and, subsequently, his time at the Laayoune gendarmerie, and the treatment to which he was subjected during his transfer by plane in order to force him to confess, amount to acts of torture under article 1 of the Convention. The complainant was brought before the investigating judge of the military court on 22 November 2010, with visible signs of torture that he specifically denounced before the investigating judge on 4 March 2011, and subsequently before the military court. The military court on 15 February 2013 rejected the request for an investigation into these allegations of torture because the complainant had not reported them at the preliminary investigation stage. The Committee also notes the complainant's allegations that he was subjected to the so-called *falaka* and "roast chicken" methods, which are in essence acts of torture. According to the State party, the complainant did not formally raise the allegations of torture before the competent authorities. The Committee recalls its jurisprudence according to which any persons deprived of their liberty must be provided with prompt and independent legal and medical assistance and must be able to contact their families, in order to prevent torture.<sup>14</sup> The Committee also notes the solitary confinement imposed on the complainant on several occasions and recalls its position on the subject, specifically, that solitary confinement may constitute torture or inhuman treatment and that it should be regulated so as to be a measure of last resort, to be applied in exceptional circumstances, for as short a time as possible, under strict supervision and with the possibility of judicial review.<sup>15</sup> Taking account of the complainant's assertion that he did not have access to any of these safeguards during his pretrial detention and solitary confinement, and in the absence of convincing information from the State party challenging these allegations, the Committee considers that the physical ill-treatment and injuries that the complainant says that he suffered during his arrest, interrogation and detention constitute torture within the meaning of article 1 of the Convention.<sup>16</sup>

11.3 The Committee notes the complainant's allegation that, if they cannot be classed as acts of torture, the acts and treatment to which he was subjected constitute cruel, inhuman or degrading treatment or punishment in accordance with article 16 of the Convention. The

<sup>14</sup> Committee against Torture, general comment No. 2 (2007).

<sup>15</sup> CAT/C/51/4, para. 32.

<sup>16</sup> *Asfari v. Morocco*, para. 13.2.

Committee considers that these allegations relate to facts that also constitute a violation of article 1 of the Convention. Accordingly, the Committee does not consider it necessary to separately examine the claims under article 16.<sup>17</sup>

11.4 The complainant also invokes article 2 (1) of the Convention, under 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>18</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 investigating judge and to the military court. In the light of the foregoing, the Committee finds a violation of article 2 (1), read in conjunction with article 1 of the Convention.<sup>19</sup>

11.5 According to the complainant, the State party violated article 11 of the Convention, as it failed to properly monitor the treatment he received during his detention. Despite his deteriorating health, he did not receive appropriate care from a doctor of his choice; he was detained in a malnourished state and was subjected to ill-treatment and abuse by the prison authorities; and he did not have effective remedies to oppose the acts of torture. 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.<sup>20</sup> In the present case, the State party provided information on the complainant's conditions of detention, his medical monitoring and his complaints of ill-treatment in detention only for the period after his transfer in May 2018 to the local prison in Tiflet 2, while he had been in detention since November 2010. In the absence of any evidentiary information from the State party to show that during the entire period of the complainant's detention his situation was indeed monitored, and in the absence of any evidence as to the effective treatment of the complainant's complaints and his medical follow-up after his transfer to Tiflet prison, the Committee finds a violation of article 11 of the Convention.<sup>21</sup>

11.6 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: (a) on 22 November 2010 he presented visible signs of torture, such as marks of beatings and numerous wounds covering his body, before the investigating judge of the military court, who did not record these facts in the record; (b) he later specifically denounced the torture to which he had been subjected before the investigating judge, on 4 March 2011; (c) these same allegations were reported to the military tribunal in the presence of the prosecutor; and (d) at no time did the prosecutor initiate an investigation. The State party responds that the complainant did not formally raise the allegations of torture before the competent authorities and that, after the case was referred to a civil court, and following the allegations of torture raised before the Rabat Court of Appeal, a medical examination was ordered by the court, but the complainant refused to submit to it, in bad faith. According to the complainant, the expert medical examinations ordered by the Court of Appeal were not impartial and were not carried out in the context of an investigation into the torture. Moreover, the Committee notes that,

<sup>17</sup> *Ramírez Martínez et al. v. Mexico* (CAT/C/55/D/500/2012), para. 17.4.

<sup>18</sup> CAT/C/MAR/CO/4, para. 12. See also CCPR/C/MAR/CO/6, paras. 23 and 24.

<sup>19</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>20</sup> CAT/C/MAR/CO/4, para. 7.

<sup>21</sup> *E.N. v. Burundi*, para. 7.6.

according to the information provided to it, the complainant's appeal in cassation was rejected by the Court of Cassation on 25 November 2020.

