2013 protests

94. At the heart of the Appellant's claims is his fear of being harmed as a result of his involvement in protests in Morocco around August 2013. In this regard, information published by Reuters and adduced by the Appellant corroborates the Appellant's claims that in August 2013 Morocco witnessed significant public protests following King Mohamed VI's controversial decision to pardon a Spanish pedophile who had been serving a 30-year sentence.[40] The convicted man, Daniel Vino Galvan, had been found guilty of raping and filming children between the ages of 4 and 15 in Kenitra, Morocco. The pardon was part of a broader release of 48 Spanish prisoners, granted at the request of Spain's King Juan Carlos following his recent visit to Morocco.

95. The decision sparked widespread outrage across the country, leading to demonstrations in several cities. In the capital Rabat, riot police forcefully dispersed hundreds of protesters attempting to gather in front of the parliament, resulting in injuries to several people, including journalists. While the Justice Ministry defended the pardon as serving Morocco's national interests and maintaining friendly relations with Spain, it also emphasized that Galvan was banned from returning to Moroccan territory.

96. The timing of the pardon coincided with Throne Day on July 30, a traditional occasion for royal pardons in Morocco. However, this particular case drew exceptional criticism from various segments of society, including child protection activists, members of the ruling coalition party, and families of the victims. Critics viewed the decision as particularly problematic given both the severity of the crimes and the fact that the pardon was granted at the request of a former colonial power. The incident highlighted tensions between traditional royal prerogatives and public accountability, with one protest organizer describing the justice system as "a toy."

97. While the Board has some reservations about the Appellant's evidence of mistreatment of a sexual nature at the hands of his father given such claims were raised for the first time at his oral hearing, it understands that disclosure of such matters may often cause someone embarrassment and does not find that the late timing of such disclosure adverse to the credibility of such claims. The Board accepts in this regard the Appellant account of being personally aggrieved at the pardoning of Galvan in this context and that this motivated him

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[40] El Yaakoubi, A., Reuters, 'Moroccan police break up protest against royal pardon of Spanish paedophile', 3 August 2013, available at: https://www.reuters.com/article/us-morrocco-spain-protest/moroccan-police-break-up-protest-against-royal-pardon-of-spanish-pedophile-idUSBRE97202320130803/.

to be involved with the August 2013 protests. The Board does not, however, accept that he was a leader within the protest movement, nor that he had a profile above that of other protesters.

98. In particular, the Board finds that the Appellant's involvement in the protest was peripheral at best. His evidence at hearing was initially that he was only involved online. His knowledge of the protest was inconsistent with country information insofar as he estimated that hundreds of people attended the protest instead of thousands.

99. More critically, the Appellant's account of his involvement in the protest evolved significantly over time. Whereas the Appellant had claimed in his NCF to have organized a protest against the decision made by the king of Morocco, he recanted those claims at hearing emphasizing that he participated but did not organize any protests.

100. He provided instead an account at hearing in which he decided to conduct a coup after having attended the protests. The Appellant went on to claim that the king must have seen him, realized that there would have been a coup attempt, and decided to issue his statement retracting his pardon. Asked how the Appellant formed the belief that the king had seen him, he referred to a video of him speaking and claimed that he had been targeted since 2011. The Board finds the evolving nature of the claims made by the Appellant undermine his reliability as a witness. The Board does not accept the Appellant was ever involved in a coup attempt, that he organized a protest, nor that he had been in any leadership role within the protest movement.

101. In any event, the Board gives weight to the outcome of the protests in assessing the government's attitude towards the protesters. In this regard, the evidence before the Board establishes that the king revoked the pardon and claimed that he had been unaware of the gravity of Galvan's crimes. Rather than suggest that the king disagreed with the protesters, such an outcome suggest that he in fact had some sympathy for their position.

