



# **Morocco Faces New Challenges**

**Report submitted to the Committee against Torture as part of  
the fourth periodic review of Morocco.**

**14 October 2011**

# Table of Contents

---

<b>TABLE OF CONTENTS</b> .....	<b>2</b>
<b>1 INTRODUCTION</b> .....	<b>3</b>
<b>2 GENERAL CONTEXT</b> .....	<b>3</b>
2.1 THE 20 FEBRUARY MOVEMENT .....	5
2.2 THE INSTITUTIONAL “NEW DEAL” .....	5
<b>3 THE WEIGHT OF THE PAST</b> .....	<b>7</b>
3.1 AN EXPERIMENT IN TRANSITIONAL JUSTICE IN THE INTEREST OF POLITICAL CONTINUITY .....	7
3.2 A REVIEW OF THE TRANSITIONAL JUSTICE PROCESS.....	9
<b>4 IS REFORM OF THE JUDICIAL SYSTEM IMPOSSIBLE?.....</b>	<b>11</b>
4.1 REFORM OF THE JUSTICE SYSTEM DRAGS ON.....	11
4.2 A LEGAL FRAMEWORK WITH UNCERTAIN BOUNDARIES .....	12
4.3 UNFAIR TRIALS .....	14
<b>5 GAPS IN THE LEGAL FRAMEWORK ON TORTURE PREVENTION .....</b>	<b>15</b>
5.1 CRIMINALIZATION OF TORTURE: CONFORMITY OF MOROCCAN LAW WITH THE CONVENTION AGAINST TORTURE .....	15
5.2 STATUS OF CONFESSIONS DURING TRIALS .....	17
5.3 POLICE CUSTODY: A QUESTIONABLE LEGAL DEVICE .....	18
5.4 THE QUESTION OF IMPUNITY.....	18
<b>6 ARBITRARY AND SECRET DETENTION.....</b>	<b>19</b>
6.1 MASS ARBITRARY ARRESTS IN 2002-2003.....	19
6.2 TEMARA, MAIN SECRET DETENTION CENTRE.....	21
6.3 SECRET DETENTION REMAINS AN ISSUE .....	22
6.4 “EXTRAORDINARY RENDITIONS” .....	23
<b>7 TORTURE .....</b>	<b>25</b>
7.1 2002-2003: TORTURE USED TO COMBAT TERRORISM .....	25
7.2 TORTURE PERSISTS DESPITE AUTHORITIES’ COMMITMENTS.....	26
7.3 TORTURE IN PRISONS .....	28
<b>8 THE EXTERNALIZATION OF MIGRATION POLICY.....</b>	<b>30</b>
8.1 POLICY DEFINED BY EUROPE.....	30
8.2 ... APPLIED BY MOROCCO... ..	31
8.3 ... TO THE DETRIMENT OF THE RIGHTS OF REFUGEES AND MIGRANTS.....	32
<b>9 CONCLUSION .....</b>	<b>33</b>

## 1 Introduction

---

The Fourth Periodic Report of Morocco (CAT/C/MAR/4) was presented to the Committee against Torture in November 2009, three years late. The Committee will examine this report during its 47<sup>th</sup> session in November 2011. As part of this review process, Alkarama submits this alternative report in which it provides answers to specific questions addressed to the Moroccan authorities by the Committee.<sup>1</sup> We also voice our concerns and those of our partners in the field relating to the implementation of the rights contained in the Covenant.

This report is based on our work which essentially consists of documenting individual cases and bringing them to the attention of the United Nations Special Procedures. We work with local actors, the victims themselves, their families, their lawyers as well as with local organisations engaged in the protection of human rights, notably **Mountada (Forum) Alkarama** based in Casablanca.

In order to comprehensively address the situation of human rights in the country, it is imperative to provide a overview of the general situation in Morocco, particularly in light of recent developments in the form of political contestations and constitutional reform, which is discussed in the section on the **general context (2)**. It is also useful to measure how the **weight of the past (3)** still has an effect on the ability of authorities to improve the status of human rights today. A study of institutional and legal framework, particularly through the reform of the **justice system (4)** and a review of the **legal framework to combat the practice of torture (5)**, reveal the shortcomings and failures that undermine respect for basic human rights. In terms of the actual situation of human rights in Morocco, we focus on the most serious violations, including **arbitrary and/or secret detention (6)** and the **practice of torture (7)** that still occur in the country. Finally, we discuss the **management of migration flows (8)** by Morocco which remains an area of concern to this day.

## 2 General Context

---

Following the death of King Hassan II in July 1999, his son Mohammed VI succeeded him, expressing a desire to democratize political life and to undertake development programs to eradicate poverty and marginalization experienced by a large part of the population.<sup>2</sup> However, the hopes raised during the transitional period have been disappointed and many of the spectacular changes announced have proved insufficient to meet the political and social aspirations they raised. Moroccan society is highly mobilized on social issues and many associations work to combat the high cost of living, unemployment, poverty in the slums, and lack of access to public services by staging boycotts or protests.

In addition, cooperation with the United States on security issues, following the attacks of 11 September 2001, has led to degradation in the human rights situation and respect of public freedoms in the country. Militant Islamists, who until that time had been tolerated, were persecuted from 2002 as part of an unprecedented wave of repression which only grew stronger after the attacks on Casablanca on 16 May 2003. A number of arrests leading to secret detention and the systematic use of torture followed the Antiterrorism Law of 28 May 2003.<sup>3</sup> This law was adopted following the attacks that month, and led to the adoption of a policy of mass repression. The law completed the Criminal Code (CC) by imposing a broad definition of terrorism offenses (Article 218-1 of the PC) and providing an extension to the scope of power of the security services. It also completed certain provisions of the Code of Criminal Procedure, including articles regarding the modalities of police custody (*garde à vue*). To this day, many people continue to be arrested and prosecuted under this law: they are sentenced to heavy sentences in unfair trials and imprisoned in appalling conditions. King Mohammed VI, in an interview with Spanish magazine *El País* in 2005, recognized the abuses committed by the security services since the attacks but did not move to put an end to these violations.

Opposition political parties are restrained by a political system which places a number of limitations on their powers. This control extends over all institutions, and it took the recent upheavals in a number of other Arab countries for the calls for constitutional reform to finally be heard by the King. To diffuse a dynamic that was likely to lead to the role of the monarchy being questioned, he channelled his

---

<sup>1</sup> Committee against Torture, *List of issues to be considered during the examination of the fourth periodic report of Morocco*, 9 May-3 June 2011, (CAT/C/MAR/Q/4).

<sup>2</sup> In 2005 in particular, the National Initiative for Human Development made social issues its priority.

<sup>3</sup> Law No. 03-03 on the fight against terrorism enacted by *Dahir* No. 1-03-140 of 28 May 2003 and published in official bulletin No. 5114 on June 2003.

population's expectations by promising real change before the protest movements could gain momentum. As a consequence, a new Constitution was adopted by referendum on 1 July 2011. At present, it remains too early to say what its effects will be.

To this day, the Parliament continues to serve more as a place for making speeches and to record what is happening in the country, but no genuine debates or decision-making take place within its walls. This "subtle" stranglehold also grips the judicial branch and many Moroccans call for reforms in order to remove constraints imposed by the executive branch. The media also face significant restrictions and in recent years, many journalists have been prosecuted, and some, like Rachid Niny, have been sentenced to prison terms for their writings.

