



**Convention against Torture  
Cruel, Inhuman**

Distr.: General **and Other**

26 November 2021

**or Degrading Treatment** Original: English **or**  
**Punishment**  
**Advance unedited version**

**Committee against Torture**

**Decision adopted by the Committee under article 22 of the  
Convention, concerning communication No. 650/2015\*,\*\***

<i>Communication submitted by:</i>	Omar N'Dour (represented by Track Impunity Always (TRIAL) and the Sahrawi Association of Victims of Grave Human Rights Violations)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Morocco
<i>Date of complaint:</i>	28 November 2014 (initial submission)
<i>Date of decision:</i>	19 November 2021
<i>Subject matter:</i>	Torture and conditions of detention of a Saharan activist
<i>Procedural issue:</i>	Non-exhaustion of domestic remedies
<i>Substantive issues:</i>	Impunity, prevention of torture, redress for victims of torture, use of torture to obtain evidence
<i>Articles of the Convention:</i>	1 (1), 2 (1), 11, 12, 13, 14, 15 and 16 (1)

\* 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, Erdogan Iscan, Liu Huawen, Peter Kessing, Ilvija Puce, Ana Racu, Diego RodríguezPinzón, 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), Essadia Belmir did not participate in the examination of the communication.

1.1 The author of the communication is Omar N'Dour, a Moroccan national who was born in Western Sahara in 1979. He states that Morocco has violated his rights under article 1 (1), read in conjunction with articles 2 (1) and 11, and articles 12, 13, 14, 15 and 16 (1) of the Convention. He is represented by Track Impunity Always (TRIAL) and by the Sahrawi Association of Victims of Grave Human Rights Violations.

1.2 On 20 October 2015, the Committee, acting through its Rapporteur for new complaints and interim measures, decided to examine the admissibility of the complaint separately from the merits.

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

2.1 The complainant was one of the activists in the Gdeim Izik camp and was a member of its order and security team.<sup>1</sup> The camp had been set up in early October 2010 on the outskirts of Laayoune, Western Sahara, to peacefully protest the marginalization of Saharans and discrimination against them by the Government of Morocco and to demand the Saharans' social and economic rights. On 8 November 2010, Moroccan security forces arrested the people living in the camp. This gave rise to a wave of demonstrations and led to the deaths of 11 members of the security forces and of 2 Saharans, according to official sources. This triggered a violent reaction on the part of the Moroccan security forces, who arrested some 200 Saharans, including the complainant, in the days following the dismantlement of the camp.

2.2 On 10 November 2010, around 11 p.m., a number of heavily armed members of the Moroccan security forces (members of the army and of elite police units) surrounded the farm where the complainant was present and arrested him without informing him of the reasons for his arrest. They then dragged the complainant to a secluded area nearby, threw him on the ground, struck him on the back and knees with truncheons and threatened to kill him. The aggressing security forces questioned him about his involvement in the protests related to the Gdeim Izik camp and about his ties to certain militant Saharans. The questioning continued until dawn. The complainant was then taken to the central police station in Laayoune and locked up in the basement, away from the other detainees. The complainant remained handcuffed and blindfolded throughout the following day. He was severely beaten and interrogated again. At around 11 p.m., a group of agents known as the "death squad" forced him into a small truck and took him to a deserted area where they dug a grave. They threatened to kill the complainant and bury him there if he did not answer their questions. They forced him to undress and threw cold water on him, after which they shoved a glass bottle into his anus.

2.3 On 12 November 2010, around 2 or 3 a.m., the complainant was taken to the Laayoune police station and placed in a cell with 80 other prisoners. Later that day, he was transferred to another room, where he was again tortured and questioned about his involvement in the protests related to the Gdeim Izik camp. One guard kept him awake by force while another beat him with a club. He was also subjected to a form of torture known as "the aeroplane", where his hands and feet were tied to a stick or pole from which he was suspended while he was beaten.

2.4 That same day, around 8 p.m., security agents forced the complainant to sign several documents without allowing him to read them. About an hour later, he was brought before the investigating judge of the Laayoune Court of Appeal, who read out 13 charges against him, which included homicide, the destruction of public property and participation in an illegal armed group. The complainant said that he was innocent and described the torture to which he had been subjected. He even unbuttoned his shirt to show the marks and bruises left by the beatings he had received. The judge, however, did not order that a medical examination of the complainant be performed but instead ordered that he be kept in custody on the basis of his signed confession.<sup>2</sup> The complainant was able to see his legal representative for the first time only while he was before the judge, since his representative's request to see him before had been denied.