102. When it was put to the Appellant at hearing that it might be strange that the government would want to harm him given that it agreed with the protesters' position, the Appellant responded by saying that Morocco is a dictatorship and that when the government says one thing they do something else. The Board observed that thousands of people had been involved in the protest across Morocco and asked why he believed that he would be particularly targeted, to which he responded that his difficulties did not start with the protest. It is apposite then to turn to those other difficulties.

103. The first time the Appellant claims to have had any difficulties with the government was in around October 2000 when the Appellant claims that he predicted that there would be an attack in New York the following year and that this would result in "the system" falling and him ruling the country. In this regard he claims that he predicted the September 11 terrorist attack and the Arab Spring and as a result arouse the interests of the security apparatus in Morocco he claims to have from that time be monitored at his workplace and then to have resigned his position two months later. He claims that he then took up a position at a bank, but was let go during his probation.

104. In assessing the Appellant's claims in this regard, the Board has had regard to Dr. LIU's assessment of the Appellant's mental health and his account of the same. Having regard to the evidences a whole, the Board does not accept the Appellant account of having predicted the September 11 terrorist attack or the Arab spring. The Board does not accept the Appellant account of having been monitored as a result of expressing such predictions. While the Board accepts that the Appellant may have believed that he was being monitored at the time, the Board find that these beliefs were the result of delusions and not founded in reality. The Board does not accept that the Appellant was let go from his position at a bank in Morocco as a result of his predictions made in October 2000. The Appellant was able to point to little more than his own speculation in this regard.

105. For similar reasons the Board rejects the Appellant's account of the train delay incident, the magical food incident of November 2011 and of the bar incident of 2014. Having regard to the evidence as a whole, and in particular the findings of Dr LIU, the Board finds that each of the Appellant's claims in relation to these incidents, while real for, and truly believed by, the Appellant, constitute delusional beliefs arising from his psychotic illness. In this regard, Dr LIU observed in her 2023 report:

> *"A delusion is a false, unshakable belief that is out of keeping with the patient's social and cultural background, and not amenable to change in light of conflicting evidence.*
>
> *Delusion is one of the core symptoms of Psychosis, or Psychotic Disorder.*
>
> *Mr EL BOURICH reported that his girlfriend gave him some "magical food" which infused a spirit into his body, someone from government put something called "magical glue" with a very high technology into his food, to weaken him by making him sick and*

painful. These allegations of being persecuted, are opined to be delusions."

106. In reaching this conclusion, the Board has been mindful of multiple competing considerations. First, as outlined by his Lordship the CJHC in *TK v Michael Jenkins & Anor* ("***TK***"), in many or most instances, genuine appellants appearing before the Board may have fled their countries with few belongings and documents and with levels of education that are relatively low.[41] Normal rules of evidence should be viewed within such a context. It would be wrong to require corroborative documentation in such cases as the high standards of fairness require a proper appreciation of the difficulties of proof faced by such appellants. The Board has also had regard to the factors outlined in section 37ZD of the Immigration Ordinance and paragraph 17 of the Practice and Procedural Guide of the Administrative Non-refoulement Claims Petition Scheme.

107. The Board is mindful that the critical events the Appellant described are said to have occurred more than a decade ago and that memory fades with the effluxion of time. In this context, the Board accepts that failures in an appellant's memory can explain inconsistencies, inaccuracies and lack of detail in a narrative which is true in substance. As noted by the UNHCR:

> *"Obviously the applicant has the duty to tell the truth. In saying this though, consideration should also he given to the fact that, due to the applicant's traumatic experiences, he/she may not speak freely; or that due to time lapse or the intensity of past events, the applicant may not be able to remember all factual details or to recount them accurately or may confuse them; thus he/she may be vague or inaccurate in providing detailed facts. Inability to remember or provide all dates or minor details, as well as minor inconsistencies, insubstantial vagueness or incorrect statements which are not material may be taken into account in the final assessment on credibility, but should not be used as decisive factors."*[42]

108. The Board is also cognizant of the fact that appellants before it may be understandably bewildered, frightened and even desperate, that they may not understand the process or language spoken at various stages in the process and that this may affect the consistency and veracity of their evidence. What this

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[41] see *TK v Michael Jenkins Esq and Anor* [2013] 1 HKC 526 (CA) at [22].

