

No. 3/2013 (Morocco)

Communication addressed to the Government on 9 July 2012

Concerning: Abdessamad Bettar

The Government responded on 1 October 2012. The State is party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which clarified and extended the Working Group's mandate by resolution 1997/50. The Human Rights Council approved the Working Group's mandate in its decision 2006/102 and extended it for a further three-year period in resolution 15/18 of 30 September 2010. In accordance with its methods of work (A/HRC/16/47, annex), the Working Group transmitted the above communication to the Government.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to the detainee) (Category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (Category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (Category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (Category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (Category V).

Submissions

Communication from the source

3. The case below was submitted to the Working Group on Arbitrary Detention in the following terms:

4. Mr. Abdessamad Bettar (hereinafter referred to as "Mr. Bettar"), a Moroccan national born in XXXX, is a craftsman by profession and works in Safi in the south of Morocco. Mr. Bettar was arrested on 5 May 2011 in front of his shop in Bayada, in the town of Safi, by four individuals wearing civilian clothes, who identified themselves as police officers attached to the National Surveillance Directorate.

5. Mr. Bettar was not shown an arrest warrant. When he asked the officers the reason for his arrest, he was told that he was accused of knocking someone over with his moped, which he immediately denied. The officers added that it was a mere formality that would not take more than a few hours.

6. Mr. Bettar was driven to a place several hundred kilometres from his home without being told where he was. During this incommunicado detention, he was not informed of the charges brought against him and was not visited by a lawyer and his family was completely unaware of what had happened to him.

7. Reportedly during his detention he was tortured and forced to sign statements without having read them. It was not until he was brought before the Crown Prosecutor in Rabat on 17 May 2011 that he found out that he had been detained at the police station of Maarif, in Casablanca. He was accused of having prepared and participated in terrorist acts and, more specifically, in the attack on the Argana café in Marrakech on 28 April 2011.

8. On 17 May 2011, Mr. Bettar appeared before the investigating magistrate of the court of Salé. During his appearance before the magistrate, Mr. Bettar stated that he had been subjected to torture during his time in custody and that he had been forced to sign a document that did not reflect his statements; however the magistrate did not take his statements into account.

9. Following this hearing and despite the fact that no proof or material evidence was produced in support of the charges against him, he was placed in pretrial detention in the Toulal 2 prison in Meknès, where he was held in solitary confinement for 7 months, forced to remain naked and prevented from sleeping for several days. According to the source, he was regularly beaten, insulted and humiliated by the guards. He was suspended by his feet and his head was submerged in water until he almost drowned. Mr. Bettar was not permitted to receive visits from his family for eight months.

10. On 28 October 2011, following a hurried preliminary enquiry, Mr. Bettar was sent to appear again before the criminal court and given a four-year non-suspended prison sentence after being charged with "setting up a criminal organization with a view to planning terrorist acts with the aim of disturbing public order ...", "failure to report a terrorist crime", "holding public meetings without prior authorization" and "conducting activities in an unauthorized association".

11. According to the source, these charges were not supported by any material evidence. Similarly, none of the alleged witnesses referred to by the police and the prosecution during the preliminary enquiry and investigation procedures were called to appear during the trial, despite counsel's requests.

12. According to the submissions, the judges merely considered the police reports of proceedings, without taking account of Mr. Bettar's statements made before the investigating magistrate or before the court, in which he had declared that he had no connection with the charges levelled against him and had been subjected to torture. No enquiry was opened into his allegations, even though he still bore torture marks and had difficulty standing up during the hearing.

13. Following his conviction, Mr. Bettar lodged an appeal. During his appeal hearing on 9 March 2012, and although the prosecution did not submit any fresh evidence, his sentence was increased to 10 years' non-suspended imprisonment.

14. On 9 April 2012, Mr. Bettar began a hunger strike to protest his innocence and denounce the unfair way in which his trial had been conducted, as well as the torture and ill-treatment he had been subjected to during his detention. His health had declined so much that he had to be transferred urgently to Ibn Sina Hospital in Rabat on 17 June 2012, where he remained for 10 days.

15. On 27 June 2012, Mr. Bettar was visited by representatives of the prison administration, members of the Mountada Alkarama association (dignity for human rights forum) and the Moroccan Authority for Human Rights. Following this visit, he decided to suspend his hunger strike on condition that he could enjoy all his rights as a prisoner. It was also agreed at that meeting that an enquiry would be opened into the acts of torture to which he had been subjected, pending reconsideration of his case and the holding of a fair trial.

16. On 1 June 2012, when he thought he was being driven to the Ibn Sina Hospital in Rabat, the prison administration decided to place him in prison in Safi. Mr. Bettar then resumed his hunger strike and refused to drink water. He lost consciousness and was taken urgently to the resuscitation unit at Safi's Mohamed V Hospital.

17. The source maintains that Mr. Bettar's detention is contrary to article 9 of the International Covenant on Civil and Political Rights, to which Morocco is party. Mr. Bettar was not notified of the

charges brought against him at the time of his arrest or during his incommunicado detention. Furthermore, the source considers that his detention in custody for 12 days, though legal, was excessive and unjustified, since Mr. Bettar has not committed any criminal offence.

18. According to the source, his detention is also contrary to article 14, paragraph 1, which guarantees that "in the determination of any criminal charge against him, [...] everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law". Mr. Bettar was unable to put forward a defence from the start of the hearing. Allegedly the judges refused to take account of his statements to the effect that he had been tortured in the police station at Maarif, even though he bore marks of torture and the judges were, therefore, under an obligation to take his allegations into consideration and order the opening of an enquiry.