After the ascension of King Mohammed VI to the throne in 1999, the omnipotence of the Interior Ministry appeared to have been undermined by the dismissal of former Minister Driss Basri (who had ruled with an iron fist), the introduction of a new security policy and the redevelopment of the security services and their respective powers. However, practices largely considered to belong to the past resurfaced after September 11 and are perpetuated by a system steeped in a tradition of authoritarian control. In September 1999, General Hamidou Laânigri was named as the head of the General Direction of Territorial Surveillance (*Direction générale de la surveillance du territoire* - DST). Under his command two waves of arrests affecting thousands of presumed Islamists were orchestrated and carried out. In 2003, General Laânigri took control of the General Direction of National Security (*Direction générale de la sûreté nationale* – GDNS) for three years. He was described as follows: "His methods are highly contested and won him an entry on the blacklist of individuals who have violated human rights as established by the Moroccan Association for Human Rights (MAHR)".<sup>4</sup> Officers from both services have been responsible for serious human rights violations and have not been brought to justice.

One of the more sensitive subjects in Morocco concerns Western Sahara, considered by the Moroccan authorities to be the "Southern Provinces", where the Polisario Front - with the support of Algeria – claims independence. Morocco is politically and militarily implicated in this conflict that has lasted since 1975 during which many Sahrawis have been victims of repression that has increased since 2010. For example, on 8 November 2010, the Moroccan security forces carried out the forced evacuation of the Gdim Izik camp set up by the Saharans outside the town of Laayoune. The Sahrawi had lived there for several weeks in protest of their marginalization and difficulties in finding jobs and housing. Violent confrontations between government forces and the protesters in the camp caused deaths and injuries on both sides and a fierce repression was imposed on the area for several weeks. Almost 200 Sahrawis were arrested and suffered torture and other ill treatment. The protesters appeared in front of the military prosecutor in Rabat and many face very heavy penalties.

Since 1992, Morocco has responded to strong European pressure to stem Sub-Saharan immigration to the north. "Morocco [is] a key target for European anti-migration policies, and has been forced to adopt this logic of security, which it finally accepted, although not without negotiating for things in exchange."<sup>5</sup> After two years and rounds of negotiations, Law No. 02-03 on the entry and residence of foreigners was passed on 26 June 2003 and was applied from November 2004. It provides for the establishment of "waiting areas" and "retention centres." What resembled a veritable police campaign against migrants started in January 2005 and intensified in September of the same year, the same time as the repression by Moroccan and Spanish law enforcement officials resulted in deaths in Ceuta and Melilla. Migreurop investigated the tragedy<sup>6</sup> and demonstrated that these deaths were the "result of public policy, one that was begun by the European Union for years, and continued by Moroccan officials converted to the logic of repression which had been imposed by Europe."<sup>7</sup> Since then, the suppression remains constant, but has become more discrete and is not mediated.

---

<sup>4</sup> Pierre Vermeren, *Le Maroc de Mohamed VI* (Mohamed VI's Morocco), Editions La Découverte, 2009, p. 103.

<sup>5</sup> Jérôme Valluy, *Contribution à une sociologie politique du HCR : le cas des politiques européennes et du HCR au Maroc* (Contribution to a Political Sociology of the UNHCR: European and UNHCR policies in Morocco), TERRA-Editions, Collection "Etudes", May 2007, p. 6, <http://www.reseau-terra.eu/article571.html> (accessed 9 August 2011).

<sup>6</sup> MIGREUROP, *Guerre aux migrants – Le Livre Noir de Ceuta et Melilla* (War on Migrants – The Black Book of Ceuta and Melilla), Migreurop, Paris, September 2006, <http://www.migreurop.org/IMG/pdf/livre-noir-ceuta.pdf>.

<sup>7</sup> Jérôme Valluy, *Contribution à une sociologie politique du HCR : le cas des politiques européennes et du HCR au Maroc* (Contribution to a Political Sociology of the UNHCR: European and the UNHCR's policies in Morocco), op.cit., p. 16.

## 2.1 The 20 February Movement

In terms of more recent developments, Morocco has remained free of the uprisings that have shaken countries in the Maghreb and Mashreq since the end of 2010. The country's recent history is in fact marked by social struggles at either the local or sectoral levels that the Government has responded to with reforms that quieted the complaints but were effectively not enough to meet the demands of citizens<sup>8</sup>. What distinguishes the 20 February Movement (20FM – named for the date on which it prepared its first demonstration) from other movements is that it has managed to mobilize people throughout the country, despite social divisions. In addition, not only does it take a regional perspective by referring to the protests which have taken place throughout the Arab world, but it also places itself in an international context by calling for the respect of internationally-recognised rights.

From February of this year, activists from different backgrounds have regularly gathered in many cities under the banner of the 20 February Movement. They have demanded constitutional reforms, greater democratization of institutions, increased political participation, social justice, access to education, health and justice from the Government, rather than directly challenging the monarchy. While most of these gatherings were generally peaceful, from both protesters and security forces, some of the latter regrettably committed abuses during these demonstrations.

The protesters' demands included the enactment of a new Constitution, as well as the arrest and trial of officials suspected of crimes and "economic predation," investigations into the arbitrary arrests and summary trials of thousands of suspected terrorists and the release of innocent political prisoners, the abolition of the Anti-terrorism Act of 2003, the establishment of an interim government for the implementation of a number of social demands, and other demands in that vein.

The Moroccan authorities responded quickly, realizing the magnitude of the movement and trying to avoid the turbulence that has shaken Tunisia and Egypt which also began with demands for social and political justice. To diffuse the tensions, grants were awarded to those of lower socio-economic status; unemployed graduates were hired by the Government; and in a televised speech on 9 March 2011, King Mohammed VI announced that a "comprehensive constitutional reform" would take place. A draft constitution, submitted to a referendum on 1 July 2011, was approved by 97.58% of voters with a turnout of 73.46%, which is disputed by the 20FM and some political parties who believe the figures to be inflated and manipulated. Institutional reforms including the separation of powers, judicial independence, the creation of a Constitutional Court, the transfer of powers from the King to the Prime Minister (who becomes the head of government), extension of Parliament's powers, and the recognition of Tamazight as an official language are some of the concessions. Yet the hope of many protesters to achieve a constitutional monarchy has not been fulfilled.

The core membership of the 20 February Movement is not satisfied with the new Constitution, and does not consider the reforms it offers to be sufficient. It criticized the retention of certain powers in the hands of the King, especially the command of the army and appointment of judges. The youth of the Movement therefore continue to call for protests, particularly on the theme of corruption. In the weeks following the referendum, rallies were held, but were not able to mobilize as many people as for previous protests. It appears that the adoption of the Constitution has managed to diffuse a potential conflict that seemed to be gaining momentum. It remains to be seen if the announced reforms will be implemented, and if they will be sufficient to meet the needs of a people that is both economically and politically marginalized.

## 2.2 The Institutional "New Deal"

**Constitutional Reform** is part of the context of the "Arab Spring." Despite the fact that it was also part of a deeper movement in Morocco that dates back several years, it has now been made possible by the pressure exerted by the 20FM and all of the debates which 20FM generated throughout the country. The overall reform process, within which the recent developments took place, began well before the recent waves of protest, but had been blocked since the late 2000s. At this time, it is difficult to predict whether a new course will truly be taken towards a real improvement of safeguards in favour of human rights.

---

<sup>8</sup> Béatrice Hibou, *Le mouvement du 20 février, le makhzen et l'antipolitique. L'impense des réformes au Maroc* (The 20 February Movement, the Makhzen and Anti-Politics. What is needed for Reforms in Morocco), CERI, May 2011, p. 3, [www.ceri-sciencespo.com/archive/2011/mai/dossier/art\\_bh2.pdf](http://www.ceri-sciencespo.com/archive/2011/mai/dossier/art_bh2.pdf) (accessed on 12 August 2011).

