

MOROCCO / WESTERN SAHARA

BRIEFING TO THE COMMITTEE AGAINST TORTURE

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31st Session of the UN Committee against Torture, November 2003: Comments by Amnesty International on the compliance by Morocco with its obligations under the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture)

INTRODUCTION

Amnesty International is gravely concerned about two negative developments observed in Morocco / Western Sahara during the period under examination which have a bearing on Morocco's obligations under the Convention against Torture. The first is a sharp rise in the number of reported cases of torture or ill-treatment. Amnesty International has recorded scores of allegations of torture or ill-treatment in the past two years alone. While cases of torture or ill-treatment continued to be reported throughout the 1990s and first two years of this millennium, Amnesty International had welcomed the fact that significantly fewer were recorded in that period than in previous decades.

The second development of concern is the promulgation on 28 May 2003 of a new law on "combating terrorism", which amends the Penal Code and Criminal Procedure Code by adding new provisions and amending others.¹ Amnesty International, as well as other international and national human rights organizations, have voiced serious concerns about some of the provisions in the law before and after it was adopted. In particular, the law extends the legal limits for *garde à vue* (pre-arraignment detention), when – as discussed in subsequent sections – detainees are most at risk of torture or ill-treatment.

These developments mark a step backwards in what has otherwise been a positive trend in Morocco / Western Sahara towards improved human rights protection and promotion over the last decade. Since the early 1990s Amnesty International has welcomed a series of significant measures taken by the Moroccan authorities, which have included most recently:

- the strengthening in 2001-2002 of official institutions mandated to receive complaints against the authorities (see below in Impunity section);

¹ Dahir no. 1-03-140 of 28 May 2003 promulgating law no. 03-03 on combating terrorism.

- modifications in October 2002 to the Code of Public Liberties which, among other things, increased the number of warnings (from one to three) law enforcement officials are required to give to unlawful assemblies before using force to disperse them;
- the promulgation in August 1999 of a new law concerning the organization and administration of penitentiary establishments, which was a positive legislative step towards promoting the rights of detainees and improving their conditions of detention;
- allowing national non-governmental organizations to conduct visits to prisons, report their findings and, on this basis, make public recommendations to the authorities;
- efforts made over the last four years to promote a human rights culture, to support human rights education in the country and to engage with human rights organizations and associations of victims in a dialogue on human rights issues.

Despite these positive developments, a number of patterns of human rights violations can still be observed in the country. Apart from torture or ill-treatment, continued “disappearance” cases and impunity, which are all covered in this briefing, Amnesty International’s concerns over the last four years have included:

- the imprisonment of several Sahrawi human rights and civil society activists for the peaceful expression of their views in favour of an independent Western Sahara;
- the harassment and intimidation of dozens of other Sahrawi human rights and civil society activists, particularly those perceived to advocate the independence of Western Sahara;
- the imprisonment of several people, including political activists and at least one journalist, convicted of “insulting the King” after peacefully expressing views or raising concerns about the monarchy.

Morocco’s second periodic report to the Committee against Torture was examined in May 1999. In its conclusions, the Committee noted some positive developments, including the “manifest political will to establish in Morocco the genuine rule of law”. However, the Committee noted that it was still “very concerned” about “the persistence of allegations of torture and ill-treatment”.²

Morocco’s fourth periodic report to the Human Rights Committee was examined in October 1999. In its conclusions, the Committee expressed concern at “the number of allegations of torture and ill-treatment of detainees by police officials, and that these have been dealt with, if at all, only by disciplinary action and not by the imposition of criminal sanctions on those responsible for such violations”.³

FACTORS UNDERLYING CONTINUED TORTURE

Unsatisfactory definition of torture (Articles 1, 2, 4)

Although the law criminalizes some aspects of use of torture, it does not have a clear definition of torture. Article 10 of the Moroccan constitution states that “No one shall be arrested, put into custody or penalized except under the circumstances and procedures prescribed by law.” Articles 392 to 424 of the Moroccan Penal Code provide for the punishment of acts of violence against individuals, including acts of violence leading to death. Article 399 of the Penal Code imposes the death penalty for the use of torture or of cruel actions to undertake an act that is considered a crime.⁴ However, the law does not make torture, cruel, inhuman and degrading treatment a crime in all situations; it does not include a clear prohibition and definition of torture as contained in Article 1 of the Convention against Torture.

² UN Document A/54/44, para. 195.

³ UN Document CCPR/C/79/Add.113, para. 16.

⁴ Amnesty International is concerned by the applicability of the death penalty in this and other articles of the Penal Code.

UN human rights bodies have on several occasions notified the Moroccan authorities of this omission. In May 1999, the Committee against Torture noted that it was “very concerned” about the “persistent non-existence, in Moroccan criminal legislation, of a definition of torture fully consistent with that contained in article 1 of the Convention, and of the classification as crimes of all acts liable to be characterized as torture pursuant to article 4 of the Convention”.⁵ The Committee recommended that Morocco should amend its legislation accordingly.

The Committee against Torture had made a similar recommendation in 1994 and the Human Rights Committee in 1999 urged Morocco “to enact legislation to make torture a criminal offence”.⁶ No amendments have yet been made, although the Moroccan authorities have stated in their third periodic report to the Committee against Torture that there is a proposal by the Ministry of Justice to reform the Penal Code to expand the definition of torture to bring it in line with Article 1 of the Convention.⁷

Recommended questions

- When is Morocco envisaging adopting the proposed reform to the Penal Code to expand the definition of torture?
- How does the proposal define torture?
- Are there proposals to amend the Criminal Procedure Code to make torture and cruel, inhuman, and degrading treatment a crime punishable in all situations, not only if used to commit a crime, as it currently appears in the law?

Erosion of safeguards (Article 2)

According to Article 2 of the Convention against Torture, a state party “shall take effective legislative, administrative, judicial or other measures to prevent acts of torture”. In previous years, UN bodies, along with Amnesty International, have expressed concerns about some of the provisions in Morocco’s Criminal Procedure Code. Amnesty International believes that recent changes to that Code exacerbate those concerns.

