



# 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. 999/2020\*, \*\*

<i>Communication submitted by:</i>	Mohamed Bani (represented by counsel, Olfa Ouled)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Morocco
<i>Date of complaint:</i>	14 April 2020 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on 15 April 2020 (not issued in document form)
<i>Date of adoption of decision:</i>	2 November 2022
<i>Subject matter:</i>	Torture in detention
<i>Procedural issue:</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 complain; right to redress
<i>Articles of the Convention:</i>	1, 2, 11, 12, 13, 14, 15 and 16

1.1 The complainant is Mohamed Bani, a national of Morocco born in Western Sahara in 1969. He claims that the State party has violated articles 1, 2, 11, 12, 13, 14, 15 and 16 of the Convention. The State party has made the declaration pursuant to article 22 (1), effective from 19 October 2006. The complainant is represented by counsel.

1.2 On 15 April 2020, 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 on new complaints and interim measures, requested the State party to: (a) immediately end

\* Adopted by the Committee at its seventy-fifth session (31 October–25 November 2022).

\*\* The following members of the Committee participated in the examination of the communication: Todd Buchwald, Claude Heller, Erdogan Iscan, Liu Huawen, 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.



the solitary confinement of the complainant, who is detained in Ait Melloul 2 prison; and (b) allow the complainant to be examined by a doctor.

### **Facts as submitted 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 did not participate in setting up the camp, but moved there with his family on 15 October 2010. Every weekend, he made the return journey between Laayoune, where he had worked since 1 October 1993 as an employee at the Ministry of Equipment, Transport and Logistics, and the camp.

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 8 November 2010, the complainant was present in the camp while it was being dismantled. Taken by surprise at the attack on the camp by the armed forces and Royal Gendarmerie, he went to his car and tried to go and collect his family. At this point, members of the armed forces threw several stones, including one at his windscreen and one directly at his head. He then lost consciousness. When the complainant regained consciousness, he was lying, prone and handcuffed, in a truck, in the presence of military personnel. When he asked for help to sit up, a gendarme violently pushed him with his foot. Six other persons whom he did not know were thrown into the back of this truck and were subjected to the same inhuman treatment as him.

2.4 The members of the armed forces took the complainant and the other persons to the Royal Gendarmerie headquarters in Laayoune, where they arrived between 11 a.m. and noon. The gendarmes brutally removed the complainant from the vehicle, beating him severely. He had to walk barefoot on broken glass while entering the gendarmerie station, which caused deep wounds on the sole of his foot. He was then taken to a room of approximately 15 m<sup>2</sup>, where he was hit with a stick on his left leg. Some 30 minutes later, members of the gendarmerie began violently beating the prisoners and covered their eyes.

2.5 The complainant was then interrogated. He was placed facing the wall and tortured again. He was hit on the back of his head, which caused heavy bleeding and a loss of consciousness. Three officers then threw him to the ground, took him by his feet and placed them on a chair. They then spread his legs and hit him violently with objects. The officers then put the complainant's head under the chair and took turns to hit him hard on the back with plastic batons. After this, the complainant was thrown into a tiny unlit room with many other prisoners, where he could not even stretch out his legs although his back was hurting. He was bleeding heavily from his head and from many open wounds, including on his left leg and knee. All the prisoners were suffering and moaning from the torture to which they had been subjected.

2.6 During the night of 8 to 9 November 2010, the complainant was transferred in a truck to the military hospital. He was still blindfolded. He was then beaten, tortured, insulted and spat at by gendarmes and even some nurses. He was kicked in his lower back and lower limbs. He was then treated by the nurses with no anaesthetic, which was very painful, and had stitches for a cut on his forehead and above his left eye. Then he received an intravenous injection on the inside of his right elbow and was given a white pill to swallow. The complainant was then transferred back to the Laayoune Royal Gendarmerie station with around 12 other prisoners. He continued to be beaten and tortured. He was not allowed to go to the toilet. In addition, dirty water and urine were thrown over him. He did not have water or food and was deprived of sleep.