Before the adoption of the Constitution of 1 July 2011, Morocco had been ruled by 5 succeeding constitutions. The Moroccan political system has always been characterized by the primacy of the executive, particularly through the control by the royal authorities of the institutional system, or more subtly through different versions of the Constitution. Article 19 of the Constitution of 1996 was the keystone of the Moroccan political system and recognized and reaffirmed the concept of "executive monarchy." It was this article, alongside article 23 which states that the King's person is sacred and inviolable, that generated the most discussion throughout the consultation period for the new draft Constitution. The Basic Law of 1 July 2011 revisited this article by seeking to "modernize" the concept of royal authority, but without upsetting the fundamental concept behind it. Paradoxically, royal authority is strengthened under the new Constitution.

On a strictly political level, the popular contestations crystallize around the issue of the powers of the King that, for the vast majority of the population, are exercised by and through the *Makhzen* and therefore appear to be unlimited. In the present context, no one doubts that the new provisions in the Constitution will not only diffuse the contestations, but also transfer popular opposition to the Government as the "constitutional depository of executive authority." It therefore must meet the expectations of "good governance" in the country and can no longer hide behind the lack of flexibility imposed by the royal cabinet. The King will, in turn, have to be satisfied with exercising his prerogatives as enumerated in the Constitution.

Adopted by referendum, the new Constitution requires the gradual adoption of a series of organic laws to give practical effect to the new proposed provisions, but at this time it is still difficult to know whether a true balance of powers will be achieved and if the main institutions will be effective.

The next step of this reform process is to renew the Parliament, of which several duties and operating principles have been revised. In addition, a new law on political parties is being prepared by the current Government to manage the transition following the early elections, scheduled for 25 November 2011. Whatever the developments in the upcoming weeks, the current process, driven by the aspiration of the people to democratize the system, clearly raises the question of relations between the various branches of government, that is to say, the executive and legislative. In terms of the justice system, it is more a question of its independence vis-à-vis the other two. Regarding the executive and legislative powers, while the new text seeks to strengthen the powers of the Prime Minister and Parliament, it continues to maintain the King at the centre of the political system which is still marked by the dominance of the executive. If there seems to be a reduction of the powers of the King, this is being marked by the reinforcement of the role of the Government.

**The separation of powers**, although addressed in past versions of the Constitution, has always been severely compromised by institutional obstacles. The new Constitutional architecture provides for a revised distribution of power as well as some clarification on the powers of various authorities, especially in terms of an increase of the powers of the Government and Parliament and a clear separation from those of the King's powers. But more generally, the fact that the executive branch maintains its primary role is an indication that the legislative branch will face strict limitations on its powers. Critics of the "executive monarchy" demand reforms that would have the King reign rather than govern, as part of a constitutional monarchy. Although article 1 of the new Constitution voluntarily avows that Morocco is a constitutional monarchy (among other adjectives) it reaffirms the dominance of the executive leads to concerns of a weakening of Parliamentary power.

The King retains a range of powers under the title of Commander of Believers and as the head of state, roles conferred upon him by article 42 of the Constitution<sup>9</sup>, and he can use these powers without ministerial countersignature in the form of *Dahirs*<sup>10</sup>. These powers consist principally of the possibility of nominating and removing the head of the Government via article 47 (paras. 1 and 6), the

---

<sup>9</sup> This concerns primarily the religious sphere as referred to by art. 41 of the Constitution and art. 44 para. 2; the appointment of the head of State as well as the decision to dismiss him of his functions as provided for in art. 47 al. 1 and 6; the dissolving of the two chambers provided by art. 51 under the conditions stated therein; the approval by *Dahir* of the magistrates nominated by the Supreme Council of the Judiciary as provided by art. 57; the declaration of the state of emergency as provided by art. 59; the appointment of 6 out of 12 members of the Constitutional council as provided by art. 130 al. 1; and finally the decision to revise the Constitution as provided by art. 174.

<sup>10</sup> A *Dahir* is an act by which the Sovereign renders his decisions compulsory. It can be of legislative or administrative nature and is therefore a decisive royal act. The establishment of the ministerial countersignature only dates back to the adoption of the Constitution of 1972. However, to date, this ministerial countersignature has not allowed for real control of royal acts by the government due to the imbalance of power between the King and prime minister.

dissolution of both chambers (Article 51), approval by *Dahir* of judges in the Supreme Council of the Judiciary (Article 57), the enactment of states of emergency (article 59) the appointment of six of the twelve members of the Constitutional Court (article 130, para. 1), and finally, decision-making powers relating to revisions of the Constitution.

The King also chairs the Council of Ministers, the Supreme Council of the Judiciary (*Conseil superieur du pouvoir judiciaire* - CSPJ) that replaced the former Higher Judicial Council (*Conseil superieur de la magistrature*) and the new Supreme Council for Security, a forum for dialogue on strategies for internal and external security of the country and the management of crisis situations. The Supreme Council for Security is also supposed to ensure the institutionalization of norms of "good security governance." This comes as the State is facing increasing scrutiny of its security policy, especially in the fight against terrorism.<sup>11</sup> That the preamble of the new Constitution puts safety before liberty raises questions about the place that authorities intend to give security in society and *a fortiori*, to the security policy of the Kingdom.

The King has also retained unlimited powers to grant pardons<sup>12</sup>, which can occur, under the law of 6 April 1953 (as amended by the law of 8 October 1977), at any stage of the judicial process and even before any criminal prosecution.

The head of the Government will now be appointed by the King from the party that wins the parliamentary elections and is approved by an absolute majority of the House of Representatives. The question that arises is whether the role of the head of the Government will also be increased with regards to the selection of members of the Government, because it is unclear to what extent, and even whether or not, the most important ministries will avoid being filled solely at the King's discretion.

The legislative branch continues to operate as a bicameral system, but only the House of Representatives is elected by universal suffrage and may bring into play the responsibility of the Government<sup>13</sup>. This means that in terms of control, the new constitutional text has rendered the mechanisms, particularly the quora required for action to be taken, including for motions of censure, commissions of inquiry, referral to the Constitutional Court, and convening of special sessions, more flexible. Article 71 of the new Constitution has considerably expanded parliamentary competencies, which would grow from the nine currently to more than thirty, notably in matters relating to the safeguards of rights and freedoms, amnesties, redistricting, and some aspects of civil, economic, and social life. All of these areas were previously under the control of the executive branch. However, it is the future Constitutional Court that will control the distribution of areas of competencies. Finally, the control exercised by the Lower House is symbolized in its ability to issue motions of censure against the Government. This power was already included in the 1996 Constitution without ever having been implemented. Article 105 of the new Constitution reaffirms the ability of the House of Representatives to challenge the Government's authority through voting for a motion of censorship.<sup>14</sup>

### **3 The Weight of the Past**

---

#### **3.1 An Experiment in Transitional Justice in the Interest of Political Continuity**

Morocco claims to be the only Arab country to have established a transitional justice system with the introduction by the King on 12 April 2004 of the Equity and Reconciliation Commission (ERC) whose mission was to investigate the serious violations committed by agents of the State between 1956 (Moroccan independence) and 1999 (ascension of Mohammed VI). This commission extends the

---

<sup>11</sup> According to article 54, the King is to chair the Council and can delegate the presidency to the head of State. The Council is further composed of the presidents of the two parliamentary chambers, the vice-president of the Supreme Council of the Judiciary and the ministers of interior, foreign affairs, justice and defence as well as the people in charge of administrative divisions related to security matters, senior officials of the Royal guard and all other individuals whose presence is of use to the Council. Internal regulation lays out the details of the Council's organisation and functioning.

