



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

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Committee against Torture

Communication No. 477/2011

**Decision adopted by the Committee at its fifty-second session (28 April–
23 May 2014)**

<i>Submitted by:</i>	Ali Aarrass (represented by counsel, Ms. Dounia Alamat and Mr. Christophe Marchand)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Morocco
<i>Date of complaint:</i>	3 October 2011 (initial submission)
<i>Date of present decision:</i>	19 May 2014
<i>Subject matter:</i>	Torture in police custody
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Torture or cruel, inhuman or degrading treatment; obligation of the State party to proceed to a prompt and impartial investigation; prohibition on invoking statements made as a result of torture as evidence
<i>Articles of the Convention:</i>	2, para. 1; 11; 12; 13; and 15

[Annex]



Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-second session)

concerning

Communication No. 477/2011

Submitted by: Ali Aarrass (represented by counsel, Ms. Dounia Alamat and Mr. Christophe Marchand)

Alleged victim: The complainant

State party: Morocco

Date of complaint: 3 October 2011 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 19 May 2014,

Having concluded its consideration of complaint No. 477/2011, submitted to the Committee against Torture by Ali Aarrass under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all the information made available to it by the complainant and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant is Ali Aarrass, a dual Belgian and Moroccan national. He claims to be a victim of violations of articles 2, 11, 12, 13 and 15 of the Convention. He is represented by counsel.

1.2 On 15 June 2012, the Committee informed the State party that it had decided to consider the admissibility of the communication and the merits together.

The facts as submitted by the complainant

2.1 On 1 April 2008, the complainant was stopped and questioned in Spain and subsequently detained under an international arrest warrant issued by Morocco for membership of a terrorist organization. Morocco requested his extradition and, following proceedings conducted in that regard, the complainant was handed over by Spain to the Moroccan authorities on 14 December 2010.

2.2 Immediately on arrival in Casablanca, the complainant was placed in police custody¹ in a location that he could not identify because he was taken there blindfold. He claims that he was then subjected to repeated sessions of torture, for between four and five days, during which time he was struck with truncheons and slapped by several people, electrocuted, and choked while his head was held in a bucket of water until he fainted, as well as being deprived of sleep, food and water, threatened with rape and undergoing actual rape with a glass bottle. He was allegedly given injections on several occasions, after which he experienced bouts of dementia and unconsciousness. On two occasions, he was driven to a forest in the vicinity of Nador, threatened with death and subjected to a mock execution by shooting. He spent several days in detention in Temara, where he reportedly endured similar torture sessions. He remained there until 23 December 2010, when he was transferred to Casablanca and handed over to the national brigade of the criminal investigation department; he was in a very serious condition, unable to speak or move. Following this treatment, the complainant signed pre-written confessions in Arabic, a language he does not know well. On 24 December 2010, the complainant was brought before the investigating judge from the Salé Court of Appeal, who neither took note of his multiple injuries nor requested that an expert medical examination be carried out.

2.3 After the extradition, his family only learned of his fate through a newspaper article that appeared on 27 December 2010. They then contacted a lawyer, who was able to see the complainant on the same day in Salé II Prison. The lawyer noted that the complainant was terrified and incapable of speaking or moving. The complainant remained in that state for several days, unable to talk about the treatment he had suffered. In the weeks that followed, he refused to lodge a complaint for fear of being tortured again.

2.4 The complainant appeared before the investigating judge again on 18 January 2011. This time, he was accompanied by his lawyer, who made allegations of ill-treatment. The judge, however, refused to take note of them. The complainant did not undergo a medical examination, notwithstanding the stipulation in articles 73, paragraph 5, and 134, paragraph 5, of the Code of Criminal Procedure that the public prosecutor and/or the investigating judge must order a medical examination of the accused when they observe that there are grounds for so doing.

2.5 On 11 February 2011, the complainant's counsel sent a letter to the Minister of Justice to ask for a medical examination to be carried out by independent international experts. On 18 March 2011, the Minister of Justice denied the request, stating that the complainant's incarceration had been lawful and that his rights and dignity had been respected; that he had never complained of having been subjected to acts of torture, either to the Office of the Prosecutor-General or to the investigating judge; that neither the complainant nor his Moroccan counsel had requested any expert medical examination or lodged any complaint about such a matter; and that under Moroccan law, the complainant was still entitled to ask for a medical examination to be conducted by the Moroccan health services.

2.6 On 13 May 2011, the complainant lodged a complaint with the Prosecutor-General at the Rabat Court of Appeal denouncing the acts of torture to which he had been subjected, but the complaint was dismissed on 29 September 2011. He also reported the acts of torture to the National Human Rights Council on 2 May 2011 and 29 July 2011. On 26 May 2011, the Brussels Bar Association addressed a letter to the Minister of Justice of Morocco

¹ In accordance with Decree 03-03 on cases relating to State security and counter-terrorism, a detainee may be held in police custody for three consecutive periods of 96 hours, during which time he or she has no right to counsel.

requesting him to authorize a forensic medical examination by Moroccan and foreign experts.

2.7 The complainant's trial took place before the Rabat Court of Appeal, hearing it in Salé as a terrorism case. The complainant appeared before the Court on 22 April 2011 and 15 September 2011. During the second hearing, his lawyers raised the procedural irregularities in his case, notably the ill-treatment that he had suffered. The Court, however, rejected all their motions, including the application to have the statements made by the complainant while in police custody declared invalid on the grounds that they had been obtained under duress. It also refused to defer consideration of the case pending an effective investigation into the allegations of torture.

