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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-sixth session, 27 March–5 April 2023

Opinion No. 23/2023, concerning Sidi Abdallah Abbahah, Mohamed El Bachir Boutangiza, Mohamed Bani, Abdel Jalil Laaroussi, Abdulahi Lakhfaoui, Ahmed Sbai, Sid'Ahmed Lemjaïd, Brahim Ismaili, Mohammed Khouna Babait, Mohamed Embareh Lefkir, Ennaâma Asfari, Mohamed Bouryal, Mohamed Lamin Haddi, El Hasane Azaoui, Abdellah Toubali, El Bachir Khadda, El Hassan Eddah and Mohamed Tahlil (Morocco)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 51/8.
2. In accordance with its methods of work,¹ on 13 December 2022 the Working Group transmitted to the Government of Morocco a communication concerning Sidi Abdallah Abbahah, Mohamed El Bachir Boutangiza, Mohamed Bani, Abdel Jalil Laaroussi, Abdulahi Lakhfaoui, Ahmed Sbai, Sid'Ahmed Lemjaïd, Brahim Ismaili, Mohammed Khouna Babait, Mohamed Embareh Lefkir, Ennaâma Asfari, Mohamed Bouryal, Mohamed Lamin Haddi, El Hasane Azaoui, Abdellah Toubali, El Bachir Khadda, El Hassan Eddah and Mohamed Tahlil. The Government replied to the communication on 10 March 2023. The State is a party to the International Covenant on Civil and Political Rights.
3. 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 him or her) (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 Covenant (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);

¹ [A/HRC/36/38](#).



(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 on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

1. Submissions

(a) Communication from the source

4. Sidi Abdallah Abbahah, Mohamed El Bachir Boutangiza, Mohamed Bani, Abdel Jalil Laaroussi, Abdulahi Lakhfaoui, Ahmed Sbai, Sid'Ahmed Lemjaïd, Brahim Ismaili, Mohammed Khouna Babait, Mohamed Embareh Lefkir, Ennaâma Asfari, Mohamed Bouryal, Mohamed Lamin Haddi, El Hasane Azaoui, Abdellah Toubali, El Bachir Khadda, El Hassan Eddah and Mohamed Tahlil (hereinafter, the "18 individuals") were reportedly arrested during the dismantling of the Gdeim Izik camp, set up on the outskirts of Laayoune and Smara, in which 15,000 Saharans had gathered to protest against economic and social discrimination in respect of Saharans by the Moroccan authorities. It is alleged that, on 8 November 2010, at around 6 a.m., without prior warning, the authorities dismantled the camp and made hundreds of arrests.

5. The Government reportedly justified the arrest of the 18 individuals on the basis that criminal acts had taken place before and during the dismantling of the camp, claiming that the purpose of the camp was to destabilize the region and threaten national security. The Government stated that a mob had attacked law enforcement officers and public buildings.

(i) Arrests and detentions

6. Mr. Boutangiza and Mr. Abbahah, born in 1974 and 1975, respectively, were reportedly arrested on 19 November 2010.

7. Mr. Bani, born in 1969, was reportedly arrested on 8 November 2010 as he attempted to leave the camp, where he was visiting relatives. The police accused him of running over an officer.

8. It is reported that Mr. Laaroussi, born in 1978, was arrested on 12 November 2010 at a relative's home in Boujdour, where he had been since 7 November 2010.

9. Mr. Lakhfaoui is a Saharan journalist born in 1974. He is said to have been a participant in the camp and helped with its running. On 5 November 2010, he allegedly prevented the governor of Laayoune from entering the camp. In consequence, police officers burst into his relatives' home on 12 November 2010 and arrested Mr. Lakhfaoui.

10. Mr. Sbai, born in 1978, is one of the founders of the Ligue pour la protection des prisonniers politiques sahraouis dans les prisons marocaines (Sahrawi Prisoners' Protection League). Reportedly detained in 2002 and 2006 because of his activism, he was arrested again on 8 December 2010, in Lirak District.

11. Mr. Lemjaïd, born in 1959, is the Chair of the Comité de soutien au plan de résolution onusien et pour la protection des ressources naturelles au Sahara occidental (Committee for the Support of the United Nations Settlement Plan and for the Protection of Natural Resources in Western Sahara). He was allegedly arrested on 26 December 2010 and taken to an unknown location. Mr. Lemjaïd is said to have visited the camp as a human rights activist to interview people about their demands and their situation.

12. Mr. Ismaili, born in 1970, is the Chair of the Centre pour la conservation de la mémoire collective sahraouie (Centre for the Preservation of Saharan Collective Memory). In 1987, he was allegedly held incommunicado for months. It is claimed that, on 9 November 2010, he was arrested again, at his home in Laayoune. After seven months in detention,

Mr. Ismaili was reportedly released on 13 May 2011, only to be immediately rearrested outside the prison gates and taken to Salé prison.

13. Mr. Babait, born in 1981, worked in the local administration in Laayoune and allegedly took part in demonstrations demanding the release of prisoners following the dismantling of the camp, despite threats from the authorities. He is reported to have been arrested on 15 August 2011.

14. Mr. Lefkir, born in 1978, was part of a delegation of Saharan human rights defenders invited to Algiers. On 12 November 2010, he was allegedly abducted from a relative's home by masked, plainclothes police officers, after being beaten in front of his family. He was held in Laayoune prison until 17 June 2011. It is claimed that, following his release, he was immediately rearrested after leaving the prison. Although he was present in the camp on 8 November 2010, he reportedly fainted during the first hours of the camp's dismantling, owing to tear gas, and was conveyed home by his family.

15. Mr. Asfari, born in 1970, is Vice-Chair of the Comité pour le respect des libertés et des droits humains au Sahara occidental (Committee for the Respect of Freedoms and Human Rights in Western Sahara). It is reported that he was detained for four months in 2009 for possession of a key ring depicting the Saharan flag, then arrested again on 7 November 2010, the day before the camp was dismantled.

16. Mr. Bouryal, born in 1976, was a member of the Comité de dialogue avec le Gouvernement marocain (Committee for Dialogue with the Moroccan Government). He allegedly participated in the camp and was arrested by the army on 8 November 2010, in the camp.

17. Mr. Azaoui, born in 1975, was a participant in the Gdeim Izik camp and was also a member of the Comité de dialogue avec le Gouvernement marocain. He was reportedly arrested on 3 December 2010. It is claimed that he was present in the camp on 8 November 2010 but fainted owing to tear gas, waking up the next day in hospital.