<sup>12</sup> Article 48 of the new Constitution.

<sup>13</sup> Alongside the House of Representatives, the second chamber represents the regions of Morocco. It is composed of a smaller membership, elected indirectly.

<sup>14</sup> Motions for censorship can only be received if signed by at least a fifth of the members of the House. The House of Representatives can only approve a motion for censorship if it is voted on by an absolute majority. The vote can only be held three working days after the motion is brought forward. If accepted, the motion leads to the collective resignation of the government. If the House of Representatives approved a motion for censorship, it may not receive another motion until a year has passed.

political reforms initiated by King Hassan II in the early 1990s (creation of the Human Rights Advisory Council in 1990, ratification of the Convention against Torture in 1993, amnesties of political opponents, etc.).

In order to accelerate the new reforms the King undertook a number of measures before finally creating the ERC (including legislative elections in 2002 leading to the "nonrenewal" of the left-wing Government, the reform of the Criminal Code in 2003, the return of exiled opponents, etc.). For the King it is also a way to close the painful chapter of past crimes in order to improve relations between the monarchy and civil society, and to disarm an opposition which was considered as being too contentious domestically, all the while improving its image abroad.

This goal was not necessarily shared by all the members of the ERC, which contains some fierce opponents to the regime of Hassan II, who had spent a number of years in prison, or had been forced into exile. Some therefore regrouped as the Moroccan Forum for Truth and Justice, created in 1999 and headed by Driss Benzekri, who was also head of the ERC. The stated purpose of the Forum was to ensure that a process of democratic reform was implemented once the ERC had completed its work. Consequently, a tacit agreement was made between the monarchy and members of the ERC; a move away from prosecution in exchange for democratization and the introduction of international human rights standards. Sadah El Oquadie, former political prisoner and a founder of the Forum for Truth and Justice said: "The historic deal that we propose is that the State recognizes its wrongdoing, initiates a profound reform process endowed with guarantees in the Constitution to avoid a repetition of past violations, and promotes a true culture of human rights in a democracy worthy of the name. In return, we will abandon efforts to prosecute violators. This is a strategic pardon that we are making."<sup>15</sup>

The King appointed the Human Rights Advisory Council to set up the ERC and assigned it three missions: that it clarify all cases of enforced disappearances and arbitrary detention; that it compensate victims; and that it propose initiatives in order to preserve the memory of past events and reinforce confidence in the rule of law and respect for human rights. However, the powers of the ERC were very limited, and it can only hope for the cooperation of State officials, as it had no way of forcing them to work with it, which would prove to be a serious obstacle to the establishment of the truth.

The human rights movement, which has been active for many years, was not adverse to the establishment of transitional justice mechanisms to shine light on past violations. However, with the exception of certain emblematic opposition figures, the movement and its members was not associated with the work of the ERC, nor has it expressed any willingness to cooperate with it and stubbornly maintains, at best, some formal contact. It should also be noted that these figures were all from the radical left and not from Islamist factions, despite the fact that the Islamist opposition was the most significant opposition movement at the time of the ERC's action.

Some NGOs and human rights defenders have criticized the official mission of the ERC since its formal establishment in April 2004. The main criticism relate to the agreement reached not to undertake legal action against past violators. But the guarantee of impunity went even further, as the names of those responsible for violations could not even be made public during public hearings. In addition, the ERC did not recommend that those responsible for torture and those giving them orders still in their posts be revoked. Even if the institutions involved in the repression were vaguely mentioned and held to account, four painful decades of political battles will not be analyzed or placed in their true historical context, the chains of command and the institutional responsibilities will not be established, in a clear effort to avoid any implication of the monarchy. This is an amputated version of history, which does not coincide with the reality of the repression.

The ERC was established at the same time as repression of activists and Islamist sympathizers was taking place in the name of combating terrorism. Just as the idea of transitional justice made it appear as though the State was issuing a *mea culpa* and guaranteeing the respect of international law, an anti-terrorism law that violated the basic principles of human rights was being passed. Thousands of Islamists were arrested after the Casablanca bombings of May 2003, held in secret detention, systematically tortured, and then sentenced to long prison sentences based on confessions extracted under torture. This particular concern was not taken up in the work and final report of the ERC, which

---

<sup>15</sup> Pierre Hazan, *Juger la guerre, juger l'histoire* (Judging War, Judging History), PUF, 2007, p. 146.



projects an image of reconciliation and modernization while ignoring the abuses caused by the new wave of repression. Regardless, senior officials of the Ministry of Interior promoted the action of the truth commission: "The ERC is a weapon in the fight against terrorism. We are conducting a war on two fronts. On one side is the hard war to dismantle the cells, and the other, the soft war, which is to bring people onto our side. The ERC is part of this soft war"<sup>16</sup>.

It should also be noted that the Sahrawis have been virtually excluded from the work of the ERC, revealing the complexities of an already delicate situation. The struggle for independence in Western Sahara since 1975 is a taboo subject in Morocco today and is totally denied and repressed. The Sahrawi community itself was conflicted on the subject of the ERC, with one part viewing it as a vehicle to educate Moroccan society about their situation, and the other refusing to acknowledge this "institutional excuse" commissioned by the King that would not make a difference to their own situation. Nearly a quarter of submissions to the ERC came from this region but in the end it was impossible to conduct a public hearing because of the Sahrawi opposition to attending this "spectacle" while perpetrators of abuses continue to operate every day with impunity.

### 3.2 A Review of the Transitional Justice Process

The ERC has certainly done a lot of work during its 23 months of existence and has brought to light countless crimes committed by state organs. Its strongest moments were the public hearings of victims. However, of the twenty public hearings scheduled, only seven were broadcast by public television, during off-peak hours. The floor was given only to victims without the interference of the commissioners. Beyond the therapeutic merits of these hearings for those victims who testified and those who experienced similar tragedies, their contribution to establishing historical fact is minimal. The Moroccan Association for Human Rights (*Association marocaine des droits de l'homme* – AMDH) criticized the nature of these hearings and organized a parallel hearing that allowed victims to testify to violations committed after 1999 and to name those responsible.

It is undeniable that the primary mission of the ERC was to identify victims and families in order to compensate them, to close this painful chapter of Moroccan history. The Moroccan authorities acknowledge in their periodic reports that the work of the ERC "constituted an extension of the work started by the Independent Arbitration Committee, set up to compensate victims of disappearances and abductions from 1956 to 1999. The said committee adopted a special approach to contacting victims and claimants, listened to their cases, determined the fate of others and awarded generous compensation to them or to their next of kin."<sup>17</sup>

Regarding the fight against impunity, the authorities' desire, shared by the ERC, seemed to be to draw a line through the past and to look to the future by undertaking legislative initiatives. With this in mind, Law No. 43-04 criminalizing torture was enacted, legislation criminalizing enforced disappearances was announced<sup>18</sup> (but has still not been made public), and measures were taken to abolish the death penalty (although death penalties continue to be handed down). But – as we have mentioned – prosecution for crimes committed during the period in question were not envisaged despite the deterrent effect of such measures would surely have had.

According to some observers: "the investigations of the ERC ... were very modest: it received 22 000 files before the deadline. According to one of its sources, 30 000 were received after the closing date; of all of these cases, approximately 17 000 were treated."<sup>19</sup> The ERC's requests for information from the public services were only made on behalf of families and victims who had made such requests.