2.8 The hearing before the Court took place on 24 November 2011. The complainant was sentenced to 15 years' imprisonment for participating in a terrorist group and obtaining arms for the group. According to the complainant, there is no objective evidence pointing to his involvement in any terrorist group and the case against him consists essentially of the "confession" which was obtained as a result of torture and subsequently retracted.² The Court, however, deemed these initial statements, which were drafted in Arabic without the assistance of an interpreter, to be valid because they were reportedly signed by the complainant, even though the Court itself had recourse to the services of an interpreter during the hearings. The Court maintained that the issue of torture had not been raised, although a request for an expert medical examination had been addressed to the Minister of Justice in February 2011 and a complaint of torture, subsequently dismissed, had been lodged in May 2011.

2.9 In Salé II Prison, the complainant does not enjoy confidential interviews with his lawyers, since there is always a man in plain clothes nearby who can hear their conversations. The lawyers have filed complaints about this matter, notably in letters dated 18 November 2011 addressed to the Minister of Justice and to the Director of the Department for Prison Administration and Reintegration, but have received no reply. Concerning his conditions of detention, the complainant asserts that he was held in complete isolation for several months, during which time he could not correspond with his lawyers, his family or his relatives. He was never informed of the rules applied to him or of the grounds for the detention regime, nor was he told of the reasons for the gradual relaxation of this regime.

The complaint

3.1 The complainant considers that the acts outlined herein constitute violations of article 2, paragraph 1, and articles 11, 12, 13 and 15 of the Convention.

² The judgement reads as follows: "The defence has argued that the defendant was subjected to torture and coercion. Given that there is no reference in the case file to indicate that the defendant or his lawyers raised the issue of torture during the investigation or requested an expert medical examination to prove the torture, the argument is demonstrably unfounded and must be rejected." The judgement further states:

"Whereas the defendant has denied in detail the accusations against him, before this Court and during the initial hearing.

"Whereas these denials are contradicted by the defendant's confession, during the preliminary phase, to all the charges against him, an unequivocal confession describing in detail the acts imputed to him and containing statements consistent and in agreement with those of defendants A.B. and B.R.B. (...).

Whereas this confession, clearly stated before the criminal investigation department, is not open to doubt and is held to constitute valid and sufficient evidence (...)."

3.2 With regard to article 2, paragraph 1, the complainant considers that the State party failed to take all effective measures to prevent him from being tortured. This violation is all the more serious because he drew the attention of the Minister of Justice to the acts in question, requested an expert medical examination and, finally, lodged an official complaint. However, the authorities did not respond.

3.3 The complainant maintains that, if the State party had respected its obligations under article 11, he would not have suffered the treatment inflicted on him in order to obtain his "confession". The State party has been confronted with numerous allegations of torture for years but has not modified its conduct in any way. The Minister of Justice had, however, been made aware of the concerns of the complainant's lawyers regarding his state of health as early as 16 December 2010.

3.4 Regarding articles 12 and 13 of the Convention, in view of the particular circumstances of the case and the context in which the events took place, there is, undeniably, reasonable ground to believe that the complainant was tortured. He was questioned several times by the Spanish authorities in the course of the two investigations launched against him in Spain for terrorist offences. During three years of inquiries, which concluded with the dismissal of the charges, he consistently denied that he belonged to any terrorist association. It is thus unthinkable that he would suddenly have confessed on being handed over to the Moroccan authorities.

3.5 In Morocco, no prompt, in-depth investigation meeting the standards required under the Convention was conducted. The investigating judge should have taken action as soon as the complainant appeared before him for the first time in December 2010. The Rabat Court of Appeal, sitting in Salé at first instance, neither requested that the documents concerning the allegations of torture be attached to the case file nor ordered that the complaint be investigated. No attempt was made during the investigation into the complaint to identify the perpetrators of the torture, and the investigation was conducted by the same police force that had inflicted the treatment complained of on the complainant. Moreover, neither the public prosecutor's office nor the investigating judge took action when the complainant emerged from police custody in a state of profound shock and bearing numerous signs of the ill-treatment that he had suffered, and, again, it was the Rabat public prosecutor's office that was given responsibility for the investigation.

3.6 The complainant and his defence lawyers have, furthermore, been subjected to pressure and intimidation. The complainant does not feel at all safe in his place of detention.

3.7 The complainant considers that the State party violated article 15 of the Convention because it did not ensure that any statement made as a result of torture could not be invoked as evidence in the proceedings against him.

State party's observations

4.1 In a note verbale dated 11 December 2011, the State party challenged the admissibility of the communication. It informed the Committee that the complainant had been placed in detention immediately on arrival in Morocco on 14 December 2010. The complainant was suspected of belonging to the *Harrakat al-moujahidine fi al-maghrib* (Al-Mujahidin Movement in Morocco), a terrorist organization. The investigation conducted by the criminal investigation department under the supervision of the public prosecutor's office established that he had been recruited by Abdelkader Belliraj (case concerning the dismantling of the terrorist organization of the same name) and had been involved in the smuggling of firearms into Morocco from Europe (Melilla) between 2002 and 2006. Immediately on arrival in Morocco, he was taken into police custody; the period of custody was extended once, on 18 December 2010, and again, on 22 December 2010, as provided

for in article 66 of the Code of Criminal Procedure, which covers police custody in terrorism cases.

