



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

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English
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Committee against Torture

Communication No. 372/2009

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

<i>Submitted by:</i>	Diory Barry (or Diodory Barry), represented by Alberto J. Revuelta Lucerga, lawyer
<i>On behalf of:</i>	Diory Barry (or Diodory Barry)
<i>State party:</i>	Morocco
<i>Date of complaint:</i>	1 November 2008 (initial submission)
<i>Date of present decision:</i>	19 May 2014
<i>Subject matter:</i>	Cruel, inhuman or degrading treatment of the author during his expulsion to Mauritania (abandoned in the desert)
<i>Procedural issue:</i>	Inaccessibility of domestic remedies
<i>Substantive issue:</i>	Cruel, inhuman or degrading treatment
<i>Article of the Convention:</i>	Article 16 of the Convention

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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. 372/2009

<i>Submitted by:</i>	Diory Barry (or Diodory Barry), represented by Alberto J. Revuelta Lucerga, lawyer
<i>On behalf of:</i>	Diory Bary (or Diodory Barry)
<i>State party:</i>	Morocco
<i>Date of complaint:</i>	1 November 2008 (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. 372/2009, submitted on behalf of Diory Barry under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

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

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

1. The complainant is Diory Barry, a Senegalese national born on 1 January 1976. He claims to have been a victim of a violation of article 16 of the Convention during his expulsion to Mauritania by the Moroccan authorities. The complainant is represented by counsel, Alberto J. Revuelta Lucerga, lawyer.

The facts as submitted by the complainant

2.1 In early August 2008 the complainant, who had been expelled from Spain to his country of origin in October 2007 after having entered the country illegally, set off by pirogue from Nouadhibou, Mauritania, to the Canary Islands, Spain, with a group of undocumented migrants. The pirogue was adrift for approximately 13 days, during which time some 30 persons died, their remains being thrown into the sea. The boat was finally intercepted by the Moroccan authorities, who placed the complainant and the approximately 40 survivors in a detention camp in Dakhla, Morocco, where they remained for roughly 10 days.

2.2 On 5 or 6 September 2008,¹ the Moroccan gendarmerie took the complainant and the rest of the group by military truck to the border area in the desert separating Morocco and Mauritania. The complainant and the rest of the group were then told by the gendarmes that they must walk across the desert in the direction of the Mauritanian town of Nouadhibou. The distance between the place where they were abandoned and the first inhabited area on the Mauritanian side was approximately 50 kilometres and included a large minefield. The equipment provided to each person by the Moroccan gendarmerie was limited to a pair of plastic flip-flops, a bottle of water and a few sandwiches. The complainant and the rest of the group did not have any way of protecting themselves, nor did they receive any warm clothing, blankets or additional food.

2.3 On 7 September 2008, the complainant and other members of the group were found in the no-man's-land in the desert between Morocco and Mauritania, some of them suffering from serious wounds resulting mainly from the time spent adrift at sea (sunburn, wounds caused by salt and other open wounds). One member of the group had been killed the previous day after stepping on an anti-personnel mine. Some members of the group were detained by the Mauritanian authorities.

The complaint

3.1 The complainant alleges that the Moroccan Government expelled him in a flagrantly illegal manner by taking him to the desert border area with Mauritania without having brought him before a court, depriving him of access to all domestic remedies to appeal his expulsion. According to the complainant, the State party holds no official record of his detention or expulsion.

3.2 The complainant asserts that his abandonment in the desert without suitable equipment by the Moroccan gendarmes was an intentional act by the State party authorities, because the gendarmes were acting with the support of their superiors and the competent political authorities. The complainant considers that these acts subjected him to pain and physical and mental suffering, constituting at the very least cruel, inhuman and degrading treatment as defined in article 16 of the Convention.

3.3 The complainant notes that all persons have the right to leave any country, including their own, in accordance with the Universal Declaration of Human Rights, and that simply exercising this basic right should not give rise to inhuman and degrading treatment such as that to which he was subjected. The complainant stresses that Morocco has not signed a readmission agreement with Senegal and, as a result, the Moroccan authorities decided simply to return him to Mauritania without informing the Mauritanian authorities.

State party's observations on admissibility and the merits

4.1 The State party observes that the complainant had been expelled from Spain in October 2007 but had nevertheless decided to return there illegally on board a makeshift vessel with a group of undocumented migrants who did not have travel documents or entry visas for Morocco. The State party confirms that on 3 September 2008,² the Moroccan Royal Navy intercepted a vessel that was in distress as a result of engine failure, en route to the Canary Islands with some 78 African citizens of various nationalities on board as well as 2 unidentified bodies.

¹ The complainant was unable to specify the exact date.

² This date does not seem to correspond to the date on which the complainant states the boat he was on was intercepted.

