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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-second session (15–19 November 2021)

Opinion No. 46/2021, concerning Yahya Mohamed Elhafed Iaazza (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 42/22.
2. In accordance with its methods of work,¹ on 5 February 2021 the Working Group transmitted to the Government of Morocco a communication concerning Yahya Mohamed Elhafed Iaazza. The Government replied to the communication on 6 April 2021. 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);
 - (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 [A/HRC/36/38](#).



Submissions

Communication from the source

4. Yahya Mohamed Elhafed Iaazza, born in 1966, is a Saharan human rights defender and the President of the Tan-Tan branch of the Collectif des défenseurs sahraouis des droits de l'homme. He is married and has three children.

a. Context

5. According to the source, Mr. Iaazza was arrested in connection with the Saharan uprising in May 2005. As a prominent Saharan activist in the town of Tan-Tan, Mr. Iaazza is said to have played an important role in the uprising for the independence of Western Sahara. He has reportedly always been involved in organizing peaceful demonstrations for the independence of Western Sahara, working on human rights issues related to political prisoners, police violence and victims of torture.

6. The source reports that a demonstration is held every year on 27 February, the anniversary of the proclamation of the "Sahrawi Arab Democratic Republic". In 2008, Mr. Iaazza allegedly participated in the organization of the demonstration but did not attend it because he was working in his shop.

7. The source says that the participants carried flags during the demonstration. The police arrived shortly after it began and reportedly threw stones at the demonstrators. The demonstrators responded by throwing stones back at the police. A police officer was reportedly hit by a stone that caused fatal injuries. The source states that the identity of the person who caused the police officer's death is not known.

b. Arrest and detention

8. Mr. Iaazza was reportedly arrested on the evening of 29 February 2008, two days after the demonstration, as he was leaving his shop in Tan-Tan with his 6-year-old son. He was not physically assaulted but was told that the police had some questions for him and wanted him to go to the police station. The officers allegedly did not show him a warrant or tell him why he was being arrested. Mr. Iaazza supposedly then voluntarily entered the police vehicle and was taken to the police station.

9. According to the source, this arrest formed part of a wave of arrests of 20 Saharan activists, 8 of whom were tried alongside Mr. Iaazza. The arrests constituted a collective punishment inflicted on the Saharan community of Tan-Tan.

10. Mr. Iaazza was taken to the interrogation room in the police station and subjected to torture involving rape, beatings, electric shocks and the tearing of his fingernails and toenails. He was also asked political questions about his links to the Frente Popular para la Liberación de Saguía el-Hamra y de Río de Oro (Frente POLISARIO) and the Saharan Ministry for the Occupied Territories. Mr. Iaazza spent four days naked, without being given any food or water and without access to a lawyer.

11. Mr. Iaazza learned of the charges against him when he appeared before the Crown Prosecutor of Agadir on 4 March 2008. The source points out that Mr. Iaazza and the other detainees bore scars as a result of being tortured, which was reported to the Crown Prosecutor. However, the Crown Prosecutor did not request a medical examination or an investigation. The source states that it is not clear whether Mr. Iaazza's arrest was ordered by a judicial body or by the Crown Prosecutor.

12. Mr. Iaazza was then transferred to a prison for a month and kept isolated from the outside world while being subjected to torture and inhuman and degrading treatment. According to the source, Mr. Iaazza did not know where he was or even that he was in a prison.² He was not permitted to contact his lawyer or his family, who did not learn of his whereabouts until April 2008.

² According to the source, he was in Anzakan prison.

13. Subsequently, Mr. Iaazza, in very poor physical condition, was transferred to Aït Melloul prison and placed in an overcrowded cell with convicted prisoners without being allowed to see or call his family. He was allowed to contact his lawyer but not to communicate privately with him since someone was always listening to his calls and prison guards were present in the room to listen to conversations during visits.

14. Mr. Iaazza went on hunger strike and was hospitalized shortly afterwards. He was then taken to a cell containing only seven prisoners.

c. Trial proceedings

15. According to the source, Mr. Iaazza was brought before Agadir Court of First Instance along with eight other Saharan activists on 14 August 2008. The proceedings were postponed until 5 September 2008 and then further postponed until 9 October 2008. During the hearing, which was attended by international observers, the defendants chanted slogans proclaiming the Saharan people's right to self-determination.

16. During the trial, the defence argued that Mr. Iaazza's arrest had not been in compliance with the law, that he had been subjected to torture and that he still bore visible signs of it. Neither the judge nor the Crown Prosecutor made any reference to these signs of torture and the defence was not permitted to challenge the Crown Prosecutor's comments. As the defendants were questioned as a group, the proceedings resembled a mass trial in which the cases were not dealt with individually and police records and confessions, corroborated by the police, constituted the main evidence. The statements were contradictory and the judge refused to call any witnesses for the defence.

17. The defence also argued that all the defendants had been arrested solely because of their human rights activism and support for the Saharan people's right to self-determination. During the trial, a defence lawyer shocked the judges when he stated that Tan-Tan was part of Western Sahara and was forced to retract the statement to avoid criminal prosecution.

18. The source reports that Mr. Iaazza was not convicted of murder but was sentenced to 15 years' imprisonment for bringing together Saharan activists in a demonstration that led to the death of a police officer.

19. After Mr. Iaazza's conviction, the ill-treatment resumed. He was routinely subjected to restrictions on visits from his family members (who were allowed only to give him money), the use of the telephone, access to the library and shop, and the possibility of having his belongings collected. He also had problems with prison guards and the prison administration. In October 2008, Mr. Iaazza was allowed to call and see his family for the first time.

20. The appeal proceedings started in the spring of 2009 but the hearings were postponed several times. Mr. Iaazza spent 62 days on hunger strike, which left him with after-effects. The first hearing, scheduled for 1 April 2009, was postponed until 12 May 2009 as one of the defendants was absent. It took place under the same circumstances, and with the same restrictions on the defence, as the first instance hearing. International observers were present at both proceedings. The judge accused Mr. Iaazza of being a separatist who had paid people to attend the demonstration.