4.2 On 24 December 2010, the complainant was brought before the competent investigating judge at the Rabat Court of Appeal. According to the record of the hearing, the complainant did not complain of having been tortured, nor did he ask to be examined by a doctor. He merely affirmed that he had become a member of the jihadist movement in Morocco in 1992. During the second hearing before the judge, on 18 January 2011, neither the complainant nor his lawyer made a complaint of torture, and they did not appeal the judge's decision. On 3 March 2011, the complainant was brought before the Rabat Court of Appeal. In May 2011, he lodged a complaint concerning acts of torture with the Minister of Justice; the complaint was referred to the public prosecutor's office for investigation.

4.3 On 15 September 2011, the complainant's lawyer applied for the police report to be declared invalid on the basis that the statements of the complainant that were contained in the report had been made as a result of torture. The application was rejected by the Court. On 27 October 2011 and the complainant was convicted under articles 293, 294 and 295 of the Criminal Code (criminal association and assistance in crime) and article 218-1, paragraph 9 (participation in an association formed, or in an agreement entered into, for the purposes of preparing or committing acts of terrorism), of the Code. He was sentenced to 15 years' imprisonment. He filed an appeal against this judgement.

4.4 The State party maintained that the communication was inadmissible under article 22, paragraph 5 (a), of the Convention because the complainant had submitted a communication to the Human Rights Committee against Spain in respect of the same facts. Secondly, he had not exhausted all domestic remedies, since his appeal was still being examined by the Court of Appeal. Once that Court had reached a decision, the complainant could still appeal under article 323 of the Code of Criminal Procedure. Furthermore, the complaint addressed to the Minister of Justice by the complainant in May 2011 remained under investigation. Completing the investigation would take some time, particularly since the complainant had not revealed the identities of the persons who had reportedly participated in the acts of torture. The Court had recently issued orders for the complainant to be examined by a doctor in order to verify his allegations of torture.

Complainant's comments on the State party's submission

5.1 On 28 March 2012, the complainant submitted his comments on the State party's observations.

5.2 The complainant maintains that the complaint filed with the Human Rights Committee is not the same as the one before the Committee against Torture. He had submitted a communication to the Human Rights Committee against Spain in order to prevent his extradition to Morocco, owing to the risk of being subjected to torture. The present complaint, on the other hand, concerns the events that took place in Morocco.

5.3 With regard to the exhaustion of domestic remedies, the complainant asserts that there is no procedure in Morocco whereby an individual who complains of having been tortured can compel the State to conduct an impartial and speedy investigation. The lodging of such a complaint has no effect, either de jure or de facto, on the progress of criminal proceedings that are brought based on evidence alleged, in all likelihood, to have been obtained through torture. There is no procedure available to the complainant for suspending the criminal proceedings initiated against him pending a proper investigation of his complaint. The complainant has no such domestic remedy available to him. In this regard, it must be noted that, in its judgement, the Court rejected the application to have the

“confession” declared inadmissible on the pretext that the case file contained no reference to allegations of torture.³ Furthermore, some of the reported violations of the Convention are definitive and could not be “made good” by acquitting the complainant or acknowledging the cruel treatment inflicted on him.

5.4 The complainant expresses concern about the progress of the criminal proceedings initiated in response to his complaint of torture. When he referred to that matter during his trial, the public prosecutor stated that no complaint had been lodged. After the complainant provided proof of submission, the judges maintained that the complaint did not affect the trial. In the meantime, the public prosecutor’s office dismissed the complaint, and the complainant was ultimately sentenced to 15 years’ imprisonment. The complainant had also brought criminal indemnification proceedings but still had no information as to the outcome. Then, in the context of the proceedings before the Committee, the complainant learned that the investigation into his initial complaint had been reopened. However, given the failure to conduct any inquiries for six months, the complainant feared that the “reopening” of the investigation was a mere sham. He advances as proof the conditions surrounding the only two investigative procedures conducted — namely, his questioning by the police officers responsible for the investigation and his forensic medical examination — which were subsequently the subject of a complaint to the Prosecutor-General at the Rabat Court of Appeal and the Minister of Justice.

5.5 In December 2011, the complainant was questioned by police officers in plain clothes who did not produce badges to identify themselves, indicate to which service they belonged or specify under which procedure they were questioning him. The questioning was conducted in French but the transcript was typed up directly in Arabic, without the presence of an interpreter, which, however, is indispensable for any procedural formality involving the complainant. The police officers presented documents for him to sign, but, since they were in Arabic, he refused to do so. He did not receive a copy of his statement.

5.6 As to the forensic medical examination, the complainant was taken on 8 January 2012, without prior notice, to a hospital located a short distance from the prison.⁴ There he met a woman who introduced herself as a forensic doctor and who was accompanied by two male doctors. None of them identified themselves by name. The complainant gave a detailed account of the ill-treatment to which he had allegedly been subjected and he was examined.⁵ The interview and examination took place in the presence of five unidentified persons in plain clothes. A radiographic examination of the complainant’s left shoulder was performed in the same establishment. The complainant was then transported to another facility for an ear, nose and throat examination, which did not take place because the equipment was not working. No further tests were conducted thereafter. The complainant

³ See footnote 2.

⁴ This was the Bin Sana Hospital in Rabat, according to the report drawn up by the Office of the Prosecutor-General.

