

Ms. Ana Racu
Rapporteur on reprisals
Mr. Claude Heller
Rapporteur on follow-up to decisions
UN Committee against Torture (CAT)
UNOG-OHCHR
CH-1211 Geneva 10 (Switzerland)

Via email

Geneva, Paris, 5th July 2018

Re: Request for protection measures regarding reprisals against petitioner

Dear Ms. Racu and Mr. Heller,

The purpose of this letter is to request that the Committee against Torture (CAT) request that Morocco take protective measures to prevent and remedy acts of reprisals against Mr. Ennaâma Asfari, the author of a communication in relation to which the CAT found violations, and to prevent further breaches of the Convention.

Background

In March 2014, Action by Christians for the Abolition of Torture (ACAT France) submitted a petition to the UN Committee Against Torture (the CAT) on behalf of Mr. Ennaâma Asfari, a Sahrawi human rights defender, who was tortured in detention in Morocco. The CAT found that the State party was responsible for violations of Art. 1 and 12 to 16 of the Convention Against Torture.¹

Since the CAT's decision, Mr. Asfari's has been subjected to several acts of reprisals, the details of which have been shared with OHCHR in two letters from ACAT France dated 3 March 2017, and 6 November 2017, and attached hereto. So far, the Moroccan authorities have failed to implement the decision. On the contrary, as explained in the 6 November 2017 letter, M. Asfari's sentence was confirmed by a civil court of appeal in July 2016, notably on the basis of confessions signed under duress by the complainant and the other accused. No thorough and impartial investigation was made into the allegation of torture. The violations of the Convention are then still ongoing

Mr. Asfari's wife, Ms. Claude Mangin-Asfari, has been repeatedly denied entry into Morocco in what appears to be an act of reprisal since it became apparent that the Committee was going to issue a decision on Mr. Asfari's case in July 2016. Ms. Mangin-Asfari was denied entry into Morocco on four occasions since October 2016, and she has not been able to meet with her husband since then. From 18 April to 17 May 2018, Ms. Mangin-Asfari went on a hunger strike to protest her continued denial of entry into Morocco to visit her husband in detention. Her health rapidly deteriorated. Following a public call by local and religious authorities for her to end the strike, as well as various interventions from the French Ministry of Foreign Affairs towards their Moroccan counterparts, Ms. Mangin-Asfari interrupted the strike.²

¹ CAT/C/59/D/606/2014, 15 November 2016

² <https://goo.gl/kgWYCh>

As outlined in the 6 November 2017 letter, 18 of Mr. Asfari's co-defendants, who were detained with him in El Arjat prison, were transferred to different prisons throughout the country. This appears to be a deliberate and calculated attempt to isolate Mr. Asfari from his co-defendants and divide the group. The group's strong cohesion throughout the seven years of detention allowed its members to support each other psychologically and to coordinate amongst themselves in order to organize their defence at both the national and international levels, including at the CAT. Mr. Asfari played an essential role in this coordination and has then found himself totally isolated, although recently since end April 2018, Mr. Asfari has a possibility to meet with his co-defendants during daily walks.

Recent developments

Mr. Asfari has repeatedly requested to be moved to a prison in Western Sahara in accordance with article 76 of the Fourth Geneva Convention that applies to occupied territories and so that he can be closer to family members. On 6 February, a new prison Director took office at El Arjat prison. Mr Asfari expressed his intention to go on hunger strike until he could be transferred to a different prison in Western Sahara. Mr Asfari was asked to file a request to be moved, in an apparent move to dissuade him to initiate the hunger strike.

Mr. Asfari's cell was emptied and searched on 13 February in a humiliating and intimidating manner: his clothes and books were stepped over by the prison wards, in what appears as a violation of rule 51 of the United Nations Standard Minimum Rules for the Treatment of Prisoners³. Subsequently, Mr. Asfari was held in solitary confinement until 13 March 2018.

His brother came from the occupied territory to visit him during this period but was denied access to him. This denial of access which was apparently not justified by the maintenance of security and order is a clear breach of rule 43.3 of the Standard Minimum Rules for the Treatment of Prisoners.

Following the termination of his solitary confinement on 13 March, he was transferred to a Kenitra prison, which is over 1200 Km from his family who lives in occupied Western Sahara.

Since then, Mr. Asfari has been denied access to the prison library and to newspapers in violation of rules 64 and 63 respectively of the Standard Minimum Rules for the Treatment of Prisoners.

Requested action

The San José Guidelines⁴ and the CAT Guidelines on Reprisals⁵ provide a clear framework to address reprisals against individuals submitting individual complaints to your Committee. Furthermore, the CAT decision G/SO 229/31 MEX (1) of 23 September 2016 establishes a precedent of protective measures by the CAT for the benefit of petitioners following the adoption of views.

In light of the above, the undersigned request that you:

- Publicly condemn Morocco's refusal to comply with the CAT's decision CAT/C/59/D/606/2014 which in and of itself constitutes a new violation of the Convention⁶, including through a press release;

³ The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)

⁴ Guidelines against Intimidation or Reprisals ; HRI/MC/2015/6

⁵ Guidelines on the receipt and handling of allegations of reprisals against individuals and organizations cooperating with the Committee against Torture under articles 13, 19, 20 and 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; CAT/C/55/2

⁶ As per para. 15.c of the decision "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

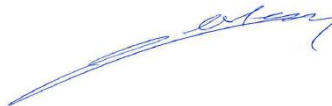
- Request that Morocco adopt protective measures necessary to ensure the physical and moral integrity of the victim, his relatives and their representatives in accordance with CAT Art. 13 and para. 19 of the San José Guidelines, including:
 - To allow Ms. Mangin-Asfari to enter Morocco in compliance with para. 15.c of the CAT decision;
 - To immediately halt all and any form of punishment or reprisal against Mr. Asfari, in compliance with para. 15.c of your Committee's decision
 - To comply with the other requests formulated in para. 15 of your Committee's decision, notably 15.a and 15.b⁷;
- Post all information regarding this case, including correspondence from your Committee and responses by the State party, on the CAT's dedicated webpage⁸ on reprisals;
- Involve our organisations in upcoming bilateral discussions with the State party during which the current case is intended to be discussed, notably during the upcoming 64th session of the Committee.

Please do not hesitate to contact us should you require any further information. We look forward to hearing from you and hope that you can assist in this very urgent matter.

Yours sincerely,



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Cc:

Mr. Andrew Gilmour, Assistant Secretary-General for Human Rights
Ms. Carla Edelenbos, Chief, Petitions and Inquiries Section at the Human Rights Treaties Division, OHCHR
Mr. Horst Kohler, Personal Envoy of the UN Secretary-General for Western Sahara
Mr. Ibrahim Salama, Chief, Human Rights Treaties Branch, OHCHR
Mr. Jen Modvig, Chair, UN Committee Against Torture

implementation of the provisions of the Convention, and to enable the complainant to receive visits from his family in prison”

⁷ 15. 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;

⁸ <https://goo.gl/CALNHi>