2.7 On the morning of 9 November 2010, the complainant was asked more questions by the officers, still under torture. He was blindfolded and handcuffed to the desk. He was then

taken to another office and placed in the prone position. He was hit on the back with a blunt object many times for some 20 minutes, which caused him significant pain. He was then knocked down to the ground and kicked on the buttocks by a gendarme. He was asked questions about his relatives' names and his address, level of education and employment. He was also questioned about the living conditions in the camp and his military experience. The complainant did not sign any statement or make any confession, contrary to what was indicated in a report dated 8 November 2010.

2.8 After the interrogation, the complainant remained in the corridor. Gendarmes would come and ask the prisoners to face the wall. They would then beat and insult them harshly. When one of them asked to go to the toilet, he was severely beaten and ordered to soil himself. The gendarmes threw dirty water and urine on the prisoners.

2.9 On 10 November 2010, he was interrogated again, this time by the National Surveillance Directorate. The complainant had no trousers and had not drunk or eaten anything for two days. He had been raped while held by the gendarmerie. That afternoon, the complainant finally received a very small amount of food: a piece of bread and a bottle of water, which he had to share with three other prisoners. This was the first time he had had something to eat since his arrest. However, the prisoners were not allowed to go to the toilet and could not move around without being severely beaten. For this reason, the complainant refused to eat or drink. The officers continued to torture the prisoners, including the complainant. They continued to have cold water and urine poured over them.

2.10 On 11 November 2010, nurses were sent to treat the most serious cases, which included the complainant. The interrogations began again the same day. The complainant was still tied up and blindfolded. He was then forced to sign and fingerprint documents he was unable to read and which the gendarmes did not read out to him. Contrary to what is recorded in the gendarmerie report dated 8 November 2010, he never made any confession relating to any offence.

2.11 On the night of 11 to 12 November 2010, the complainant was taken to Laayoune Court of First Instance, handcuffed and blindfolded. Under torture, like his co-defendants, he had to sign documents he was unable to read. The criminal investigation police then submitted to the military investigating judge an interrogation record containing the alleged confessions of the complainant and his co-defendants, which they had been unable to read and would subsequently consistently deny. After signing the documents, the complainant and other prisoners were taken back to the gendarmerie station. Neither the complainant nor the other prisoners transferred with him to the Rabat Military Court the next day saw any judge at the Laayoune court that evening.

2.12 At approximately 5 p.m. on 12 November 2010, the complainant was transferred to the airport in inhuman and degrading conditions with other prisoners. The standard handcuffs had been replaced with plastic ones, which caused him severe pain and which the gendarmes refused to loosen. The complainant was still blindfolded. He was then placed on a flight to Rabat, throughout which he was lying on the ground, unable to move. He was also kicked several times on his head and legs. Upon arrival, the complainant was taken to the military court. He had to wait for many hours with gendarmes who insulted him, tightened his handcuffs and refused to allow him to go to the toilet. After this waiting period spent facing pressure and violence from the gendarmes, the complainant was the first to be violently dragged by his hands to the office of the investigating judge. Only then were his handcuffs and blindfold removed. The purpose of the meeting was to confirm his identity and inform him of the charges against him. When the complainant asked the judge to document the visible signs of torture on his body, the judge refused, saying that he was not a doctor. The hearing lasted only a few minutes, with the judge merely presenting the indictment. The complainant refused to sign it.

2.13 The complainant was then transferred to Salé 2 prison without knowing it. He had to wait 29 days until his family, who had never been informed of his arrest and transfer, came

to visit him.<sup>1</sup> He was not able to see his family again until a month later during his in-depth questioning before the investigating judge, when he learned of the deaths of his father and father-in-law. The detention conditions of the complainant and his co-defendants were inhuman. They had spent the night handcuffed to a large door with iron bars, first standing up for three hours and then lying on the floor. Every time they wanted to change position, they were kicked and insulted by the guards. The next day, the complainant was given a prison uniform, blindfolded again and taken to an individual cell. He was forced to wear the prison uniform all the time and only got changed when his family or lawyer visited him. At this time, the complainant was continuously changing cells, sometimes in solitary confinement and sometimes with the group. He spent almost a month in complete solitary confinement.