[42] UNHCR, 'Note on Burden and Standard of Proof in Refugee Claims', 16 December 1998, available at: https://www.refworld.org/docid/3ae6b3338.html at [9].

means, in the words of Lord Justice Brook of the UK Court of Appeal, is that the Board must be careful so as not to exclude any matters from its consideration when assessing future risk unless it has no real doubt that they did not in fact occur, or, indeed, that they are not occurring at present. Similarly, if an appellant contends that the relevant matters did not happen, the Board should not exclude the possibility that they did not happen even where it believes that they probably did, unless it has no real doubt that they did in fact happen.[43] However, the Board is not required to accept uncritically all of the allegations made by an appellant, nor is the Board obliged to accept claims that are inconsistent with independent evidence regarding the situation in the Appellant's country of nationality.[44]

109. In particular, the Board has had regard to the Appellant's claims to have been suffering from what he described as a "memory lock" which prevented him from recalling these events, with the exception of the bar incident, when giving his account of events at the first tier. However, having regard to the Appellant's evidence as a whole, the Board finds that the Appellant's perception of events was affected by his mental health at the time. For example, the Board finds the Appellant's account of the bar incident reveals severe paranoia, rather than a risk of being subjected to proscribed harm. In this regard, the Appellant characterised the incident as a kidnapping attempt at his screening interview on the basis of the suspected officer's posture and alertness. The Appellant could point to nothing more than the demeanour of those men when contrasted to the relaxed attitude of other patrons of the bar to support his conclusion that they were intending to harm and/or kidnap him. The Board rejects the Appellant's characterisatisation of such men as not credible.

110. While the Board is mindful of the fact that it is quite possible for the centre piece of an appellant's claim to stand despite the presence of some exaggeration, uncertainly or even untruthfulness,[45] this was not the case with the Appellant's evidence. The difficulty with the Appellant's evidence is that it changed fundamentally over time, that the incidents and parties involved changed and that his account relied substantially upon his projected fears, which are more readily accounted for by reference to his mental health.

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[43] *Karanakaran* [2000] Imm AR 271 at [102]-[103].

[44] see for example, *Randhawa v MILGEA* (1994) 54 FCR 437 at [451]; *MIMA v Rajalingam* (1999) 93 FCR 220; and *MIEA v Guo & Anor* (1997) 191 CLR 559 at [169]-[170].

[45] *Secretary of State for the Home Department v Chiver* [1997] INLR 212, 220.

Treatment of people with mental health challenges

111. Given the Board's findings regarding the Appellant's mental health, the Board has gone on to consider the state of Morocco's mental health system and whether returning the Appellant to Morocco now or in the reasonably foreseeable future might result in a risk of him being subjected to proscribed harm.

112. Morocco's mental health system has undergone significant changes over the past two decades, with varying degrees of progress in infrastructure, workforce development, and human rights protections. An October 2023 investigation by Hespress English ("**Hespress Report**"),[46] Morocco's leading digital news platform, indicates that 48.9% of Moroccans suffer or have suffered from psychological disorders. More specifically, according to a Morocco World News Report ("**Morocco World News Report**"),[47] 26% of Moroccans experience depression at some point in their lives, 9% experience anxiety disorders, 5.6% experience mental disorders, and 1% experience schizophrenia.

113. In 2006, the World Health Organization conducted a comprehensive assessment of Morocco's mental health system using its Assessment Instrument for Mental Health Systems ("**WHO-AIMS Report**").[48] This assessment, carried out in collaboration with Morocco's Mental Health Office and the Directory of Epidemiology and Fight against Diseases at the Ministry of Health, provides a baseline understanding of the country's mental health infrastructure. According to the WHO-AIMS Report, Morocco had 306 psychiatrists (1.02 per 100,000 population) and 648 nurses (2.17 per 100,000 population).[49] The World Health Organization's Mental Health Atlas 2020, part of WHO's initiative to map

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[46] Tachfine, K., Hespress English, 'Mental health issues persist in Morocco as infrastructure lags behind', 12 October 2023, available at: https://en.hespress.com/72606-mental-health-issues-persist-in-Morocco-as-infrastructure-lags-behind.html.