2.5 The complainant was then transferred to the detention centre known as "the black jail" in Laayoune, where he remained until 17 May 2011. Upon his arrival at the centre, the complainant, along with other prisoners (some of whom were children), was forced to undress

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<sup>1</sup> The complainant states that his duties consisted of maintaining peace and order in the camp, which included preventing fights and making sure that no one brought drugs or alcohol into the camp.

<sup>2</sup> The complainant points out that this is not in accordance with Moroccan law, which requires judges and prosecutors to order that a medical examination be performed and to undertake an inquiry if they observe signs of ill-treatment.

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and to file in front of the guards, who beat them, touched their genitals and insulted them for an hour. The complainant was then placed in an overcrowded cell, which had no lighting.

2.6 On 14 November 2010 at 6 a.m., the complainant was taken to the Laayoune police station, where he was again tortured. He was hung from the ceiling until he lost consciousness and was subjected to sexual violence involving the insertion of a stick in his anus. Security agents demanded that he identify two persons as being responsible for the murder of a police officer. When the complainant refused to do so, he was threatened and severely beaten again.

2.7 After having been kept all day at the police station, the complainant was taken back to the centre known as “the black jail”. In the days that followed, his blindfold was taken off, but he was not allowed to have his glasses. His physical condition deteriorated severely. He became feverish and his entire body was in pain, but he was refused medical treatment and medicine.<sup>3</sup> From 13 to 16 November 2010, the complainant was kept in a small cell measuring about 3 metres by 5 metres with 47 other prisoners; they had to use toilets that were inside the cell, had no running water and had to sleep on the ground.

2.8 On 16 November 2010, the complainant was handcuffed and blindfolded and was told that he would be transferred to Rabat. However, he was simply placed in another cell in the same prison with 34 other prisoners. In the new cell, the guards left the lights on around the clock. When the prisoners protested, the guards left them in the dark for the entire day. They were held in that cell for 20 days before they were allowed to receive visitors. The complainant remained in that cell until the end of the year.

2.9 When the Prosecutor General of the Court of Appeal of Laayoune visited the prison, the inmates, including the complainant, told him about the acts of torture, to which they had been subjected, the conditions of detention in the prison, and the absence of medical treatment, and they asked that an inquiry be opened. Nevertheless, and contrary to Moroccan law,<sup>4</sup> no inquiry was opened, and the prisoners did not undergo any medical examinations. On 9 December 2010, the complainant’s father filed a complaint with the Court of Appeal of Laayoune regarding the torture of his son. He never received a response, and no inquiry has been opened.

2.10 Towards the end of December 2010, 133 of the inmates who had been imprisoned in connection with the dismantlement of the Gdeim Izik camp, including the complainant, were regrouped into three very small cells in a separate part of the detention centre and were kept there for 24 hours.

2.11 On 28 January 2011, the complainant’s representative filed a request with the Laayoune Court of Appeal that he be released on bail; the acts of torture to which the complainant had been subjected were mentioned in the bail application. That request was denied, and no inquiry into the allegations of torture was opened.

2.12 Between 1 and 4 February 2011, the representatives of the prisoners and their parents lodged complaints of torture on behalf of the prisoners, including the complainant, with the Prosecutor General of the Court of Appeal of Laayoune, the Ministry of Justice, the Ministry of the Interior and the Consultative Council on Human Rights. Nonetheless, no inquiry was opened.

2.13 On 17 May 2011, the complainant was released on his own recognizance. Only 4 of the 13 initial charges against him were retained: belonging to a criminal group, commission of an act of violence upon an official, blocking the public right-of-way and disturbing the peace. To date, the complainant remains at liberty on his own recognizance and no legal proceedings have been instituted against him. He states that many other people who were involved in the events at Gdeim Izik are in the same position as he is and that the fact that they have been free on their own recognizance for a prolonged period is used to deter them from taking part in efforts to defend human rights in Western Sahara.

2.14 The complainant indicates that, following the acts of torture inflicted upon him, he suffers from physical and psychological problems, including insomnia and post-traumatic

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<sup>3</sup> The complainant states that he did not receive any pain suppressing medication until February 2011 and that he was first seen by a doctor in April 2011. The doctor visited the prison once every three days, for only one hour at a time.

<sup>4</sup> The complainant cites articles 74.8 and 135.5 of the Code of Criminal Procedure of Morocco.

stress syndrome, and has been unable to complete his studies. The complainant's exposure to torture has been attested by medical certificates, attached to his communication.