2.14 After three months, following their first hunger strike, the complainant and his co-defendants were allowed to go out into the corridor for five minutes two or three times per week, each one in turn so that they could not meet. The visit from his family took place in the visiting room once a week and lasted no more than 10 minutes. His family had to travel 1,200 km for each visit. Owing to their terrible general situation, the prisoners of the Gdeim Izik group started a hunger strike.

2.15 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 Rabat Military Court rejected the request for an investigation<sup>2,3</sup> into the acts of torture. 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 and for committing acts of violence leading to the premeditated killing of law enforcement officials in the performance of their duties.

2.16 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.

2.17 On 27 July 2016, the Court of Cassation overturned the judgment of the military court<sup>4</sup> and referred the case to the Rabat Court of Appeal.<sup>5</sup> 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 reports signed under torture and remove them from the case

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<sup>1</sup> The complainant's family and counsel were never officially informed of his arrest or his detention at Salé 2 prison. They learned about it from the relatives of other prisoners who had been transferred to this prison.

<sup>2</sup> The court considered that the defendants 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 preliminary inquiry and the trial.

<sup>3</sup> In the statement of case addressed to the military court on 31 January 2013, the complainant's lawyer reported 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 complained 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 about the investigating judge. In its interim order of 8 February 2013, the military court recorded the allegations of torture made by the defendants, but 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> The Court of Cassation found that it had not been shown that all the constituent elements of the offence were present.

<sup>5</sup> In the meantime, the law had changed and the criminal acts that were the subject of the trial were no longer under military jurisdiction.

file.<sup>6</sup> On 25 January 2017, more than six years after the events, the presiding judge 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 on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) and who did not offer sufficient guarantees of independence. The complainant agreed to submit to the examination,<sup>7</sup> whose findings, like those relating to 15 other co-defendants, stated that his symptoms and the objective data from the medical examination were not specific to the various alleged methods of torture.

2.18 On 19 July 2017, the Rabat Court of Appeal upheld the life sentence against the complainant, without any investigation being conducted into the torture to which he had been subjected, despite his consistent complaints. On 29 September 2017, the complainant lodged an appeal in cassation, which was rejected on 25 November 2020 by the Court of Cassation.

2.19 On 16 September 2017, the complainant was transferred from El Arjat prison to Ait Melloul 2 prison. His family and lawyers were not informed of this transfer and he was not able to take his belongings with him. He was ill-treated during the transfer.

2.20 Several times in September, October and November 2017, the complainant and his co-defendants went on hunger strike in protest against their ill-treatment and arbitrary transfer to a prison even farther from their families and the refusal to grant them access to a doctor and to provide them with clothing. In November 2017, the complainant again protested, to have his belongings confiscated during the transfer returned to him and against his solitary confinement and the threats made by guards. The complainant initiated another hunger strike on 9 March 2018, which lasted 14 days, to protest against the ill-treatment and medical negligence to which he was being subjected. He and two other co-defendants received death threats from the prison director. He was placed in solitary confinement in a very narrow cell similar to a coffin with no window or bed. In addition, the prison administration gave him no drinking water.

2.21 The complainant stopped his hunger strike on 22 March 2018, after being promised a transfer to Bouizakarne prison, medical care and improved visiting rights, including the right to regular telephone calls with his family. However, the prison administration did not comply with its commitments, particularly regarding the visit from a doctor. On 3 May 2018, the complainant's medication was changed. However, his health was very poor and the new medicines did not improve his situation. In July 2018, he was still in solitary confinement and his visiting rights were not being upheld.

2.22 In August 2018, the complainant's family requested that the General Delegation for Prison Administration and Reintegration actually transfer him to a closer prison, namely Bouizakarne or Smara. On 16 August 2018, a complaint was filed with the Crown Prosecutor attached to the Inezgane court, which had territorial jurisdiction, to stop the complainant's family being harassed at every visit and his visiting rights being denied. On 11 September 2018, the complainant's wife submitted requests to both the General Delegation for Prison Administration and Reintegration and the Crown Prosecutor for an investigation to be opened into the ill-treatment of the complainant by prison officials.