⁵ According to the medical report, he stated that he had been “assaulted repeatedly with a blunt instrument and slapped and kicked while bound at the wrists and ankles and blindfolded. He further states that police officers penetrated his anus with a glass bottle. Mr. Ali Aarrass reports that, during the torture, he experienced generalized pain, ringing in his ears and bleeding from his left ear and his anus, and that he lost consciousness several times, requiring him to be attended by a doctor, who injected him intravenously in the crook of each arm twice at an interval of two days, with an unidentified drug, before administering an intramuscular injection in his left buttock. He states that he also suffered a cigarette burn on the ulnar side of his right hand, which resulted in blistering”. The conclusion of the report is as follows: “The clinical examination of Mr. Ali Aarrass performed on 8 December 2011 (sic) revealed no sign of injuries that could have been caused by the acts of torture that Mr. Aarrass alleges took place during his pretrial detention.”

did not meet with a psychiatrist, and therefore no psychological impact assessment was carried out.

5.7 On 19 March 2012, the complainant wrote to the Prosecutor-General requesting, inter alia: an examination of his left shoulder and the necessary medical care, since he could not lift his arm in the normal way and without experiencing pain; an ear, nose and throat examination; a neurological examination, given that he had experienced a significant loss of sensitivity in his limbs since the events complained of; and a psychiatric examination, as he was suffering from insomnia, stress and anxiety, among other symptoms. In the same letter, he applied for permission to designate one or more medical consultants and to have the expert medical examination conducted by a neutral international body (the International Rehabilitation Council for Torture Victims) so that the equality of the parties would be ensured when the examination was conducted. He also asked to be assisted by counsel throughout the investigation procedure. He further requested access to a photograph album containing pictures of all the persons who had had charge of him on his arrival in Morocco, so that he could identify his aggressors. No reply to this letter has been received.

5.8 The complainant states that the inquiry was opened only after a considerable delay and evidence has therefore been lost. In addition, he has not been informed of the status of the inquiry, and his lawyers have not been authorized to assist him in that connection or been invited to provide any comments that they might wish to make. A number of basic required steps have not been taken, such as the organization of a *confrontation* (a face-to-face meeting among all concerned parties), the provision of a compilation of photographs of persons who may have been his assailants, the transmittal of the prison file containing photographs of the complainant, etc. Neither he nor his counsel were informed that he was going to be interviewed and examined by a physician, nor was his consent to that evaluation sought. Since the defence was not given the opportunity to request that certain inquiries be made, the report on the investigation into his complaint of torture is woefully incomplete. The complainant therefore concludes that there was no effective remedy that he could have used to demonstrate that he was tortured or to prevent himself from being convicted on the basis of confessions obtained under torture.

5.9 With regard to the State party's observations, he emphasizes that it is paradoxical to say, on the one hand, that an investigation into his allegations of torture is being conducted and, on the other, to state that the allegations are untrue because there is no mention of them in the transcripts of the hearings held by the investigating judge. Reports from international organizations attest to the existence of repeated cases of torture in Morocco, along with unfair trials and the impunity that prevails in that regard. The fact that his complaints were not initially reflected in the records of the proceedings in no way supports the conclusion that he had not been subjected to inhuman and degrading treatment.

5.10 The complainant notes that cases involving charges of terrorism are heard by judges who specialize in such proceedings. It can therefore be supposed that the judges responsible for his case file are the same ones who, in the past, have helped members of the Moroccan police and the National Surveillance Directorate (DST) to escape punishment for violations of the fundamental rights of accused persons and allowed statements obtained under torture to be used as evidence in legal proceedings. In particular, the involvement in his case of investigating judge C., who specializes in terrorism cases, and of trial judges at first instance who reportedly issued rulings in the Belliraj case gives reason to believe that torture could have been used yet again in the claimant's case.⁶ The complainant refers to the Committee's concluding observations regarding Morocco, in which the Committee

⁶ The complainant states that people who were prosecuted in the Belliraj case said that they had been subjected to ill-treatment and torture, but that no action was taken on their complaints.

observed with concern that a climate of impunity appears to have taken hold in the country⁷ with respect to violations of the Convention. He also refers to the judgement handed down in *Boutagni v. France*, in which the European Court of Human Rights noted that international reports on the human rights situation in Morocco all denounced the ill-treatment of people suspected of taking part in terrorist acts.⁸

5.11 The complainant states that he was powerless to ensure that any particular piece of information was recorded in the transcripts of his hearings, whether during his time in custody or during his appearance before the investigating judge. During his arraignment, the investigating judge was “introduced” to him as the chief of the officials who had been questioning him, which is why he decided not to lodge any complaint with the judge. Nevertheless, given his physical condition at the time, the investigating judge should have ordered that medical examinations be performed. During his second appearance, when he was assisted by counsel, the complainant retracted his “confession” and complained of acts of torture, but that statement was not recorded in the transcripts. The complainant could not compel the judge to abide by the law. What is more, the judge knew what had occurred and would already have taken action had he intended to do so. Lastly, the complainant complained to the Minister of Justice and filed a criminal complaint. No action was taken, and no type of investigation was undertaken until later on, when the inquiry was reactivated. The complainant fears that the inquiry will not be pursued in earnest, given its slow pace, ineffectiveness, lack of transparency and the fact that objective evidence from both sides is not being sought, as demonstrated by the supposedly expert examination performed on the complainant.

5.12 He notes that, in its observations, the State party does not dispute the fact that the charges brought against the complainant are chiefly based on the statements that he is said to have made while in police custody and that were confirmed during his initial examination before the investigating judge. Yet, throughout the rest of the proceedings, the complainant has said that those confessions are not valid.