2.15 The complainant asserts that he has exhausted domestic remedies inasmuch as he told the investigating judge that he had been tortured when he appeared before that judge on 12 November 2010 and his father lodged a formal complaint of torture with the same judge. In addition, in the bail application, which his legal counsel submitted to the investigating judge, his counsel stated that he had been subjected to torture. In February 2011, the complainant's father and the Sahrawi Association of Victims of Grave Human Rights Violations again reported the acts of torture undergone by a number of persons arrested in connection with the events at the Gdeim Izik camp, including the complainant, to the Prosecutor General of the Court of Appeal of Laayoune, the Consultative Council on Human Rights and other governmental institutions. Despite all those efforts, no inquiry has been opened.

2.16 The complainant adds that the violations of his rights are explicitly described in a number of public reports that have been prepared by national and international nongovernmental organizations<sup>5</sup> and presented to the Moroccan authorities. The Robert F. Kennedy Center has also published a report that gives the first-hand accounts of a number of the Gdeim Izik prisoners, including the complainant, who say that they tried to lodge complaints regarding the numerous acts of torture, to which they had been subjected, but that the officials working at the detention centre refused to accept them.<sup>6</sup> The establishment of a parliamentary committee in Morocco to look into the events at Gdeim Izik has not led to the opening of an investigation.<sup>7</sup> Furthermore, there is no avenue of recourse in Morocco, which people who claim to have been tortured can use to demand that a fair, independent and impartial investigation be undertaken, and the submission of a request that such an investigation be opened has no suspensive effect on legal proceedings that are based on evidence extracted by torture.

2.17 The complainant states that the events in question occurred within the context of absolute impunity in cases of torture and other serious human rights violations perpetrated by members of Moroccan security forces in Western Sahara, despite the numerous complaints presented to judicial authorities (see CAT/C/MAR/CO/4, para. 12). He points out that the Committee has also noted the absence of an impartial, effective investigation into the serious human rights violations linked to the dismantlement of the Gdeim Izik camp (para. 13). The complainant concludes that he has attempted to make use of the remedies available at the national level, but to no avail.

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### The complaint

3.1 The complainant claims to be the victim of a violation of article 1 (1), read in conjunction with articles 2 (1) and 11, and of articles 12, 13, 14 and 15 of the Convention by reason of the acts of torture to which he was subjected, the extraction of confessions under duress, the absence of a prompt, effective, independent, impartial and thorough investigation into his allegations of torture and the failure to prosecute and punish those responsible. The complainant further contends that the State party has not offered him any assurance of adequate reparation, compensation or rehabilitation for the harm that he has suffered.

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<sup>5</sup> The complainant cites a November 2010 report of Human Rights Watch that documents acts of torture and sexual violence committed by members of Moroccan security forces against the Gdeim Izik prisoners: *Sahara Occidental: Palizas y maltrato por parte de las fuerzas de seguridad marroquíes. Investigar la respuesta violenta a disturbios*, 2010. He also cites a report of Amnesty International that documents numerous cases in which prisoners have been tortured: *Derechos pisoteados: Protestas, violencia y represión en el Sahara Occidental* (2010). The Sahrawi Association of Victims of Grave Human Rights Violations also published a report in January 2011, which lists the names, including that of the complainant, of the persons held in "the black jail" following the dismantlement of the Gdeim Izik camps and details the torture, to which they were subjected.

<sup>6</sup> Robert F. Kennedy Center for Justice and Human Rights, *Sahara Occidental: Persisten los relatos de abusos a los derechos humanos en el despertar de los disturbios de noviembre* (2013).

<sup>7</sup> The complainant states that this parliamentary committee issued a report on 12 January 2011, which contradicts the conclusions reached by other organizations that have investigated the events of Gdeim Izik.

3.2 The complainant submits that he is also the victim of a violation of article 16 (1), read in conjunction with article 11, of the Convention due to the inhumane conditions, in which he was detained.

3.3 The complainant requests that the Committee call upon Morocco to:

(a) Carry out an impartial, thorough investigation, which should include the performance of medical examinations in accordance with the Istanbul Protocol, into his claims with a view to bringing to justice those responsible for the acts of torture to which he was subjected. The findings of that investigation should be made public;

(b) Adopt all necessary measures to ensure that the complainant and his family are duly protected from any kind of threat, harassment or intimidation;

(c) Ensure that the complainant obtains prompt, adequate and equitable compensation;

(d) Offer the medical and psychological treatment needed by the complainant;

(e) Offer the complainant a scholarship so that he can attend specialized courses of study in order to complete his university education, which he had to discontinue as a consequence of the harm that he has suffered;

(f) Withdraw all charges brought against the complainant in connection with events at the Gdeim Izik camp;

(g) Hold a public ceremony at which it will acknowledge international responsibility for the violations in question;

(h) Design and conduct training programmes on international standards regarding the treatment of prisoners and the use of force by law enforcement officers, security forces and prison personnel;

(i) Adopt the necessary measures to ensure that conditions of detention are in line with international standards;

(j) Amend existing laws, including those dealing with the definition of torture and the use of pre-trial detention, in order to ensure that they are in conformity with the Convention;

(k) Translate the Committee's decision into Arabic and Hassaniya, and publish it in a newspaper with a nationwide circulation.