---

<sup>16</sup> "A high-level official who asked to remain anonymous during an interview with Pierre Hazan", 3 December 2005, in Pierre Hazan, op. cit., p. 175.

<sup>17</sup> *Fourth periodic report presented by Morocco to the Committee against Torture, Consideration of reports submitted by State parties under article 19 of the Convention*, November 2009, CAT/C/MAR/4, para. 7.

<sup>18</sup> The national report mentions the adoption of a 'draft law on crimes relating to forced disappearances', but the text has not been published. See *Fourth periodic report presented by Morocco to the Committee against Torture, Consideration of reports submitted by State parties under article 19 of the Convention*, November 2009, CAT/C/MAR/4.

<sup>19</sup> Amine Adelhamid, *Le sombre bilan de l'Instance Équité et Réconciliation* (The gloomy results of the Equity and Reconciliation Commission), CETRI, 18 March 2009, <http://www.cetri.be/spip.php?article1113&lang=fr> (accessed 12 August 2011). The Moroccan authorities state in their periodic report that the Equity and Reconciliation Commission has succeeded in resolving close to 17'000 cases and has given compensation to 10'000 persons (see para. 138).

The ERC states having received approximately 800 cases of enforced disappearances including 66 cases that are still pending, while 742 have been clarified<sup>20</sup>. However, it has not released the names of the disappeared. This is despite the fact that during the four decades in question, thousands of people were disappeared following their arrest or abducted. It says in its final report that it was confronted with many obstacles: "that said, many difficulties have hampered the search for truth. These include the fragility of oral testimony that the Commission addressed by referring to written sources; the deplorable state of the national archives when they even exist; the uneven cooperation of the security services; the vagueness of some of the testimonies provided by former officials; and the refusals of others to contribute to the effort to establish the truth."<sup>21</sup>

Other major issues were not addressed, including the various campaigns of repression in the 1970s and 1980s, certain executions, and the secret detention centre PF3 where many of the disappeared are buried.<sup>22</sup>

The Monitoring Committee of the Human Rights Advisory Council (HRAC) is responsible for shedding light on the cases that the ERC could not solve during its tenure but nothing has been set up to handle the applications which were not selected for treatment by the ERC. The 66 unsolved cases of disappearances handled by the ERC were processed by the CCHR, which concluded that 47 died "for political reasons," nine cases were not related to political events, two should still be alive while the rest have not yet been clarified.<sup>23</sup>

The HRAC also indicated that regarding compensation, 11 706 cases in total between the ERC (8071) and independent arbitration (3635) have been treated since 1999. "In total there are 9481 cases of compensation given to victims themselves, and 2215 cases of compensation for the next of kin of deceased victims. The amount of compensation totals 1567 million dirhams (about 140 million Euros), of which 608 were paid by the ERC and 959 by the arbitration body."<sup>24</sup> It is certain that thousands of victims and their families were not compensated because of their failure to file a case or comply with the deadline.

According to some parts of the Moroccan media, as of 2008, the issue of compensation has been finished and the HRAC has sought to focus on other tasks. "Ahmed Herzenni, Chairman of the Human Rights Advisory Council told us that the institution should move towards the defence of social, economic, and cultural rights: 'The work of these initial years is done. To date, we have acted mainly to deal with the issue of the memories of abuse. We can now return to the fundamentals: right to health, school, work and housing.' This way is as good as any to close the issue of compensation and at the same time, draw a line through the past."<sup>25</sup>

Ultimately, the experience of transitional justice in Morocco has been disappointing for many players and observers, particularly due to the inadequate mandate of the ERC, limited to identifying the role of the State in two types of violations – enforced disappearances and arbitrary detention – while not clarifying its role in other crimes. The same applies to compensation, which was only provided to the victims of these two types of violations. On the subject of compensation, "Abdelkarim Manouzi (brother of the well-known case of Houcine Manouzi, who was disappeared), President of the Medical Association for the Rehabilitation of Victims of Torture (*Association médicale pour la réhabilitation des victimes de la torture* - MARVT) said the following: 'There are those who dispute the amount of their compensation and those for whom the ERC declined jurisdiction, giving vague reasons as to why this was the case. Others have simply not been informed that they must make a claim, especially as they

---

<sup>20</sup> Equity and Reconciliation Commission, *Rapport final, Volume 2 : Vérité et responsabilité des violations* (Final Report, Volume 2: Truth and Responsibility of the Violations), December 2009, p. 90-91, <http://www.ccdh.org.ma/spip.php?article2851> (accessed 15 August 2011).

<sup>21</sup> Equity and Reconciliation Commission, National Commission for Truth, Equity and Reconciliation, *Synthèse du rapport final (Synthesis of the Final Report)*, 2006, p. 12, [http://www.ccdh.org.ma/IMG/pdf/rapport\\_final\\_mar\\_fr\\_.pdf](http://www.ccdh.org.ma/IMG/pdf/rapport_final_mar_fr_.pdf) (accessed 15 August 2011).

<sup>22</sup> Amine Abdelhamid, op cit.

<sup>23</sup> Human Rights Advisory Council, *Rapport sur le suivi de la mise en œuvre des recommandations de l'instance Équité et Réconciliation* (Report on the follow up of the implementation of the recommendations issued by the Equity and Reconciliation Authority), December 2009, p. 52, [http://www.ccdh.org.ma/IMG/pdf/rapport\\_mise\\_en\\_oeuvre\\_recom\\_IER\\_en\\_Frc.pdf](http://www.ccdh.org.ma/IMG/pdf/rapport_mise_en_oeuvre_recom_IER_en_Frc.pdf) (accessed 15 August 2011).

<sup>24</sup> Amine Abdelhamid, op.cit.

<sup>25</sup> Souleïman Bencheikh, "Années de plomb. Les oubliés de l'IER (Years of Lead. Those Forgotten By the Equity and Reconciliation Commission)", *Tel Quel* of 24 to 30 May 2008, [http://www.telquel-online.com/325/maroc2\\_325.shtml](http://www.telquel-online.com/325/maroc2_325.shtml) (accessed 15 August 2011).

only had one month to do so' Mohammed Nadrani, national Member of the Board of the Moroccan Forum for Truth and Justice (*Forum Marocain pour la Vérité et Justice - FMVJ*), drives the point home: 'It is not for the victim to begin the process of compensation. This is the kind of administrative obstacle that discredits the work of the ERC.'<sup>26</sup> Another problem is that social rehabilitation and health coverage must also be supported by the State. It seems that many former offenders could benefit from a reintegration program and many patients are not provided sufficient support to manage the effects of their incarceration: "An estimated 50 000 direct victims of abuses suffer severe physical and psychological effects. For most of the 12 000 people who received 'compensation,' the compensation does not even begin to pay off their debts."<sup>27</sup>

For the hundreds of victims who did accepted compensation, moving on is not possible because those responsible for violations have not been prosecuted and the State has never apologized for the crimes it committed. For the former President of the HRAC, Ahmed Herzenni, this is inconceivable because: "Those who agreed to be compensated are, in fact, endorsing the approach of the Commission," he argues. "You cannot challenge a process from which you yourself have benefited."<sup>28</sup>

## **4 Is Reform of the Judicial System Impossible?**

---

### **4.1 Reform of the Justice System Drags On**

Moroccan civil society is unanimous about the absolute necessity and urgency of reforming the justice system and regularly calls for the establishment of a credible, independent, accessible and competent judicial branch, as the ills that affect its operation are numerous.<sup>29</sup> Victims of human rights violations, their families, NGOs, and ordinary litigants do not consider the justice system to be independent, and consider it to be plagued by corruption, and exploited. In fact, one of the outstanding recommendations of the ERC issued in 2005 refers specifically to the reform of the justice system that actively supported repression during Morocco's dark years (*'années de plomb'*). It is undeniable that the lack of judicial independence has serious consequences for human rights.