2.23 In October 2018, the complainant fell seriously ill, with severe nausea and vomiting, for 20 days, to the point of being too weak to stand up. In December 2018, despite his deteriorating state of health, no doctor intervened. Visits from his family remained irregular and infrequent, given their geographical distance and the arbitrary refusal of some visits. In July 2019, the prison administration was still denying access to a doctor to the complainant,

<sup>6</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 reports were null and void together with the merits of the case, as can be seen from the judgment. The reports were thus discussed throughout the six months of the trial, as shown 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>7</sup> Sixteen prisoners agreed to submit to the medical examinations ordered by the court. The other five refused to be examined by doctors not trained on the Istanbul Protocol.

who continued to suffer from prolonged solitary confinement. In December 2019, during a period of more than one month, he was prevented, as were the other prisoners at Ait Melloul 2 prison, from calling his family: Given the long-lasting effects on his already precarious health and the lack of response to complaints of ill-treatment previously filed by his wife, his counsel submitted a complaint of ill-treatment intentionally committed by a public official, which was received on 25 February 2020 by the Crown Prosecutor attached to the Inezgane court. To date, no action has been taken.

### **Complaint**

3.1 The physical abuse to which the complainant was subjected at the time of his arrest and during his interrogation at the police station and, subsequently, at the Laayoune gendarmerie station 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 also complains that he did not receive medical treatment and that he was placed in solitary confinement for periods of more than 15 days without having been informed of the reason for such measures and without any medical examination during these periods. 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.

3.2 In accordance with 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, malnutrition, ill-treatment, abuse and the lack of an effective complaint mechanism for prisoners in Morocco.

3.3 The complainant recalls that, on 12 November 2010, he appeared before the military investigating judge with visible signs of torture on his body and asked the judge to document them. However, the judge refused and neither recorded the facts nor opened an immediate investigation. In addition, the military court did not take into account his allegations of torture when deciding on his conviction. The decision of the Court of Cassation did not change this situation, and the complainant is still detained on the sole basis of his coerced confession. The Rabat Court of Appeal did not even call for an investigation, despite the repeated statements of the complainant concerning the torture to which he had been subjected. It is therefore clear that the State party has failed to fulfil its obligations under articles 12 and 13 of the Convention.

3.4 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. The complainant also states that the medical examinations ordered by the Rabat Court of Appeal were not impartial and that, in any event, they were not carried out as part of an investigation into the alleged torture. In addition, the military court failed to take the complainant's allegations of torture into account. The absence of an investigation to date has prevented the complainant from receiving rehabilitation, compensation, support and guarantees of non-repetition of the offence, in violation of article 14 of the Convention.

3.5 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 fact that the complainant has, through his counsel, contested the probative value of the confessions signed under torture at various stages of the proceedings against him, the Court of Appeal found the reports to be admissible, without ordering an investigation. By failing to carry out any checks, and by using such statements in the judicial proceedings against the complainant, the State party manifestly violated its obligations under article 15 of the Convention.

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

3.7 The Committee has already noted in the case of *Asfari v. Morocco*,<sup>8</sup> which concerned one of the complainant's co-defendants, that Mr. Asfari had reported the acts of torture to which he had been subjected on several occasions to 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 in that case that Morocco had exceeded the reasonable time limit for dispensing justice by waiting more than six years to investigate the alleged acts of torture.

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

4.1 On 17 September 2020, the State party contested the admissibility of the complaint on the grounds of non-exhaustion of domestic remedies.

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 law enforcement officers. 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 overturned 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 on 29 September 2017. Consequently, the State party believes that domestic remedies have not yet been exhausted, particularly as the legal proceedings are still ongoing.

4.3 The State party rejects any assertion that an appeal to the Court of Cassation cannot be considered an effective remedy, pointing out that in the complainant's case, 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. Moreover, the Court of Cassation is competent to raise any issues relating to violations of national law or of a procedural rule that have caused harm to a party. In the present case, it is therefore competent to investigate the value of the confessions allegedly obtained under torture and the procedures used for the forensic medical examinations.