18. Mr. Toubali, born in 1980, was also a member of the Comité de dialogue avec le Gouvernement marocain. He is reported to have been struck by a police car on 7 November 2010 and taken to hospital in Laayoune. The next day, the day that the camp was dismantled, he returned home in critical condition and was visited by a member of the parliament, whom the court of appeal refused to call as a witness. He was allegedly arrested on 2 December 2010.

19. Mr. Khadda, born in 1986, is a Saharan journalist and member of the Observatoire sahraoui des droits de l'homme au Sahara occidental (Saharan Observatory for Human Rights in Western Sahara). Mr. Eddah, born in 1987, is a Saharan journalist and human rights activist. In 2010, he was reportedly detained for 10 months because of his political views. He is said to have participated in the Gdeim Izik camp as a correspondent for the television and radio service of the Frente Popular para la Liberación de la Saguía el-Hamra y del Río de Oro (Frente POLISARIO). Mr. Tahlil, born in 1981, is the Chair of the Boujdour section of the Association sahraouie des victimes de graves violations des droits humains (Sahrawi Association of Victims of Grave Human Rights Violations Committed by the Moroccan State). He was allegedly imprisoned for his activism in 2005 and 2007. According to the source, Mr. Khadda, Mr. Eddah and Mr. Tahlil were arrested together on 4 December 2010, in a café in Laayoune.

20. It is reported that Mr. Boutangiza, Mr. Tahlil, Mr. Abbahah, Mr. Ismaili, Mr. Toubali, Mr. Lemjaïd, Mr. Khadda, Mr. Eddah, Mr. Babait, Mr. Asfari and Mr. Laaroussi were not present in the Gdeim Izik camp on the day it was dismantled. Moreover, Mr. Tahlil had never been to the camp.

21. The source claims that each of the 18 individuals was subjected to torture and inhuman treatment and signed statements and confessions under torture. The Committee against Torture concluded that the continued detention of Mr. Abbahah, Mr. Asfari and Mr. Bouryal

was based on confessions signed under torture, in violation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.²

22. Mr. Abbahah, Mr. Boutangiza, Mr. Bani, Mr. Laaroussi, Mr. Lakhfaoui and Mr. Sbai were charged with forming a criminal organization and with intentional homicide, and the other men with participation in homicide and intentional homicide. On 17 February 2013, the 18 individuals were sentenced to terms ranging from 20 years' to life imprisonment. They were transferred to the Salé 2 prison, where they were allegedly subjected to further acts of torture and inhuman treatment. Following their appeals in cassation, on 25 November 2016, the 18 individuals were informed that a new trial would take place before the Salé court of appeal, as the 2013 judgment had been deemed null and void.

23. The prosecutor and the parties claiming damages are said to have portrayed the 18 individuals in the media as terrorists and murderers, so that by the time they appeared before the court of appeal, the national media had made it seem that they were guilty and had been responsible for the events in the Gdeim Izik camp.

24. At the court of appeal, the 18 individuals were reportedly held in a glass cage, which prevented them from following the proceedings. Loudspeakers were installed in January 2017. The court refused to release the defendants provisionally. On 23 January 2017, the defence lawyers, having been unable to meet with their clients, requested more time to prepare their case, to no avail. The following day, the defendants were reportedly deprived of pens and paper, as the judge felt that they could be used as weapons. The judge granted the 18 individuals' requests for medical examinations, provided that they were carried out by three State doctors.

25. On 13 March 2017, a compact disc containing images – allegedly manipulated – depicting the Gdeim Izik camp as a place of violent resistance is reported to have been presented as evidence. The defendants were also questioned and testified that they had been subjected to severe torture and forced to sign pre-written or blank statements.

26. On 8 May 2017, witnesses were reportedly called. Only three of the defence witnesses were accepted; the majority of the witnesses who could testify that the defendants had been absent from the camp were rejected. The prosecution's witnesses, on the other hand, were all accepted and gave entirely new testimony. The 18 individuals denounced the false testimony of one witness, which corresponded exactly to what was written in the police reports, and urged the court to investigate the origin of the new witnesses. Their protests prompted the prosecutor to shout at the judge, who declined to initiate an investigation or to verify the credibility of the witness in question.

27. On 16 May 2017, owing to the court's lack of impartiality and following the submission of several petitions and protests to the court, the 18 individuals and their lawyers withdrew from the proceedings. The judge appointed four lawyers to represent the defendants, two of whom also represented the parties claiming damages. The new lawyers' request for time to prepare the defence was denied, and they never obtained full access to the case file. Nor did they make any attempt to contact the 18 individuals, who saw their new lawyers only on the television news.

28. On 18 May 2017, the officers accused of torturing the 18 individuals denied the acts. The prosecutor stated that the court should trust public officials. Once again, the judge declined to initiate an investigation.

29. On 5 June 2017, the court-ordered medical examinations were presented, with the reports concluding that none of the prisoners had been tortured. The judge declined to ask further questions, despite the obvious signs of torture on the defendants' bodies during the March hearings. The Committee against Torture considered that the examinations were not carried out in accordance with the Manual on the Effective Investigation and Documentation

² See, *inter alia*, *Asfari v. Morocco* (CAT/C/59/D/606/2014); and *Abbahah v. Morocco* (CAT/C/72/D/871/2018).

of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).³

30. It is claimed that, on 19 July 2017, 10 minutes after adding the evidence to the case file, including the police reports allegedly signed under torture, the judge handed down his verdict, sentencing Mr. Abbahah, Mr. Boutangiza, Mr. Bani, Mr. Laaroussi, Mr. Lakhfaoui, Mr. Sbai, Mr. Lemjaïd and Mr. Ismaili to life imprisonment, Mr. Asfari and Mr. Bouryal to 30 years' imprisonment, Mr. Babait, Mr. Lefkir, Mr. Haddi, Mr. Eddah and Mr. Azaoui to 25 years' imprisonment and Mr. Toubali, Mr. Khadda and Mr. Tahlil to 20 years' imprisonment. With the exception of Mr. Eddah's sentence, which was reduced from 30 to 25 years' imprisonment, the sentences were identical to those passed by the military court in 2013. The Court of Cassation confirmed the verdict and the sentences on 25 November 2020.

31. The 18 individuals, scattered across six prisons, were allegedly subjected to physical and psychological torture, harassment and increased isolation, in retaliation for their advocacy of the right to self-determination and their withdrawal from the appeal process.