21. The appeal court upheld Mr. Iaazza's conviction and sentenced the other defendants in the same case to 4 years' imprisonment, increasing the sentence for three of them.

22. The source reports that, in order to punish Mr. Iaazza for his opinions, the authorities refused to grant him any of the prison transfers that he requested. He is currently being held in Bouizakarne prison, where his life is in danger owing to the coronavirus disease (COVID-19) pandemic and health problems related to torture, continued ill-treatment and hunger strikes. He also suffers from asthma and rheumatism and is subjected to ongoing racial discrimination and systematic punishment for his opinions.

23. On 9 October 2020, Mr. Iaazza's situation dramatically worsened. He was placed in a cell with a prisoner who tested positive for COVID-19 and then, on October 13, was placed in solitary confinement and deprived of all contact with the outside world. Nothing more was heard of Mr. Iaazza until 9 December 2020. In early November 2020, the prison governor told Mr. Iaazza's family that his situation was "normal" and that he had simply "chosen not

to use the telephone for three weeks”. From 9 December 2020 onward, he was allowed to make three phone calls per week for a few minutes, these being the only times that he was allowed out of his cell.

24. On 23 December 2020, the prison governor explicitly stated that Mr. Iaazza would not receive any form of medical treatment and would not be allowed to go to hospital, regardless of the severity of his illness. He also made death threats against Mr. Iaazza and cut off the electricity in his cell. On 6 January 2021, two other prisoners were placed in Mr. Iaazza’s cell.

d. Legal analysis

25. The source argues that Mr. Iaazza’s deprivation of liberty falls within categories I, II, III and V of the Working Group’s methods of work and should also be assessed in the light of international humanitarian law, which it considers to be applicable to this case.

26. The source considers that the Saharans have the right to self-determination³ and are protected persons under the first paragraph of article 4 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention).

i. Category I

27. The source claims that Mr. Iaazza’s arrest was unlawful, that he was held incommunicado for a prolonged period, that he was subjected to enforced disappearance during his first month of detention and to various forms of torture. The source also believes that Mr. Iaazza’s detention was not ordered by a judicial body.

28. Therefore, the formal procedures necessary to establish the legal basis for his arrest were not followed, rendering the arrest and detention devoid of any legal basis, in violation of article 9 of the Universal Declaration of Human Rights and article 9 (1) of the Covenant.

ii. Category II

29. According to the source, Mr. Iaazza was held responsible for the death of the police officer following the demonstration of 27 February 2008, even though he was working in his shop that day and did not attend the demonstration. The source reports that celebrations of the Saharan national day are inherently peaceful, with demonstrators carrying the Western Saharan flag and celebrating their national holiday, but are usually met with massive crackdowns and police violence. The entire town of Tan-Tan was subjected to collective punishment after Mr. Iaazza’s arrest and the demonstration on 27 February 2008.

30. The source believes that Mr. Iaazza was arrested, tortured and detained solely because he is a Saharan human rights defender and has campaigned for the independence of Western Sahara and its people’s right to self-determination. In this connection, the source notes the following: (a) Mr. Iaazza was subjected to questioning of a political nature; (b) the police records state that he was a “dangerous separatist” who belonged to a criminal organization and should be punished to make an “example” of him; (c) the Moroccan judicial system is used to silence dissidents who oppose the regime; and (d) the proceedings constituted a sham trial.

31. According to the source, Mr. Iaazza’s deprivation of liberty is arbitrary under category II in that it constitutes a violation of humanitarian law and of his rights to freedom of expression and assembly, which are guaranteed under articles 19 and 21 of the Covenant.

iii. Category III

32. According to the source, neither the judge nor the Crown Prosecutor was independent or impartial, no action was taken in response to the allegations of torture, and Mr. Iaazza was prosecuted solely because he had advocated for the right to self-determination in a country where the justice system is used to punish persons considered to be “separatists”.

³ The source refers to the case law on Western Sahara of the International Court of Justice and to General Assembly resolutions 1514 (XV), 1541 (XV) and 2625 (XXV).

33. The source also argues that Mr. Iaazza was questioned alongside other defendants, in violation of the principle of individual responsibility. The political nature of the trial is illustrated by the fact that the courtroom was surrounded by police officers, which could constitute a violation of the right to a public hearing. The source also notes that the defence was required to retract a statement in order to avoid criminal proceedings and that Mr. Iaazza was unable to communicate with his lawyers or submit evidence that would exonerate him.

34. Therefore, the source considers that Mr. Iaazza was subjected to a politically motivated prosecution and was not heard by an independent and impartial tribunal, in violation of article 14 (1) of the Covenant. The source also believes that the court failed to consider the fact that, as a Saharan, Mr. Iaazza has the status of a protected person under the Fourth Geneva Convention.

35. The source argues that confessions signed under torture were the only evidence used against Mr. Iaazza, in violation of articles 7 and 14 (3) (g) of the Covenant and article 75 (4) (f) of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I). The judge ignored the evidence of torture and refused to admit exculpatory evidence. He also refused to call or hear witnesses who could attest to Mr. Iaazza's absence from the demonstration, arguing that police records already proved that Mr. Iaazza had organized the peaceful demonstration and that he had paid "separatists" to attend it.

36. Furthermore, Mr. Iaazza was neither shown an arrest warrant nor informed of the reasons for his arrest. He was detained in an unknown location, while being subjected to torture, between 29 February and 4 March 2008, on which date he was brought before the Crown Prosecutor. The source concludes that the authorities failed to inform the accused of the nature and cause of the charge against him, in violation of articles 9 (2) and 14 (3) (a) of the Covenant and article 71 of the Fourth Geneva Convention.

37. Mr. Iaazza was also held in complete isolation between 29 February 2008, when he was arrested, until his transfer to Aït Melloul prison in April 2008. Between April and October 2008, he was prevented from communicating with his lawyer and preparing his case and was subjected to inhuman treatment in prison. The authorities also interfered with his right to communicate with his lawyer in a confidential manner by listening in on conversations and interrupting meetings. The source claims that these circumstances raise doubts over the independence of the judges, in violation of article 14 (3) (b) of the Covenant.