A World Bank report in 1995 pointed to the dysfunction of the justice system and especially its lack of credibility<sup>30</sup>, already stressing the necessity of reform. Upon his accession to the throne in 1999, Mohammed VI addressed the issue in a speech on 15 December 1999 during a speech, as Chairperson, at the opening of the High Judicial Council, calling for the rehabilitation of justice. It was only ten years later, on 20 August 2009, that the King actually provided instruction to the Government to develop an integrated and strategic plan for reform.<sup>31</sup>

A hundred-page "Memorandum for the Reform of the Justice System" was prepared and jointly signed in Rabat on 7 April 2009 by dozens of human rights associations.<sup>32</sup> They gathered to present a formal request to the Government to be consulted as part of the "next" reform of the judiciary that had been announced a few days earlier by Prime Minister Abbas El Fassi as the "priority of the governmental

---

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> The European Union has also expressed reservations about its close relationship with Morocco: "Judicial reform, which King Mohammed VI has stated is a priority, is an essential challenge that must be met in order to ensure sustainable rule of law, effective protection of citizens and an improvement in the business climate. These are key conditions for a genuine rapprochement with the EU" stated a press release issued by the European Commission on 3 April 2008.

<sup>30</sup> That same year, King Hassan II called for an upgrade of the justice system by emphasising training and the material conditions of judges. This amounted to an implicit recognition of the fact that lack of confidence in the system was, already at this period, mostly due to lack of qualified judges. However, the most serious shortcomings, and particularly the issue of a moral-based exercise of justice and the fight against corruption, were not explicitly mentioned. It was only in 1998 with the advent of a new government under a system based on alternation of power that a critical view of the system, and the necessity of a global reform of the justice system developed. Even if the concept of reform is obviously part of a process which began straight after the reconstruction of State sovereignty as described above, this process remained marked by the effects of its simple announcement.

<sup>31</sup> Instructions on the matter focus on six steps: first a consolidation of the guarantees of the independence of the justice system; secondly, the modernisation of its normative framework, an upgrade of its structures and human resources; thirdly, an improvement in the efficiency of the legal system; the establishment of rules to manage the moralisation of the justice system; and finally the implementation of reforms as mentioned above.

<sup>32</sup> The organisations which were part of this project are : the Moroccan Bar Association, the *Ligue marocaine de défense des droits de l'Homme*, the *Association marocaine des droits humains*, the *Organisation marocaine des droits de l'Homme*, the *Association marocaine de lutte contre la corruption*, the *Forum marocain pour la vérité et la justice*, *l'Association Adala*, *l'Association marocaine pour la défense de l'indépendance de la justice*, the Moroccan branch of Amnesty International and the *Observatoire marocain des prisons*.

program.”<sup>33</sup> This draft memorandum aimed to provide a diagnosis of the situation of the justice system and the main problems it faces.<sup>34</sup>

The real debate on the nature and extent of reform remains open, and the fear now is that the King has merely prescribed superficial remedies such as changing judicial districts and increasing the number of courts, judges and court officers. This falls short of civil society’s calls for structural reform of the entire judiciary to incorporate international standards for the protection of human rights through the administration of justice.<sup>35</sup> The King, in his speech on 9 March 2011, reiterated the need to continue this reform process as part of the overall reform of the system. This speech was given because of the pressure of popular demands, but was also to avoid reaching a point of no return that would discredit the entire process.<sup>36</sup>

## 4.2 A legal framework with uncertain boundaries

It is clear that the texts governing the justice system impede its independence and contributes to its structural bottlenecks. The guarantees of the Constitution of 13 September 1996 on the justice system in general and on the judiciary in particular are surprisingly brief and maintains the tradition of subjugation of the justice system to the King, in whose name it is handed down.<sup>37</sup>

The Moroccan justice system is marked by the passage of a unifying law enacted on 26 January 1965<sup>38</sup>, which aimed to simplify the operation of the courts and procedures inherited from the colonial period. However this law did not solve the issue of the “two-tiered”<sup>39</sup> nature of the system which, given the particularly tense situation, gradually became completely subjugated to those in power.<sup>40</sup>

Several major texts were adopted in 1974 which continue to govern the Moroccan justice system to this day: the Law of 15 July 1974 on the legal system and especially the Law of 11 November 1974 concerning the status of the judiciary.<sup>41</sup> Despite strong resistance from civil society, such texts reinforced the subordination of the justice system to King Hassan II.

---

<sup>33</sup> AFP, *Maroc: mémorandum de 10 ONG pour contribuer à une réforme la justice* (Morocco: Memorandum by 10 NGOs to Contribute to Judicial Reform) 7 April 2009, <http://www.journaux.ma/maroc/actualite-internationale/maroc-memorandum-de-10-ong-pour-contribuer-une-reforme-la-justice>, (accessed 12 August 2011)

<sup>34</sup> The project also included recommendations relating to the functioning of courts, the efficiency of the justice system, its transparency, and access to information by the public, anti-corruption measures, the reinforcement of guarantees and the right to defence. It also contained suggestions regarding prisons.

<sup>35</sup> This vision of the reform process is shared by those who agree about the urgent need for reforms, or at the very least, who seek harmonisation of the normative framework (constitution, criminal code and even the code of criminal procedure, which had already been the subject of insufficient reforms in 2003).

<sup>36</sup> Strangely enough, on 24 August 2011, the Minister of Justice sought to give a first appraisal of how reforms were going for the period 2009-2011 as based on the royal instructions of 2009, during a press conference. He thought it necessary to specify that certain elements of the reform process had required measures such as the modernisation of the information technology systems, before announcing that other elements of the reform process would take more time as they required the drafting of laws and regulations before being submitted to parliament for adoption. This is particularly relevant to the revision of the criminal code and the status of judges. In this regard, while the adoption of an organic law on the status of judges could be adopted relatively quickly during the next parliamentary term, there are numerous concerns about the reform of the Criminal Code which is eagerly awaited.

<sup>37</sup> Euro-Mediterranean Human Rights Network (EMHRN), *Justice in the South and East of the Mediterranean Region*, EMHRN Publications, October 2004, <http://www.euromedrights.org/en/publications-en/emhrn-publications/emhrn-publications-2004/3609.html>, p.51 (accessed 29 August 2011).

<sup>38</sup> Law of 26 January 1965, the so-called “Law of Unification, Moroccanisation and Arabisation of the Justice System”, official bulletin of 3 February 1965, p. 103.

<sup>39</sup> Once this news system established, its flaw were quickly visible, namely structural problems. This was particularly true of the competencies of legal professionals which, with the establishment of communal courts, were downgraded. These communal courts are simply a reflection of the two-tiered nature of the justice system, courts operating under the cover of community justice, but simply avatars of the former Makhzéiens, or (pre-colonial) customary. They are of an expedient nature and therefore lack clear guarantees for litigants, such as being able to appeal decisions issued by these courts.

<sup>40</sup> Hassan II declared a state of emergency on 7 June 1965 in the wake of riots in Casablanca on 23 May 1965 during which several dozen people died. This led to the suspension of parliament but also more generally to the suspension of the constitution. All powers gradually concentrated in the hands of the King who resorted to a brutal repression of the opposition – the beginning of a series of political actions against opposition from the left.