[47] Rahhali, L., Morocco World News, 'Minister: Morocco Is Actively Dealing with Mental Health Issues', 20 July 2022, available at: https://www.Moroccoworldnews.com/2022/07/350364/minister-Morocco-is-actively-dealing-with-mental-health-issues.

[48] World Health Organization, 'WHO-AIMS Report on Mental Health System in Morocco', 2006, available at: https://cdn.who.int/media/docs/default-source/mental-health/who-aims-country-reports/Morocco_who_aims_report.pdf?sfvrsn=2473c5b_3&download=true.

[49] World Health Organization, 'WHO-AIMS Report on Mental Health System in Morocco', 2006, available at: https://cdn.who.int/media/docs/default-source/mental-health/who-aims-country-reports/Morocco_who_aims_report.pdf?sfvrsn=2473c5b_3&download=true at p.5.

mental health resources and systems globally ("**2020 Atlas**"), showed an increase to 428 psychiatrists (1.17 per 100,000) and 1,335 nurses (3.66 per 100,000).[50] By 2022, according to the Morocco World News report, a prominent English-language Moroccan news outlet reporting on ministerial statements, these numbers had evolved to 343 psychiatrists, supported by 214 psychologists, 1,335 psychiatric nurses, 16 child psychiatrists, and 64 physicians with special mental health training.[51]

114. Human rights concerns have, however, persisted over time. In particular, the WHO-AIMS Report highlighted that over 20% of patients were physically restrained or secluded within the previous year in both community-based psychiatric inpatient units and mental hospitals, with an estimated 70% of admissions being involuntary.[52] The 2020 Atlas indicates that this pattern of involuntary treatment continues, with 51-75% of admissions still being involuntary.[53] This suggests limited progress in reducing coercive practices over the 14-year period.

115. Infrastructure development has been ongoing but remains also insufficient. The WHO-AIMS Report documented that in 2006, there were 74 outpatient mental health facilities, 15 community-based psychiatric inpatient units, and 9 mental hospitals, with no day treatment facilities available.[54] The 2020 Atlas shows some progress in community-based care, reporting 88 community-based mental health facilities (0.24 per 100,000 population).[55] According to the Hespress

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[50] World Health Organization, 'Mental Health Atlas 2020 Country Profile: Morocco', 2020, available at: https://cdn.who.int/media/docs/default-source/mental-health/mental-health-atlas-2020-country-profiles/mar.pdf?sfvrsn=a0b66670_6&download=true.

[51] Rahhali, L., Morocco World News, 'Minister: Morocco Is Actively Dealing with Mental Health Issues', 20 July 2022, available at: https://www.Moroccoworldnews.com/2022/07/350364/minister-Morocco-is-actively-dealing-with-mental-health-issues.

[52] World Health Organization, 'WHO-AIMS Report on Mental Health System in Morocco', 2006, available at: https://cdn.who.int/media/docs/default-source/mental-health/who-aims-country-reports/Morocco_who_aims_report.pdf?sfvrsn=2473c5b_3&download=true at p.11.

[53] World Health Organization, 'Mental Health Atlas 2020 Country Profile: Morocco', 2020, available at: https://cdn.who.int/media/docs/default-source/mental-health/mental-health-atlas-2020-country-profiles/mar.pdf?sfvrsn=a0b66670_6&download=true.

[54] World Health Organization, 'WHO-AIMS Report on Mental Health System in Morocco', 2006, available at: https://cdn.who.int/media/docs/default-source/mental-health/who-aims-country-reports/Morocco_who_aims_report.pdf?sfvrsn=2473c5b_3&download=true at p.5.