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

4.1 On 13 March 2015, the State party contested the admissibility of the complaint on grounds of non-exhaustion of domestic remedies. It submits that the complainant has never filed a specific, formal complaint with Moroccan judicial authorities regarding the acts of torture to which he was allegedly subjected while in custody. The complainant simply states that the authorities never agreed to open an inquiry, but he provides no evidence of having taken any steps to request that an investigation be conducted. The State party adds that the bail application submitted by the complainant's counsel in May 2011 did not constitute a request for the opening of an inquiry because such a request must be presented in accordance with an established procedure and must provide specific, detailed information about the circumstances in which the alleged acts of torture occurred. Finally, the complainant has made no effort to avail himself of other national human rights mechanisms at either the local or national level. Nor has he demonstrated that the corresponding procedures would be excessively prolonged or that such remedies would be ineffective.

4.2 The State party objects to the complainant's claim that, when he was heard, he told the investigating judge that he had been tortured, and it notes that he failed to do so even though he was assisted by six lawyers. The State party recalls that it is incumbent upon complainants to document their allegations by, in particular, furnishing copies of the judicial decisions handed down in their cases. In that regard, the letters containing allegations of torture, which were presumably sent to judicial or other authorities, bear no indication of an acknowledgement of receipt by those authorities but instead appear to have been produced especially for the occasion.

4.3 As for the facts of the case, the State party affirms that the complainant belonged to the armed militias recruited by the organizers of Gdeim Izik to keep order in the camp. He was intercepted by police officers, because he had taken part in the attacks made on security forces when they came to dismantle the camp on 8 November 2010 and had committed acts of vandalism in Laayoune. He was then taken into police custody on the instructions of the Court of Appeal of that city. The charges were read out on 12 November 2010 before the Crown Prosecutor General of Laayoune, who referred the case to an investigating judge. That judge had issued a detention order.

4.4 The State party requests that the Committee suspend its consideration of the present communication until such time, as the Moroccan courts have issued a decision in the complainant's case, since he has not yet stood trial.

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

5.1 In his comments of 22 May 2015 on the State party's observations, the complainant insists that domestic remedies have been exhausted because he informed the investigating judge that he had been tortured and showed him the marks left by the acts of torture, to which he had been subjected. Furthermore, his father submitted a formal complaint of torture to the same investigating judge, and the complainant's counsel referred to the acts of torture in his bail application. He states that the judicial authorities did not acknowledge receipt of any of those complaints and that this is an established practice in Morocco, especially in cases involving complaints about human rights violations committed by security forces in Western Sahara.

5.2 The complainant maintains that there is no recourse in Morocco whereby the authorities can be obliged to undertake a prompt, impartial investigation into allegations of torture.

5.3 As for the facts of the case, the complainant asserts that, contrary to what the State party has said, he did not belong to an armed militia. When Gdeim Izik was being dismantled, he was not at the camp; it was only later that he went there to help some of the injured, whom he then took to his home. The complainant had said that he had witnesses who could prove that, but the judge did not call them to testify.

5.4 The complainant submits that the State party has not provided an explanation for his arrest and interrogation by security forces or for the way he was treated even though, in accordance with international jurisprudence, the State party bears the burden of proof when persons deprived of their liberty claim to be the victims of human rights violations. Thus, the State party should have provided detailed explanations concerning the physical and psychological injuries exhibited by the complainant when he was in police custody; the existence of those injuries has been confirmed in medical reports.

5.5 The complainant points out that although he was provisionally released, the criminal proceedings against him have lasted four years. During this period, no effective steps have been taken by the authorities to carry out the proceedings and no hearing has been held. Moreover, these proceedings are related to his alleged criminal responsibility and have no relation with his complaint of torture. Therefore, they cannot be considered an effective remedy that should be exhausted. Finally, the State party's observations do not explain or identify which domestic remedy should have been exhausted in relation to his claims of torture.

#### **State party's additional observations**

6. On 16 July 2015, the State party requested that the Committee's consideration of the communication be suspended because the complainant remains on conditional release and has not stood trial, which demonstrates that domestic remedies have not been exhausted.