4.2 Upon arrival at the Moroccan port of Dakhla, the surviving undocumented migrants underwent a medical examination; 10 of them were subsequently hospitalized because of their deteriorating health. The two bodies were transported to the morgue so that a sample of their DNA could be taken and their identity ascertained. The rest of the group was transported to the centre for undocumented migrants after their statements had been taken. The *wilaya* (governorate) of the Oued Ed-Dahab-Lagouira region then ensured that all persons detained at the centre received daily meals, clothes and blankets as well as medical follow-up.

4.3 The State party notes that on 8 September 2008,³ the *Wali* (governor) decided to expel these undocumented migrants via the Morocco-Mauritania border crossing, and that the decision was carried out on 10 September 2008, in accordance with the legislation in force. In this connection, the State party notes that the provisions of its national legislation concerning the entry and stay of aliens in Morocco and irregular migration guarantees the right of aliens to access to a lawyer, an interpreter and a doctor, to communicate with their consulate or a person of their choice and to appeal a decision to escort them to the border within 48 hours of being notified of the decision. The State party concludes by stating that neither the complainant nor any other member of the group followed the judicial appeal procedures mentioned above during their detention at the centre.⁴

Complainant's comments on the State party's observations

5. The complainant observes that the State party confirms the reported facts and that he was therefore unable at the time of his expulsion to make use of the legal remedies indicated by the State party.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 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.

6.2 Regarding the exhaustion of domestic remedies, the Committee takes note of the information submitted by the State party on remedies provided for in its legislation allowing individuals to contest decisions to escort them to the border within 48 hours of being notified of the decision. The Committee observes, however, that the State party does not indicate that it had effectively informed the complainant of the remedies available to appeal the expulsion decision. Nevertheless, the Committee points out that, in the present case, the complainant's claim does not focus on the expulsion decision but on the cruel, inhuman and degrading treatment inflicted by the State party authorities during his expulsion to Mauritania. The Committee also notes that the State party does not provide information on the relevant, suitable and effective remedies available in practice. In particular, no information is provided by the State party on the remedies accessible to the complainant to obtain reparations for the alleged violation following his expulsion, when he

³ The dates provided by the State party concerning the expulsion decision and its execution do not seem to correspond to those provided by the complainant.

⁴ The State party does not indicate that the complainant was informed of the remedies available.

was no longer in the territory of the State party and could not reasonably return there without the risk of similar treatment. The Committee therefore believes that, in practice, no domestic remedy was accessible to the complainant, who was in an extremely vulnerable position and was unable to lodge this complaint with the Moroccan courts after being expelled from the country. It is the view of the Committee that, given the circumstances of the case, the requirement for the exhaustion of domestic remedies provided for in article 22, paragraph 5 (b), of the Convention does not preclude the Committee from finding the petition admissible.⁵

6.3 The Committee, finding no other reason to consider the communication inadmissible, thus proceeds to its consideration on the merits of the claims submitted by the complainant under article 16 of the Convention.

Consideration of the merits

7.1 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. The State party has partially confirmed the facts as submitted by the complainant, although confusion regarding dates and the number of migrants on board the intercepted boat means that it cannot be proven beyond doubt that the State party and the complainant are referring to the same boat and group of migrants. Given that the State party has not provided any observations on the treatment of the complainant while the decision to expel him to Mauritania was being implemented, due weight must be given to the complainant's allegations. The Committee also refers to its concluding observations,⁶ adopted following consideration of the fourth periodic report submitted by the State party, in which it expressed its concern regarding information received that, in practice, "undocumented migrants [had] been escorted to the border or otherwise expelled in violation of Moroccan law without having been given the opportunity to exercise their rights. Several allegations have been made that hundreds of migrants have been abandoned in the desert without food or water." The facts reported by the complainant are therefore not isolated.

7.2 The Committee notes that, according to the complainant, Moroccan gendarmes abandoned him and approximately 40 other undocumented migrants, some of whom were severely injured, in the border area separating Morocco and Mauritania without adequate equipment and with minimal supplies of food and water, and forced them to walk some 50 kilometres through an area containing anti-personnel mines in order to reach the first inhabited areas on the Mauritanian side. The Committee considers that the circumstances of the complainant's expulsion by the State party constitute the infliction of severe physical and mental suffering on the complainant by public officials. They can therefore be considered cruel, inhuman or degrading treatment as defined in article 16 of the Convention.

8. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the facts before it constitute a violation of article 16 of the Convention.

9. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee urges the State party to launch an impartial inquiry into the events in question for the purpose of prosecuting those persons responsible for the treatment inflicted on the complainant, and to take measures to provide the complainant with redress, including fair and adequate

⁵ See communication No. 194/2001, *I.S.D. v. France*, decision adopted on 3 May 2005, para. 6.1.

⁶ CAT/C/MAR/CO/4, para. 26.

compensation. The State party is also under an obligation to take steps to prevent similar violations occurring in the future. The Committee asks the State party to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in accordance with the above observations.

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