[55] World Health Organization, 'Mental Health Atlas 2020 Country Profile: Morocco', 2020, available at:

Report, by 2023, the system includes 2,330 beds in mental health facilities, with plans for three new 120-bed centers in Agadir, Kenitra, and Beni Mellal.[56]

116. Geographic inequity in access to care remains a persistent human rights concern. The WHO-AIMS Report found that the proportion of psychiatric beds in or near the largest city was 9.23 times greater than in the rest of the country, with particular access challenges for rural users and Berberous groups.[57] The 2020 Atlas confirms this urban-rural divide persists, and the Hespress Report[58] notes that services remain predominantly concentrated in major cities like Casablanca and Rabat.[59]

117. The human rights framework in Morocco has evolved since 2006. The WHO-AIMS Report noted that while a national human rights review body existed, only 11% of mental hospital staff and 7% of inpatient psychiatric unit staff had received human rights training. [60] The 2020 Atlas indicates improvement in this area, reporting that Morocco's mental health legislation is largely in line with human rights covenants, scoring 5 out of 5 on the WHO's human rights checklist for mental health laws.[61] However, the WHO-AIMS Report identified significant gaps in social protection, noting that in 2006 there

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https://cdn.who.int/media/docs/default-source/mental-health/mental-health-atlas-2020-country-profiles/mar.pdf?sfvrsn=a0b66670_6&download=true.

[56] Tachfine, K., Hespress English, 'Mental health issues persist in Morocco as infrastructure lags behind', 12 October 2023, available at: https://en.hespress.com/72606-mental-health-issues-persist-in-Morocco-as-infrastructure-lags-behind.html.

[57] World Health Organization, 'WHO-AIMS Report on Mental Health System in Morocco', 2006, available at: https://cdn.who.int/media/docs/default-source/mental-health/who-aims-country-reports/Morocco_who_aims_report.pdf?sfvrsn=2473c5b_3&download=true at p.11.

[58] Tachfine, K., Hespress English, 'Mental health issues persist in Morocco as infrastructure lags behind', 12 October 2023, available at: https://en.hespress.com/72606-mental-health-issues-persist-in-Morocco-as-infrastructure-lags-behind.html.

[59] World Health Organization, 'Mental Health Atlas 2020 Country Profile: Morocco', 2020, available at: https://cdn.who.int/media/docs/default-source/mental-health/mental-health-atlas-2020-country-profiles/mar.pdf?sfvrsn=a0b66670_6&download=true.

[60] World Health Organization, 'WHO-AIMS Report on Mental Health System in Morocco', 2006, available at: https://cdn.who.int/media/docs/default-source/mental-health/who-aims-country-reports/Morocco_who_aims_report.pdf?sfvrsn=2473c5b_3&download=true at p.9.

[61] World Health Organization, 'Mental Health Atlas 2020 Country Profile: Morocco', 2020, available at: https://cdn.who.int/media/docs/default-source/mental-health/mental-health-atlas-2020-country-profiles/mar.pdf?sfvrsn=a0b66670_6&download=true.

were no legislative provisions for persons with mental disorders concerning employment, housing, or financial support.[62] The 2020 Atlas shows some improvement in legal protections,[63] but according to the Hespress Report,[64] the recent withdrawal of a mental health draft law from the House of Representatives in 2023 suggests that legislative protection of mental health rights remains incomplete.

118. Developments in training and workforce development also show signs of progress in protecting patient rights. In this regard, while the WHO-AIMS Report noted that only 4% of training for medical doctors and nurses was devoted to mental health in 2006,[65] the 2020 Atlas indicates improved integration of mental health into primary care, with a functional rating of 4 out of 5 on WHO's checklist for primary care integration.[66]

119. Similarly, the materials before the Board indicate that treatment and monitoring of persons with severe mental illness has improved over time, with the 2020 Atlas reporting that 126,584 cases of psychosis were treated (76,482 male and 50,102 female), indicating increased capacity for treating severe mental illness.[67] However, this must be viewed in the context of Morocco's population of over 36 million, suggesting significant unmet need which is all too common in even the most developed of nations.