32. It is reported that Mr. Khadda, Mr. Haddi and Mr. Abbahah, who are detained in the Tiflet 2 prison, and Mr. Ismaili, Mr. Bani, Mr. Bouryal and Mr. Lemjaïd, who are detained in the Aït Melloul 1 and 2 prisons, have been held in solitary confinement since 16 September 2017. Mr. Azaoui, Mr. Eddah, Mr. Lakhfaoui, Mr. Sbai, Mr. Boutangiza and Mr. Asfari are in Kenitra prison, Mr. Babait and Mr. Toubali in Bouizakarne prison, Mr. Lefkir and Mr. Laaroussi in Tan-Tan prison, and Mr. Tahlil in Aïn Borja prison. The 18 individuals are allegedly subjected to discrimination, threats, intimidation, medical negligence and physical abuse and are deprived of contact with the outside world. There has been no news of Mr. Tahlil since his transfer to Aïn Borja in November 2021. Reportedly, the men's families are often prevented from visiting them after making the long journey to the prisons. Telephone conversations are restricted, increasing the isolation of the 18 individuals, and their calls with their lawyers are monitored.

33. The 18 individuals are said to have staged hunger strikes to protest against their conditions of detention and to obtain their transfer to a prison in Western Sahara. Mr. Haddi was allegedly threatened with death by the prison director. Nothing more was heard of him until 22 March 2021. His family's enquiries about his state of health reportedly went unanswered. He disappeared again from 15 June to 24 September 2021. According to the source, he was kept in complete isolation for 70 days in an unsanitary cell, under constant surveillance, and subjected to daily intimidation.

34. The source notes that the Working Group documented the conditions of detention and the state of health of the 18 individuals during its visit to Morocco in 2013. To this day, they continue to suffer from medical neglect and from chronic illnesses due to torture and to their conditions of detention.

(ii) *Legal analysis*

a. *Category I*

35. The source notes that article 23 of the Constitution prohibits any arrest except in accordance with the law and that article 140 of the Code of Criminal Procedure requires that a detainee be brought before a judge and have access to his or her lawyer within 24 hours of arrest.

36. According to the source, none of the 18 individuals was shown an arrest warrant at the time of their arrest and none appeared before a judge or had access to a lawyer within the next 24 hours, contrary to the provisions of article 140 of the Code of Criminal Procedure. They were reportedly brought before a judge in a deplorable state, after being held for between two and five days and subjected to torture and political interrogation and without being asked a single question about the events at the Gdeim Izik camp. Each of the 18 individuals reportedly told the judge that they had been arrested because of their political opinions and had been tortured, as evidenced by the marks on their bodies. According to the

³ See *M.B. v. Morocco* (CAT/C/72/D/923/2019).

source, some of the 18 individuals were unable to walk, and one of them was carried before the judge on a bloodstained blanket. The judge nevertheless ordered their detention.

37. The source therefore submits that the detention of the 18 individuals has no legal basis, contrary to article 9 of the Universal Declaration of Human Rights and article 9 of the Covenant, and is thus arbitrary under category I.

b. Category II

38. According to the source, the detention of the 18 individuals results from their exercise of the rights guaranteed by articles 18, 19, 21 and 22 of the Covenant.

39. The Saharan people are allegedly subjected to the systematic and systemic use of force, abduction, torture and arbitrary arrest and detention, in order to silence their calls for self-determination and independence.⁴ Saharan individuals are subjected to unfair trials and imprisonment on trumped-up charges.⁵

40. According to the source, the Gdeim Izik camp was one of the largest demonstrations organized in Western Sahara since the ceasefire came into force in 1991.⁶ The clashes on the morning of 8 November 2010 are said to have been the motive for the arrest of 25 activists, human rights defenders, journalists, lawyers and demonstrators, including the 18 individuals.

41. The source claims that the 18 individuals were held responsible for the clashes that followed the dismantling of the camp, without the slightest evidence. The source adds that sporadic acts of violence or offences by some should not be attributed to others whose intentions and behaviour remained peaceful, and asserts that the 18 individuals cannot therefore be held responsible for the actions of others and the events that followed the authorities' attack on the demonstrators.⁷

42. Furthermore, the source points out that the 18 individuals were questioned solely about their activism and their relations with the Frente POLISARIO, and not about any criminal activities. The source asserts that, insofar as the detention of the 18 individuals results from their peaceful exercise of rights guaranteed by the Covenant, it is arbitrary under category II.

c. Category III

43. According to the source, the proceedings held before the court of appeal from 26 December 2016 to 19 July 2017, whose outcome the Court of Cassation upheld in November 2020, failed to meet the requirements of the right to a fair trial.

44. The source asserts that the Moroccan judiciary is not independent, in violation of article 14 (1) of the Covenant.⁸ The source denounces the use of torture during initial interrogations, and convictions based on reports written by the police and confessions signed in the absence of a lawyer.⁹ The source deplores the culture of impunity within the judicial system, as a result of which allegations of torture are not properly investigated, perpetrators are not prosecuted, and judges and prosecutors fail in their duties.

45. The judge allegedly tried to weaken the exculpatory evidence while rejecting the majority of the questions put by the defence. The defence witnesses were questioned in detail,

⁴ See [CAT/C/MAR/CO/4](#); [A/HRC/22/53/Add.2](#); [A/HRC/27/48/Add.5](#); and opinions No. 21/1993, No. 3/1994 and No. 54/2013.

⁵ See [S/2018/277](#).

⁶ [S/2011/249](#), paras. 2–10 and 96.

⁷ [A/HRC/31/66](#), para. 20; opinion No. 22/2017, para. 36; and European Court of Human Rights, *Ziliberberg v. Moldova*, Application No. 61821/00, Judgment of 1 February 2005.

⁸ See *Oló Bahamonde v. Equatorial Guinea* ([CCPR/C/49/D/468/1991](#)); and Inter-American Commission on Human Rights, Report on Terrorism and Human Rights (OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr.), 22 October 2002.

⁹ See opinions No. 40/2012, No. 3/2013, No. 19/2013, No. 25/2013, No. 54/2013, No. 27/2016, No. 11/2017, No. 31/2018, No. 58/2018, No. 60/2018, No. 23/2019, No. 67/2019, No. 52/2020, No. 68/2020 and No. 46/2021.

with the aim of drawing contradictory answers from them, while not a single question was put to the prosecution witnesses that could have undermined their statements.

46. It is alleged that falsified police reports and confessions signed under torture were used against the 18 individuals. In response to the allegations of torture raised during the trial, the President of the court of appeal reportedly declared that the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the decision of the Committee against Torture concerning Mr. Asfari had no legal force in his court. The source denounces the court's lack of impartiality, noting that the defence's multiple applications for the judge to initiate an investigation into the prosecution's evidence, allow independent medical examinations and summon defence witnesses were all rejected.