5.13 The State party makes no mention of the dismissal of the complaint in September 2011 and gives no explanation for that decision. Nor does it explain why the inquiry was reopened or why it was reinitiated at that particular point in time. It says nothing about the type of expert examination requested, the doctor who was instructed to perform it, the tests that were done or their results. The State party does not address the fact that no interpreter assisted the complainant while he was in police custody or that he was asked to sign documents written in Arabic. Photographs were apparently taken of the complainant upon his arrival at the Salé II Prison. However, they were not produced during the proceedings in order to verify his claims about his physical condition. On 21 March 2012, the complainant’s attorneys wrote to the Minister of Justice, the Prosecutor-General at the Rabat Court of Appeal and the director of the prison and requested access to those photographs and to the complainant’s prison file, but their letters went unanswered.

Additional information from the parties

Information from the complainant

6.1 The complainant has written to the Committee on several occasions about events that have occurred since the time that he submitted his comments on the State party’s

⁷ Concluding observations of the Committee against Torture regarding the fourth periodic report of Morocco, adopted on 17 November 2011 (CAT/C/MAR/CO/4), para. 16.

⁸ European Court of Human Rights, *Boutagni v. France*, No. 42360/08, judgement of 18 November 2010, para. 46.

observations. He states that on 18 April 2012, the Prosecutor-General again dismissed the complaint of torture that he had filed in May 2011 on the grounds that his claims had not been substantiated. No action has been taken on his request for the initiation of criminal indemnification proceedings either. The complainant again sent requests to the Minister of Justice and the Rabat Prosecutor-General for, among other things, the reports concerning his hearing of 7 January 2012 and the forensic medical examination of 8 January 2012 and for the photographs of him that were taken upon his arrival at the Salé II Prison, because he believed that they could provide information that could have a bearing on his appeal against his conviction.

6.2 The reports on the expert medical examination and the hearing were communicated to the complainant on 29 May 2012. However, these reports were prepared by the same services whose members had tortured him and contain irregularities. For example, the statement he made to the investigators is signed, whereas he did not sign anything during the interview because he could not understand the transcripts drafted in Arabic. He maintains that he did not say that he had fully recovered, yet the report says just the opposite. It also says that the complainant's body no longer bore any sign of ill-treatment, yet his sister saw such signs on his wrists and behind his right ear and his wife saw marks of cigarette burns. The complainant also received a photograph, but it is the one on his arrest sheet, not the one taken by prison personnel upon his arrival at Salé II Prison. The expert medical report is one-sided and contains errors. For example, it says that an ear, nose and throat examination was performed, which is not the case.

6.3 At the request of the complainant's counsel, Dr. B., who is a doctor and an independent expert on torture, gave his opinion on the medical report and concluded that a complete medical and psychological examination in accordance with the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) should have been carried out. Such an examination includes tests performed by independent physicians who specialize in evaluating people who are thought to have been subjected to torture. The report does not provide details on the tests that were done and gives almost no detailed information on the results of those tests. The doctors did not attempt to obtain the reports of the doctors who examined the complainant while he was in police custody or in prison. The report does not say whether the examination took place in the presence of police officers or prison personnel or whether the complainant was handcuffed or otherwise physically restrained. The substantive portion of the report consists of one and a half pages, and mention of his claims that he was tortured is limited to just two short sentences. The report contains no diagrams or photographs. All the report does is to note the existence of scars on his lower extremities from an old road traffic accident. There is no indication that the complainant's allegations were evaluated. Since the examination took place over a year after his arrest and it was therefore unlikely that there would be visible marks on his body, a complete, full-body examination would have been called for. Furthermore, the report makes no mention of any psychiatric or psychological assessment, which demonstrates that the examination did not meet international standards for the evaluation of claims of torture.

6.4 The report on the expert medical examination and Dr. B's report were submitted to Dr. H.B., a Moroccan physician who specializes in the detection of torture. He describes the forensic medical report as being "so brief that neither the Board nor the parties concerned can be confident that Mr. Ali Aarrass actually underwent a complete, thorough examination. The brevity of the report is evident at all levels ... The conclusions are equally terse and are not in line with the recommendations made in the Istanbul Protocol, since the expert must not merely say whether or not physical sequelae associated with acts of torture are present but must also provide his or her opinion as to the degree of consistency between all the evidence obtained from physical and psychological observations, diagnostic test results, the expert's knowledge of methods of torture used in

the region, consultation reports ... and the allegations of abuse ... Any shortcomings in the psychological evaluation of a person claiming to have been tortured is a serious failing and an unacceptable lapse on the part of the expert in terms of the standards set out in the Istanbul Protocol.” Dr. B. concludes that the report in question “is very brief, provides little information, was not prepared in accordance with the proper procedures and fails to meet the accepted international minimum standards set out in detail in the Istanbul Protocol for medical evaluations of persons who claim to have been tortured.”

6.5 “A complete physical and psychological medical re-evaluation of Mr. Ali Aarrass should therefore be undertaken by physicians with experience in investigating and documenting claims of torture. These examiners should be provided with the time and the discretionary authority to make use of any and all methods of medical investigation, diagnostic tests and other consultations as may be needed to arrive at sound, reasoned conclusions.”

