



Morocco: Encouraging step forwards but significant challenges to be addressed

**Submission to the list of issue in the context of the review of
Morocco's 5th periodic review by the Committee against Torture**

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**SUMMARY – FOR FULL TEXT OF ORIGINAL
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1. Introduction

In the context of its contributions to the periodic reviews of Morocco by the Committee against Torture, Alkarama once again would like to provide suggestions of questions with the objective of strengthening the dialogue which will take place during the review of the State party in November 2015.

In January 2013, Alkarama undertook a visit to Morocco in the framework of its civil society capacity-building project aiming to ensure implementation of the Committee's recommendations. We were able to meet with numerous NGOs working on torture, as well as officials, and victims along with their families and lawyers. This allowed us to evaluate the progress achieved by the authorities in order to put an end to torture, but also to determine the challenges still to be addressed.

Since the 2011 social mobilisations and the calls for democratic change, significant progress has been made.

In particular, the Moroccan Parliament signed the International Convention for the protection of all persons against on enforced disappearances as well as the Optional Protocols to the Convention against Torture and the International Covenant on Civil and Political Rights.

Likewise, a national dialogue on judiciary reform initiated by the Ministry of Justice should lead to the adoption of a "National Charter" in the following months. This issue is a crucial factor and is particularly essential to ensure an effective rule of law in the country.

These positive developments are unfortunately hindered by problems that continue to linger, such as the lack of enquiries into allegations of torture of numerous detainees, especially individuals condemned in terrorism cases. Persistent impunity of people accused of torture and the continuing detention of individuals condemned uniquely on the basis of coerced confessions are also of major concern.

2. Legal framework of Counter-Terrorism Measures

Despite numerous recommendations from human rights organizations in this regard, Anti-Terrorism Law No.03-03 has still not been revised. The same vague and broad definition of terrorism remains applicable, without the accusations necessarily involving a risk of violent action. To date, hundreds of persons (between 500 to 850) remain detained on the basis of this law.

As per Law No. 35.11 of 17 October 2011, its article 66 does not provide for access to counsel as soon as the person is taken into custody but only "before the expiry of half the initial period of custody". For common law defendant, half the initial period of custody can last up to 12 hours, and up to 48 hours for defendants accused of terrorism. This still is excessive.

Questions:

- 1. In what way is the anti-terrorism legislation compatible with article 2 of the Convention (taking into account the CAT's concluding observations in 2004 and 2011)?*
- 2. In what way are the restrictions to a direct and immediate access to a lawyer compatible with the State party's obligations to take into account all measures to prevent torture (articles 2 and 11 of the Convention)?*

3. Ratification of the Optional Protocol to the Convention against Torture

The Moroccan Parliament undertook the ratification of the Optional Protocol to the Convention against Torture as well as the International Convention for the Protection of All Persons from Enforced Disappearances, a crucial process which certainly also constitutes an effective means of guaranteeing the rights of persons under custody.

In this regard, the independence of the inspection mechanism of places of detention is at stake since the authorities seem to be willing to attribute this prerogative to the National Council for Human Rights (NCHR), which is already able to visit places of detention. However, this human rights national institution's very establishment by a Royal Dahir (No. 1-11-19 of 1st March 2011) undermines its independence, since a Dahir consists of the King's unilateral decision.

According to this Dahir, the NCHR is thus only accountable to the executive, and cannot on its own motion examine human rights violations nor issue statements or recommendations independently, thus infringing para. C-1 of the Paris Principles. Furthermore, the Council's membership is determined by Royal Dahir: the 10 most important members of the National Council as well as the 13 Heads of Regional Commissions are directly nominated by the Moroccan King.

Thus, placed under the King's authority, the National Council of Human Rights cannot function independently and efficiently to monitor places of detention within the framework of a national prevention mechanism. Alkarama encourages the Moroccan authorities to implement its obligations stemming from the Optional Protocol's article 18 by establishing one or several national prevention mechanisms (NPM) which guarantee the participation of civil society and ensure the independence and pluralism of its membership.

Questions:

3. *In what way will civil society be involved in the establishment of the national prevention mechanism as provided for in article 18 of the Optional Protocol?*
4. *Through which means do the authorities plan on guaranteeing the NPM's independence?*

4. Confessions Obtained under Torture and Arbitrary Detention

Following the Casablanca attacks of 16 May 2003, thousands of individuals were arrested and charged with belonging to a terrorist group, planning acts of terrorism, or undermining the security of the state. Arrests were mostly conducted by agents of the *Direction générale de la surveillance du territoire* (DGST – the General Directorate for Intelligence) in civilian clothing driving unmarked cars, without presentation of judicial warrants. Suspects were abducted and detained *incommunicado* for weeks in order to extract confessions which were then used as evidence during the proceedings.