On 28 May 2003 a new law on “combating terrorism” was promulgated, amending both the Penal Code and Criminal Procedure Code by adding new provisions and amending others. Amnesty International has a number of concerns about the new law, which employs a broad and unspecific definition of “terrorism”, widens the scope of applicability of the death penalty, threatens freedom of expression and increases police powers to search properties, tap telephone calls and intercept exchanges of other types of communication.

Amnesty International is particularly concerned that the law has extended what was already a long detention period without charge or judicial review. Amendments to Article 66 of the Criminal Procedure Code (of October 2002) allow, in “terrorism” cases, for the extension of *garde à vue* for up to 12 days (an initial 96-hour period which is renewable twice). This is based on written permission from the crown prosecutor. During the whole of this period, the detainee is denied access to their lawyer. Amnesty International is concerned that this is a very long period of time, especially in light of the scores of reported cases of torture or ill-treatment during *garde à vue* over the last two years (see below). Amnesty International would like to bring to the Committee’s attention the opinion of the Special Rapporteur on torture, who stated that “the time required by law to obtain a judicial warrant of pre-trial detention..., in any case, should not exceed a period of 48 hours... The Special Rapporteur would like to recall that the exigencies of dealing with terrorist criminal activities cannot justify interpreting the notion of the ‘reasonableness’ of the suspicion on which an arrest and then a detention

⁵ UN Document A/54/44, para. 195.

⁶ UN Document CCPR/C/79/Add.113, para. 16.

⁷ UN Document CAT/C/66/Add. 1, para. 21.

may be based, to the point of impairing its very meaning.”⁸

It should be noted that before this amendment, the Criminal Procedure Code allowed for *garde à vue* to be extended for only 24 hours beyond the initial period of 48 hours, if this was essential for the investigation, or for an initial period of 96 hours renewable once for another 96 hours in cases involving the “undermining of national security”. The maximum period of *garde à vue* was consequently eight days. Even these shorter legal limits had given rise to concern from UN bodies and international human rights organizations. The Human Rights Committee in 1999 noted “with concern that the maximum length of detention of a suspect before being brought before a judge may in some cases be as long as 96 hours, that the Crown Prosecutor General has power to extend this period, and that persons detained may not have access to counsel during this period”.⁹

Amnesty International is also concerned that, in “terrorism” cases, separate provisions in the new law further restrict access to legal counsel. Amendments to Article 66 of the Criminal Procedure Code (of October 2002) allow the judicial authorities in “terrorism” cases to delay contact between a detainee and their lawyer for a period of 48 hours after the first extension by 96 hours of the initial 96-hour period of *garde à vue*. This brings the total period in which a person can be denied contact with their lawyer to 10 days. Again, in the light of increased reports of torture or ill-treatment in *garde à vue* in the last two years, Amnesty International is concerned that this very long period without legal counsel will make detainees even more vulnerable to torture or ill-treatment, as well as affecting their right to an adequate defence.

Recommended questions

- Will Morocco amend its legislation to reverse recent negative amendments and bring it into line with international standards regarding arrest and detention procedures?

Statements obtained under torture (Article 15)

In October 2002 a new Criminal Procedure Code was promulgated, which introduced, among other things, the stipulation that no confession can be relied upon in court if it is obtained “through violence or duress”.¹⁰ This is an improvement on the previous Criminal Procedure Code, which contained no such provision. However, the law does not state clearly, in as specific terms as those contained in Article 15 of the Convention against Torture, that no statement made as a result of torture shall be invoked in any proceedings.

Recommended questions

- Bearing in mind Article 293 of the Criminal Procedure Code promulgated in October 2002, are there any other guarantees that statements extracted under torture are not used against the person in question in any legal proceedings?

PATTERNS OF TORTURE OR ILL-TREATMENT

During the period under examination reports of torture or ill-treatment have risen. Amnesty International has recorded scores of allegations of torture or ill-treatment in the past two years alone. This is a reversal of the trend recorded by Amnesty International throughout the 1990s, when significant human rights improvements were made in Morocco / Western Sahara and torture

⁸ Report of the Special Rapporteur on torture to the General Assembly, 2002; UN Document A/57/173, paras 19 and 21.

⁹ UN Document CCPR/C/79/Add. 113, para. 17.

¹⁰ Article 293 of the Criminal Procedure Code promulgated in October 2002.

decreased. The rise in political arrests in the last two years, in particular, is a significant factor in this increase.

Reports of torture or ill-treatment against both political and common-law detainees are received regularly. Beatings are the most common complaint reported by common-law detainees, while torture or ill-treatment against political detainees can take the form of beatings, the application of live electrodes to the body, the forced insertion of objects into the anus, the suspension of the body in contorted positions, the threat of rape or other sexual abuse of the detainee and the threat of rape of the detainee's (normally female) relatives. For the purpose of this briefing we look at three broad categories of political detainees who have been allegedly subjected to torture or ill-treatment: Islamists accused of involvement in or planning acts of violence, Sahrawis perceived to be actively in favour of independence for Western Sahara and certain Moroccan civil society activists. In the period under examination, torture or ill-treatment in custody has reportedly caused or contributed to the deaths of at least 10 detainees in the last four years.

Reports of torture or ill-treatment are most common during the period of *garde à vue*, when detainees are being held in the custody of the security forces, although reports of torture or ill-treatment against sentenced prisoners also continue to be received by Amnesty International. The allegations generally involve detainees who have been held in the custody of the police, the gendarmerie or the *Direction de la surveillance du territoire* (DST), Directorate for the Surveillance of the Territory. The DST is "charged with ensuring the protection and safeguard of the state's security and institutions",¹¹ but its personnel are neither agents nor officers of the judicial police. In dozens of cases, the torture or ill-treatment allegedly occurred during an illegally extended period of *garde à vue*. In order to mask these violations of the law, the date of arrest on the written reports of the security forces was reportedly falsified (see example below).