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[62] World Health Organization, 'WHO-AIMS Report on Mental Health System in Morocco', 2006, available at: https://cdn.who.int/media/docs/default-source/mental-health/who-aims-country-reports/Morocco_who_aims_report.pdf?sfvrsn=2473c5b_3&download=true at p.5.

[63] World Health Organization, 'Mental Health Atlas 2020 Country Profile: Morocco', 2020, available at: https://cdn.who.int/media/docs/default-source/mental-health/mental-health-atlas-2020-country-profiles/mar.pdf?sfvrsn=a0b66670_6&download=true.

[64] Tachfine, K., Hespress English, 'Mental health issues persist in Morocco as infrastructure lags behind', 12 October 2023, available at: https://en.hespress.com/72606-mental-health-issues-persist-in-Morocco-as-infrastructure-lags-behind.html.

[65] World Health Organization, 'WHO-AIMS Report on Mental Health System in Morocco', 2006, available at: https://cdn.who.int/media/docs/default-source/mental-health/who-aims-country-reports/Morocco_who_aims_report.pdf?sfvrsn=2473c5b_3&download=true at p.5.

[66] World Health Organization, 'Mental Health Atlas 2020 Country Profile: Morocco', 2020, available at: https://cdn.who.int/media/docs/default-source/mental-health/mental-health-atlas-2020-country-profiles/mar.pdf?sfvrsn=a0b66670_6&download=true.

[67] World Health Organization, 'Mental Health Atlas 2020 Country Profile: Morocco', 2020, available at: https://cdn.who.int/media/docs/default-source/mental-health/mental-health-atlas-2020-country-profiles/mar.pdf?sfvrsn=a0b66670_6&download=true.

120. The country information sighted by the Board suggest that while the high rate of involuntary admissions remains a significant human rights concern that requires attention, the oversight of human rights in mental health facilities has strengthened over time. In this regard, while the WHO-AIMS Report noted only basic oversight mechanisms,[68] the 2020 Atlas indicates that Morocco now has a dedicated authority to assess compliance of mental health legislation with international human rights standards, including regular inspections and complaint mechanisms.[69]

121. The Appellant has never complained of breaches of his human rights arising as a result of his mental health. Dr LIU reported his interactions with the mental health services in Morocco thus:

> *"The Appellant said that he first saw psychiatrist in Morocco in 2011. Without telling him the diagnosis, he said the psychiatrist gave him Prozac, i.e. a kind of antidepressant, and medication for treatment of anxiety. He stopped seeing the psychiatrist after 2 to 3 months."*

122. This was consistent with the Appellant's evidence at hearing. In this regard, the Appellant claimed he saw a psychiatrist in his hometown, whose name he could not recall. The visit was prompted after he saw his face in the bathroom mirror and noticed he looked different, causing him to run down the stairs to the psychiatrist's office where he had seen a sign, and waited in the waiting room where a nurse asked about his condition. He visited the psychiatrist on three or four occassions, although the doctor had wanted to see him more frequently. When asked about prescribed medication, the Appellant could not remember specifically but indicated it was Prozac under a different name, along with anti-anxiety medication. When asked if the medication helped, the Appellant confirmed it did.

123. Nothing in the Appellant's claims and evidence suggest he has been mistreated in Morocco on account of his mental health. While the Board accepts that he ceased employment in 2000, the Appellant claimed that this was his own decision to resign. In relation to the Appellant being let go in 2001 while on probation, the Board considers while this could possibly have some association

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[68] World Health Organization, 'WHO-AIMS Report on Mental Health System in Morocco', 2006, available at: https://cdn.who.int/media/docs/default-source/mental-health/who-aims-country-reports/Morocco_who_aims_report.pdf?sfvrsn=2473c5b_3&download=true at p.9.