47. According to the source, the upholding of the 18 individuals' convictions is linked to the escalation of the armed conflict between Morocco and the Frente POLISARIO on 13 November 2020. This demonstrates the lack of independence and impartiality of the judiciary. In addition, the source denounces the fact that the President of the Court of Cassation and 5 of its 20 members are appointed by the King of Morocco.

48. The source reports that, while each of the 18 individuals was subjected to acts of torture while they were being questioned about their activism, they were never asked about the events at the Gdeim Izik camp. It is alleged that the records of their interrogation were signed under duress, the statements contained in the records were falsified or left partially blank and none of the 18 individuals was able to read them before signing.

49. The 18 individuals reportedly informed the investigating judges of the torture they said they had suffered. During the proceedings before the court of appeal in March 2017, Mr. Lefkir stated that a guard had threatened him with further torture if he did not sign statements. Mr. Azaoui showed the judge his scars and claimed that he had been subjected to ill-treatment and torture. Likewise, Mr. Lemjaïd showed his scars to the judge and requested a medical examination, in vain. A doctor reportedly told Mr. Lemjaïd that he could not help him because he was being pressured.

50. The source claims that the main evidence used against the 18 individuals was the reports written by the officers who arrested them and are accused of torturing them. This testimony was used to prove the veracity of the police and gendarmerie reports. The source points out that the use of evidence obtained through torture fundamentally taints the proceedings and compromises the right to a fair trial.

51. To this day, the 18 individuals do not know the identity of the law enforcement officers whose killing they were charged with. The source maintains that they have been convicted collectively of serious crimes without ever having been informed of the charges against them, which is contrary to the provisions of articles 9 and 14 (3) (a) of the Covenant.

52. According to the source, the defence was not able to properly challenge the police files, the evidence obtained or the statements of the prosecution witnesses, in violation of article 14 of the Covenant. While the parties claiming damages and the prosecutor were allowed to put their questions, the defence was constantly interrupted by the judge, the prosecutor and the parties claiming damages. The defence was forbidden to mention the reason for the setting up of the protest camp, the general living conditions of Saharans in Western Sahara or the nature of the camp's dismantling. The defence was not allowed to present evidence or question its own witnesses. Applications to call defence witnesses were rejected and, as a result, only the prosecution's witnesses were heard.

53. Lastly, defence counsel were prevented from meeting their clients, despite numerous requests. The meetings that were authorized took place in the presence of prison guards, in violation of article 14 (3) (b) and (d) of the Covenant.

d. Category V

54. The source recalls that the 18 individuals are Saharans and that Saharans defending the right to self-determination are persecuted and systematically targeted by the authorities.¹⁰

¹⁰ A/HRC/27/48/Add.5, paras. 62–71.

55. The source claims that the 18 individuals were targeted because of their Saharan identity and their political opinions regarding the Saharan people's right to self-determination, in violation of articles 1, 2, 26 and 27 of the Covenant.¹¹ The source notes that, as early as October 2010, the Gdeim Izik camp was surrounded by armed trucks, helicopters and military vehicles, and subjected to roadblocks and checkpoints. On 24 October 2010, police reportedly opened fire on a food truck, killing a 14-year-old child.

56. In addition, the source maintains that, during the trial of the 18 individuals, the parties claiming damages interrupted the defence's argument concerning the relevance of humanitarian law in the case of the individuals, declaring that the Saharans were Moroccans by virtue of their identity cards. The source asserts that, by denying the existence of a local population with a different nationality, and by stating that neither international law nor humanitarian law was relevant, the court violated article 47 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention).

57. Lastly, the source asserts that the systemic and systematic use of arrest, torture and detention to silence calls for self-determination and force people protected under international humanitarian law to pledge allegiance violate article 45 of the Regulations respecting the Laws and Customs of War on Land (Hague Regulations) and article 147 of the Fourth Geneva Convention.

(b) Response from the Government

58. On 13 December 2022, the Working Group transmitted a communication to the Government requesting it to provide detailed information on the 18 individuals by 13 February 2023 at the latest.

59. On 11 January 2023, the Government requested an extension of the deadline and was given until 13 March 2023 to reply.

60. On 10 March 2023, the Government submitted its response, in which it stated that it had provided the necessary clarifications in its replies to the joint communications received from the special procedure mandate holders and the communications of the Committee against Torture.

61. The Government contests the source's allegations. It notes that the military court's jurisdiction in the case was provided for in the former Code of Military Justice, but that, following the reform of this Code, it is now prohibited to bring a civilian before a military court. The Court of Cassation overturned the judgment of the military court and referred the case to the Rabat court of appeal. The families of the victims reportedly sued for damages in criminal proceedings.

62. According to the Government, the Gdeim Izik camp was set up following a campaign to encourage the local population to move to areas near Laayoune, in order to take advantage of social benefits. A dialogue was established between the population and the authorities who, after launching appeals for people to leave the area, were obliged to take the decision to dismantle the camp on the basis of imperatives linked to public order and public safety.

63. On 8 November 2010, at around 6.30 a.m., the Royal Gendarmerie reportedly dismantled the camp, providing transport for evacuation to Laayoune.

64. Some individuals allegedly refused to leave and attacked the unarmed law enforcement officers, resulting in the death of 10 officers and 1 member of the civil protection force. Other officers were injured and public property was vandalized. Clashes followed in Laayoune, during which an auxiliary officer was murdered and acts of vandalism and theft were committed. An investigation was opened on 8 November 2010.

65. On 17 February 2013, the military court reportedly handed down its verdict following a public trial open to international and national observers. Following an appeal in cassation, the military court's decision was overturned, and the case was referred to a civilian court.

¹¹ See opinion No. 67/2019.

The trial took place before the criminal division of the Rabat court of appeal from 26 December 2016 to 19 July 2017.

66. On 19 July 2017, after 31 hearings, the court of appeal handed down its verdict. On 25 November 2020, the Court of Cassation dismissed the appeal lodged on 29 September 2017.

67. The Government asserts that national laws apply without exception in all regions of Morocco, including the southern provinces, in accordance with the Constitution and the international obligations of Morocco. It recalls that article 23 of the Constitution prohibits arbitrary detention, and asserts that the persons concerned were arrested and convicted in connection with offences under ordinary law by a competent and independent tribunal, following a procedure that respected the rights of the defence.

68. According to the Government, the arrest and detention in police custody of the 18 individuals complied with procedure, and their families were notified of their arrest in accordance with article 67 of the Code of Criminal Procedure and as mentioned in the records of their interrogation.

69. According to the Government, Mr. Boutangiza and Mr. Abbahah¹² were arrested on 20 November 2010 in Laayoune and held in police custody until the following day, on the instructions of the competent public prosecutor's office.