Islamists

Amnesty International has received numerous reports during the last year and a half of scores of Islamists accused of involvement in or planning violent acts being tortured or ill-treated in custody in order to extract confessions or to force them to sign or thumb-print statements which they rejected or denied. Since May 2003, many of those allegedly tortured or ill-treated were arrested in connection with the attacks in Casablanca on 16 May 2003 which resulted in the death of some 45 people. According to official statements, more than 900 people suspected of involvement in the attacks have been arrested.

The torture or ill-treatment is generally reported in the custody of the police or the DST during the period of *garde à vue*. In dozens of cases, the period of *garde à vue* appears to have been extended beyond the legal limits provided by the law and, during this time, relatives were not informed of the detainee's whereabouts. In some cases, particularly those involving people arrested by the DST and held in their detention centre in Temara, the period of *garde à vue* was allegedly extended by several weeks. In these cases, it is alleged that not only were relatives not informed of the detainee's whereabouts during this period, but when they asked the authorities for information, the latter denied holding the person in question. According to Amnesty International's information, the family and lawyer of the detainee finally learnt of the detention of their relative and had access to them only after the detainee was brought before a magistrate, charged and placed in pre-trial detention. The initial period of detention in the custody of the security forces was therefore secret and unacknowledged, amounting to a period of "disappearance".

¹¹ Dahir no. 1-73-652 of 2 January 1974 abrogating and replacing dahir no. 1-73-10 of 12 January 1973 creating a Directorate General for the Surveillance of the Territory.

By way of illustration, we present below two examples involving the alleged torture or ill-treatment of Islamist detainees in recent months. In the second case, the victim reportedly died in custody as a full or partial consequence of being tortured or ill-treated.

Case of three Saudi Arabians and seven Moroccans

Three Saudi Arabian and seven Moroccan nationals, including the wives of two of the Saudi Arabians, were arrested in May and June 2002, by members of the DST. They were charged in connection with an alleged plan to blow up NATO warships in the Straits of Gibraltar and of plotting attacks on cafés and public buses in Marrakech. The three Saudi Arabians were found guilty of “having formed a criminal gang”, and sentenced on 21 February 2003 to 10 years in prison each by the Casablanca Court of Appeal. The court sentenced six of the Moroccans to between four months and one year in prison and acquitted the seventh.

The three Saudi Arabian nationals, **Zouhair Hilal Mohamed al-Tubaiti, Hilal Jaber Awad al-Assiri** and **Abdellah M’sfer Ali al-Ghamdi** were arrested on 12 and 13 May 2002, according to the organization’s information, although official records indicate their arrest date as 12 June 2002. They were not presented to the judicial authorities and charged until 13 June. During these weeks, the authorities allegedly not only did not notify the detainees’ families or lawyers about their arrest and detention, but also denied holding them when asked by the families for information regarding their whereabouts. The men were consequently held in secret and unacknowledged detention or were “disappeared” throughout this period.

The three Saudi nationals told lawyers who visited them that they were tortured regularly during interrogations while in secret detention. The torture techniques used reportedly included suspension, beatings and threats that their wives would be raped in order to make the men sign “confessions” the content of which they rejected and denied. The three Moroccan women accused in the case, **Bahija Haidur, Huriya Haidur** and **Na’ima Harun**, alleged that they were beaten and threatened with rape and further beatings in order to make them sign their “confessions”.

On 13 June 2002 the three Saudi Arabian nationals and at least four of the Moroccan accused were presented for the first time before a crown prosecutor in Rabat. Following this, they appeared before an examining magistrate. According to reports received by Amnesty International, the three Saudi nationals and at least four men among the Moroccan accused were taken to the court blindfolded, where they were kept waiting blindfolded for several hours before being taken in to see the magistrate and threatened with further torture immediately before appearing before him, apparently in order to coerce them into repeating their “confessions”. Amnesty International is concerned that the men were apparently questioned in the absence of their lawyers, who had allegedly not been notified of their appearance before the magistrate. According to the Criminal Procedure Code, the magistrate must “inform the accused of their right to choose immediately a lawyer”, who “has the right to attend the questioning session in which the identity of the accused is established”.¹² An official complaint about the torture has been made.

Abdelhak BENTASSIR

Abdelhak Bentassir was arrested in May 2003, accused of being the coordinator of the 16 May 2003 attacks in Casablanca. According to the authorities he was arrested on 26 May 2003 and died of pre-existing illnesses of the heart and liver as he was being taken to hospital on 28 May before his questioning had been completed. The authorities announced that an autopsy had concluded that his death was natural. The family of Abdelhak Bentassir said, however, that he had been in good health before the arrest and was actually arrested on 21 May, five days before the officially announced date of detention. According to Amnesty International’s information, the autopsy was not performed by an

¹² Article 127 of the Criminal Procedure Code in force at the time.

independent doctor, nor was the report made public. The family was apparently not informed in advance that the autopsy would be performed so that they could have their own independent doctor present. Amnesty International believes that a full, independent and impartial investigation is required into the death.

Recommended questions

- Have the Moroccan authorities ordered investigations into the allegations of torture and ill-treatment in the cases of Zouhair Hilal Mohamed al-Tubaiti, Hilal Jaber Awad al-Assiri, Abdellah M'sefer Ali al-Ghamdi, Bahija Haidur, Huriya Haidur and Na'ima Harun? If so, what were the findings?
- Have the Moroccan authorities ordered investigations into the allegations of torture and ill-treatment in the cases of scores of other Islamists arrested during the period under examination? If so, who carried out the investigations and what were the findings?
- Has any official been brought to justice following such investigations into torture or ill-treatment?
- Have the Moroccan authorities ordered an investigation into the death of Abdelhak Bentassir? If so what were the findings?
- Given that members of the DST are neither officers nor agents of the judicial police, to whom are they accountable when they are involved in the arrest, detention and questioning of suspects?

Sahrawi activists

Amnesty International has investigated scores of reports of torture or ill-treatment used against Sahrawi political and civil society activists and demonstrators since 1999. Many of those allegedly tortured or ill-treated have been accused by the authorities of being in favour of the independence of Western Sahara, or are, at least, apparently perceived as such. Some have been arrested, tried and imprisoned on apparently politically motivated charges. In many cases the convictions were largely based on statements which the accused was coerced into signing or thumb-printing following torture or ill-treatment.