<sup>41</sup> More specifically, it is *Dahir* of 11 November 1974 regarding Law 1-74-467 of 11 November 1974, which establishes the status of the judiciary (published in the official bulletin of 13 November 1974); the text has been modified several times, namely by Law No. 15.79 (promulgated on 8 November 1979 and completed by Law No. 43.90 promulgated on 10 September 1993), and later Laws No. 5-98, No. 35-01 and No. 17-06.

The Law of 11 November 1974 concerning the status of judges<sup>42</sup> governs the career of judges by asking for "guarantees" from the judicial office, and establishes the Higher Judicial Council (HJC)<sup>43</sup>, the constitutional body that governs the working conditions of judges. Many analysts and law practitioners consider that the law literally subjugates judges to the executive branch as represented by the Department of Justice.

The theoretical independence of judges from the executive branch is guaranteed by their tenure<sup>44</sup> and their right to advancement in accordance with article 23 of the Law on the Judiciary. However, no judge can be promoted to a higher rank if he is not on a reserve list drawn up and adopted annually by the Minister of Justice under the advice of the HJC. Although section 22 of the Rules of Procedure of the HJC (established by the Ministry of Justice in 2000) sets forth objective criteria for promotion (such as age, skill, and behaviour), the application of these criteria depends on Presidents of courts and the Minister of Justice<sup>45</sup>. According to Mr Abdellatif Hatimi, a lawyer in Casablanca and President of the Moroccan Association for the Independence of the Judiciary, says that Moroccan judges fear the president or even prosecutor of the court to which they are assigned, and their actions are accorded a grade that the President of the Court sends annually to the Minister of Justice.<sup>46</sup> According to Article 55 of the Statute, judges may receive a new assignment in their specialization either by request, as a result of a promotion, or upon the deletion or creation of jurisdiction. Since 1977, following a legislative amendment, judges may also receive a new assignment to "remedy a shortage of staff which seriously affects the functioning of a court." Assignments are made by *Dahir* on the advice of the Higher Judicial Council. It therefore appears that the Minister of Justice in fact has wide power to reassign a judge on the grounds of filling a gap elsewhere, and even if it is done with the consent of the judge in question, such requests are difficult for them to refuse.

The material and statutory fragility of judges and clerks has continued to worsen with time and seriously compromises their independence, encouraging their exploitation, as well as cronyism, and corruption. So while the justice system is ever more solicited and courts grow increasingly congested, all the malfunctions that affect the judiciary result in the deterioration of the guarantees of justice.

The ERC noted in its final report in 2005 the need for: "strengthening the separation of powers and the constitutional prohibition of any interference by the executive in the functioning of the judiciary"<sup>47</sup>. This presupposed a change in the Constitution that finally did materialize, but the ERC had also proposed "the revision, by an organic law, of the Statute of the HJC", and suggested in particular that "the presidency of the HJC be given to the First President of the Supreme Court [and] the extension of its composition to sectors other than the magistrate..." In comparison with the silence or ambiguity of past Constitutions, the adoption of the new Constitution seems to indicate there will be an evolution in this direction since it finally provides a number of fundamental guarantees for the independence of judges – including the prohibition of interference in the activities of judges<sup>48</sup>. The question now is whether the judiciary can actually be turned into a guarantor of individual rights through the operation of the institutional system as a whole. No one knows how this crucial step can be taken, and

---

<sup>42</sup> The Moroccan judiciary is composed of a single body which includes judges and prosecutors. They are assisted by auxiliaries who support the work of the justice system. Court officers are divided into those employees who are directly administered by the Minister of Justice (clerks); public officers holding an office (notaries, *adouls*, bailiffs, interpreters, and experts); and lawyers, members of a liberal profession organized by order. Normal recruitment of judges happens through two methods: either by the appointment by the state of professional judges, or by the election of communal judges and judges of municipal districts.

<sup>43</sup> The HJC will soon be replaced by the Supreme Council of the Judiciary (SJC) following the adoption of the Constitution of 2011 and for which an organic law should be adopted during the following parliamentary term.

<sup>44</sup> Security of tenure is the legal situation of those who, invested with a public service, can not be revoked, suspended, transferred or retired prematurely. This is a fundamental principle enshrined in Article 85 of the Moroccan Constitution of 1996. It stipulates that "judges are appointed for life." However, public prosecutors do not enjoy security of tenure are dependent on the executive branch and are subject to a hierarchy, in comparison to judges.

<sup>45</sup> Law of 15 July 1974 on the organisation of the judiciary attributed this power to grade judges to the Presidents of courts. Public prosecutors are graded by their superiors.

<sup>46</sup> Abdellatif Hatimi, *Report on the Reality of the Judiciary and the Horizons of his Reform*, not published (only available in Arabic), December 2004, p.15.

<sup>47</sup> Equity and Reconciliation Commission, *Rapport final, Les Recommandations* (Final Report, Recommendations), November 2005, [http://www.ier.ma/article.php3?id\\_article=1433](http://www.ier.ma/article.php3?id_article=1433) (accessed 9 August 2011).

<sup>48</sup> Article 109 of the new Constitution "prohibits any intervention in cases that are brought to court. While serving his judicial function, a judge cannot receive orders or instructions or be subjected to any pressure. Whenever he considers his independence threatened, the judge must seize the Supreme Council of the Judiciary."

particularly whether the Law of 11 November 1974, defining the status of judges, will be repealed or simply amended.

The new Constitution states that the King is the "guarantor of the independence of the judiciary"<sup>49</sup> and continues to chair the Supreme Council of the Judiciary (SCJ) that replaced the Higher Judicial Council (HJC). Judgments are always handed down on behalf of the King and he appoints the judges. In the new Constitution, the composition of the judiciary is laid down in article 115 and is increased to 20 members, half of which are now elected by magistrates. The Council, as with its predecessor, is supposed to enforce the guarantees given to judges. In the new Constitution, the vice-presidency of the SCJ is given to the President of the Supreme Court and not the Minister of Justice. The King will still advise and endorse the appointment of judges upon the proposal by the SCJ, but *a priori* without being able to vote on their removal or reassignment. In addition, in situations of a conflict with a decision by the SCJ regarding a judge, this decision can be subjected to an appeal for *ultra vires*. As for prosecutors, they will only be able to receive instructions from their superiors, in writing and in conformity with the law. There are indications that an organic law will be adopted in the next parliamentary term. The independence of the justice system will only work if there is a clear definition of the rules relating to the election, organisation, and functioning of the SCJ and a complete reform of the status of the judiciary.

### 4.3 Unfair Trials

The lack of independence of the judiciary carries grave consequences for the rights of individuals, particularly those charged with undermining the security of the State, suspected of terrorist offenses, or prosecuted for "press crimes."

In **terrorism** cases, particularly those within the context of the Casablanca bombings, the investigating judges and trial courts have clearly failed to meet their obligation to strictly and impartially enforce the law.<sup>50</sup> While the excesses of the fight against terrorism initially manifested itself in terms of large-scale abductions, secret detentions, torture, and certainly some deaths in custody, its most common trait was the substantial numbers of unfair trials which took place. These trials violated the most basic rights of defense. Summary trials multiplied, and even if the rate appears to have slowed today, the authorities regularly announce the dismantling of "terrorist cells," giving rise to new rounds of unfair trials.