#### **Complainant's additional comments**

7.1 On 4 August 2015, the complainant reiterated his previous arguments regarding the exhaustion of domestic remedies and cited the case of *Asfari v. Morocco*,<sup>8</sup> in which the Committee found the complaint to be admissible. The complainant recalls that he submitted a request to investigate his allegations of torture on 12 November 2010 and 9 December 2010,

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<sup>8</sup> Communication No. 606/2014, decision concerning admissibility of 20 April 2015. The decision on the merits of that case was adopted on 15 November 2016 (CAT/C/59/D/606/2014).

respectively. On 28 January 2011, the complainant's counsel requested before the investigating judge of the Court of Appeal in Laayoune a conditional release of the complainant from detention, denouncing the acts of torture he suffered.

7.2 The complainant points out that, four years after having been released on his own recognizance, he has still not been brought to trial and has not been heard. No action has been taken in the case regarding the remaining charges against him. In any event, that case has nothing to do with the failure to undertake an investigation into the acts of torture, to which he was subjected, and therefore does not constitute an effective remedy for that purpose. The suspension requested by the State party is, according to the complainant, nothing more than a means of deferring the consideration of the present communication.

### **Admissibility decision**

8. On 11 August 2016, the Committee concluded that the State party had not produced evidence to indicate that an effective remedy was available, and that the exhaustion of domestic remedies by the complainant was not possible. The Committee also rejected the State party's argument that the consideration of the communication should be suspended because the complainant had not stood trial, as not relevant in this case. The Committee decided that the communication was admissible insofar as it raised issues under articles 1 (1), 2 (1), 11, 12, 13, 14, 15 and 16 (1) of the Convention.

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

8.1 On 12 June 2020, the State party re-submitted its observations, dated 25 August 2017.<sup>9</sup> The State party informed that the complainant, who was part of the armed militia during the events in Gdeim Izik camp, was arrested and interrogated on 10 November 2010 by the Police of Laayoune, in accordance with applicable international norms and procedural standards. He was suspected of involvement in the attacks of 8 November 2010 against the law enforcement authorities during the dismantlement of the referred camp, and in the subsequent riots and vandalism against the public and private property in Laayoune.

8.2 In the inquiry, the complainant voluntarily admitted that, during the said clashes and acts of vandalism, he and other companions had attacked the police vehicle, post office, police station and a police officer in the districts nos. 3 and 5 of Laayoune. The examination of a personal PC of the complainant, seized during his arrest, led to a detection of photos and videos the complainant had taken during the intervention by the Police in Gdeim Izik. Those could prove that the complainant incited the rioters to confront and attack the Police officers, shouting out that it concerned "a war against the enemy".

8.3 Following his arrest, the complainant was placed in custody at the request of the Crown General Prosecutor by the Court of Appeal of Laayoune, before he was presented to a judge of the said court on 12 November 2010, who authorized his questioning by the investigating judge of the said court. The investigating judge ordered the complainant's detention in the prison of Laayoune. On 17 May 2011, the complainant was conditionally released from detention.

8.4 As regards the complainant's allegation that he was arrested on 10 November 2010, around 11 p.m., by the security forces and questioned at the farm, without informing him of the reasons of his arrest, the State party argues that, in reality, the complainant was arrested together with three other persons by the Police of Laayoune on the same day, around 3 p.m. in the district of Erac in Laayoune. When arrested, the complainant had with him a card indicating his role as a supervisor of the Gdeim Izik camp. He and his companions were taken to a police station, where they were informed about the charges against them, and that their custody was ordered by the General Prosecutor's Office by the Court of Appeal of Laayoune.

8.5 When asked about the origin of his injuries and bruises on his face and feet, the complainant said they were due to exchanges of throwing stones during the clashes with the Police, in which he had participated. As per the complainant's allegation that he had not been present at the camp when it was dismantled, it turned out in reality that he had participated

<sup>9</sup> The State party's observations were not received initially, and were not on file. Therefore, the Secretariat sent reminders for the State party's observations on 20 January 2017 and 28 July 2017, respectively.

within the camp in serious acts of sabotage consisting of targeting elements of the security forces with molotov cocktails and gas cylinders, before moving on with four other rioters to the city of Laayoune, where they had carried out acts of vandalism, destruction and distortion of buildings and public and private property.

8.6 Concerning the complainant's claims that he had been forced by the Police officers, being beaten by a club, to sign protocols on his hearing without the possibility to review them beforehand, it should be noted that the graphologic expertise of the complainant's signatures, which appear identical in all the protocols, confirms that the complainant attached his signatures in regular circumstances, without being subjected to force. The State party also notes that the national legislation foresees a facultative nature of signature of the protocols on hearing, which the person interrogated can refuse to sign. Therefore, there is no reason to force a person to sign such protocol. In addition, the State party refutes the complainant's allegation that there would be a Police unit called "death squad", which is rather illusory. Equally, the complainant invented that he had been held in the underground custody of the Police station in Laayoune, when all the cells are located on the ground floor.