[69] World Health Organization, 'Mental Health Atlas 2020 Country Profile: Morocco', 2020, available at: https://cdn.who.int/media/docs/default-source/mental-health/mental-health-atlas-2020-country-profiles/mar.pdf?sfvrsn=a0b66670_6&download=true.

with his mental health, such a claim was not made and nor has it been established by the Appellant.

124. Having regard to the Appellant's evidence together with the country information as a whole, the Board finds the Appellant not to be at risk of being subjected to proscribed harm on account of his mental health should he return to Morocco in the reasonably foreseeable future.

Conclusion

125. The Board has considered the Appellant's claims both individually and cumulatively, but in light of the findings above, the Board does not consider that he would face a real risk of suffering proscribed harm should he return to Morocco in the reasonably foreseeable future. Based on the evidence as a whole, the Board finds for the reasons that follow that the Appellant's case for non-refoulement has not been made out.

Conclusions regarding persecution risk

126. The Appellant need not have suffered severe injury or serious harm in the past in order to bring himself within the definition of persecution. However, he must establish he has a well-founded fear at the time his claim is assessed and good grounds for fearing persecution in the future. As pointed out in *Azam,* he must establish that he has a subjective fear of persecution and also that the fear is well-founded in an objective sense. While evidence of past persecution is one of the effective means of showing that a fear of future persecution is objectively well-founded, severe injury or serious harm is not a necessary factual element to establish persecution.[70]

127. However, the Appellant has neither established that he has been persecuted in the past, nor that he would be of sufficient interest to be persecuted in the future. As a result, the Board does not consider there to be a "real possibility",[71] a "real chance" or a "reasonable degree of likelihood" of him being persecuted should he return to Morocco.[72] There is no real or substantial basis for saying that this would occur. Accordingly, the Board finds the feared harm not to be well-founded.

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[70] *Muhammad Azam v Deputy Chairperson of the Torture Claims Appeal Board / Non-refoulement Claims Petition Office & Anor* [2018] HKCFI 4; HCAL 161/2017, per Woodcock J at [51].

[71] *B v TCAB / NCPO & Director of Immigration* HCAL 2231/2018 [2020] HKCFI 380 at [46]; *INS v Cardoza Fonseca* 480 US 421 (1987) at [440]; *R v Secretary for the Home Department, ex parte Sivakumaran* [1988] AC 958 at [994F].

[72] *Chan v Minister for Immigration & Ethnic Affairs* [1989] HCA 62; *Sivakumaran* [1988] 1 AC 958 (UKHL, Dec. 16, 1987)

128. Having regard to the evidence as a whole, the Board finds the Appellant is not at real risk of being persecuted on any Refugee Convention basis. Accordingly, the Board finds that he does not have a well-founded fear of being persecuted in Morocco, whether for reason of any of the Refugee Convention grounds enumerated in Article 1A, or for any other reason.

Conclusions regarding torture risk

129. For similar reasons, the Board finds the risk of torture not to be a real one so as to engage protection under the Immigration Ordinance. The Board is mindful in this context that the risk of torture must go beyond mere theory or suspicion. It must be a foreseeable, real and personal risk of being subjected to torture should the Appellant return to Morocco. The risk needs not be highly probable although it must be personal and present.[73] In this case, the risk is not. There is nothing in the Appellant's accepted evidence indicating he was of adverse interest to the Moroccan government or anybody else in the past. While evidence of past harm is not required in order for a non-refoulement claim to be successful in the Board's opinion, it is most certainly a relevant consideration when weighing up the potential risk appellants facing before it. For example, in General Comment No. 1,[74] the UN Committee Against Torture notes that previous torture or mistreatment by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity in the past, in particular the recent past, would be a relevant consideration. This view was endorsed by the Court in *Secretary for Security v Sakthevel Prabakar*.[75]

130. This is not a case of the Board considering that past harm is necessary in order to establish substantial grounds for believing there is a future danger of torture or other mistreatment. This is clearly not necessary.[76] As the observations of the Court in *A v Director of Immigration*[77] make clear, the lack of past harm

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[73] *A v Director of Immigration & Or* HCAL 69 of 2012 at [89].