70. Mr. Asfari and Mr. Bouryal were arrested in flagrante delicto on 8 November 2010, during the operation to dismantle the camp. Mr. Bani was also arrested in flagrante delicto on 8 November 2010. They were each taken into police custody on the same day and held until 11 November 2010, after the custody period had been extended for 24 hours with the written authorization of the competent public prosecutor's office.

71. Mr. Laaroussi¹³ was the subject of two wanted notices, issued on 12 and 13 November 2010. He was arrested on 13 November 2010 in Laayoune and immediately placed in police custody, where he remained until 15 November 2010, following the extension of the custody period for 24 hours with the written authorization of the competent public prosecutor's office. He was not transferred to any other location.

72. Mr. Lakhfaoui¹⁴ was arrested on 13 November 2010, in an abandoned dwelling in Laayoune. He was held in police custody until 15 November 2010, following the extension of the custody period for 24 hours with the written authorization of the competent public prosecutor's office.

73. Mr. Sbai was the subject of a wanted notice issued on 13 November 2010. He was arrested on 9 December 2010 and held in police custody until 11 December 2010, on the instructions of the competent public prosecutor's office.

74. Mr. Lemjaïd¹⁵ was the subject of a wanted notice issued on 2 December 2010. He was arrested on 25 December 2010 and held in police custody until 27 December 2010, on the instructions of the competent public prosecutor's office.

75. Mr. Ismaili was arrested on 10 November 2010, in the vicinity of the Moulay El Hassan Ben Mehdi hospital in Laayoune, and held in police custody until 12 November 2010, on the instructions of the competent public prosecutor's office.

76. According to the Government, Mr. Sbai, Mr. Lemjaïd and Mr. Ismaili confessed to killing a security guard and setting fire to government buildings.

77. Mr. Babait¹⁶ was arrested on 15 August 2011, near his home, on the basis of a wanted notice issued on 14 November 2010. He was held in police custody until 17 August 2011, after the custody period was extended for 24 hours with the written authorization of the competent public prosecutor's office.

¹² Referred to by the Government as Sidi Abdallah Abbahah.

¹³ Referred to by the Government as Sidi Abdel Jalil Laaroussi.

¹⁴ Referred to by the Government as Abdellah Lekhfaoui.

¹⁵ Referred to by the Government as Sidi Ahmed Lemjiyid.

¹⁶ Referred to by the Government as Mohamed Khouna Bobit.

78. Mr. Lefkir¹⁷ was reportedly arrested on 11 November 2010, near a bank in Laayoune, and held in police custody until 12 November 2010, on the instructions of the competent public prosecutor's office.

79. Mr. Haddi¹⁸ was the subject of a wanted notice issued on 14 November 2010. He was arrested on 20 November 2010 and was held in police custody until 22 November 2010.

80. Mr. Azaoui¹⁹ and Mr. Toubali were the subject of wanted notices issued on 13 November 2010. Mr. Azaoui was held in police custody from 3 to 5 December 2010, on the instructions of the competent public prosecutor's office. Mr. Toubali was arrested on 2 December 2010 and held in police custody until 5 December 2010, following the extension of the custody period for 24 hours with the written authorization of the competent public prosecutor's office.

81. Mr. Khadda, Mr. Tahlil²⁰ and Mr. Eddah²¹ were arrested on 5 December 2010 on the basis of wanted notices and held in custody until 7 December 2010, on the instructions of the competent public prosecutor's office. Mr. Eddah reportedly confessed to preparing and throwing Molotov cocktails at the authorities and using vehicles to strike and kill members of their ranks.

82. The Government claims that, at the end of their police custody, each of the 18 individuals was brought before the competent public prosecutor, who referred them to the military investigating judge on the same day. Their families were informed.

83. The 18 individuals were arrested on the basis of serious and corroborating evidence of their involvement in the organization of a criminal gang for seditious purposes and in violence and homicide committed against law enforcement officers, obscene acts committed against the victims' corpses, acts of vandalism, arson of State and private property and kidnapping, accusations that were corroborated, inter alia, by their spontaneous confessions and by material evidence, and in connection with which they were formally charged by the courts.

84. The placement of the 18 individuals in police custody was in conformity with national procedure, legal safeguards and human dignity. The Government points out that a person may be held in police custody for a period not exceeding 48 hours with the authorization of the public prosecutor and that the custody period may be extended for a further 24 hours. The Government asserts that the procedures and the 96-hour time limit are in line with article 9 of the Covenant. It maintains that none of the 18 individuals was held incommunicado.

85. According to the Government, the Rabat court of appeal ordered medical examinations of the 18 individuals in connection with the allegations of torture made. Mr. Asfari, Mr. Sbai, Mr. Abbahah, Mr. Lemjaïd and Mr. Khadda are said to have refused. The examinations reportedly complied with the Istanbul Protocol, and it was determined that the evidence and data collected in no way indicated the use of the various methods of torture alleged. The examinations were carried out by highly qualified, impartial and independent forensic experts, under the supervision of the court. The report on the medical examinations was translated into Arabic and explained in court.

86. With regard to category II, the Government asserts that the responsibility of the 18 individuals for the above-mentioned crimes was established on the basis of their own uncoerced confessions, video footage, the testimony of criminal police officers present at the scene, statements by camp residents, testimony by police officers called by the defence, post-mortem reports and medical examinations attesting to signs of violence on the victims' bodies. The Government reaffirms the independence of the Moroccan judiciary and notes that police reports concerning crimes serve merely as information subject to the judge's sovereign discretion.

¹⁷ Referred to by the Government as Mohamed Mbarek Lafkir.

¹⁸ Referred to by the Government as Mohammed Lamine Haddi.

¹⁹ Referred to by the Government as El Hassan Azaoui.

²⁰ Referred to by the Government as Mohamed El-Tahlil.

²¹ Referred to by the Government as Hassan Addah.

87. With regard to category III, the Government recalls that national legislation enshrines the right to a fair trial, and asserts that at trial the 18 individuals enjoyed all fair trial guarantees, as confirmed in the public reports of the National Human Rights Council.

88. The trial was held in public, and the court guaranteed access to the courtrooms without the least restriction on the part of the authorities and ensured the interpretation of the proceedings, including into Hassaniya, in accordance with articles 300, 304, 318, 423 and 435 of the Code of Criminal Procedure. The court also verified the identity of each defendant and reminded them of the charges against them.