6.6 According to the complainant, in accordance with the principle of the right of response, a thorough expert medical evaluation is essential in order to gather concrete evidence concerning his claims of torture. This process would entail providing advance notice to the complainant and his counsel of the arrangements made for doctors’ visits, allowing the complainant to be assisted by his lawyer and a medical consultant on those occasions, giving the complainant access to the results of his clinical tests, and carrying out any supplementary tasks and examinations requested by the complainant’s defence counsel with a view to obtaining a complete analysis of his state of health and his claims.

6.7 When appearing before the court on 18 June 2012, the complainant repeated his request for an effective and independent inquiry into his claims of torture and, in particular, for a rigorous expert medical evaluation. Because he felt that a thorough inquiry was called for, the complainant submitted an application for the institution of criminal indemnification proceedings to the presiding judge of the court of first instance of Rabat⁹ on 18 September 2012. This application was declared inadmissible on 28 January 2013, with the judge basing his decision on the fact that the complainant had not identified his torturers and had not specified the articles of the Criminal Code under which the acts of torture in question constituted a criminal offence.

6.8 The complainant has informed the Committee that he is the target of continual acts of intimidation in prison. His lawyers are not always informed when hearings are to be held and, as a result, he sometimes has to appear without counsel. He is not provided with proper health care, and he is prevented from corresponding with his lawyers and his family. After being held in total isolation for months (no communication whatsoever with fellow prisoners or guards; no reading materials, radio or television; he was allowed in the exercise yard only when no one else was there; etc.), he was placed in a cell with four people convicted on drug charges who were particularly rough and abrasive. Twice he has been assaulted by another prisoner without any guard stepping in to protect him. In July 2012, with no reason being given, he was placed in isolation again and allowed to go out into an individual exercise yard for just one hour per day. He was returned to a regular cell shortly before the Special Rapporteur on torture visited Morocco. After he met the Special Rapporteur on 20 September 2012,¹⁰ the complainant was threatened by the deputy director

⁹ The complainant asked the court of appeal to grant a stay of the ruling pending the outcome of the investigation.

¹⁰ In a letter from the Special Rapporteur to the Moroccan authorities which was made public on 31 May 2013, the Special Rapporteur indicated that the independent forensic physician who had accompanied him to Morocco had performed an external physical examination of the complainant and concluded that most of the marks that he had found were consistent with the complainant’s claims

of the prison. His lawyers have written to the Moroccan authorities numerous times about the pressure and threats directed at him, his ill-treatment¹¹ and the denial of medical treatment, but have received no response.

6.9 On 1 October 2012, the Criminal Division of the Rabat Court of Appeal upheld the complainant's conviction and his sentence of 12 years' imprisonment for violating the Anti-Terrorism Act. The Court stated that "the court of first instance ruled properly on all requests and arguments for the defence. This Court therefore upholds all such rulings as meeting all the requirements of the law, especially in respect of the defendant's claim to having been tortured, inasmuch as an expert medical examination was performed by three physicians, all of whom confirmed that the defendant had not been subjected to torture of any sort. The Court therefore finds that the verdict handed down by the criminal court of first instance was justified and thus upholds it on appeal as set forth herein."¹² The Court also upheld the sentence set by the court of first instance and endorsed the reasoning on which it was based. In October 2012, the complainant filed an appeal with the Court of Cassation.

Information submitted by the State party

7.1 On 20 March 2014,¹³ the State party informed the Committee that the complainant had apprised the Ministry of Justice of his allegations of torture and ill-treatment in February 2011 and had been advised to lodge a criminal complaint. A preliminary inquiry into that complaint had been undertaken by the criminal investigation department at the request of the Prosecutor-General, but the findings did not provide the Prosecutor with a basis for opening an investigation. At the insistence of the complainant, the public prosecutor's office ordered two additional measures in December 2011: another interview with the criminal investigation department and a forensic medical examination. The evidence collected by these means was transmitted to the complainant in April 2012.

7.2 The Moroccan authorities have devoted a great deal of attention to this complaint in the course of a constructive exchange of information with United Nations human rights mechanisms. Within this framework, the Special Rapporteur on torture, accompanied by a physician, spoke to the complainant on 20 September 2012 at Salé Prison. Other special procedures have also considered the complainant's case.

7.3 In response to the allegations which were made by the Special Rapporteur and which were formally communicated to the authorities on 4 December 2012, members of the National Human Rights Council and three physicians went to Salé Prison on 25 and 26 December 2012 to investigate the claims that the complainant had been tortured in police custody and the allegations concerning the use of ill-treatment, duress and intimidation by prison officials. The administrators of the prison had already begun to look into the matter before the visit by members of the National Human Rights Council.

(cigarette burns, signs that he had been beaten on the soles of both feet, that he had been bound up tightly and hung by his wrists, and that electric shocks had been applied to his testicles). The physician also found that the complainant's description of his symptoms after being subjected to torture and ill-treatment was entirely compatible with his claims and with the types of practices and methods described and the claims made by other witnesses whom the Special Rapporteur met in other places of detention and who were unknown to Mr. Aarrass.

¹¹ A list of the letters is included in the Committee's case file.

¹² According to a French translation of the judgement provided to the Committee by the complainant.

¹³ Reminders were sent to the State party by the Committee on 15 June 2012, 15 August 2012, 11 October 2012, 6 December 2012, 21 December 2012 and 25 February 2014, inviting it to submit its observations on the merits.