38. The source considers that the criminal proceedings brought against Mr. Iaazza constitute a separate violation of the right to a fair trial enshrined in articles 5 and 66 to 75 of the Fourth Geneva Convention.

iv. Category V

39. According to the source, Mr. Iaazza was arrested and imprisoned because of his Saharan identity and his political views on the Saharan people's right to self-determination, in violation of articles 1, 2, 26 and 27 of the Covenant, article 47 of the Fourth Geneva Convention and article 45 of the Regulations respecting the Laws and Customs of War on Land. Mr. Iaazza's case is symbolic of the systematic and systemic persecution of all Saharans.

Response from the Government

40. On 5 February 2021, the Working Group transmitted a communication concerning Mr. Iaazza to the Government, requesting it to provide detailed information about him by 6 April 2021 and to guarantee his physical and mental integrity.

41. On 6 April 2021, the Government sent its response, in which it stated that the Moroccan authorities have always made efforts to interact constructively with special procedure mandate holders. However, the Government regrets to note that individual complaints mechanisms are being used for purposes other than those originally provided for in their mandates. It also believes that, for the person concerned, the present communication mainly serves as a means of relaying a purely political plea.

42. According to the Government, Mr. Iaazza⁴ is a Moroccan citizen who was born in 1966 in Tan-Tan, where he has his home. Before his arrest, he worked as a shopkeeper. In 1993, he was convicted of defaming and insulting a public official, damaging public property, and assault and battery and, in 2008, he was convicted following his alleged involvement in events leading to the death of a police officer.

43. On 26 February 2008, armed groups gathered on a public road in Tan-Tan to lure the police into an ambush that had allegedly been planned. Stone blocks were placed on the public road to force the authorities to leave their vehicles in order to clear the way, after which they were attacked.

44. During the attack, a police officer sustained a serious injury to the face, requiring him to be taken to the local hospital, then to the military hospital in Guelmim, and finally to the Ibn Sina military hospital in Marrakech. On 3 March 2008, the police officer died of his injuries. On 1 March 2008, following judicial investigations and the establishment of Mr. Iaazza's direct involvement in the events, he was arrested in a public place by the Tan-Tan police, who informed him of the reasons for his arrest.

45. He was immediately taken to criminal investigation police premises, where he was held in custody from 3 p.m. on 1 March 2008 until 11 a.m. on 4 March 2008, his custody having been extended on 3 March 2008 with the written authorization of the public prosecutor's office and in accordance with article 80 of the Code of Criminal Procedure.

46. His family was notified of his arrest in accordance with article 67 of the Code of Criminal Procedure and article 9 of the Covenant. On 4 March 2008, Mr. Iaazza was brought before the Crown Prosecutor General of the Agadir Court of Appeal, who filed an application for an investigation into Mr. Iaazza's involvement in the events of 26 February 2008.

47. According to the Government, the investigating judge decided to prosecute Mr. Iaazza for criminal association, placing objects on the public highway with a view to obstructing traffic, violence against a public official resulting in his death, participation in these acts, armed gathering, and rebellion, in accordance with articles 129, 267, 293, 294, 300 and 591 of the Criminal Code and article 20 of the Royal Decree of 15 November 1958. On 9 October 2008, the case was referred to the criminal chamber of first instance of Agadir Court of Appeal, which sentenced Mr. Iaazza to 15 years' imprisonment after upholding all the charges against him and deciding not to convict him of criminal association. The court also decided to reclassify the offence of "violence against a public official, in the exercise of his duties, resulting in his death" as "incitement to rebellion leading to violence resulting in death", in accordance with articles 403.2 and 405.2 of the Code of Criminal Procedure.

48. Mr. Iaazza benefited from mitigating circumstances under article 147 of the Criminal Code, as the legally enforceable penalty was life imprisonment. This judgment, which, on 24 June 2009, was upheld on appeal by the criminal chamber of appeal of the Agadir Court of Appeal, has not been the subject of an appeal by way of cassation.

49. The Government notes that, under article 23 of the Constitution, national law and the relevant provisions of the Covenant, including article 9, no person may be arbitrarily arrested or detained. According to the Government, the police arrested Mr. Iaazza on 1 March 2008, not on 29 February, and immediately informed him of the reasons for his arrest. On the instructions of the public prosecutor's office attached to the Agadir Court of Appeal, and after eight accomplices had identified Mr. Iaazza as the main instigator of the disturbances that took place on the evening of 26 February 2008, he was arrested as part of an investigation initiated under article 80 of the Code of Criminal Procedure.

50. Furthermore, the Government contests the claim that Mr. Iaazza was detained in an unknown location between 29 February and 4 March 2008 and tortured. In its view, this allegation corresponds to the period from 1 to 4 March 2008, when he was in police custody.

51. Mr. Iaazza did not raise the question of his alleged ill-treatment, either before the Crown Prosecutor, during the hearing held on 3 March 2008 to extend his police custody under article 80 of the Code of Criminal Procedure, or subsequently, during his appearance

⁴ In its submission, the Government uses the spelling Yahya Iaazza.

before the investigating judge, despite the fact that his lawyer was present during his extensive hearing.

52. Mr. Iaazza also did not ask to speak to a lawyer following the extension of his police custody. The Government notes that the previous version of article 66 of the Code of Criminal Procedure did not expressly require the authorities to inform persons of the reasons for their arrest or their right to remain silent, communicate with a lawyer and receive legal assistance, which is why Mr. Iaazza was not informed of these matters at the preliminary hearing.⁵

53. Under article 134 of the Code of Criminal Procedure, the investigating judge informs accused persons of their right to choose a lawyer immediately and appoints a lawyer if no choice is made and the accused person so requests. Mr. Iaazza waived his right to be assisted by a lawyer during the pretrial questioning on 4 March 2008, as is recorded in the minutes. On 27 May 2008, he appeared before the investigating judge at an extensive hearing, this time in the presence of his lawyer.