8.7 The complainant, who constantly declares that he is in a state of war with the public authorities, claims that his conditional release in fact aims to discourage his further participation in activities in support of observance of human rights in the south of the Kingdom of Morocco. Such allegations are not substantiated, as the complainant was recruited by the Ministry of the Interior in 2011 as administrator, and he has carried out militant advocacy in the context of several human rights institutions (e.g. ASVDH), some of which remain critical of the public authorities.

8.8 The State party also objects that the complainant would suffer from any physical or psychological sequels of torture, he was reportedly subjected to. In fact, since his conditional release, the complainant continues to engage in hostile activities towards the government, challenging the territorial integrity of the Kingdom of Morocco. Such activities require the complete mental and physical capacities, which the complainant can enjoy, as demonstrated.

8.9 Finally, the State party informs that it would refrain from submitting any new information in relation to the cases before the Committee, which have remained pending before the judicial authorities of Morocco, such as the present case.

#### **State party's further observations**

9. On 4 June 2020, the State party expressed its commitment to a constructive cooperation with the United Nations treaty bodies. However, it regretted that the communications in relation to Gdeim Izik camp are motivated, under the caveat of human rights concerns, by the political interests, which fall outside the mandate of the Committee. The State party reiterated its observations on the merits of 25 August 2017, adding that on 16 July 2015 it had requested that the consideration of the present case be suspended since the complainant had been released pending his trial, and the judicial authorities of Morocco had not taken the final decision in his case. It also recalled its submission that it would not provide any further information in relation to the cases, which had remained pending before the national judicial authorities. The State party finally submitted that it should not be requested to submit observations on the merits in the case, wherein it previously asserted that the complainant had not exhausted all available domestic remedies.

#### **Complainant's additional comments**

10.1 On 24 July 2020, the complainant's counsel noted that the original communication was lodged before the Committee almost six years ago, and the Committee adopted the decision on the admissibility on 11 August 2016. The fact that it took Morocco almost 4 years after the Committee's admissibility decision to respond with an attempt to reopen and challenge the admissibility decision, is considered unacceptable lulls, with the only aim to delay the adoption of the decision on the merits by the Committee.

10.2 The State party is not acting with due diligence in dealing with the proceedings before the Committee and this is worsened by the announced lack of cooperation, as Morocco "intends to abstain from informing the Committee about any news on the communication until Moroccan courts will pronounce themselves". Such an attitude amounts to obstruction

of justice and failure to cooperate in good faith with the Committee and to allow the complainant to exercise his right under article 22 of the Convention.

10.3 The complainant denies that he was part of any armed militia, as alleged by the State party, which has not presented any evidence in that regard. He reiterates the arguments made presented on 22 May and 4 August 2015, recalling that he was arbitrarily deprived of liberty already on 10 November 2010 at the evening, and that he was tortured that night. The complainant referred to medical certificates, attached to his initial communication, which confirm that he had been subjected to torture. During the nine years, which have lapsed since the complainant's conditional release on 17 May 2011, the complainant has not stood a trial, during which he would have been heard. Finally, the complainant requests that the State party's call for suspension of examination of the present case be dismissed, inviting the Committee to proceed to an adoption of a decision on the merits of his case without further delay, on the basis of the previous exchanges between the parties.

### **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 complaint in the light of all information made available to it by the parties concerned.

11.2 The Committee notes the complainant's allegation that the physical ill-treatment he suffered during his arrest and interrogation at the Police station in Laayoune on 10 and 12 November 2010, and the treatment to which he was subjected during his custody on 14 November 2010, including sexual assaults, in order to force him to confess, amount to acts of torture because of their severity. The Committee notes that in the course of his hearings on 12 November 2010 and 28 January 2011, the complainant complained of the treatment he had suffered, but that the investigating judge ignored his allegations and injuries, and did not ask for a medical examination to be carried out. The Committee also notes the complainant's allegations that those acts of violence, which caused him long-term suffering, as evidenced by medical certificates, constitute a violation of article 1 of the Convention. In that context, the Committee observes the complainant's claim that he had access to a lawyer only after two days from his arrest. The Committee further notes the State party's argument that, at the aforementioned hearings, neither the complainant nor his lawyers made a complaint about the acts of torture. However, the Committee observes that the complainant's father referred to the acts of torture suffered by his son in the request for the complainant's release on bail of 9 December 2010, which was rejected without requesting a medical examination for the signs of torture. The Committee recalls its jurisprudence according to which any person deprived of liberty must be given access to prompt and independent legal and medical assistance and must be able to contact his family in order to prevent torture.<sup>10</sup> Taking account of the fact that, according to the complainant, he did not have access to any of these safeguards, and in the absence of convincing information from the State party challenging these allegations, the Committee considers that the physical ill-treatment and injuries suffered by the complainant during his arrest, interrogation and detention, as presented, constitute torture within the meaning of article 1 of the Convention. The Committee also concludes that the lack of fundamental legal safeguards to the complainant amounted to a violation of article 2 (1) of the Convention.