4.4 Regarding the request for interim measures, the State party indicates that the complainant has been detained in Ait Melloul 2 prison since 16 September 2017 and is being held in compliance with the provisions of Act No. 23-98 on the organization and functioning of prison facilities. The complainant has never been in solitary confinement. He is placed in an individual cell which meets all international standards as regards its size, natural light, ventilation and sanitation. Contrary to the allegations of his counsel, the complainant has daily exercise of one hour in the morning and one hour in the evening in the presence of other prisoners, including those convicted as part of the same case, and has always received the necessary medical consultations and appropriate and regular medical care. During his incarceration in Salé 2, Salé 1 et El Arjat prisons, the complainant had 82 on-site consultations<sup>9</sup> and five specialized off-site consultations in hospital. At Ait Melloul 2 prison, he has had 73 on-site consultations with a general practitioner and two specialized off-site consultations. His general state of health is currently good.

4.5 Moreover, contrary to what was stated by his counsel, the complainant was never deprived of telephone calls and does communicate with his family, who have always been allowed to visit him. At Ait Melloul 2 prison, he has received 49 visits lasting an average of three hours. The National Human Rights Council and the deputy Crown Prosecutor attached to the Inezgane Court of First Instance have also met with him, on 16 October 2017 and 15 October 2019 respectively.

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

<sup>9</sup> On 21 May 2021, the State party updated the number of on-site consultations to 92.

4.6 On 29 December 2020, the State party reiterated its challenge to the admissibility of the communication and submitted its observations on the merits. It regrets that the present complaint, which is the sixth relating to the dismantling of the Gdeim Izik camp to be submitted to the Committee, has in common with the others the fact that, under the cloak of numerous allegations of human rights abuses, the complainant seeks to put forward purely political demands that fall outside the scope of the Committee's mandate.

4.7 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, 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.

4.8 The State party indicates that, during the operation to dismantle the camp and evacuate the persons present at the site on 8 November 2010, the complainant, like other individuals, refused to obey the instructions of law enforcement authorities and deliberately ran over law enforcement officers in his vehicle, causing the death of one officer who died of his injuries on the spot and seriously injuring others. He was immediately arrested, in flagrante delicto and while conscious, still in his vehicle as it was stuck in mud, by members of the Royal Gendarmerie. The commission of these atrocious crimes was corroborated before the court of appeal by eyewitnesses, including three of the injured law enforcement officers, who recognized the complainant as their attacker.

4.9 Owing to his direct involvement at the location of the events and the seriousness of the acts, the complainant was placed in custody the same day, 8 November 2010, at 8 p.m., by the Laayoune Royal Gendarmerie under the supervision of the Crown Prosecutor attached to the court of appeal, where he remained until 11 November 2010 at 6 p.m., following a 24-hour extension granted by the competent public prosecution service in accordance with article 80 of the Code of Criminal Procedure.<sup>10</sup>

4.10 Contrary to his claims, when interviewed on 8 November 2010, the complainant voluntarily and spontaneously admitted to the acts of which he was accused. Following his interview, he read his statement, left it without additions, deletions or changes, wrote his full name and signed the record book. He made a fingerprint in the police custody register. At the end of the custody period, on 11 November 2010 at 6 p.m., the criminal investigation brigade of the Royal Gendarmerie in Laayoune brought the complainant before the Crown Prosecutor attached to the Laayoune Court of Appeal. After considering the judicial proceedings relating to the complainant and given the nature of the acts committed, the Crown Prosecutor declined jurisdiction and referred the case to the Rabat Military Court. The State party reiterates that the trial was conducted in accordance with international fair trial standards.

4.11 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. The court appointed a tripartite commission chaired by an associate professor of forensic medicine and composed of a doctor specializing in trauma and orthopaedics and a psychiatrist and judicial expert working for the Rabat Court of Appeal. The State party thus rebuts the claim that the forensic examinations were entrusted to three forensic doctors who were not trained on the Istanbul Protocol and did not provide adequate guarantees of independence. The examination showed that the complainant's symptoms did not result from torture or ill-treatment as alleged. It was therefore established that the allegations of torture were unfounded.