54. After being confronted with the evidence, Mr. Iaazza clearly and distinctly admitted to having played an active role in coordinating the armed gatherings and demonstrations in Tan-Tan and to having deliberately incited others to participate in them, thereby undermining public order. The Government therefore considers as unfounded the allegation that Mr. Iaazza's detention lacked a legal basis and falls within category I.

55. The Government categorically rejects the allegations that Mr. Iaazza's arrest, prosecution and conviction are related to his right to freedom of expression, as guaranteed in article 19 of the Covenant. The armed gathering on the public highway, the barricade erected on the road, the obstruction of traffic and the incitement to rebellion resulting in death cannot be equated with the expression of any opinion and cannot result from such expression or be justified by it. Contrary to the source's claim, Mr. Iaazza's arrest and prosecution were not based on his activism but on investigations conducted by the police on the instructions of a judicial authority, which established his direct and effective involvement in criminal acts punishable by law.

56. According to the Government, all fundamental rights related to Mr. Iaazza's arrest, detention and defence were respected in accordance with the Constitution, Moroccan law and the relevant provisions of the Covenant.

57. After he had been questioned, Mr. Iaazza refused to sign the records of his arrest and hearing, which contained his statements, without giving any reason for his refusal. This refusal was set down in the records in question, in accordance with article 67.2 of the Code of Criminal Procedure.

58. When the Crown Prosecutor was informed of the acts of torture, at the hearing held on 4 March 2008, he referred Mr. Iaazza to the investigating judge on the same day. However, the judge did not notice or detect anything that might have prompted him to investigate the allegations. Mr. Iaazza did not raise the matter before the judge.

59. In accordance with articles 73 and 74 of the Code of Criminal Procedure, when anyone is brought before the Crown Prosecutor, the prosecutor is required to ensure that the person undergoes a medical examination, either at his or her request or because signs of torture or ill-treatment have been detected. Article 293 of the Code of Criminal Procedure provides that no confession extracted through the use of violence or coercion is admissible in court. According to the Government, it was up to the judge alone, on the basis of his or her assessment and personal conviction, to decide whether or not to order a medical examination.

60. The Government claims that Mr. Iaazza was assisted by a lawyer during his extensive hearing before the investigating judge although he voluntarily waived the right to such assistance during the preliminary hearing. In addition, his lawyer visited him in Inezgane prison on 13 March 2008. Foreign jurists were present at the trial, and Mr. Iaazza was

⁵ According to the Government, this guarantee was introduced following the amendment of article 66 of the Code of Criminal Procedure under Act No. 35-11, which was published in *Bulletin officiel* No. 5990 of 27 October 2011.

defended by different lawyers throughout the proceedings, both at first instance and on appeal.

61. Mr. Iaazza was confronted with all the evidence obtained in the investigation and made detailed statements in which he voluntarily acknowledged the facts. The court based its judgment on the physical evidence and on statements made by other persons involved in the case, which confirmed that Mr. Iaazza was the main instigator of the criminal acts committed in 2008. His associates all stated that he was responsible for planning the attack, which included determining the time and place of its execution, recruiting and funding the participants and allocating roles to the accomplices.

62. The Government considers that there was nothing unusual about the fact that Mr. Iaazza was heard alongside other defendants since they were all involved in the same case. The trial was conducted in full compliance with the guarantees of the right to a fair trial, as shown by the fact that lawyers and witnesses were present and the adversarial principle was upheld. All the defendants mounted a defence and were free to put forward all their claims. Mr. Iaazza's lawyer had the opportunity to raise any claims deemed relevant to demonstrating his client's innocence. Several witnesses, including defence witnesses, were heard. The Government notes that it was for the judge alone, acting in accordance with his or her own assessment and personal convictions, to decide whether or not to accept requests to summon or hear witnesses on the basis of the facts, the circumstances of the case and the evidence before him or her. The Government thus asserts that Mr. Iaazza's detention is not arbitrary under category III.

63. The Government categorically denies that Mr. Iaazza was arrested because of his Saharan identity since all Moroccans are equal before the law and Moroccan identity is plural and indivisible. It notes that the Constitution and the law prohibit all forms of discrimination and that, under Moroccan law, the prosecution and detention of anyone may be carried out only in full compliance with the law, with all forms of prosecution based on discriminatory grounds being prohibited. Mr. Iaazza was arrested, prosecuted and sentenced in strict compliance with the law, as are all other persons who have committed acts punishable by law.

64. In the Government's view, to claim that a detention is arbitrary simply because of the detainee's ethnic, cultural or political affiliation would be tantamount to granting him or her an immunity that cannot be supported by international human rights law, particularly when the case involves acts of violence and proven violations of laws in force that are applicable to all Moroccan citizens.

65. Mr. Iaazza was visited by his family in March and April 2008 and obtained permission from the public prosecutor's office to communicate with his lawyer on 13 March 2008. He has never been deprived of the right to communicate by telephone, nor has he been transferred to an unknown location, subjected to enforced disappearance or declared to be on a hunger strike of any kind since the start of his incarceration.

66. Since 18 May 2017, Mr. Iaazza has been incarcerated in Bouizakarne prison in a cell that complies with all international standards. He has never been placed in solitary confinement. In common with all other prisoners, Mr. Iaazza enjoys all his rights and is treated humanely and with respect for his dignity, in accordance with international standards. He continues to communicate with his family, who have always been allowed to visit him, including on 11 March 2020, prior to the suspension of visits following the outbreak of the COVID-19 pandemic. Mr. Iaazza was also visited by his family on 5 March 2021. He has never been in a cell with an inmate who has COVID-19 and has never had any symptoms of the disease or been identified as a contact person.

67. With regard to the allegation that Mr. Iaazza has been deprived of contact with the outside world since 13 October 2020, the Government notes that he purchased five phone cards from the prison canteen on 15 October 2020 and that he has deliberately avoided using the landline since 2 October 2020.