7.4 As for the complainant's allegations concerning his treatment following his meeting with the Special Rapporteur on torture, the State party notes that inquiries were undertaken in October and December 2012 by the Office of the Inspector General for the Prison System and that all those involved were interviewed. Its findings indicate that these allegations are essentially the result of the complainant's vexation with various routine measures taken by prison officials. The complainant mistakenly believed that these lawful measures were directed at him alone, in view of several incidents that occurred during that period, and interpreted them as being attempts at intimidation or reprisals.

7.5 With regard to the question of the complainant's conditions of detention in general, the State party notes that the complainant was placed in an individual cell — not an isolation cell — at his request. At the time of the Special Rapporteur's visit, the complainant was not being held in isolation and was not subject to any disciplinary measures. The complainant had asked to be in a one-person cell when he was placed in pretrial detention. Although the facility is overcrowded, an individual cell was found for him. He remained in the same cell after his conviction.

7.6 As to his allegations concerning a lack of medical care, the State party notes that, since his arrival at Salé Prison, the complainant has had 11 medical appointments. Following the visit to the prison by personnel of the National Human Rights Council on 25 and 26 December 2012, the development of a more targeted medical treatment schedule that includes psychological counselling has done a great deal to defuse the tension surrounding the issue of the complainant's conditions of detention.

7.7 Since he was incarcerated, the complainant has gone on hunger strike several times (most recently on 10 July 2013) to protest against the conditions in which he is being held. Following the intervention by the National Human Rights Council and a number of meetings between the complainant and prison administrators, including face-to-face meetings between the various parties, the complainant decided to end his strike. On 3 August 2013, he received a visit from the Director of the Department of Prison Administration who assured him that every effort would be made to ensure that the requested medical examinations would be performed and that instructions would be given to make sure that his fundamental rights as a prisoner were respected. On 6 August, he was examined by a urologist and given a general check-up in the presence of members of the National Human Rights Council. That examination showed that the complainant does not suffer from any problems whatsoever that would endanger his health.

7.8 Thanks to the successful mediation of the National Human Rights Council, the dialogue between the prisoner and prison administrators has been resumed. Prison officials have given assurances that they will regularly update the National Human Rights Council and the Inter-Ministerial Human Rights Delegation on the situation of the complainant.

Further information submitted by the complainant

8. On 31 March 2014, the complainant reiterated his earlier claims and emphasized that he continued to be subjected to pressure by the authorities.

Issues and proceedings before the Committee

Consideration of admissibility

9.1 Before considering any claim contained in a complaint, the Committee against Torture must decide whether the complaint is admissible under article 22 de la Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 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. It notes that issues relating to the

arrest and trial of the complainant have been brought to the attention of a number of different special procedures of the Human Rights Council, including the Special Rapporteur on torture and the Working Group on Arbitrary Detention. However, the Committee considers that extra-conventional procedures or mechanisms established by the Commission on Human Rights or the Human Rights Council, whose mandates are to examine and report publicly on human rights situations in specific countries or territories or on cases of widespread human rights violations worldwide, do not generally constitute an international procedure of investigation or settlement within the meaning of article 22, paragraph 5 (a), of the Convention. The Committee therefore considers that the above-mentioned provision does not preclude it from considering the present complaint.¹⁴

9.2 In accordance with article 22, paragraph 5 (b), of the Convention, the Committee does not consider any communication unless it has ascertained that the complainant has exhausted all available domestic remedies. In this instance, the Committee takes note of the fact that a complaint of torture was lodged with the Prosecutor-General at the Rabat Court of Appeal on 13 May 2011. That complaint was dismissed, reactivated and subsequently dismissed once again, on 18 April 2012, on the ground that the claims had not been substantiated. The Committee also notes that when he was on trial at the Rabat Court of Appeal, Mr. Aarrass reported that he had been tortured. Accordingly, the Committee concludes that domestic remedies with respect to Mr. Aarrass' complaint that he was tortured while being held in police custody have been exhausted.

9.3 The other admissibility requirements having been met, the Committee considers the communication to be admissible and proceeds to its consideration of the claims on the merits under article 2, paragraph 1, and articles 11, 12, 13 and 15 of the Convention.

Consideration of the merits

10.1 The Committee has considered the complaint in the light of all the information made available to it by the parties, in accordance with article 22, paragraph 4, of the Convention.

10.2 The Committee takes note of the claims by the complainant that he was placed in police custody on 14 December 2010 and subjected to torture sessions until 23 December 2010 for the purpose of extracting a confession from him; that he was then forced to sign a so-called confession, which had been written beforehand in Arabic, a language that he does not know well; that during this period his family was not informed of his whereabouts and only discovered where he was through the press on 27 December 2010; that he did not have access to a lawyer until that date; that the investigating judge neither documented his injuries at his hearing on 24 December 2010 nor requested a medical evaluation; and that when he made his second appearance before the investigating judge on 18 January 2011, this time accompanied by his lawyer, he made a complaint about being tortured in custody, but his allegations were not written down and the judge failed to order a medical examination. Concerning these allegations, the Committee also takes note of the State party's comments that neither the complainant nor his lawyer made a complaint about torture at the hearing held on 18 January 2011.

10.3 The Committee recalls its jurisprudence concerning certain basic guarantees that must be applied to all persons deprived of their liberty in order to prevent them from being subjected to torture. These guarantees include the right of detainees promptly to receive independent legal assistance and independent medical assistance and to contact relatives.¹⁵

¹⁴ See also, for example, communication No. 1806/2008, *Saadoun v. Algeria*, Views of the Human Rights Committee adopted on 22 March 2013, para. 7.2.