Some of the activists arrested have been members of the Sahara branch of the human rights organization, the Forum for Truth and Justice. The branch was dissolved by the Court of First Instance in Laayoune on 18 June 2003 on the charge that the organization had undertaken illegal activities which were likely to disturb public order and to undermine the territorial integrity of Morocco. Amnesty International is concerned that the activities deemed to be illegal merely involved individual members of the organization exercising their rights to peacefully express opinions on the issue of self-determination for the Sahrawi people and to disseminate views relating to human rights issues to outside bodies, such as international human rights organizations.

Bazid SALEK

A member of the Sahara branch of the Forum for Truth and Justice, he was sentenced by the Court of Appeal in Laayoune on 12 March 2003 to 10 years' imprisonment. He was reportedly tortured or ill-treated in police custody in Laayoune after his arrest on 24 September 2002 to force him to sign a police statement admitting he had instigated outbreaks of violence in Laayoune and Smara between 2000 and 2002. His conviction was based solely on this statement, which he later withdrew in court, saying that it was extracted under duress. The torture or ill-treatment allegedly involved him being beaten while his feet and hands were tied together.

Ahmed NASIRI

A member of the Sahara branch of the Forum for Truth and Justice, he was sentenced by the Court of Appeal in Laayoune on 27 November 2002 to 18 months' imprisonment. He was reportedly tortured or ill-treated in custody in a police station in Laayoune after his arrest on 19 June 2002 in an attempt to force him to sign a police statement admitting he had instigated violence at an anti-government protest in 2001. Despite his refusal to sign it, the statement was the sole basis for his conviction. The

torture or ill-treatment allegedly involved him being beaten while his feet and hands were tied together.

14 people sentenced following November 2001 demonstration in Smara

On 25 April 2002, 14 people were sentenced to between six months' and two years' imprisonment for taking part in a demonstration in Smara on 17 November 2001, which was violently dispersed by the Moroccan security forces. The demonstration reportedly began as a protest about welfare payments, but political slogans in favour of the independence of Western Sahara were chanted after the intervention of the security forces. The 14 people were allegedly tortured during *garde à vue* in the custody of police in Smara and Laayoune, including being beaten with clubs and whipped, in order to extract "confessions" from them. Despite raising this in court, no investigation into these allegations was undertaken and the "confessions" were accepted as the principal piece of evidence leading to their convictions. Lawyers claimed that, in some cases, traces of torture were visible when the accused appeared before the crown prosecutor and the examining magistrate.

Brahim LAGHZAL, Cheikh KHAYA and Laarbi MASSOUD

In June 2000, Brahim Laghzal, Cheikh Khaya and Laarbi Massoud were sentenced to terms of imprisonment by the Court of First Instance in Agadir for "threatening state security". Brahim Laghzal and Cheikh Khaya were sentenced to four years' imprisonment and Laarbi Massoud to three years' imprisonment. In addition, they were fined 10,000 dirhams (approximately 930 US dollars) each. The Court of Appeal turned down an appeal against the verdict and increased Laarbi Massoud's sentence to four years' imprisonment. The three men had been arrested on 6 December 1999 in separate incidents in Tan Tan, Laayoune and Agadir, reportedly by members of the DST. Two days later they were transported to military barracks, where they alleged that they were held in illegally extended *garde à vue* and tortured; these allegations were never investigated. They were interrogated about material they had been carrying linking them to the Polisario Front, including a video cassette of the Polisario's 10th Congress and the Constitution of the Sahrawi Arab Democratic Republic.¹³ The three men were released in November 2001 following a royal pardon.

Statements the three men allegedly made under torture were later used to convict Sahrawi activist, Ali-Salem TAMEK, a member of the Sahara branch of the Forum for Truth and Justice. Ali-Salem Tamek was sentenced by the Court of First Instance in Agadir on 10 September 2002 to two years' imprisonment for "undermining the internal security of the state", a verdict which was confirmed on appeal on 24 October 2002. Tamek's conviction was based on two elements. The first was his stated belief that Western Sahara should be an independent state. The second was a statement made by the three men during questioning by Moroccan security forces in 1999 that Tamek received funds from the Polisario Front. Tamek has denied the accusation.

Recommended questions

- Have the Moroccan authorities ordered investigations into the allegations of torture and ill-treatment in the cases of Bazid Salek, Ahmed Nasiri, Brahim Laghzal, Cheikh Khaya, Laarbi Massoud and the 14 people sentenced following the November 2001 demonstration in Smara? If so, what were the findings?
- Has any official been brought to justice following such investigations?

¹³ The Polisario Front, or Popular Front for the Liberation of Saguia el-Hamra and Rio de Oro, calls for an independent state in Western Sahara and has set up a self-proclaimed government-in-exile in refugee camps in southwestern Algeria. Western Sahara continues to be the subject of an unresolved territorial dispute between Morocco, which annexed the territory in 1975 and claims sovereignty there, and the Polisario Front.

Moroccan activists

In general, Moroccan human rights organizations and civil society activists have been able to carry out their activities, including peaceful protests, in the absence of widespread harassment or intimidation from the authorities, who have increasingly sought a constructive dialogue with them. Amnesty International has, however, received in the period under examination reports of several isolated incidents of torture or ill-treatment of Moroccan activists during the period of *garde à vue*, when the detainee is in police custody.

Mohamed Rachid CHRII

Mohamed Rachid Chrii, member of a branch of the *Association marocaine des droits humains* (AMDH), Moroccan Association of Human Rights, in the city of Safi and activist in other non-governmental organizations, was arrested on 22 April 2003 following an incident the day before in which, according to him, he had denounced police brutality against a fellow citizen in the street. According to the local authorities, he had violently interfered with the police's arrest of a drug trafficker. He was later sentenced to 18 months in prison on 13 May 2003 for insulting police officers while they were exercising their duties and attempting to help a criminal evade detention, among other charges. The sentence was confirmed on appeal on 10 June 2003.