19. According to the submissions, Mr. Bettar is alleged to have been convicted solely on the basis of the statements that he had signed while in custody under the aforementioned conditions, without the charges against him being supported by any material evidence. The source maintains that the Moroccan authorities' failure to observe the provisions of articles 9 and 14 of the Covenant is, in this case, of sufficient gravity as to make his deprivation of liberty arbitrary.

Government reply

20. The Government, in a letter dated 1 October 2012, maintains that the enquiry found that Mr. Bettar had been under the influence of fundamentalist ideas since 2003, that he used to watch DVDs in favour of Iraqi jihadists and related video recordings on the Internet, and that he had made several attempts to travel to trouble spots, notably in Iraq, and to camps run by Al-Qaida in the Islamic Maghreb.

21. In addition, he had been reported by Adil Atmani for taking part in the attack on the Marrakech café on 28 April 2011. The subsequent investigation into this attack, in which 17 people of different nationalities were killed and 20 people suffered injuries of varying gravity, led to the identification of the perpetrators, including the accused. Mr. Bettar was arrested and remanded in custody on 5 May 2011, brought before the Crown Prosecutor on 17 May 2011 and, after being interrogated by the investigating magistrate, imprisoned in the prison of Salé.

22. Following the investigation, Mr. Bettar was charged with forming a criminal group with the intention of committing terrorist acts and endangering the lives and safety of persons, as well as with the production, transport and use of explosives in violation of the law, as part of the group's plan to seriously disturb public order through acts of destruction, terrorism and homicide. He was found guilty and sentenced to 4 years' imprisonment.

23. Based on this information, the Government considers that the arrest of Mr. Bettar was carried out normally and his custody remained in line with current legislation. It lasted from 5 to 17 May 2011 and was extended twice with the authorization of the Prosecutor-General.

24. Mr. Bettar enjoyed all the guarantees provided for by law, having been duly informed of the charges brought by the court, and of his right to a defence and to the official recording of all his statements both during the investigation and in the course of the trial.

25. Concerning the allegations of torture, neither Mr. Bettar nor his lawyer raised the issue before the prosecutor or the investigating magistrate, who did not detect any signs of torture on his person. Additionally, an administrative enquiry carried out into the allegations made found that the prisoner had not been subjected to any act of torture or ill-treatment and that he enjoyed all the rights to which prisoners were entitled. Mr. Bettar ended his hunger strike when he was transferred at his request to the regional hospital of Safi, where he received all necessary care.

Comments from the source

26. The source, in comments dated 18 March 2013, maintains that the Government's reply in no way invalidates the allegations regarding the arbitrary nature of Mr. Bettar's detention.

27. The source draws attention to a contradiction between the Government's reply and the records of the criminal file, notably the decision of the criminal division dated 28 October 2011 and the appeal decision of 9 March 2012.

28. The source also points out that Mr. Bettar has always denied the charges against him. The Government's reply confirms the lack of any material evidence, the fact that no lawyer was able to

visit him while he was in custody and that no witness was called before the court, in particular the eyewitnesses who had given a description of the suspect.

29. The source confirms that torture did take place during custody, and that the administrative enquiry referred to by the Government concerned ill-treatment suffered in prison.

Discussion

30. The facts as they are presented raise the issues of the incommunicado detention of Mr. Bettar; his remand in custody for 12 days before being brought before the Crown prosecutor; the serious allegations of torture that he made to explain his confession; the vague nature of the charges brought against him that were not precisely worded and the heavy sentences handed down in first instance and on appeal, on the sole basis of the report of proceedings, which was allegedly prepared following acts of torture and in the absence of witnesses, whose presence had been requested by Mr. Bettar's lawyers.

31. Although in its reply the Government maintains that the custody was normal, denies the acts of torture to which Mr. Bettar alleges he was subjected, and maintains that he was informed of the charges brought against him and received the assistance of a lawyer, it sheds no light on the incommunicado detention during custody, the vague and imprecise nature of the charges, the non-appearance of witnesses and the absence of supporting material evidence.

32. The source also refers to two court decisions that have not been produced and which the Working Group cannot therefore consider. In the same way, the source does not contest the administrative enquiry into ill-treatment in prison mentioned by the Government.

33. As regards the incommunicado detention, this is entirely contrary to international customary law and to principles 12, 13, 15 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Above all, incommunicado detention opens the way for the rights of a detainee to be seriously violated, out of sight and deprived of the basic guarantees contained in those rights.

34. In all likelihood, the jihadist ideology referred to by the Government has something to do with the arrest and detention of Mr. Bettar, especially as the charges on which the legal proceedings are based are vague, not clearly worded and not supported by evidence. In this regard, the request of Mr. Bettar and his counsel to bring forward alleged witnesses was unsuccessful, in violation of the provisions contained in article 14 of the International Covenant on Civil and Political Rights, in particular those in paragraphs 1, 2 and 3 (b) and (e).

Disposition

35. On the basis of the above considerations, the Working Group considers the detention of Mr. Bettar to be arbitrary and in contravention of the provisions contained in articles 9 and 10 of the Universal Declaration of Human Rights, articles 9 and 14 of the International Covenant on Civil and Political Rights and categories I and III of the working methods of the Working Group.

36. Therefore, the Working Group requests that the Government immediately release Mr. Abdessamad Bettar, consider compensation for any harm that he may have suffered and order an independent enquiry into the possible occurrence of incommunicado detention.

[Adopted on 30 April 2013]