11.7 The Committee further notes that no medical examination was requested by the investigating judge of the military court, even though the complainant bore clear signs of physical abuse, and no investigation was carried out in this regard. Furthermore, the military court did not take into account the complainant's allegations of torture when deciding on his conviction, and the State party denies that such allegations were made during the proceedings. The Committee also notes that the State party has far exceeded the reasonable length of time for dispensing justice in the complainant's case: 11 years have elapsed since the events and the submission of the first allegations of torture, and no investigation has been opened. The cassation did not change this situation, and the complainant is still detained on the basis of his coerced confession. In the light of the foregoing, the Committee considers that the absence of any investigation into the allegations of torture in the complainant's case is incompatible with the State party's obligation under article 12 of the Convention to ensure that the competent authorities carry out a prompt and impartial investigation whenever there is reasonable ground to believe that an act of torture has been committed.<sup>22</sup>

11.8 In these circumstances, the State party has also failed to meet its obligation under article 13 of the Convention to guarantee the right of the complainant to lodge a complaint, which calls for the authorities to provide a satisfactory response to such a complaint by launching a prompt and impartial investigation.<sup>23</sup> The Committee notes that article 13 does not require the formal lodging of a complaint of torture under the procedure laid down in national law, nor does it require an express statement of intention to bring a criminal case. It is sufficient for victims simply to come forward and bring the facts to the attention of a State authority for the State to be under an obligation to consider this as a tacit but unequivocal expression of their desire to have an immediate and impartial investigation initiated, as required by this provision of the Convention.<sup>24</sup> The Committee concludes that the facts in this case constitute torture within the meaning of article 13 of the Convention.

11.9 Regarding the complainant's claims under article 14 of the Convention, the Committee recalls that this article recognizes the right of torture victims to fair and adequate compensation and also requires States parties to ensure that they obtain redress for all damages suffered. The redress must cover all the harm suffered and should encompass restitution, compensation and guarantees of non-repetition of the violations, taking into account the circumstances of the individual case.<sup>25</sup> In the present case, the Committee notes the complainant claims that he suffers from physical and psychological sequelae of the abuse to which he was subjected. The fact that the investigating judge of the military court 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 thus considers that the failure to conduct a prompt and impartial investigation has deprived the complainant of the possibility of availing himself of his right to redress, in violation of article 14 of the Convention.<sup>26</sup>

11.10 The complainant also claims to be a victim of a violation of article 15 of the Convention because he was convicted on the basis of confessions obtained through torture. He claims to have confessed to nothing but to have been forced, while handcuffed and blindfolded, to sign a document whose contents were unknown to him.

11.11 The Committee recalls that the general nature of the provisions of article 15 derives from the absolute nature of the prohibition of torture and therefore implies an obligation for any State party to verify that statements included in proceedings under its jurisdiction were not obtained through torture.<sup>27</sup> In the present case, according to the complainant, the

<sup>22</sup> *Asfari v. Morocco*, para. 13.4.

<sup>23</sup> *Bendib v. Algeria* (CCPR/C/51/D/376/2009), para. 6.6.

<sup>24</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>25</sup> *Bendib v. Algeria*, para. 6.7.

<sup>26</sup> *Niyonzima v. Burundi* (CAT/C/53/D/514/2012), para. 8.6; and *Asfari v. Morocco*, para. 13.6.

<sup>27</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.

statements he signed under torture were used as the basis for his prosecution and conviction and, through his counsel, he challenged the probative value of the confessions signed under torture at various stages of the proceedings against him, to no avail. The Committee also notes that the court did not take the allegations of torture into consideration when convicting the complainant on the basis of his confession, denying that such allegations had been presented during the proceedings. The Committee considers that the State party had the obligation to ascertain the veracity of the complainant's allegations. 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. The Committee recalls that, in its concluding observations on the fourth periodic report of Morocco,<sup>28</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>29</sup>

11.12 Lastly, the Committee notes that it has reiterated on four occasions the request made to the State party at the time of registration of this complaint, namely to: suspend all use of solitary confinement against the complainant; allow the complainant to be visited by a doctor of his choice; and identify and immediately implement alternative measures to detention, such as house arrest, in order to avoid any further deterioration in his state of health. In addition, in its decision of 5 August 2019 on the admissibility of the complaint, the Committee once again mentioned the request for interim measures and requested the State party to facilitate visits by the complainant's family and to allow the complainant to meet regularly with his family and his counsel and, in view of the great distance between them, it invited the State party to transfer the complainant to a detention centre closer to his family. The Committee notes that the State party has merely contested the allegations made by the complainant's counsel and stated that the complainant's conditions of detention are and remain completely normal, without however complying with the measures requested by the Committee or citing any impediment to their implementation.

11.13 The Committee emphasizes that by ratifying the Convention and voluntarily recognizing the competence of the Committee under article 22, the State party has undertaken to cooperate in good faith with the individual complaints procedure established by that article and to give it full effect. The Committee therefore concludes that by failing to implement the interim measures that it requested, the State party has failed to fulfil its obligations under article 22 of the Convention.

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

13. 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 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; (c) return the complainant to a group regime in a prison closer to his family; (d) refrain from any form of pressure, intimidation or reprisals likely to harm the physical and moral integrity of the complainant, which would otherwise constitute a violation of the State party's obligations under the Convention to cooperate with the Committee in good faith for the implementation of the provisions of the Convention; and (e) enable the complainant to receive visits in prison from his family and his counsel.

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<sup>28</sup> CAT/C/MAR/CO/4, para. 17.

<sup>29</sup> *Asfari v. Morocco*, para. 13.8.

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

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