During the period of *garde à vue*, in police custody, he was allegedly tortured by being stripped, suspended in a contorted position and beaten on various parts of his body, including his genitals, as well as having, on separate occasions, a bottle and a stick forcibly inserted into his anus. He alleges that he was forced to thumbprint a police statement while he was being tortured. He underwent two medical examinations by doctors appointed by the Court of First Instance in Safi, the first on 24 April 2003 and the second on 5 May 2003. The second examination followed a request by Mohamed Rachid Chrii's legal counsel. The second medical report, which was more detailed than the first, catalogued "recent lesions of traumatic origin and of medium degree".

Recommended questions

- Have the Moroccan authorities ordered investigations into the allegations of torture in the case of Mohamed Rachid Chrii? If so, what were the findings?
- Has any official been brought to justice following such investigations?

Deaths in custody of common-law detainees

Dozens of reports of torture or ill-treatment against common-law detainees have been received by Amnesty International in the last four years. In at least 10 cases torture or ill-treatment allegedly caused or contributed to deaths in custody. These include the following:

- Mohamed AIT SIRAHAL, who died on 25 July 2002, allegedly as a result of blows inflicted on him in a police station in Marrakech;
- Abdelmalek GUERROUANE, who was allegedly beaten to death following arrest by police officers in Anfa on 6 May 2002;
- Fouad Hammou NAÏCHA, who died on 13 October 2001, allegedly as a result of torture or ill-treatment he received in a gendarmerie station in Ain Ma'iza, Meknes;
- Mustafa ANKARI, who died on 1 July 2001, allegedly as a result of torture or ill-treatment he received in a gendarmerie station in Khemis Anjara, Tetouan;
- Mustafa BOUNOUARA, who died on 20 February 2001, allegedly as a result of torture or ill-treatment he received in a police station in Salé;
- Abdelaziz M'QARTA, who died on 7 January 2001, allegedly as a result of blows inflicted on him in a police station in Maâmoura, Kenitra.

It is known that autopsies have been carried out and investigations have been opened into at least some of these cases.

Recommended questions

- Is there a mechanism for investigation in all cases of deaths in custody? If so, who carries out the investigation and what is the composition of the body? What have been the mechanism's findings?
- Are autopsies carried out in all cases of death in detention? If so, who carries out the autopsy?
- Has any official been brought to justice following investigations into cases of deaths in custody?

ILL-TREATMENT OUTSIDE OF DETENTION

Non-violent demonstrations continue to be dispersed with excessive force by the security forces, particularly in the form of beatings. Hundreds have been injured in the last four years as a result. Those affected have included Islamists, Sahrawis, human rights activists and members and supporters of associations of the unemployed, particularly when the demands they are making relate to sensitive issues. In many instances participants are beaten and arrested by the security forces, and then prosecuted on charges related to participating in "unauthorized" gatherings. The use of excessive force on the part of the security forces often appears to be carried out deliberately as a form of punishment, and not as a legitimate attempt to restore order. In some cases, the use of excessive force, in the form of beatings, may amount to torture or ill-treatment. Two examples involving a particularly high incidence of beatings are outlined below.¹⁴

On **10 December 2000**, members and sympathizers of the Islamist organization *al-'Adl wa'l-Ihsan* (Justice and Charity) demonstrated in cities across the country to protest against police harassment of the organization's members and restrictions on the organization's newspapers, *al-'Adl wa'l-Ihsan* and *Risalat al-Futouwa* (The Youth Message).¹⁵ According to the demonstrations' organizers, they had sought advance authorization, in compliance with the Law on Public Assemblies, but did not receive it. Police broke up the demonstrations and arrested participants in at least seven cities. Although the fact that hundreds of protesters were out on the streets meant that there was considerable disruption in many of the cities, the demonstrations were non-violent before they were dispersed. In Rabat, where the police were filmed beating the participants, some 200 were detained and around 100 injured, according to *al-'Adl wa'l-Ihsan*. In some parts of the footage taken, small groups of policemen could be seen repeatedly beating demonstrators who had already been apprehended with batons on the head and other parts of the body. In Casablanca, some 400 were detained and over 300 allegedly injured. In Fez, el-Jadida, Marrakech, Oujda, and Agadir, it was reported that a total of about 500 protesters were detained and over 300 injured.

On the night of **22-23 September 1999**, a peaceful sit-in for socio-economic demands by Sahrawi students, sacked workers and people with disabilities in Laayoune, Western Sahara, was violently broken up by the security forces, as was a march held several days later to protest at the brutal manner in which the sit-in had been dispersed. Dozens of Sahrawis were severely beaten, and many sustained serious injuries, including broken bones, which resulted in their hospitalization. Dozens were arrested and there were later reports of torture and ill-treatment in custody.

Recommended questions

- Have the Moroccan authorities conducted any investigations into complaints that the police used excessive force and brutality in dispersing peaceful demonstrations during the last four years? If so, what were the findings?

¹⁴ For further information on the issue of ill-treatment outside of detention, please see Amnesty International's and Human Rights Watch's joint report *Morocco / Western Sahara: Freedom of assembly on trial* (AI Index: MDE 29/011/2001) of 21 November 2001.

¹⁵ *Al-'Adl wa'l-Ihsan* is an organization that the government has declined to legally authorize but generally tolerates.

- Has any official been brought to justice following such investigations?
- Have the Moroccan authorities reviewed the practices of their security forces in policing demonstrations to ensure that they are consistent with international human rights standards and that the members of the security forces are held fully accountable for their actions?

REPARATION FOR TORTURE (Article 14)

Acknowledgement of responsibility

Amnesty International has welcomed measures the Moroccan state has taken in recent years to recognize the state's responsibility, in general terms, for torture and "disappearances" which took place in previous decades. Amnesty International is concerned, however, that Morocco's acknowledgement at the highest level of state responsibility for grave human rights violations in the past, including torture, is being undermined by contradictory messages by other authorities in the country.

In two meetings with local authorities in Laayoune and Smara during a research mission in June and July 2002, for example, delegates from the organization asked questions relating to the state's responsibility for the practice of "disappearance" and torture during secret detention during previous decades and were told categorically, despite the overwhelming evidence to the contrary, that the Moroccan security forces were not responsible for a single case of "disappearance" in the region. Local journalists, human rights organizations and families of the "disappeared" have reported similar statements being made by such authorities in recent years.