89. The defendants were assisted by national and foreign lawyers, with whom they were able to communicate freely. During the hearings, they had the right to defend themselves on a basis of equality. The court granted all the applications submitted, notably concerning the calling of defence witnesses and the conduct of medical examinations. In accordance with article 287 of the Code of Criminal Procedure, the court ensured that the evidence was debated in an adversarial hearing and that the defendants were able to challenge the witnesses. It appointed four lawyers after defence counsel withdrew on 16 May 2017. When the defendants refused to appear in court, the court ensured that a bailiff kept them informed of the proceedings on a daily basis. In addition, the court refused to allow the defendants to be presented in handcuffs and ensured that they were in good health and were properly treated during the hearings. The defendants were held in a glass box in order to protect them from any reprisals by the victims' families.

90. The Government adds that the compact disc mentioned by the source forms part of the case file and documents the extent of the brutality of the acts committed by certain defendants. It claims that the conditions of detention of the 18 individuals are normal and in accordance with the regulations in force and international standards. They are held in individual cells, enjoy group exercise and take part in various activities with other inmates.

91. According to the Government, the 18 individuals were placed in different prisons depending on their sentences, behaviour and family location, any studies they were pursuing and their medical needs. They were never subjected to inhuman treatment or physical or psychological torture and were able to communicate with their families. They have benefited from appropriate medical monitoring and receive all necessary medical care. They enjoy regular visits from their loved ones and, for those whose families are unable to travel regularly, special dispensation to receive extended visits not subject to a pre-established schedule. Their conditions of detention are monitored regularly by various mechanisms, and they are able to meet with their lawyers. They receive parcels and money from their families. The individuals who went on hunger strike were placed in specialized areas where their state of health could be more readily monitored. Prisoners who so wished were able to continue their studies, and some have obtained university diplomas.

92. With regard to Mr. Tahlil, the Government asserts that he requested to be transferred to Bouizakarne prison on 3 February 2021; there he enjoys all the rights guaranteed by law, including the right to communicate with his family.

93. The Government denies the allegations of death threats against Mr. Haddi and his disappearance between 15 June and 24 September 2021. The Committee on Enforced Disappearances has reportedly found these allegations to be unfounded. It is claimed that Mr. Haddi deliberately stopped using the telephone, in order to attract public attention. However, he is allowed three calls per week lasting 10 to 15 minutes each. He was transferred to Kenitra prison from 12 to 15 July 2021 to sit his university examinations and communicated with his mother by telephone on 13 and 14 July 2021. He sent a handwritten letter to the Tiflet public prosecutor's office informing it of a hunger strike on 9 and 10 June 2021. Mr. Haddi continued to eat in January 2021 and to shop at the canteen.

94. The Government categorically rejects allegations of any discrimination or link between the Saharan origin of the 18 individuals and their arrest, which it considers to have been based on the commission of crimes. The Constitution and the law prohibit all forms of discrimination. Article 5 of the Constitution protects Hassaniya as an integral part of the unique cultural identity of Morocco. Citizens of Western Saharan enjoy the full range of rights, in accordance with the principle of non-discrimination.

2. Discussion

95. The Working Group thanks the source and the Government for their submissions.

96. In determining whether the detention of the 18 individuals is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a *prima facie* case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.²² Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.

(a) Preliminary remarks

97. The source invites the Working Group to apply international humanitarian law. As the Working Group's mandate is limited to issues of arbitrary detention, it believes that it can reach a conclusion on the deprivation of liberty of the 18 individuals without having recourse to international humanitarian law.²³ It points out that its conclusions on the allegations of violations have no legal consequences for the status of Western Sahara. Consequently, its opinions should not be interpreted as expressing any political view concerning the present or future status of the Non-Self-Governing Territory of Western Sahara.²⁴

(b) Category I

98. According to the source, none of the 18 individuals was shown an arrest warrant at the time of their arrest.

99. As the Working Group has previously stated, in order for a deprivation of liberty to have a legal basis, it is not sufficient for there to be a law authorizing the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case. This is typically done through an arrest warrant, an arrest order or equivalent document.²⁵ The Working Group points out that it is not usually feasible to obtain an arrest warrant in cases of arrest in *flagrante delicto*. In its jurisprudence, the Working Group has concluded that arrest in *flagrante delicto* occurs when a person is arrested during or immediately after the commission of a crime, or during a pursuit shortly after the crime has been committed.²⁶

100. The Working Group notes that the Government does not deny that the individuals were not shown arrest warrants at the time of their arrest, but asserts that Mr. Asfari, Mr. Bouryal and Mr. Bani were arrested in *flagrante delicto*.

101. With regard to Mr. Asfari, the source states that he was arrested on 7 November 2010, the day before the Gdeim Izik camp was dismantled. The Government maintains that he was arrested on 8 November 2010, during the dismantling. Noting the discrepancies between the source's account and those of the witnesses, who stated that Mr. Asfari had ordered them to attack law enforcement officers on 8 November 2010, the Working Group considers that the source has not provided sufficient information to demonstrate that Mr. Asfari was arrested on 7 November 2010. The Working Group therefore finds that Mr. Asfari's arrest was carried out in sufficient proximity to the violence that occurred during and after the dismantling of the camp as to constitute a case of arrest in *flagrante delicto*.

102. Concerning Mr. Bani and Mr. Bouryal, the parties both claim that they were arrested on 8 November 2010, in the camp in Mr. Bouryal's case and as he was leaving the camp in Mr. Bani's case. Noting the proximity in time between the violence in the camp and that outside the camp in Laayoune, and the fact that the two individuals were charged in connection with these events, the Working Group considers that they were arrested in circumstances of *flagrante delicto* not allowing an arrest warrant to be obtained.

103. Concerning the arrest of the other individuals, including the rearrest of Mr. Ismaili on 13 May 2011, the Working Group notes discrepancies between the dates of arrest given by

²² A/HRC/19/57, para. 68.

²³ Opinions No. 52/2020, para. 75; and No. 68/2020, para. 59. See also A/HRC/27/48/Add.5, para. 62.

²⁴ Opinions No. 60/2018, paras. 62–64; and No. 68/2020, para. 61.

²⁵ Human Rights Committee, general comment No. 35 (2014), para. 23.

²⁶ Opinion No. 61/2011, paras. 48 and 49; No. 67/2011, para. 30; and No. 53/2014, para. 42.

the source and by the Government. Nevertheless, it notes that the Government has not refuted the source's allegations that they were arrested without being shown an arrest warrant. The Working Group considers that the Government has not demonstrated that it was impossible for the authorities to produce an arrest warrant or a summons to appear.