[74] UN Committee Against Torture, *General Comment No. 1: Implementation of Article 3 of the Convention in the Context of Article 22 (Refoulement and Communications)*, 21 November 1997, A/53/44, annex IX, available at: https://www.refworld.org/docid/453882365.html.

[75] *Secretary for Security v Sakthevel Prabakar* (2004) 7 HKCFAR 187 at [52].

[76] see the Court's obiter comments in *AM v Director of Immigration & Anor* HCAL 102 of 2012 (McWalters J, 20 November 2013) to the effect that the Adjudicator in that case had misdirected himself that there had to be past exposure to torture in order to establish substantial grounds for believing there is a future danger of torture. The Court in that case held that what weight should be given to such instances of past harm may depend on a whole range of matters such as the gravity of it, how recent it was, whether the authors of the harm are still alive and active and how extensive their ability is to cause harm in the home country.

[77] *A v Director of Immigration & Or* HCAL 69 of 2012 at [105]-[106].

alone cannot not be a sufficient reason to find that the Appellant does not face a real risk of torture, including by way of severe mental suffering, upon return to Morocco.

131. The Board has, however, considered if there is anything else in the Appellant's profile or claims which might suggest he could be at risk of torture or other form of proscribed harm in the future. In this regard, the Board has been mindful that its principal task in the context of torture claims is to assess whether the Appellant would be at a foreseeable, real and personal risk of being subject to torture if returned, having regard to all relevant considerations including emerging country conditions. The risk needs not be highly probable, although it must be personal and present. Even having regard to these matters, however, the Board does not consider this to be the case on the basis of the Appellant's claims or evidence.

132. On the facts accepted, the Board does not consider there to be anything which creates a risk of severe pain being inflicted on the Appellant should he return to Morocco. As a result, the Board does not consider that there are substantial grounds for believing him to be in danger of being subjected to torture if returned to Morocco.

Conclusions regarding BOR 3 risk

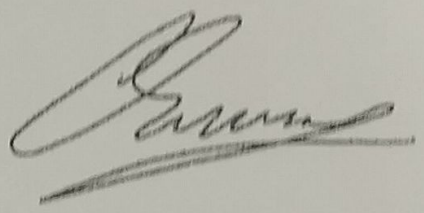
133. In light of the foregoing and the accepted facts, the Board similarly finds there is nothing which indicates the Appellant faces a genuine and substantial risk of being subjected to any form of mistreatment, let alone treatment which can be characterized as torture or which attains the requisite level of severity to amount to CIDTP, should he return to Morocco. Accordingly, the Board finds that the Appellant is not at risk of being subjected to torture or cruel, inhuman or degrading treatment or punishment if returned to Morocco so as to constitute a breach of Article 3 of section 8 of the Hong Kong Bill of Rights Ordinance (Cap. 383).

Conclusions regarding BOR 2 risk

134. In light of the foregoing, the Board finds there is not a real risk the Appellant will arbitrarily be deprived of life, have the death penalty imposed on him or otherwise be deprived of his rights under BOR 2. As a result, the Board finds that returning the Appellant to Morocco would not expose him to a real risk of a violation of his right to life so as to constitute a breach of Article 2 of section 8 of the Hong Kong Bill of Rights Ordinance (Cap. 383).

Decision

135. For the reasons set out above, the Appellant's claims for non-refoulement protection are not made out on any applicable ground. Accordingly, the Board confirms the Decision of the Director dated 27 September 2019.



(Gregory Brock)
Member of the Torture Claims Appeal Board /
Adjudicator of the Non-refoulement Claims Petition Office
9 December 2024