68. On 4 November 2020, Mr. Iaazza received a visit from the Guelmim-Oued Noun Regional Human Rights Commission. This delegation from the National Human Rights Council found that he was suffering from a number of chronic illnesses, including diabetes,

rheumatism, asthma and vision problems, but was receiving regular medical care. The Commission is in regular contact with Mr. Iaazza. On 23 February 2021, the national preventive mechanism met Mr. Iaazza, who complained about his state of health. The mechanism forwarded the complaint to the Commission, which is monitoring his case.

69. Since the start of his incarceration, Mr. Iaazza has had 37 inpatient consultations with general practitioners and 8 consultations with specialists. On 22 January 2021, he was transferred to the emergency department at Bouizakarne Hospital, as he was suffering from asthenia, but he refused to undergo the appropriate treatment. On 1 March 2021, he was transferred to the hospital's emergency department, where he received the necessary treatment. The Government notes that Mr. Iaazza currently enjoys a fair general state of health.

Further information from the source

70. The source notes that it has not been possible to confirm whether Mr. Iaazza's lawyer visited him on 13 March 2008. Consequently, it would like to amend its submission to indicate that Mr. Iaazza was subjected to enforced disappearance for two weeks. The source confirms that, contrary to its initial allegations, Mr. Iaazza was able to see his family before the proceedings began in October 2008.

71. Mr. Iaazza is currently being held for up to 23 hours per day, in unsanitary conditions, without adequate food or medical care. His health is in critical condition. He is allowed to make only three short calls, twice a week, to pre-approved individuals. The source confirms that a delegation from the National Human Rights Council visited him in February and March 2021 as a result of international pressure.

72. The source notes that Mr. Iaazza was arrested late at night on 29 February 2008, which could be understood to mean early in the morning of 1 March 2008, and was not informed of the reasons for his arrest. He was held incommunicado for four days, tortured and subjected to political questioning. The documents used against Mr. Iaazza and the other defendants were almost identical and Mr. Iaazza's pretrial detention was extended to force him to sign the documents, which constitute the only incriminating evidence against him. It is reportedly common practice for the police to use documents signed under torture against defendants.

73. Mr. Iaazza never waived his right to a lawyer and was never informed of the charges against him or of his right to remain silent after his arrest. However, the fact that these rights were not provided for in Moroccan law cannot justify the Government's violation of its international obligations. Mr. Iaazza informed the judge that he had been subjected to torture but no investigation was carried out. During the proceedings, Mr. Iaazza denied the charges against him and informed the court that he had been arrested because of his activism.

74. According to the source, the presence of defence lawyers is not sufficient to fulfil the requirements of a fair trial. Mr. Iaazza was denied confidential access to his lawyer and was prevented from calling witnesses who could attest to the fact that he had not attended the demonstration.

75. Lastly, there is a link between the suppression of the 2008 demonstrations and Tan-Tan's reputation as a town with a large Saharan population that is the birthplace of the Saharan revolution and the home of Frente POLISARIO. Mr. Iaazza's prominence as a Saharan activist is the only reason why he remains in detention. The source believes that sporadic acts of violence carried out by some people at a gathering is not to be attributed to others who are acting peacefully.

Discussion

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

77. In determining whether the deprivation of liberty of Mr. Iaazza 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. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.⁶

78. The source has called on 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 Mr. Iaazza's liberty without having recourse to international humanitarian law.⁷ 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.⁸

Category I

79. The source states that Mr. Iaazza was arrested in Tan-Tan late in the evening of 29 February 2008, which could also mean early in the morning of 1 March 2008. Of his own free will, he went to the police station at the request of some police officers, who told him that they had some questions to put to him. He was neither shown an arrest warrant nor informed of the reasons for his arrest.

80. According to the Government, Mr. Iaazza was arrested on a public street on 1 March 2008 after his direct involvement in a demonstration resulting in the death of a police officer had been established. The police immediately informed him of the reasons for his arrest. However, the Government has not made any mention of an arrest warrant being shown. The information provided by the Government suggests that Mr. Iaazza was arrested several days after the demonstration, i.e., he was not arrested in flagrante delicto.⁹

81. In accordance with article 9 (1) of the Covenant, "no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law". The Working Group considers that the source has provided credible information, which the Government has not rebutted, to the effect that Mr. Iaazza was arrested without an arrest warrant, in violation of article 9 (1) of the Covenant.¹⁰ Therefore, the authorities have not established the legal basis for his arrest under the Covenant.

82. Article 9 (2) of the Covenant provides that "anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him". Oral notification of reasons for arrest satisfies the requirement.¹¹ The source and the Government have provided conflicting information on whether or not Mr. Iaazza was informed of the reasons for his arrest. The Working Group is therefore unable to determine whether there has been a violation of Mr. Iaazza's right to be informed of the reasons for his arrest.

83. The source concurs with the Government in stating that Mr. Iaazza was informed of the charges against him on 4 March 2008, when he appeared before the Prosecutor, that is to say three days after he had been arrested. Articles 9 (2) and 14 (3) (a) of the Covenant provide that anyone who is arrested must be promptly informed of any charges against him.¹² The Working Group is not persuaded that the authorities have violated these provisions.¹³

84. According to the Government, Mr. Iaazza was not informed of his rights to remain silent, communicate with a lawyer or receive legal aid as the obligation to inform arrested persons of these matters was not expressly provided for in national law until 2011. Persons deprived of their liberty are entitled to be informed by the authorities, at the time of their

⁶ A/HRC/19/57, para. 68.

⁷ Opinions No. 68/2020, para. 59; and No. 52/2020, para. 75. See also A/HRC/27/48/Add.5, para. 62.

⁸ Opinions No. 68/2020, para. 61 and No. 60/2018, paras. 62–64.

⁹ Opinion No. 9/2018, para. 38.

¹⁰ Opinions No. 45/2019, para. 51; and No. 44/2019, para. 52.

¹¹ Human Rights Committee, general comment No. 35 (2014), para. 26.