Compensation

In August 1999, King Mohamed VI announced the establishment of the Independent Arbitration Commission on Compensation for the suffering of victims and family members of victims of "disappearance" and arbitrary detention. Amnesty International welcomed the setting up of the body as a significant initial step towards redressing human rights violations of the past.

The Commission began its work on 1 September 1999. Claimants were initially required to submit their applications for compensation by 31 December 1999, though it seems that applications were also accepted after this deadline. Those who applied for compensation had to sign a waiver recognizing that the Commission's decision on their claim was definitive and subject to no appeal. This has prevented victims who feel their claims have been unfairly dealt with challenging the decision on their case.

According to a statement made by Abdelaziz Benzakour of the Commission at an international conference organized by the International Committee of the Red Cross in Geneva, Switzerland, from 19 to 21 February 2003, the Commission had, up to the end of January 2003, accepted some 2,840 requests for compensation, thereby benefiting some 3,700 individuals. In total, some 840 million dirhams (approximately 90 million US dollars) had been paid or were due to be paid to victims and family members. The statement also said that decisions on compensation were being made according to criteria which stipulated that compensation should be proportional to the gravity of the violations and the harm suffered.

Amnesty International welcomes the payment of compensation to survivors of "disappearance" and arbitrary detention, many of whom were tortured during their detention, as well as to relatives of those who died during a period of "disappearance" or arbitrary detention. However, it is concerned that the Commission was only mandated to receive applications for compensation during a fixed time period and for a limited range of violations. To Amnesty International's knowledge, no mechanism has been established to compensate those who were tortured before 31 December 1999 in circumstances which

did not constitute an act of “disappearance” or arbitrary detention. Similarly, no mechanism exists which is mandated to offer compensation to victims of human rights violations, including torture, which were committed after 31 December 1999 (or may occur in the future).

With regard to the Independent Arbitration Commission on Compensation which was set up in 1999, Amnesty International is aware of a number of concerns that have been raised by victims and families of victims of “disappearances” and arbitrary detention. One is that the Commission has, in some cases, failed to adhere to its own criteria when deciding on compensation claims. Former Sahrawi “disappeared” have told the organization that, in general, those who survived 16 years’ “disappearance” in the secret detention centre of Kal’at M’gouna received less than half the amount in compensation received by others who survived 18 years’ “disappearance” in the secret detention centre of Tazmamert. Most of those who survived each of the two secret detention centres were not only tortured in the first days and weeks of their “disappearance”, but suffered treatment constituting torture or ill-treatment on a daily basis right up to the time of their release. According to the former Sahrawi “disappeared”, the difference in the amount of compensation received could not be justified with reference to the Commission’s criteria. A related problem is the aforementioned lack of appeal mechanism. This has prevented victims who feel their claims have been unfairly dealt with challenging the decision on their case.

Amnesty International is also concerned that reparation for victims and family members of victims of “disappearances” has so far been restricted to financial compensation. Although financial compensation is, of course, a key element of reparation, it is only one element among others for which the state is responsible. The process does not envisage possibilities of “restitution, compensation, rehabilitation, and satisfaction and guarantees of non-repetition” as components of reparation.¹⁶

Recommended questions

- What measures are the Moroccan authorities taking to address apparent contradictions between His Majesty King Mohamed VI’s acknowledgement of past human rights abuses, on the one hand, and categorical denials by local officials that the state is responsible for the “disappearance” of anyone originating from Western Sahara, on the other?
- Do those who have made applications to the Independent Arbitration Commission on Compensation have any form of recourse against the Commission’s decision, despite the absence of an official appeal procedure? If so, what form of recourse do they have? If not, do the authorities intend to investigate allegations of discrimination in the matter of compensation payments?

¹⁶ See “The right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms”, Final report of the Special Rapporteur, M. Cherif Bassiouni, submitted in accordance with Commission resolution 1999/33, E/CN.4/2000/62 (18 January 2000). The report develops the concept of “satisfaction and guarantees of non-repetition”, stating that they should include any or all of the following:

- (b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further unnecessary harm or threaten the safety of the victim, witnesses, or others;*
- (c) The search for the bodies of those killed or disappeared and assistance in the identification and reburial of the bodies in accordance with the cultural practices of the families and communities;*
- (d) An official declaration or a judicial decision restoring the dignity, reputation and legal and social rights of the victim and of persons closely connected with the victim;*
- (e) Apology, including public acknowledgement of the facts and acceptance of responsibility;*
- (f) Judicial or administrative sanctions against persons responsible for the violations;*
- (g) Commemorations and tributes to the victims;*
- (h) Inclusion of an accurate account of the violations that occurred in international human rights and humanitarian law training and in educational material at all levels;*

- Does the Commission consider whether the concerned person has been subjected to torture or ill-treatment when deciding on a case?
- Do the Moroccan authorities plan to ensure that reparation, other than compensation, is provided to victims of “disappearance” and their families? As a first step, do they plan to issue an apology to victims and their families, including a public acknowledgement of the facts and acceptance of responsibility?
- Have any steps been taken to locate the remains of those who died in secret detention centres such as Agdz, Kal’at M’Gouna, Laayoune and Tazmamert and hand them over to their families?

IMPUNITY (Articles 6, 7, 12)

Continued impunity for most current violations

Amnesty International has been pleased to note a general strengthening in the last few years of national mechanisms intended to deal with complaints lodged by citizens against the authorities. The reform of the Human Rights Advisory Board in 2001, which included the expansion of its mandate to allow it to examine individual cases of human rights violations and the increased representation of non-governmental organizations in it, was a positive development, as was the establishment of a new institution, the *Diwan Al Madhalim* (Complaints Bureau), created to deal with complaints from citizens who considered they had been unjustly treated by the authorities. These steps have been taken against the backdrop of statements made at the highest levels by the Moroccan authorities that impunity is unacceptable. Despite these positive developments, Amnesty International is concerned that, particularly in the light of the recent rise in the reported cases of torture or ill-treatment, there has been little, if any, public acknowledgement that torture is being committed by members of the security forces and that it is a crime and will not be tolerated.