4.12 The State party notes the complainant's claim that the convictions were based solely on the defendants' confessions, even though the complainant was caught in flagrante delicto during the law enforcement operation, and explains that the Code of Criminal Procedure states, with regard to the probative value of confessions, that criminal investigation police

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<sup>10</sup> The State party includes in the file a copy of the arrest report drawn up by the criminal investigation brigade of the Royal Gendarmerie in Laayoune on 8 November 2010.

reports concerning criminal offences serve merely as information subject to the discretion of the court.

4.13 With regard to the complainant's detention conditions, the State party reiterates the information already transmitted to the Committee. It explains that the complainant's transfer to Ait Melloul 2 prison following his final conviction took place in order to bring him closer to his family's place of residence, as advised by the prison administration.

4.14 The State party rejects the false allegation that no action was taken in response to the complainant's complaints. Firstly, following an investigation initiated pursuant to a complaint made by the complainant's wife on 11 September 2018 for ill-treatment by prison officials, the Crown Prosecutor attached to the Inezgane Court of First Instance dismissed the complaint for lack of evidence. Secondly, in relation to the complaint of ill-treatment sent to the General Delegation for Prison Administration and Reintegration on 12 November 2018, the complainant's wife received a response on 13 November 2018 refuting all the claims. Thirdly, on 13 February 2020 the complainant's counsel filed a complaint with the Crown Prosecutor attached to Agadir Court of First Instance claiming that the complainant and other prisoners had been subjected to ill-treatment by prison officials and prevented from leaving their individual cells for more than one hour per day. The director of Ait Melloul 2 prison issued a response refuting all the claims dated 6 March 2020, following which the complaint was dismissed for lack of evidence.

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

5.1 In his comments dated 29 July 2021, the complainant notes that the State party continues to attempt to shift 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.

5.2 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 reported acts, with prompt and independent legal and medical assistance or with immediate contact with his family. 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.

5.3 Despite the fact that the complainant appeared with visible signs of torture before the military investigating judge on 12 November 2010, the State party fails to show that the investigating judge took into account his allegations of torture and injuries and called for an investigation to be initiated or at least for a medical examination to take place, even though the abuse had caused the complainant acute 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.

5.4 The complainant's statements, which, it has been established, were obtained under 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.

5.5 It has moreover already been established that the expert medical examinations ordered by the court of appeal had not been impartial and that, in any event, they had not been carried out as part of an investigation into the torture. On the basis of this evidence, the State party should be considered to have failed to fulfil its obligations under article 15 of the Convention.

5.6 The complainant stresses that his current situation remains as described in his initial communication and that, despite numerous appeals by some non-governmental organizations,

his detention conditions constitute inhuman and degrading treatment. The State party does not provide any evidence that all the complaints have been addressed.

5.7 On 8 April 2022, the complainant's counsel stated that the complainant had been transferred to Smara prison but that he had no further information on the improvement of the complainant's detention conditions. The complainant's health remains a concern.

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

#### *Consideration of admissibility*

6.1 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.

6.2 The Committee notes that the State party contested the admissibility of the complaint on the grounds of non-exhaustion of domestic remedies given that the appeal in cassation was apparently still pending. In this regard, the Committee observes that the State party had initially indicated that the appeal before the Court of Cassation, which was lodged by the complainant and his co-defendants on 29 September 2017, was still pending and that domestic remedies had thus not been exhausted. However, it also takes note of the information that, on 25 November 2020, the Court of Cassation ultimately rejected the complainant's appeal. The Committee concludes that the State party's challenge to the admissibility of the complaint is no longer relevant since a judgment on the appeal before the Court of Cassation has already been handed down and it is therefore no longer necessary for the Committee to rule on the effectiveness of this remedy in the present case.<sup>11</sup>

6.3 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 communication and proceeds with its consideration of the merits with respect to articles 2 (1) and 11 to 15, read in conjunction with article 1, and of article 16 of the Convention.

#### *Consideration of the merits*

7.1 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.