11.3 With regard to article 11, the Committee recalls its concerns and recommendation to the State party in its concluding observations, in response to numerous allegations regarding torture and ill-treatment committed by police officers, prison staff and, in particular, agents of the National Surveillance Directorate, to investigate acts of torture and to prosecute and punish those who have committed such acts, and to guarantee the right of prisoners to have access to a lawyer and a doctor, and to communicate with their family.<sup>11</sup> In the light of this recommendation and the lack of information provided by the State party on the subject in the case at hand, the Committee can only find that, in the present case, the State party has failed to fulfil its obligations under article 11 of the Convention.

<sup>10</sup> See e.g. General comment No. 2 (CAT/C/GC/2) on implementation of article 2 by States parties, paras. 13 and 19.

<sup>11</sup> CAT/C/MAR/CO/4, paras. 7 and 10.

11.4 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, on 12 November 2010, he appeared before the investigating judge bearing visible signs of torture, such as signs of beating on his arms, chest and back, but that these facts were not mentioned in the minutes; that he subsequently denounced the torture explicitly before the investigating judge on 12 January 2011; that the same allegations were raised in request for release on bail of 9 December 2010 and during the visit of the Crown General-Prosecutor of the Court of Appeal of Laayoune to the local prison; and that at no point did the investigating judge or the prosecutor launch an investigation *ex officio*.<sup>12</sup> The Committee takes note of the complainant's assertion that no effective remedies were available to enforce an obligation of medical examination for the signs of torture. The Committee further notes the State party's arguments that the complainant did not raise the allegations of torture with the competent authorities, and that he did not submit evidence that any complaints were submitted in that regard. It notes that, on 17 May 2011, the complainant was conditionally released and the criminal procedure, on the basis of four remaining charges, was suspended, without affording the complainant a court hearing or rendering the final court judgment. The Committee further notes that, according to information it has received, the purpose of the criminal procedure, which has now been in progress for more than ten years, does not relate to the allegations of torture that are the subject of this complaint, which have not given rise to any investigation. In these circumstances, the Committee considers that it is unlikely that the eventually resumed criminal procedure will be able to examine the allegations of torture.

11.5 The Committee observes that the State party far exceeded the reasonable length of time for dispensing justice in the complainant's case: nearly ten years elapsed since the events in question and the submission of the first allegations of torture, and no investigation was initiated. The complainant was held in detention solely on the basis of mere suspicions and a confession he was forced to sign under duress on 12 November 2010, while his roles in the Gdeim Izik camp and during its dismantlement remain disputed between the parties. In the light of the above, the Committee considers that the failure to conduct any investigation into the allegations of torture made in the complainant's case is incompatible with the State party's obligations under article 12 of the Convention to ensure that the competent authorities proceed to a prompt, independent and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed.

11.6 In the circumstances, the State party has also failed to guarantee the right of the complainant to lodge a complaint in accordance with its responsibilities under article 13 of the Convention, which presupposes that the authorities provide a satisfactory response to such a complaint by launching a prompt, independent and impartial investigation.<sup>13</sup> The Committee recalls that, pursuant to article 13 of the Convention, each State party shall take steps to ensure that the complainant and witnesses are protected against any ill-treatment or intimidation that might occur as a consequence of the complaint made or any evidence given. The Committee notes that the complainant was repeatedly subjected to acts of torture, which have escalated in gravity, following the complaint presented to the investigating judge on 12 November 2010, and that there was no satisfactory response to such a complaint. The Committee observes that the perpetuation of torture, to which the complainant was allegedly subjected, may have been related to a preceding denunciation thereof before the investigating judge, and that the State party has not provided any information to refute this part of the communication. The Committee concludes that these acts constitute a violation of article 13 of the Convention.

11.7 Regarding the complainant's allegations under article 14 of the Convention, the Committee recalls that this provision recognizes the right of the victim of an act of torture to fair and adequate compensation, and requires States parties to ensure that he obtains redress

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<sup>12</sup> See communication *Oskartz Gallastegi Sodupe v. Spain* (CAT/C/48/D/453/2011), paras. 6.4 and 7.3.