104. Accordingly, the Working Group finds that, by failing to present warrants to Mr. Laaroussi, Mr. Boutangiza, Mr. Abbahah, Mr. Lakhfaoui, Mr. Sbai, Mr. Lemjaïd, Mr. Ismaili, Mr. Babait, Mr. Lefkir, Mr. Haddi, Mr. Azaoui, Mr. Toubali, Mr. Khadda, Mr. Tahlil and Mr. Eddah at the time of their arrest, the authorities violated article 9 (1) and (2) of the Covenant.

105. Furthermore, the source claims that none of the 18 individuals was represented by a lawyer at their initial hearing or advised of their rights. The source provides a detailed account in support of the allegations and maintains that several of the detainees were unable to speak during their hearing. Although the Government contends that the appropriate procedures were respected, it fails to provide a detailed and substantiated rebuttal of the source's largely consistent arguments concerning the initial hearing of the 18 individuals.

106. The Working Group considers that the failure to allow the 18 individuals to be represented at their initial hearing, to inform them of their rights and, in some cases, to allow them to speak effectively undermined their ability to challenge their detention, in violation of article 9 (3) of the Covenant.

107. The source states that national law requires an individual to be brought before a judge within 24 hours of arrest. The Government maintains that a person may be held in police custody for a period of 48 hours, which may be extended for a further 24 hours, with the authorization of the public prosecutor, before being brought before a judge.

108. The Human Rights Committee has observed that 48 hours is ordinarily sufficient to satisfy the obligation to bring a person who has been arrested promptly before a judge or judicial authority, and any longer delay must remain absolutely exceptional and be justified under the circumstances.²⁷ Given that the 18 individuals appeared before the investigating judge at the end of their 72 hours in police custody, and in the light of the exceptional circumstances involving large-scale violence and the transportation of the detainees to another location to be heard by a judge, the Working Group does not consider that the source has demonstrated the violation of the rights of the 18 individuals in this regard.

109. The Working Group thus finds that the authorities violated articles 3 and 9 of the Universal Declaration of Human Rights and article 9 of the Covenant in respect of each of the 18 individuals. Their detention is therefore arbitrary under category I.

(c) Category II

110. The source claims that the 18 individuals were arrested and detained for exercising their right to freedom of thought, expression and opinion, and of peaceful assembly and association, guaranteed in articles 18, 19, 21 and 22 of the Covenant. The source maintains that, while some of the 18 individuals were actively involved in the camp, others are human rights defenders and still others only visited their relatives in the camp. The Government claims that the 18 individuals were arrested as a direct result of the violent confrontations of 8 November 2010.

111. The source does not deny that at least 10 law enforcement officers were killed and around 160 injured during the events surrounding the dismantling of the camp on 8 November 2010. The Working Group takes note of the large-scale violence and murderous context in which the arrests took place and considers that such circumstances fall within the scope of the exceptions provided for in relation to public safety and public order in articles 19 (3), 21 and 22 of the Covenant. Furthermore, the source asserts that the 18 individuals were questioned solely about their activism and their relations with the Frente POLISARIO, and not about any criminal activities. However, the Working Group considers it unlikely that the police would have lost interest in the events that took place at the camp, given that 10 police

²⁷ Human Rights Committee, general comment No. 35 (2014), para. 32.

officers were killed during these events and that the criminal charges were based on these events.

112. Nevertheless, the Working Group notes that this should not be interpreted as expressing any view as to the responsibility of the individuals for the crimes of which they were accused. The Working Group considers only that, in the light of the context and the information provided by the Government, the information provided by the source does not allow it to conclude that the detention of the 18 individuals is arbitrary under category II.

(d) Category III

113. As a preliminary matter, the Working Group notes that the source's allegations discussed below relate to the trial of the 18 individuals before the court of appeal, in 2016 and 2017, following the overturning of the original judgment.

(i) Torture and evidence obtained through torture

114. The source claims that the trial of the 18 individuals was characterized by the use of evidence obtained through torture. The source highlights other cases in Morocco involving the systematic use of torture during initial interrogations and the use as evidence of confessions signed without the presence of a lawyer. According to the Government, no acts of torture occurred, the proceedings were fair and the court acceded to all requests made by the defence.

115. With regard to Mr. Asfari and the period after 12 November 2010, the source's allegations are consistent with the account given to the Committee against Torture referring to acts of torture perpetrated after 12 November 2010. The Government disputes this account and claims that Mr. Asfari refused to undergo the medical examination ordered by the court of appeal. Nevertheless, the Working Group notes that this examination was ordered several years after Mr. Asfari's arrest and that the Government's response does not take into account the fact that the injuries he sustained might not have been visible by that point. In addition, the source claims that Mr. Asfari was prevented from challenging the use of evidence obtained through torture. Although the Government mentions the medical examinations ordered by the court of appeal, it does not rebut this allegation directly.

116. Concerning the other individuals, the source claims that they were tortured following their arrest and that the defence was prevented from challenging the use of evidence obtained through torture at their trial (including the police reports containing their confessions). In its response, the Government has provided no detailed, substantiated information refuting the source's allegations. Moreover, the Government's argument that the police reports served merely as information subject to the judge's sovereign discretion is not sufficient to rebut the source's claims.

117. The prohibition against torture is a peremptory norm of international law, enshrined in article 5 of the Universal Declaration of Human Rights, article 7 of the Covenant and articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Obtaining incriminating statements through the use of torture raises serious concerns with respect to the fairness of trials and is contrary to article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Confessions made in the absence of legal counsel are not admissible as evidence in criminal proceedings.²⁸ Furthermore, the admission into evidence of a statement obtained through torture renders the entire proceedings unfair, regardless of whether other evidence was available to support the verdict.²⁹

118. Consequently, the Working Group considers that, by using confessions obtained through torture and prohibiting the defence from challenging their use, the authorities violated the right of the 18 individuals to a fair trial under article 14 of the Covenant and article 10 of the Universal Declaration of Human Rights. The Working Group's conclusions

²⁸ A/HRC/45/16, para. 53. See also opinions No. 1/2014, para. 22; No. 14/2019, para. 71; No. 59/2019, para. 70; and No. 73/2019, para. 91.

²⁹ Opinions No. 43/2012, para. 51; No. 34/2015, para. 28; No. 52/2018, para. 79 (i); No. 32/2019, para. 43; No. 59/2019, para. 70; and No. 73/2019, para. 91.

are reinforced by its earlier findings that none of the 18 individuals was represented by a lawyer at the initial hearing, during which some were allegedly tortured in front of the judge.