¹⁵ General comment No. 2 (2007) on implementation of article 2 by States parties, *Official Records of the General Assembly, Sixty-third Session, Supplement No. 44 (A/63/44)*, annex VI.

The Committee also recalls its concluding observations on the fourth periodic report of Morocco. In that document it noted with concern that under the Anti-Terrorism Act No. 03-03 of 2003 access to a lawyer is not permitted until after the sixth day, which places suspects who are being held in custody at greater risk of torture. The Committee added that it is precisely while they cannot communicate with their families and lawyers that suspects are most vulnerable to torture.¹⁶ In this context, considering the fact that the complainant was not guaranteed access to legal assistance, particularly during his time in custody, that he had no contact with his family, that his family had no information about his place of detention, that he had no access to a doctor and that he was allegedly forced to sign statements in a language that he does not know well, and in view of the absence of information from the State party challenging those claims, the Committee considers the State party to have failed in its obligations under article 2, paragraph 1, and article 11 of the Convention.

10.4 With regard to articles 12 and 13 of the Convention, the Committee has taken note of the complainant's allegations that the investigating judge neither launched an inquiry nor ordered a medical examination and refused to take note of his allegations of torture; that, on 11 February 2011, he wrote to the Minister of Justice to request a medical examination by independent experts, a request that was denied; that, on 13 May 2011, he lodged a complaint of torture with the Prosecutor-General at the Court of Appeal, but the complaint was dismissed and then subsequently reactivated; that he was only questioned by the police about his complaint in December 2011 and was only examined by a forensic doctor in January 2012; that his requests for an examination by doctors from an independent institution were denied; and that his request for access to the photographs taken upon his arrival at the prison was also denied. The Committee also takes note of the opinion of two medical doctors that the report produced by the forensic doctor after examining the complainant in January 2012 was not in conformity with the Istanbul Protocol.

10.5 The Committee notes that, notwithstanding the letter which the complainant sent to the Minister of Justice in February 2011, no medical examination was undertaken and, in the context of his criminal complaint, an examination was only undertaken in January 2012, which was more than a year after the alleged events. Moreover, in the context of this complaint, the complainant was only granted a hearing in December 2011 and was not informed at any time prior to that date of the status of the proceedings or even the fact that the proceedings had been reactivated. The Committee also notes that the State party failed to provide any information about the outcome of the investigation and the evidence made available to the authorities; it merely affirmed that the information gathered had been communicated to the complainant. The Committee, furthermore, draws attention to the fact that the Court of Appeal took no account of the claimant's allegations of torture when deciding to convict him; it even went so far as to deny that the allegations had been made during the proceedings.

10.6 In the light of the above, the Committee considers that there was a failure on the part of the authorities to conduct an investigation and that this was incompatible with the State party's obligations under article 12 of the Convention to ensure that the authorities proceed to a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed. By failing to meet this obligation, 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

¹⁶ CAT/C/MAR/CO/4, para. 8.

authorities provide a satisfactory response to such a complaint by launching a prompt and impartial investigation.¹⁷

10.7 The complainant claims that he is a victim of a violation of article 15 of the Convention, as he was convicted on the basis of a case mainly consisting of a “confession” that was obtained under torture during his time in custody and subsequently retracted.

10.8 The Committee recalls that, pursuant to this article, the State party must ensure that any statement which is established to have been made as a result of torture is not invoked as evidence in any proceedings. From a reading of the Court of Appeal rulings, it is clear that the complainant’s confession had a decisive impact on the conviction. The Committee takes note of the complainant’s allegations concerning the torture to which he was subjected while in custody and notes that the complainant was examined on 20 September 2012 by an independent doctor who accompanied the Special Rapporteur on torture during his visit to Morocco and who concluded that most of the marks found on the complainant’s body and the symptoms experienced by the complainant were consistent with his allegations; that, as previously stated, the State party has failed in its duty to proceed to a prompt and impartial investigation into the allegations of torture; and that the Court of Appeal did not give serious consideration to the allegations of torture when convicting the complainant on the basis of his confession, even going so far as to deny that those allegations had been made during the proceedings. On the basis of this evidence, the Committee considers that the State party has breached its obligations under article 15 of the Convention. The Committee recalls that, in its concluding observations on the fourth periodic report of Morocco, it expressed concern about the fact that confessions are commonly used in the State party’s current system of investigation as evidence for prosecutions and convictions and that convictions in many criminal cases, including terrorism cases, are based on confessions, thus creating conditions that may provide more scope for the torture and ill-treatment of suspects.¹⁸

11. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is of the view that the information before it discloses a violation of article 2, paragraph 1, and articles 11, 12, 13 and 15 of the Convention.

12. Pursuant to rule 118, paragraph 5, of its rules of procedure (CAT/C/3/Rev.6), the Committee urges the State party to inform it, within 90 days from the date of transmittal of the present decision, of the measures that it has taken in accordance with the observations set forth above. These measures must include the initiation of an impartial and in-depth investigation into the complainant’s allegations. Such an investigation must include the conduct of medical examinations in line with the Istanbul Protocol.

[Adopted in English, French and Spanish, the French text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee’s annual report to the General Assembly.]

¹⁷ Communication No. 376/2009, *Bendib v. Algeria*, Committee Decision of 8 November 2013, para. 6.6.

¹⁸ CAT/C/MAR/CO/4, para. 17.