¹² Ibid., para. 30.

¹³ Opinion No. 44/2016, para. 33.

arrest, of their right to be assisted by a lawyer of their choice.¹⁴ As the authorities failed to inform Mr. Iaazza of this right, which cannot be excused by the lack of provisions requiring them to do so in national law, he was unable to challenge the legal basis for his detention.

85. The information provided by both parties indicates that Mr. Iaazza was not brought before a court in a timely manner. According to the source, the Prosecutor ordered Mr. Iaazza's detention on 4 March 2008, three days after his arrest. The Government states that Mr. Iaazza was held in police custody from 3 p.m. on 1 March 2008 to 11 a.m. on 4 March 2008. On 3 March 2008, the Prosecutor extended Mr. Iaazza's custody by 24 hours.¹⁵ Mr. Iaazza appeared before the Prosecutor General, who referred him to the investigating judge on the same day (4 March 2008), three days after his arrest.

86. According to article 9 (3) of the Covenant, "anyone arrested or detained on a criminal charge shall be brought promptly before a judge". The Human Rights Committee has observed that 48 hours is ordinarily sufficient to satisfy this obligation, and any longer delay must remain absolutely exceptional and be justified under the circumstances.¹⁶ Mr. Iaazza was brought before a judicial authority on 4 March 2008, i.e., three days after his arrest, in violation of article 9 (3) of the Covenant. On 3 March 2008, the Prosecutor extended the custody of Mr. Iaazza, who was brought before the Prosecutor General on 4 March 2008. As the Working Group has stated, the lawfulness of detention must be reviewed by a judicial authority, not by a prosecutorial authority.¹⁷ Consequently, the authorities failed to establish the legal basis of Mr. Iaazza's detention in accordance with the provisions of the Covenant.

87. The submissions of both parties indicate that Mr. Iaazza was unable to communicate with his family or his lawyer between the time of his arrest and 4 March 2008. As a result, Mr. Iaazza was deprived of the right to take proceedings before a court so that it might decide without delay on the lawfulness of his detention in accordance with article 9 (4) of the Covenant.

88. According to the source, Mr. Iaazza was unable to speak to a lawyer while in police custody and never waived his right to a lawyer. According to the Government, Mr. Iaazza did not ask to speak to a lawyer following the extension of his police custody and waived his right to a lawyer during the preliminary hearing held on 4 March 2008. However, the Government claims that Mr. Iaazza met his lawyer on 13 March 2008. Therefore, the Working Group believes it likely that Mr. Iaazza attempted to contact a lawyer while in custody and in advance of the preliminary hearing but was prevented from doing so. Mr. Iaazza was therefore denied access to counsel, which is an essential safeguard in legal proceedings,¹⁸ and was prevented from exercising his right to an effective remedy under article 2 (3) of the Covenant.

89. Given that the judge did not order a medical examination or any investigation during the preliminary hearing on 4 March 2008, the Working Group finds credible the source's allegations concerning the torture and inhuman treatment to which Mr. Iaazza was subjected. This treatment significantly undermined Mr. Iaazza's ability to challenge his detention.¹⁹ It is therefore all the more likely that he was unable to exercise the right to challenge the legal basis for his detention, in violation of article 9 (3) and (4) of the Covenant.

¹⁴ Opinions No. 43/2019, para. 53; and No. 39/2019, para. 87. See also the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court ([A/HRC/30/37](#), annex), principle 9.

¹⁵ The Government submitted the record of the extension but the document was illegible. At the request of the Working Group, it provided another copy, but that was also illegible. The Working Group was unable to obtain an official translation of this document.

¹⁶ Human Rights Committee, general comment No. 35 (2014), para. 33. See also [CAT/C/MAR/CO/4](#), para. 7; and opinion No. 67/2019, para. 64.

¹⁷ [A/HRC/45/16/Add.1](#), para. 35 (prosecutorial authorities do not possess the requisite degree of independence to assess the necessity and proportionality of detention); Human Rights Committee, general comment No. 35 (2014), para. 32.

¹⁸ Opinions No. 61/2020, para. 70; No. 40/2020, para. 29; and No. 25/2020, para. 41. See also the Human Rights Committee's general comment No. 35 (2014), para. 46.

¹⁹ Opinion No. 37/2021, para. 66.

90. The Working Group concludes that Mr. Iaazza's detention lacked any legal basis and was therefore arbitrary under category I.

Category II

91. The source states that Mr. Iaazza is being detained for having exercised his rights to freedom of expression and freedom of peaceful assembly, which are guaranteed under articles 19 and 21 of the Covenant. According to the source, Mr. Iaazza was held responsible for the death of a police officer following the peaceful demonstration held on 27 February 2008, although he was not present at the demonstration. He was reportedly arrested because he had actively campaigned for the Western Saharan people's right to self-determination.

92. The Government categorically rejects these allegations and stresses that the proceedings brought against Mr. Iaazza followed an investigation that established his direct involvement in criminal acts.

93. Article 19 (2) of the Covenant provides that everyone has the right to freedom of expression. This right includes the freedom to seek, receive and impart information and ideas of all kinds. It covers political discourse, commentary on public affairs and discussion of human rights²⁰ and guarantees the freedom to express opinions that do not conform to government policies.²¹

94. The Working Group considers that Mr. Iaazza's activism falls within the scope of the right to freedom of expression, which is guaranteed by article 19 of the Covenant, and that he was arrested for exercising this right.²² This conclusion is based on the source's allegations, which the Government has not refuted, to the effect that Mr. Iaazza was subjected to politically motivated questioning about his links to the Frente POLISARIO and the Saharan Ministry of the Occupied Territories, which suggests that he was arrested because of his activism and not because he had committed criminal offences. Moreover, the police reports mentioned that Mr. Iaazza was a "dangerous separatist" and a member of a criminal organization that had to be suppressed in order to set an example.