7.2 The Committee notes the complainant's claim that the physical abuse he suffered during his arrest, his various transfers and his interrogation at the Laayoune gendarmerie station and the treatment to which he was subjected during his transfer by plane constitute acts of torture under article 1 of the Convention. It also notes that the complainant was brought before the investigating judge of the military court on 12 November 2010 bearing visible signs of torture and that he expressly complained about this torture on that day and later before the military court, which, on 15 February 2013, rejected the request for an investigation into the allegations of torture. The Committee further notes the complainant's claims that he was raped and seriously beaten several times and deprived of treatment for his injuries, sleep, water, food and access to a toilet. 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>12</sup> The Committee also notes the solitary confinement imposed on the complainant on several occasions and recalls its position on the subject, namely 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>13</sup> Taking account of the complainant's assertion that he did not have access to any of these safeguards

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<sup>11</sup> *Laaroussi v. Morocco* (CAT/C/74/D/891/2018), para. 7.3.

<sup>12</sup> See Committee against Torture, general comment No. 2 (2007).

<sup>13</sup> CAT/C/51/4, para. 32.

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 he suffered during his arrest, interrogation and detention constitute torture within the meaning of article 1 of the Convention.<sup>14</sup>

7.3 The Committee notes the complainant's claim 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 Committee considers that these claims relate to facts that also constitute acts of torture within the meaning of article 1 of the Convention. Accordingly, the Committee does not consider it necessary to examine the claims under article 16 separately.<sup>15</sup>

7.4 The complainant also invokes article 2 (1) of the Convention, under which the State party should have taken effective legislative, administrative, judicial and 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>16</sup> and called on the State party to take urgent and substantive steps to prevent all acts of torture and ill-treatment and to introduce 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 custody, without being able to contact his family or have access to counsel and with limited access to 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 the visible signs of torture he bore 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>17</sup>

7.5 The Committee also notes the complainant's argument that article 11 of the Convention, which requires the State party to 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 with a view to preventing any occurrence of torture, was violated. In particular, the complainant claims that: (a) despite his deteriorating health, he did not receive appropriate care from a doctor of his choice; (b) he was detained in a malnourished state and was subjected to ill-treatment and abuse by the prison authorities; and (c) he did not have effective remedies to oppose the 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.<sup>18</sup> In the present case, the State party provided information on the complainant's conditions of detention and his complaints of ill-treatment in detention only for the period after his transfer in September 2017 to the Ait Melloul 2 prison, while he had been in detention since November 2010. In the absence of any relevant information to the contrary from the State party and in the absence of any evidence as to the effective handling of the complainant's complaints and his detention conditions before his transfer to Ait Melloul 2 prison, the existence of such deplorable conditions and treatment is sufficient to establish that the State party failed in its obligation to 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, with a view to preventing any cases of torture, and that this

<sup>14</sup> *Asfari v. Morocco*, para. 13.2; and *Abbahah v. Morocco* (CAT/C/72/D/871/2018), para. 11.2.

<sup>15</sup> *Ramírez Martínez et al. v. Mexico* (CAT/C/55/D/500/2012), para. 17.4; and *Abbahah v. Morocco*, para. 11.3.

<sup>16</sup> CAT/C/MAR/CO/4, para. 12. See also CCPR/C/MAR/CO/6, paras. 23–24.

<sup>17</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>18</sup> CAT/C/MAR/CO/4, para. 7.

violation resulted in harm to the complainant. The Committee therefore finds a violation of article 11 of the Convention.<sup>19</sup>

7.6 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 claims that: (a) he appeared on 12 November 2010 bearing visible signs of torture before the investigating judge of the military court, who did not record these facts or open an immediate investigation; (b) he later expressly complained, before the military court, about the torture to which he had been subjected, in the presence of the prosecutor; and (c) that neither the prosecutor nor the judge initiated an investigation at any point. Moreover, the Committee notes that, according to the information provided to it, the complainant's appeal in cassation was rejected by the Court of Cassation on 25 November 2020. It also notes that, after the case was referred to the Rabat Court of Appeal and the complainant and his co-defendants made allegations of torture, the complainant underwent a medical examination ordered by the Court. In this connection, it notes the complainant's claims that the medical examinations ordered by the court were not impartial and were not performed as part of an investigation into the torture he had suffered, as they ought to have been, pursuant to the Istanbul Protocol. The Committee reiterates that, while it takes note that the State party attests to the impartiality, competence and professionalism of the experts who conducted the medical examination, it considers that the State party does not provide any relevant explanation to demonstrate that it was carried out in accordance with the Istanbul Protocol.<sup>20</sup>