119. The Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

(ii) *The right to a hearing by an independent and impartial tribunal*

120. According to the source, none of the 18 individuals enjoyed their right to a hearing by an independent and impartial tribunal. The source deplores the domineering attitude of the prosecution and the involvement of the parties claiming damages, and notes previous cases in Morocco in which the Working Group concluded that torture had been used during initial hearings and confessions signed in the absence of a lawyer used as evidence. The Government denies these allegations, contending that the proceedings were fair and that the arguments made and applications filed by the defence were largely taken into account.

121. Article 14 (1) of the Covenant guarantees the right to a fair and public hearing by a competent, independent and impartial tribunal established by law.

122. The Working Group finds that the source has not sufficiently established that the domineering attitude of the prosecutor and the involvement of the parties claiming damages rendered the trial unfair. It notes the detailed examples provided by the Government of the measures taken by the court in response to the applications filed by the defence, as well as its argument that the 18 individuals were represented by national and international lawyers, as reflected in the judgment.

123. On the other hand, the Working Group finds that the source's claims that the defence was unable to question the police officers about the torture allegedly inflicted have been established and are consistent with its conclusions above concerning the use of confessions obtained under torture. It also finds that the Government has not provided sufficiently detailed and substantiated information refuting these allegations, despite being in possession of information concerning the course of the proceedings. The Working Group concludes that there has been a violation of the principle of equality of arms and of the right to a hearing by an independent and impartial tribunal, guaranteed by article 14 (1) and (3) of the Covenant. In addition, the Working Group notes that it has already found violations of this right in cases concerning Morocco in which evidence obtained through torture was also used during the proceedings.³⁰

(iii) *Access to a lawyer*

124. According to article 14 (3) (b) and (d) of the Covenant, all persons deprived of their liberty have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after the moment of apprehension, and access to counsel must be provided without delay.³¹ Deprivation of the right to counsel violates the principle of equality of arms and the right to a hearing by an independent and impartial tribunal, guaranteed by article 14 (1) and (3) (e) of the Covenant.³²

125. The Working Group has already concluded that the source has established that the 18 individuals did not have access to a lawyer during their initial interrogations. It considers that the impossibility for the 18 individuals of having access to a lawyer immediately after their arrest hampered their ability to prepare their defence, in violation of article 14 of the Covenant.

(iv) *Other claims*

126. The Working Group notes that the Government denies the source's allegations that, 12 years after their arrest, the 18 individuals have still not been notified of the charges against

³⁰ See opinions No. 68/2020 and No. 46/2021.

³¹ [A/HRC/30/37](#), annex, principle 9 and guideline 8; Human Rights Committee, general comment No. 35 (2014), para. 35; [A/HRC/48/55](#), para. 56; and [A/HRC/45/16](#), paras. 50–55. See also [A/HRC/27/47](#), para. 13.

³² Opinions No. 18/2018, para. 53; No. 78/2018, paras. 78 and 79; and No. 43/2020, para. 84.

them, and asserts that they were informed of the charges from the outset of the proceedings. Noting that the judgment details the charges against each of the 18 individuals, the Working Group does not consider the source's allegations to be sufficiently established.

127. In addition, several of the source's allegations concerning the principle of equality of arms relate to specific items of evidence or questions. The Working Group notes that the Government has given a diametrically opposite account. It recalls that it has already addressed the issue of the restrictions imposed on the defence, which was unable to challenge the use of confessions obtained through torture, as well as the issue of the court's independence and impartiality. The Working Group considers that, on the basis of the information available to it, it is not in a position to assess the remainder of the allegations concerning specific items of evidence and questions asked at the trial. The Working Group reiterates that its role is not to act as a supranational tribunal examining the entirety of the proceedings at first instance and on appeal.

128. In the light of the above conclusions, the Working Group finds that the violations of the 18 individuals' right to a fair trial are of such gravity as to render their detention arbitrary under category III.

(e) Category V

129. The source claims that the Gdeim Izik prisoners were targeted because of their Saharan origin and their political views concerning the Saharan people's right to self-determination, which is contrary to international law, in particular articles 1, 2, 26 and 27 of the Covenant. The Government denies these allegations and asserts that all citizens have the same rights.

130. The Working Group recalls that the arrest of the 18 individuals followed the violent events of 8 November 2010. The source's allegation of general discrimination against Saharans does not exclude the fact that the 18 individuals were charged and convicted in connection with the events of 8 November 2010. The Working Group does not have sufficient information to conclude that the 18 individuals were arrested on discriminatory grounds.

131. Accordingly, the Working Group is not in a position to make a finding on the claims under category V.

(f) Concluding remarks

132. The Working Group recalls that, under article 10 of the Covenant, the Government is required to treat all persons deprived of their liberty with respect for the inherent dignity of the human person. International standards must be upheld, in particular rules 12–27 and 58 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), relating to living conditions, health care and contact with the outside world. The Working Group refers the present case to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

133. The Working Group is gravely concerned about the number of alleged cases of arbitrary detention in Western Sahara.³³ In particular, it echoes the concerns expressed by the Committee against Torture,³⁴ as well as by multiple special procedure mandate holders, regarding the Gdeim Izik detainees.³⁵

3. Disposition

134. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Sidi Abdallah Abbahah, Mohamed El Bachir Boutangiza, Mohamed Bani, Abdel Jalil Laaroussi, Abdulahi Lakhfaoui, Ahmed Sbai, Sid'Amed Lemjaid, Brahim Ismaili, Mohammed Khouna Babait, Mohamed

³³ Opinions No. 11/2017, No. 31/2018, No. 58/2018, No. 60/2018, No. 23/2019, No. 67/2019, No. 68/2020 and No. 46/2021.

³⁴ See *Asfari v. Morocco*.

³⁵ See communication MAR 3/2017, available at:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23226>.

Embareh Lefkir, Ennaâma Asfari, Mohamed Bouryal, Mohamed Lamin Haddi, El Hasane Azaoui, Abdellah Toubali, El Bachir Khadda, El Hassan Eddah and Mohamed Tahlil, being in contravention of articles 3, 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant, is arbitrary and falls within categories I and III.

135. The Working Group requests the Government of Morocco to take the steps necessary to remedy the situation of the 18 individuals without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the Covenant.

136. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release all 18 individuals immediately and accord them an enforceable right to compensation and other reparations, in accordance with international law.

137. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of the 18 individuals and to take appropriate measures against those responsible for the violation of their rights.

138. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, for appropriate action.

139. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

4. Follow-up procedure

140. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether the 18 individuals have been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to the 18 individuals;
- (c) Whether an investigation has been conducted into the violation of the 18 individuals' rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Morocco with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

141. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

142. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

143. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.³⁶

[Adopted on 31 March 2023]

³⁶ Human Rights Council resolution 51/8, paras. 6 and 9.