95. Furthermore, Mr. Iaazza, who claimed the Saharan people's right to self-determination, is being detained for having exercised his right to take part in the conduct of public affairs²³ under article 25 (a) of the Covenant. With regard to the organization of the demonstration, he was also entitled to protection of the right of peaceful assembly, as guaranteed by article 21 of the Covenant.²⁴ While the organizers of a demonstration should make every effort to comply with the law and encourage the peaceful conduct of the assembly, they cannot be held responsible for the unlawful behaviour of others.²⁵

96. There is nothing to suggest – and the Government has not argued – that the restrictions referred to in articles 19 (3), 21 and 25 of the Covenant apply in the present case. The Government has not explained why it was considered necessary to prosecute Mr. Iaazza in order to protect a legitimate interest within the meaning of these provisions or why sentencing Mr. Iaazza to 15 years' imprisonment for organizing a demonstration was considered to be a proportionate measure. There is no reason to believe that Mr. Iaazza's activism could reasonably be considered a threat to national security, public order, public health or morals, or the rights or reputations of others.

97. The Working Group concludes that Mr. Iaazza is being detained for having exercised his rights to freedom of expression and peaceful assembly and his right to take part in the conduct of public affairs. His detention is arbitrary under category II. The Working Group refers the case to the Special Rapporteur on the promotion and protection of the right to

²⁰ Human Rights Committee, general comment No. 35 (2011), paras. 11 and 12.

²¹ Opinions No. 8/2019, para. 55; and No. 79/2017, para. 55.

²² A/HRC/27/48/Add.5, para. 64.

²³ Human Rights Committee, general comment No. 25 (1996), para. 8; see also opinions No. 16/2020 and No. 15/2020.

²⁴ Human Rights Committee, general comment No. 37 (2020), para. 12.

²⁵ Ibid., para. 17; A/HRC/31/66, paras. 20 and 26; and opinion No. 22/2017, para. 74.

freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association.

Category III

98. As the Working Group has found that Mr. Iaazza's detention is arbitrary under category II, it asserts that he should not have been brought to trial. However, Mr. Iaazza was convicted and sentenced to 15 years' imprisonment and this judgment was upheld on appeal.

99. According to the source, Mr. Iaazza was held in solitary confinement for two weeks at the start of his detention and was prevented from meeting his lawyer to prepare his defence between April 2008 and October 2008, when his trial began. It was impossible for him to talk to his lawyer in private as the authorities listened in on their conversations and interrupted their talks.

100. The Government refutes these allegations, maintaining that Mr. Iaazza did not ask to meet a lawyer after his police custody was extended, that he waived his right to a lawyer during the preliminary hearing held on 4 March 2008, that he was visited by his lawyer in Inezgane prison on 13 March 2008, and that he was assisted by his lawyer during the hearing held on 27 May 2008 and throughout his trial and appeal.

101. All persons deprived of their liberty have the right to legal assistance by the counsel of their choice at any time during their detention, including immediately after their apprehension, and such assistance must be provided without delay.²⁶ Mr. Iaazza was unable to communicate with his lawyer when he was taken into custody or on a regular basis after that. As a result, he was prevented from preparing a proper defence. Meetings with counsel may be within sight but not within hearing of the authorities, and all communications with counsel must remain confidential.²⁷ Therefore, Mr. Iaazza's right to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing, as guaranteed by article 14 (3) (b) of the Covenant, was violated.

102. The Working Group is not persuaded that the presence of eight co-accused persons rendered the trial unfair. However, the Government has not fully responded to allegations that the defence was not given the opportunity to call witnesses,²⁸ particularly those who were in a position to confirm that Mr. Iaazza did not attend the demonstration. The reaction to the defence lawyer's statement about Tan-Tan further suggests that the court was not independent. Therefore, the Working Group considers that Mr. Iaazza's rights under article 14 (1), (2) and (3) (e) of the Covenant have been violated and refers the case to the Special Rapporteur on the independence of judges and lawyers.

103. Given that the authorities failed to conduct a medical examination or an investigation, the Working Group considers that the source has presented credible arguments to show that Mr. Iaazza was subjected to torture and ill-treatment, in violation of 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, to which Morocco is a party. The torture and ill-treatment to which Mr. Iaazza was subjected may have hindered his ability to participate in his own defence. The Working Group refers the case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

104. In addition, the source claims that the only evidence put forward by the prosecution was a confession signed by Mr. Iaazza under torture and in the absence of a lawyer. The Government claims that Mr. Iaazza voluntarily admitted the facts in detailed statements and that the court relied on the evidence contained in the case file, including the statements made by Mr. Iaazza and other suspects in the case.

²⁶ A/HRC/30/37, annex, principle 9 and guideline 8; A/HRC/27/48/Add.5, para. 83 (a); A/HRC/45/16, para. 51; opinion No. 7/2021, paras. 81–82; and CCPR/C/MAR/CO/6, paras. 25–26.

²⁷ United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), rule 61 (1); Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 18; and A/HRC/30/37, annex, guideline 8.

²⁸ CCPR/C/MAR/CO/6, paras. 33–34.

105. Confessions made in the absence of legal counsel should not be admitted as evidence in criminal proceedings.²⁹ Furthermore, the admission into evidence of a statement obtained through torture or ill-treatment renders the entire proceedings unfair, regardless of whether other evidence was available to support the verdict.³⁰ The burden is on the Government to prove that Mr. Iaazza's confession was given freely³¹, but it has not done so. The Working Group finds credible the source's allegations that Mr. Iaazza bore visible signs of torture.³² The authorities did not order a medical examination or an investigation that might have served to refute these allegations.

106. The authorities violated Mr. Iaazza's right not to be compelled to confess guilt under article 14 (3) (g) of the Covenant and article 15 of the Convention against Torture.³³ The court did not order an independent investigation when it was informed that acts of torture had been committed, contrary to Mr. Iaazza's right to be tried by an independent and impartial tribunal under article 14 (1) of the Covenant,³⁴ and articles 12, 13, and 14 of the Convention against Torture. In addition, the Prosecutor was required to investigate and report on the torture and coerced confessions in accordance with principles 12 and 16 of the Guidelines on the Role of Prosecutors.³⁵

107. The Working Group concludes that the violations of the right to a fair trial are of such gravity as to give Mr. Iaazza's detention an arbitrary character under category III. The Working Group in no way condones the killing of a police officer but stresses that the investigations into the alleged perpetrators and the proceedings brought against them must respect the guarantees of a fair trial. This opinion is without prejudice to any findings that may be made in other proceedings concerning the murder of the police officer.