Although this practice seems to have declined since 2012, as no such cases have been brought to Alkarama's attention recently, the individuals condemned in the past on the basis of confessions extracted under torture still remain in detention.

4.1 Status of 'confessions' obtained under torture and other forms of constraints

Preliminary transcripts established by the judicial police and based on confessions obtained under torture are never rejected by judges. Criminal condemnations are in majority based solely on this single element, thus clearly violating article 293 of the Code of Criminal Procedure which explicitly states that all declarations made under torture are null and void. The criminal judge privileges the approach embodied in article 291, according to which the statements produced by judicial police are trusted unless the contrary is proven.

Mr **Abdessamad Bettar** was arrested on 5 May 2011 by 4 individuals in plain clothes, allegedly from the DGST, without a judicial warrant. During his detention, he did not have access to a lawyer nor to his family who was not aware of his whereabouts. He was heavily tortured and forced to sign confessions before being brought before the Moroccan Royal Prosecutor on 17 May 2011 and charged with preparation and participation in the 2011 bombing of Café Argana.

When he appeared in Court before the investigating judge, Mr Bettar, who showed visible signs of violence, declared that he had been subjected to torture and forced to sign a statement. However, the

judge did not take these affirmations into account and despite the lack of any other material evidence, placed Mr Bettar under preliminary detention at the Prison of Toulal 2, in Meknes.

Following an expeditious investigation procedure, he was referred to a criminal court on 28 October 2011 and sentenced to 4 years imprisonment. The trial judge explicitly declared in his decision that the confessions recorded in the minutes "**must be considered as a sufficient means of proof**"¹. This clearly demonstrates that Mr Bettar's condemnation was based solely on the confessions extracted under the torture to which he was subjected during the 12 days he spent under police custody. Furthermore, **no defence witness was summoned** by the Court, not even the eyewitnesses who allegedly drew an identikit picture of the suspect. Finally, no investigation was opened regarding the allegations of torture, neither by the investigating judge nor by the trial judge although there were reasonable grounds to believe his allegations were founded.

On 9 March 2012, an appeal decision increased Mr Bettar's sentence to 10 years imprisonment. According to him, the increase of his sentence in the absence of any new evidence constitutes a reprisal for having denounced the arbitrary nature of his detention and the torture to which he had been subjected.

Question:

5. *Are there any legislative reform planned, in particular regarding the Code of Penal Procedure, in order to ensure the rights of the accused to a fair and impartial trial?*

4.2 The persistent occurrence of arbitrary detention

As noted previously, although the practices used following the 2003 Casablanca attacks have declined since 2012, the individuals formerly condemned on the basis of those confessions extracted under torture remain detained to date.

Mr **Mohamed Hajib**, a 31 year-old German-Moroccan national, is currently being detained in Tiflet Prison. After his arrest at Casablanca airport on 17 February 2010, he was charged with "terrorism" and sentenced on 24 June 2010 following a summary trial to 10 years of imprisonment by the Court of Rabat. On 9 January 2012, his sentence was reduced to 5 years on appeal.

Upon Alkarama's request, the UN Working Group on Arbitrary Detention, after hearing Morocco's official version, adopted an Opinion on Mr Hijab's case on 31 August 2012². It confirmed that his detention was arbitrary and requested that the authorities release him. Moreover, the Working Group declared that the conditions of a fair trial were not fulfilled, as "[c]onfessions made in the absence of legal counsel are not admissible as evidence in criminal proceedings, and this applies especially to confessions made during the time spent in police custody"³.

The Working Group concluded that "no material evidence was put forward during the trial and the confessions were obtained without a lawyer being present. The Working Group therefore finds violations of article 5 of the Declaration and article 7 of the Covenant, in direct connection with articles 9, 10 and 11 of the Declaration and articles 9 and 14 of the Covenant. The Working Group considers that the violations of the right to a just and equitable trial to which Mr. Hajib has been subjected are sufficiently serious to render his detention arbitrary."⁴

Almost 8 months after the adoption of this Opinion, no measure has been undertaken by the authorities to implement the Working Group's decision and release Mr Hajib.

Questions:

6. *In 2012, the Working Group on Arbitrary Detention issued several opinions concerning Morocco, all qualifying the arbitrary nature of the concerned individual's detention. In what*

¹ Criminal Court Judgement of 28 October 2011, at pp.100, 110.

² Working Group on Arbitrary Detention, 64th Session, Opinion No. 40/2012 (Morocco), 31 August 2012, A/HRC/WGAD/2012/40.

³ *Ibid.*, para. 48.

⁴ *Ibid.*, para. 50.

way are the authorities planning on putting an end to these violations and implement the Working Group's recommendations?