Investigations, however, have been opened into an increasing number of allegations of torture and ill-treatment and of deaths in custody which occurred during recent years, although, particularly in the case of torture or ill-treatment, investigations appear not to be opened automatically. In a limited number of cases the investigations have led to well publicized arrests and prosecutions of members of the security forces. In other cases, concerns have been raised by lawyers acting on behalf of the victims or their families that the investigation was neither comprehensive, nor carried out by an independent, competent body.

However, in the majority of cases involving allegations of torture or ill-treatment, investigations have either not been opened into complaints or have been opened but dismissed without adequate investigation. It is Amnesty International’s belief that this continued impunity undermines the confidence of Moroccan citizens in the justice system and has facilitated the renewed increase in practices such as secret detention and torture or ill-treatment, since the security forces have not received clear enough messages that the practice of torture is forbidden and will not be tolerated.

Recommended questions

- Can the Moroccan government point to recent public statements acknowledging that torture is being committed by members of the security forces and that it is a crime and will not be tolerated?
- How many security force personnel have been convicted since 1999 for having committed or participated in acts of torture or ill-treatment of detainees? Is it possible to have a list with the names of those convicted, the dates and places of the trials, the sentences imposed, and the details of the cases in which they were convicted?
- In cases where investigations have been opened into allegations of torture or ill-treatment or of deaths in custody, are they carried out comprehensively by an independent, competent body?

Lack of investigations and impunity for past violations

Thousands of Moroccans and Sahrawis were subjected to torture or ill-treatment in the context of political repression between the 1960s and 1990s. Many still suffer from the physical and psychological scars their ordeal has left them. However, in no case are investigations known to have been carried out to establish responsibility for grave and systematic human rights violations which occurred in the past, and not one of the perpetrators, including those who carried out gross violations over long periods of time, have been brought to justice.

Some of the gravest cases of torture in previous decades are those of the hundreds of Moroccans and Sahrawis who “disappeared” between the mid-1960s and early 1990s at the hands of Moroccan security services.¹⁷ It was they who were subjected to torture and cruel, inhuman and degrading treatment for the longest time. Many of the Moroccans who “disappeared” were known or suspected political opponents. Many of the Sahrawis who “disappeared” were arrested because of their alleged activities in favour of the independence of Western Sahara, their support for the Polisario Front or their opposition to Morocco’s control of Western Sahara. Others, including elderly people and children, “disappeared” apparently because of their family links with known or suspected opponents to Moroccan government policy in Western Sahara.

Torture of those who “disappeared” and were later released or confirmed to have died in secret detention

Some 300 Sahrawis and around 50 Moroccan “disappeared” were released in 1984, 1991 and 1992 after spending up to 18 years completely cut off from the world in secret detention centres. In October 1998, the Human Rights Advisory Board issued a list containing the names of 112 Moroccan “disappeared” and announced that 56 of these had died and that death certificates would soon be issued to their families. This list did not contain the names of any Sahrawi “disappeared”. In April 1999 the Human Rights Advisory Board put the number of the Moroccan “disappeared” who had died in detention at 65. Since then, there has been no official public acknowledgement of the death in detention of other Moroccans or Sahrawis who “disappeared” after arrest between the mid-1960s and early 1990s.

Both those who survived the ordeal of years of secret detention and those who died in secret detention were not only tortured in the first days and weeks of their “disappearance”, but suffered treatment constituting torture or ill-treatment on a daily basis right up to the time of their release, or death. These “disappeared”, whom the Moroccan authorities repeatedly denied holding right up to their release, were kept completely cut off from the rest of the world. Many of them were held in solitary confinement for all or prolonged periods of their captivity and none had any access to any medical care for the entire duration of their detention. The victims’ families, agonizing daily over the fate of their relatives, also suffered torture or ill-treatment as a result of the “disappearance”.¹⁸

¹⁷ For further details on the “disappeared”, see the following Amnesty International reports:

- *Morocco and Western Sahara: “Turning the page”: achievements and obstacles* (AI Index: MDE 29/001/1999), issued in June 1999;

- *Morocco and Western Sahara: Addendum to “Turning the page”: achievements and obstacles* (AI Index: MDE 29/005/1999), issued in August 1999;

- *Morocco and Western Sahara: Human rights violations in Western Sahara* (AI Index: MDE 29/004/1996), issued in April 1996;

- *Morocco: Breaking the wall of silence: the “disappeared” in Morocco* (AI Index: MDE 29/001/1993), issued in April 1993.

¹⁸ On the suffering of the families of the “disappeared” amounting to torture or ill-treatment, see for example the opinion of the Human Rights Committee in the case of *Quinteros V. Uruguay*, where the Committee found that the mother of a “disappeared” daughter was herself a victim of violation of Article 7 of the ICCPR because

Those held in Tazmamert never saw daylight for 18 years; they were held in individual cells with only 18 small holes for ventilation. Those held in Agdz, Kal'at M'Gouna and Laayoune were kept constantly handcuffed and blindfolded for the first few years of their captivity. Some of the “disappeared” spent years of their secret detention unable to get up off the floor; some of those who were released died shortly after as a result of the treatment they had been subjected to; and all those who survived still bear the physical and psychological consequences of their ordeal. In addition some of the Sahrawi former “disappeared” were again rearrested after their release in 1991 and held for periods varying from a few days to a few months, during which they were again tortured.

Amnesty International knows of no attempt made by the Moroccan authorities to locate the remains of those who died in secret detention and to hand them over to their families for burial, even when the victim reportedly died and was believed to have been buried at an identifiable location, such as the secret detention centres of Agdz, Kal'at M'gouna, Laayoune and Tazmamert. This is the case even with the 65 Moroccan “disappeared” whose deaths in detention the authorities have publicly acknowledged. According to Amnesty International's information, many of the families of the victims have also not received death certificates.