Category V

108. The source states that Mr. Iaazza is being detained because he is a Saharan and because of his political views on the Saharan people's right to self-determination. It believes that his case is symbolic of the systematic persecution of all Saharans.

109. According to the Government, Mr. Iaazza benefited from mitigating circumstances and is being detained under the law because he committed a criminal offence, rather than on any discriminatory grounds. The Government states that all Moroccans are equal before the law and that international human rights law does not confer immunity on persons who commit acts of violence and break the law.

110. The Working Group has determined, under category II, that Mr. Iaazza was detained for having peacefully exercised his rights under international law. In such circumstances, it is very likely that Mr. Iaazza's detention also constitutes a violation of international law on the grounds of discrimination based on political or other views.³⁶ In limiting itself to asserting that Mr. Iaazza was incarcerated for having committed a criminal offence, the Government has neither dispelled this presumption nor rebutted the credible allegations made by the source regarding the discrimination to which he was subjected.

111. As the President of the Collectif des défenseurs sahraouis des droits de l'homme, Mr. Iaazza is an influential Saharan activist who has played a leading role in the movement for the independence of Western Sahara. He is one of 20 Saharan activists to have been apprehended in a wave of arrests. He was prosecuted alongside eight of them and questioned about his links with Frente POLISARIO³⁷ and the Saharan Ministry of the Occupied Territories. According to police reports, Mr. Iaazza is a "dangerous separatist" and a member of a criminal organization that had to be cracked down on to set an example. During the trial,

²⁹ E/CN.4/2003/68, para. 26 (e); A/HRC/27/48/Add.5, para. 35; and A/HRC/45/16, para. 53.

³⁰ Opinion No. 41/2020, para. 70.

³¹ Human Rights Committee, general comment No. 32 (2007), para. 41.

³² Opinion No. 68/2020, para. 80; and CCPR/C/MAR/CO/6, paras. 23–24.

³³ Opinions No. 31/2020, para. 58; and No. 28/2019, para. 70. See also CAT/C/MAR/CO/4, para. 17.

³⁴ Opinions No. 31/2020, para. 57; and No. 24/2020, para. 108. See also A/HRC/27/48/Add.5, para. 83 (d).

³⁵ Opinions No. 4/2021, para. 106; and No. 63/2020, para. 42.

³⁶ See opinions No. 4/2021, No. 59/2019 and No. 13/2018.

³⁷ Opinion No. 67/2019, para. 75.

a defence lawyer who said that Tan-Tan was part of Western Sahara was forced to retract the statement in order to avoid prosecution. The judge said that Mr. Iaazza had paid “separatists” to attend the demonstration.

112. This information shows that Mr. Iaazza was arrested because of his Saharan origins and his political views in support of the right to self-determination of the people of Western Sahara. The Working Group recalls its previous findings concerning Saharans detained on discriminatory grounds.³⁸ It believes that Mr. Iaazza’s deprivation of liberty is contrary to articles 2 (1) and 26 of the Covenant and is arbitrary under category V.

Concluding remarks

113. Since February 2008, Mr. Iaazza has been the victim of numerous human rights violations. He has been placed in overcrowded cells, prevented from contacting his family, transferred to a prison far from his family and ill-treated by prison staff. He was subjected to enforced disappearance for a period of around two weeks, at the start of his detention, followed by a further period of eight weeks, around October 2020, when, after being placed in the same cell as another inmate who tested positive for COVID-19, he was transferred to an isolation cell. Mr. Iaazza has gone on hunger strike several times to protest against his treatment and is currently being held in his cell for up to 23 hours per day in unsanitary conditions, without adequate food or medical care. The Government denies these allegations and argues that Mr. Iaazza was not a victim of enforced disappearance as family members visited him in March and April 2008 and he bought phone cards in the prison canteen on 15 October 2020.

114. The Working Group recalls that, under article 10 (1) 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. It stresses the importance of upholding international standards, in particular rules 12 to 27 and 58 of the Nelson Mandela Rules, relating to living conditions, health care and contact with the outside world. The Working Group refers the matter to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

Disposition

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

The deprivation of liberty of Yahya Mohamed Elhafed Iaazza is arbitrary, being in contravention of articles 2, 5, 7, 8, 9, 10, 11, 19, 20 (1) and 21 (1) of the Universal Declaration of Human Rights and articles 2 (1) and (3), 7, 9, 14, 19, 21, 25 (a) and 26 of the International Covenant on Civil and Political Rights, and falls within categories I, II, III and V.

116. The Working Group requests the Government of Morocco to take the steps necessary to remedy the situation of Mr. Iaazza 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 International Covenant on Civil and Political Rights.

117. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Iaazza immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.³⁹ In the current context of the global COVID-19 pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure the immediate release of Mr. Iaazza.

118. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr.

³⁸ Opinions No. 68/2020, No. 67/2019, No. 23/2019, No. 60/2018, No. 58/2018, No. 31/2018 and No. 11/2017.

³⁹ Working Group on Arbitrary Detention, deliberation No. 10 ([A/HRC/45/16](#), annex I).

Iaazza and to take appropriate measures against those responsible for the violation of his rights.

119. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the independence of judges and lawyers, 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.

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

Follow-up procedure

121. 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 Mr. Iaazza has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Iaazza;
- (c) Whether an investigation has been conducted into the violation of Mr. Iaazza's 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.

122. 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.

123. 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.

124. 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.⁴⁰

[Adopted on 15 November 2021]

⁴⁰ Human Rights Council resolution 42/22, paras. 3 and 7.