7. *In its concluding observations following the last review of Morocco, the Committee against Torture issued a recommendation in this regard, requesting that the authorities "review criminal convictions that have been based solely on confessions in order to identify cases in which the conviction was based on confessions obtained under torture or ill-treatment. The State party is also invited to take the appropriate remedial measures and to inform the Committee of its findings." What concrete measures are being taken in order to implement this recommendation?*
8. *What measures are being taken by the authorities to ensure the non-repetition of practices leading to mass arrests and arbitrary detentions, including in alleged "exceptional" circumstances?*

5. Lack of Follow Up to Torture Allegations Highlights Gaps in Forensics Expertise

6.1 Absence of investigation into allegations of torture

Article 74, paragraph 8, of the Code of Criminal Procedure imposes the King's Prosecutor to order a medical exam when requested to investigate acts of violence or when he or she informed of such act. Article 134, paragraph 5, also obliges the investigating judge to **immediately order a medical exam** of all persons who show signs of torture.

However, follow up to allegations of torture within the justice system remains all too rare, particularly during the investigation phase. Often, requests for medical exams made to the investigating judge by victims are not taken into account, or, when taken into account, only treated with delay to ensure the signs of torture have time to disappear. It must also be said that victims often fear aggravating their situation by making a request during the interrogation phase as they do not trust judges to react appropriately.

Question:

9. *What concrete measures is the State party taking in order to effectively implement legal provisions in regard to the investigation of torture allegations?*

6.2 Forensic expertise: lack of training and independence of experts

In the (rare) event inquiries are conducted into allegations of torture, forensic experts often issue reports which are not in accordance with international standards, in particular the Istanbul Protocol. Indeed, considering these experts are civil servants working under the Penitentiary and Reinsertion Administration and not the Ministry of Health, their independence cannot be guaranteed.

The case of Mr **Ali Aarass**, a Belgian-Moroccan national, is illustrative of this. He was initially arrested in Algeiras, Spain, on 1 April 2008 and placed in custody before being extradited to Morocco on 14 December 2010, contrary to the recommendation made by UN Human Rights Committee. When he arrived in Morocco, he was detained *incommunicado* for 10 days, heavily tortured and forced to sign confessions in Arabic, a language he does not understand. On 24 November 2011, he was sentenced to 15 years imprisonment on the basis of these confessions extracted under torture.

It is only following the involvement of the UN Committee against Torture in the case that Mr Aarass was able to be medically examined. The forensic report was issued by 3 doctors appointed by the Prosecutor of the Court of Rabat, and concluded that there was "no marks that could be related to the alleged acts of torture".

However, an independent expert from the International Rehabilitation Council for Torture Victims (IRCT) analysed this forensic report and noted numerous shortcomings and deficiencies. The IRCT expert concluded that the report did not meet the requirements of the Istanbul Protocol as it contained only very basic information on Mr Aarass's medical state, without bringing any kind of psychological and psychiatric assessment to the analysis.

These shortfalls have been highlighted by the Special Rapporteur on Torture, Mr Juan Méndez, during his visit of the country in September 2012. He reviewed "a sample of medical certificates and [noted] with concern that the majority of medical assessments that are made for forensic purposes are performed not by forensic medical experts but by medical clinicians included in the court lists of "experts". These individuals do not have any specific training or competence in forensic medicine. The medical reports produced after allegations of torture and ill-treatment are of very poor quality, not in accordance with the minimum international standards for clinical forensic assessment of victims and not acceptable as forensic evidence. Neither prison health-care staff nor the clinicians who act as court "experts" have specific training in assessing, interpreting and documenting torture and ill-treatment."⁵

Questions:

10. Are the authorities considering taking measures in order to ensure the access to a forensic doctor as soon as the individuals are under police custody?

11. What measures is the State party planning on taking in order to ensure the independence and proper training of forensic doctors in accordance with the international standards in particular the Istanbul Protocol?

6. Conclusion

The legislative changes introduced since 2011 and the ongoing ratification process of the Optional Protocol to the Convention against Torture in particular, foreseeing the establishment of a national inspection mechanism for places of detention, are encouraging signs of the strengthening of the rule of law in Morocco. Besides, the reform process of the judiciary system will constitute a significant and long-awaited step forward which should result in a real independence of the judiciary.

However, the weight of the past, in particular the post-Casablanca attacks' massive use of secret detention, torture and unfair trials, denounced by all local and international human rights organisations, constitutes an acute societal problem which must be acknowledged by the authorities.

It is only with a courageous decision-making process of releasing hundreds of detainees sentenced during unfair trials very often based on confessions extracted under torture that this issue will be effectively dealt with.

We hope that a constructive dialogue between the Committee and the Moroccan authorities will allow to combat torture as well as other related violations of fundamental rights.

⁵ See Report of the Special Rapporteur on Torture on his visit to Morocco, submitted to the 22nd session of the Human Rights Council (A/HRC/22/53/Add.2), 28 February 2013, para. 35.