Torture of the “disappeared” who are still unaccounted for

Several hundred people who “disappeared” after arrest between the mid-1960s and early 1990s remain unaccounted for. Some 115 of them are recorded by the UN Working Group on Enforced or Involuntary Disappearances as outstanding “disappearance” cases. The remainder of the cases have either never been submitted to the Working Group or have not been registered by the UN body because those who submitted the report were only aware of the year and month of the “disappearance” and not the exact date. Amnesty International has, over the last four decades, collected extensive information relating to these cases. In dozens of cases, the organization's delegates have met the families of those still considered to be “disappeared” and received detailed testimonies from people who witnessed the arrest of their relative by Moroccan security forces and never saw them again. The vast majority of those still “disappeared” are Sahrawis, arrested in the main during the first few years of Morocco's military occupation of Western Sahara. Reports from those who survived their time in secret detention centres such as Agdz, Kal'at M'Gouna and Laayoune, as well as testimonies from former members of the security services, indicate that many of them may have died in secret detention between the 1960s and early 1990s.

The families of those who are still “disappeared” have, however, received no information from the authorities clarifying the facts surrounding the case of their relatives, let alone an acceptance of responsibility on their part. Many continue to believe that their relatives are still alive and being held in secret detention, suffering treatment amounting to torture or ill-treatment. The families' acute awareness of Morocco's recent history, during which hundreds have reappeared following years of torture or ill-treatment in secret and unacknowledged detention helps to give strength to this belief. Agonizing daily over the fate of their relatives, these families continue to suffer torture or ill-treatment.¹⁹

Amnesty International has raised with the Moroccan authorities in recent years dozens of individual cases of people it considers still to be “disappeared”, as well as providing a list of over 400 cases which it has recorded. In at least 25 cases involving Sahrawi “disappeared”, the Moroccan authorities have replied to Amnesty International in the last two or three years indicating that the persons concerned had never been arrested by the Moroccan security forces, but instead had fled to the

of her continued anguish. *Elena Quineros Almeida and Maria del Carmen Almeida de Quinteros v. Uruguay*, (21 July 1983, para. 14).

¹⁹ See previous footnote.

Polisario-controlled camps in Tindouf or had been killed in clashes during the 1970s between the Moroccan armed forces and the Polisario Front or had died of natural causes.

The replies Amnesty International has received from the Moroccan authorities have raised a number of concerns. Firstly, in some Sahrawi “disappearance” cases, the organization has received conflicting information from different authorities. In two cases, the Ministry of Interior has informed Amnesty International that the men were killed in clashes during the 1970s between the Moroccan armed forces and the Polisario Front, while representatives of the Moroccan embassy in London have indicated that they had fled to Tindouf. Secondly, in some Sahrawi “disappearance” cases, the information received from the Moroccan authorities has contradicted testimonies received from the families of the victim. In one case, the Ministry of the Interior has informed Amnesty International that the person concerned left for Tindouf in 1976, while the victim’s family reports that they witnessed his arrest by members of the gendarmerie and never saw him again after this.

Some families of those still considered to be “disappeared” have told Amnesty International that, in the last two or three years, they have for the first time been summoned by the gendarmerie and questioned briefly about the case of their relative, usually after having submitted a complaint to the authorities. However, to date the results of these inquiries by the gendarmerie are not known. Neither can such inquiries substitute for the full, independent and impartial investigations which the Moroccan authorities are obliged to undertake, according to international human rights standards. For many of the “disappearance” cases, witnesses have stated that they are able to identify members of the gendarmerie as being responsible for the arrest and subsequent torture of the victim. In the light of the alleged involvement of the security forces in these human rights violations, the Moroccan authorities should ensure that investigations into them are carried out by a competent, impartial and thorough body, which is independent and perceived to be so.

Morocco is required by the Convention against Torture to investigate and bring to justice alleged perpetrators of torture. To date, however, not one person responsible for ordering or carrying out “disappearances” has been prosecuted. Former “disappeared” and families of the “disappeared” have told Amnesty International that many of those responsible for the violations are still alive and, in some cases, still working within the security forces.

Amnesty International is concerned that, even when members or former members of the security forces have disclosed information regarding “disappearances” in previous decades, there has apparently been no investigation of the allegations they have made. Former security officer Ahmed Boukhari has made allegations implicating members of the security forces in involvement in the “disappearance” of opposition activists during the 1960s and 1970s, including Mehdi Ben Barka, who was abducted in Paris, France, in 1965. To Amnesty International’s knowledge, however, no judicial investigation has been launched in Morocco into these allegations.

Recommended questions

- Have any investigations taken place into “disappearance” cases and, if so, could details of their functioning and subsequent findings be provided?
- What investigations have been carried out to establish the date, place, circumstances and cause of death of those who died in secret detention, often apparently as a result of torture?
- Has any Moroccan official been brought to justice for their involvement in an act of “disappearance” or death in secret detention and, if so, could details of the trials be provided?
- Do the Moroccan authorities plan to establish a commission of inquiry into the grave human rights violations of previous decades, as proposed by local human rights organizations?

Impunity for abuses committed by the Polisario Front in the past

The Convention against Torture requires the Moroccan authorities to establish universal jurisdiction and investigate and prosecute all cases of torture when the alleged perpetrator is found in an area under its jurisdiction. In this regard, noting the concerns repeatedly expressed by the Moroccan authorities about human rights violations in the Sahrawi refugee camps administered by the Polisario Front in Tindouf, Algeria, Amnesty International has on several occasions reminded the Moroccan government of the presence in Morocco of persons, generally of Moroccan nationality, believed to have been responsible for serious human rights abuses in the Polisario camps. The organization has further reminded the government of its obligation to bring these persons to justice or to extradite them to another jurisdiction where they can be brought to justice in conformity with Article 8 of the Convention against Torture.

However, to date such persons have not been brought to justice. In addition, several people who were in a position of authority in the Polisario camps when serious human rights abuses – including torture – were widespread, particularly during the late 1970s and throughout the 1980s, now occupy positions of authority in the Moroccan civil administration.

Recommended questions

- What measures have been taken to investigate and bring to justice persons who are now present in Morocco and who are allegedly responsible for torture and other human rights abuses in the Sahrawi refugee camps administered by the Polisario Front in Tindouf, Algeria?