7.7 The Committee notes that no medical examination was ordered by the investigating judge of the military court, even though the complainant bore clear signs of physical abuse, and that 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 and that, 12 years after the events and the submission of the first allegations of torture, no investigation in accordance with the Istanbul Protocol has been carried out. In the light of the 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>21</sup>

7.8 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>22</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 desire that criminal proceedings be instituted. 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 wish to have an immediate and impartial investigation initiated, as required by this provision of the Convention.<sup>23</sup> The Committee concludes that the facts of the present case also constitute a violation of article 13 of the Convention.<sup>24</sup>

7.9 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 injuries

<sup>19</sup> *M.D. v. Burundi* (CAT/C/73/D/921/2019), para. 6.5.

<sup>20</sup> *Laaroussi v. Morocco*, para. 8.6.

<sup>21</sup> *Asfari v. Morocco*, para. 13.4; and *Abbahah v. Morocco*, para. 11.7.

<sup>22</sup> *Bendib v. Algeria* (CAT/C/51/D/376/2009), para. 6.6.

<sup>23</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>24</sup> *Abbahah v. Morocco*, para. 11.8; and *Laaroussi v. Morocco*, para. 8.8.

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 that the complainant claims that he suffers from physical and psychological sequelae of the abuse to which he was subjected. The failure of the military investigating judge to order an investigation into the allegations of torture and the fact that the medical examination ordered by the court of appeal was not carried out in accordance with the Istanbul Protocol and as part of such an investigation prevented the complainant from receiving rehabilitation, compensation, support and guarantees of non-repetition of the offence. 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>

7.10 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. 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, the Committee notes that, according to the complainant, the statements that he signed as a result of torture served as a basis for his prosecution and conviction, and that he questioned the probative value of the confession signed under torture at various stages of the proceedings against him, without success. The Committee also notes that the court of appeal did not give due consideration to the allegations of torture when sentencing the complainant on the basis of his confession. It considers that the State party had the obligation to ascertain the veracity of the complainant's allegations. By failing to verify the substance of the complainant's claims other than through the medical examination ordered by the court of appeal, which was not carried out in accordance with the Istanbul Protocol, and by using such statements in the judicial proceedings against the complainant, the State party manifestly violated its obligations under article 15 of the Convention. The Committee recalls that, in its concluding observations on the fourth periodic report of Morocco,<sup>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>

7.11 Lastly, the Committee notes the systemic nature of the series of cases concerning the events that occurred on 8 November 2010 in the Gdeim Izik camp.<sup>30</sup>

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

9. The Committee urges the State party to: (a) initiate a thorough and impartial investigation into the incidents in question, as provided for by articles 12 and 13 of the Convention and in full conformity with the guidelines of the Istanbul Protocol, with a view to bringing those responsible for the complainant's treatment to justice; (b) provide the complainant and his family with fair and adequate compensation, including the means for the fullest rehabilitation possible; (c) refrain from any form of pressure, intimidation or reprisals likely to harm the physical and moral integrity of the complainant, which would otherwise

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

<sup>26</sup> *Niyonzima v. Burundi* (CAT/C/53/D/514/2012), para. 8.6; *Asfari v. Morocco*, para. 13.6; *Abbahah v. Morocco*, para. 11.9; and *Laaroussi v. Morocco*, para. 8.9.

<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.

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

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

<sup>30</sup> See *N'Dour v. Morocco* (CAT/C/72/D/650/2015), *Asfari v. Morocco*, *Abbahah v. Morocco* and *Laaroussi v. Morocco*.

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 (d) allow the complainant to be visited by a doctor of his choice in prison and receive appropriate treatment. The State party is also under an obligation to take specific preventive measures to guarantee the non-repetition of such violations.

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

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