<sup>13</sup> See *Bendib v. Algeria* (CAT/C/51/D/376/2009), para. 6.6. See also *Parot v. Spain*, *Abad v. Spain* and *Bouabdallah Ltaief v. Tunisia*.

for all injuries suffered. The Committee recalls that redress must cover all the harm suffered and encompass restitution, compensation and guarantees of non-repetition, taking into account the circumstances of each individual case.<sup>14</sup> In the present case, the Committee notes the complainant's allegation that he is suffering the physical and psychological after-effects of the torture inflicted. The Committee also notes that the fact that the investigating judge did not order a medical examination prevented the complainant from receiving rehabilitation, compensation, support and guarantees of non-repetition of the crime. The Committee considers that the failure to conduct a thorough, prompt and impartial investigation denied the complainant any possibility of exercising his right to redress, in violation of article 14 of the Convention.<sup>15</sup>

11.8 The complainant also claims to be a victim of a violation of article 15 of the Convention because he was detained on the basis of confessions, signed on 12 November 2010, after he was subjected to torture. The Committee notes that the complainant claims to have confessed to no criminal activities, but to have been forced to sign a pile of unknown documents, which content he did not know. The Committee recalls that the general nature of the provisions of article 15 of the Convention 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>16</sup> In this case, the Committee notes that, according to the complainant, the statements that he signed as a result of torture served as the grounds for the charges against him and as justification for his continued detention for more than six months; and that he has, through his counsel, 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 Appeals of Laayoune did not take the allegations of torture into account when hearing the complainant, and denied that these allegations had been made during the proceedings. The Committee considers that the State party was under an obligation to verify the substance of the complainant's claims. By failing to carry out any verification and using such statements in the judicial proceedings and basing thereon the charges against the complainant, the State party manifestly violated its obligations under article 15 of the Convention. In this connection, the Committee recalls that, in its concluding observations on the fourth periodic report of Morocco (CAT/C/MAR/CO/4, para. 17), it expressed concern about the fact that, in the State party's current system of investigation, confessions are often used as evidence for prosecutions and convictions, thus creating conditions that may provide more scope for the torture and ill-treatment of suspects.<sup>17</sup>

11.9 With regard to the complaint under article 16 of the Convention, the Committee has taken note of the complainant's claim that the various forms of abuse to which he was subjected in the course of the judicial proceedings, including the ill-treatment and deplorable sanitary conditions in which he was detained during his initial months in Laayoune prison, amount to inhuman and degrading treatment. The Committee also takes note of the allegations that the complainant spent protracted periods of time handcuffed and blindfolded in detention, often in small and overcrowded cells, and that his access to a doctor was restricted for several weeks. In the absence of any relevant information from the State party in this regard, the Committee concludes that the facts reveal a violation by the State party of its obligations under article 16 of the Convention, in conjunction with article 11.<sup>18</sup>

11.10 As regards the State party's objections to the Committee's admissibility decision, and the alleged lack of due diligence in its dealing with the proceedings before the Committee, including the announced lack of cooperation with the Committee (paras. 8.10, 9 and 10.2),

<sup>14</sup> See *Bendib v. Algeria*, para. 6.7. See also the General comment No. 3 (2012): Implementation of article 14 by States parties (CAT/C/GC/3).

<sup>15</sup> See *Niyonzima v. Burundi* (CAT/C/53/D/514/2012), para. 8.6.

<sup>16</sup> See communications No. 419/2010, *Ktiti v. Morocco* (CAT/C/46/D/419/2010), para. 8.8, and No. 193/2001, *P.E. v. France* (CAT/C/29/D/193/2001), para. 6.3.

<sup>17</sup> See also *Ntikarahera v. Burundi* (CAT/C/52/D/503/2012), para. 6.6, and *Niyonzima v. Burundi*, para. 8.8.

<sup>18</sup> See *Niyonzima v. Burundi*, para. 8.8.

the Committee reminds the State party of its obligations under article 22 of the Convention to cooperate in good faith with the Committee, to allow the complainant to exercise his rights under article 22 of the Convention, and to promptly address the complainant's complaint.

12. The Committee, acting under article 22 (7) of the Convention, decides that the facts before it reveal a violation by the State party of article 2(1), in conjunction with article 1, and articles 11, 12, 13, 14, 15 and 16 of the Convention.

13. Pursuant to rule 118 (5) of its rules of procedure, 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) refrain from any form of pressure, intimidation or reprisals likely to harm the physical and moral integrity of the complainant and his family, which would otherwise constitute a violation of the State party's obligations under the Convention to cooperate with the Committee in good faith in the implementation of the provisions of the Convention; and (d) to inform it, within 90 days from the date of transmittal of this decision, of the steps it has taken in response to the views expressed above.

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