The many cases brought to the attention of Alkarama, and particularly those referred to below, have brought to light the major irregularities of the system. Nearly systematically, investigations were carried out summarily, and exclusively on the basis of accusations; witnesses were absent during hearings; there was a lack of confrontation that could exonerate defendants; and the authorities relied exclusively on statements obtained under torture during police custody.

Almost all lawyers' requests for a mistrial due to violation of defendants' rights are rejected. In many trials, judges, during expedited hearings, simply seek to "confirm" confessions obtained by police. Judges systematically refuse requests for expert opinions in view of torture allegations, but nonetheless pronounce heavy penalties – including death sentences – against complainants.

The rights of defense are deeply affected by this, and lawyers continue to point out many other obstacles such as the grouping of unrelated cases, the refusal to acknowledge periods of custody longer than permitted by law, the failure to notify family members of an arrest, violations of the terms of search warrants, the refusal to call witnesses, etc. All of these rights are guaranteed by the Code of Criminal Procedure, yet are ignored by many judges.

Trials that target journalists in Morocco reflect the chronic underlying tensions between the authorities and the press. The use of the courts to repress media is also evident. Since the early 2000s, the Moroccan press has evolved significantly in terms of liberalization.<sup>51</sup> However, too many lawsuits

---

<sup>49</sup> Article 107 of the new constitution.

<sup>50</sup> The Anti-Terrorism Law of 28 May 2003 established a special court, the Criminal Chamber of the Court of Appeal in Rabat, which is responsible for terrorism cases. It should be stressed that before this law came into force, several cases were tried by ordinary courts just after the events of 16 May 2003. The judges responsible for these cases were unable to resist the "security temptation."

<sup>51</sup> In addition to the traditional, or partisan, press, a new independent press has emerged, including such newspapers as *Te/Quel*, *Assahifa*, *Al Ayyam*, and *Al Massae*.

continue to be filed against journalists or publications that are subjected to seizures and bans<sup>52</sup> by the Ministry of the Interior, or are forced into bankruptcy because of heavy financial penalties. Trials against the press have turned into legal battles in which procedural irregularities are never identified by the judges.

The recent case of the journalist **Rachid Niny** was particularly revealing of the legal irregularities in the system. As editor-in-chief of one of the largest Arabic Moroccan dailies *Al Massae*, he was called to the headquarters of the Brigade of the National Judicial Police in Casablanca on 28 April 2011 and taken into custody. Charged with "harming corporations and public figures" he was sentenced on 9 June to one year of imprisonment by a trial court in Casablanca. He had just published a series of columns in which he challenged fraudulent procurement by high-level public officials; the impartiality of the justice system; unfair trials of Islamic activists following the Casablanca bombings; serious human rights violations, and excessive counter-terrorism measures.

Human rights activists and NGOs have unanimously denounced the pressure and prosecution that Mr Niny has suffered because of his professional activities and the use of his right to freedom of expression. The prison sentence handed down on 9 June had no other purpose than to muzzle journalists who are critical of the authorities or denounce corruption and serious abuses committed by certain political figures and the judiciary.

This case has strongly mobilized public opinion and civil society continues to point out that the adoption of the new Press Code is still pending and that it is unacceptable that journalists are sentenced to prison terms for their writings.

## **5 Gaps in the Legal Framework on Torture Prevention**

---

### **5.1 Criminalization of Torture: conformity of Moroccan law with the Convention against Torture**

The Committee has recommended on several occasions that the State party establish a domestic law which includes a definition of torture consistent with that of article 1 of the Convention.<sup>53</sup> Ratification was not in itself enough to fill this legal vacuum nor to set a course to end torture in the country. Harmonization of domestic legislation with the international human rights protection system has been sidelined by judicial reform that is struggling to take shape and is parallel to the recommendations of the ERC (supra). It took nearly thirteen years before Law No. 43-04 of 14 February 2006<sup>54</sup> was passed. This law amends and supplements the Criminal Code of 1962 and criminalized torture by including a special section entitled "Abuse of authority by officials against individuals, and the practice of torture." It is with this text that torture is supposed to be repressed.

The definition of torture under article 231-1 of the Criminal Code<sup>55</sup> refers to the three main components provided in article 1 of the Convention, namely the fact of having caused acute physical or mental suffering, the fact that it was committed intentionally by a public official or on his/her

---

<sup>52</sup> On 2 December 2000, the government simultaneously banned three newspapers (*Le Journal*, *Assahifa* and *Demain*). This decision caused an outcry among politicians and public opinion. Measures taken at the time did not prevent the disappearance of these newspapers. The legal battle which took place pushed these publishers to publish through other media. While some new newspapers were in the end established, certain journalists such as Abubakr Jamaï and Ali Lembaret continued to face extreme pressure from the authorities, and some even had their press cards confiscated.

<sup>53</sup> The term 'torture in article 1 of the Convention defines as such any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or intimidating or coercing a third person, or for any other reason based on discrimination of any kind, when such pain or suffering is inflicted by a public official or other person acting in an official capacity or at his instigation or with his consent or acquiescence. It does not include pain or suffering arising only from, inherent in or incidental to sanctions.

<sup>54</sup> Law No. 43-04 modifies and completes the criminal code promulgated by *Dahir* No. 1-06-20 of 14 February 2006 and published in official bulletin No. 5400 of 2 March 2006, p. 342. It modifies article 231 and incorporates articles 231-1 to 231-8 into the criminal code.

<sup>55</sup> Article 231-1 of the Moroccan criminal code states that " [...]torture means any fact which causes acute physical or mental pain, committed intentionally by a public official or someone acting at his behest or with his express or tacit consent, inflicted on a person in order to intimidate him or her, or to pressure that person, or someone else, to obtain information or indications, or confessions; to punish that person for an act that he or she, or a third person has committed or is suspected to have committed, or when such pain or suffering is inflicted for any other reason based on any type of discrimination. This term does not cover the pain or suffering related only to legal sanctions or caused by such sanctions or that is inherent to such sanctions."

command or express or implicit consent, and finally that it be with the aim of intimidating or pressuring someone to obtain information or a confession. The Moroccan authorities claim to have proposed an even broader definition than that of the Convention due to the fact that Moroccan law replaces the reference to "act" to inflict severe pain or suffering with the more general "any fact that causes" pain or suffering, a formulation that may have the advantage of also taking into account omissions.

However, after analysis of the various components of torture that remain, it is clear that the Convention is more ambitious in identifying perpetrators. The Law of 2006 certainly attempts to establish a legal framework on torture by connecting acts of torture to public agents acting against individuals, but leaves a number of ambiguities about the notion of a public official. The Law identifies the responsibility of public officials as defined in section 224 of the Criminal Code, namely "any person who, by title or to any extent, is invested with a function or even temporary office, on a voluntary basis or for the performance of this function, in any public, municipal or state government service or interest." Although this definition seems broad, it is not as extensive as that provided by the Convention that a public official is "a public servant or other person acting in an official capacity". There remains a significant risk of interpreting the term "public official" narrowly in the Moroccan law.

The crime of torture is punishable by long prison sentences and fines depending on the severity of the situation. Article 231-2 of the Criminal Code establishes a prison sentence of 5-15 years for any public official who has committed torture. Article 2 of the Law of 14 February 2006 amended and completed article 231, which existed in the former version of the Criminal Code, by increasing the penalties for torture<sup>56</sup>.

The legal framework surrounding this crime is very likely to be defeated by the more general provisions of the Criminal Code. Article 124 of the Criminal Code states that "there is no crime, nor offence, nor contravention when the act was required by law and commanded by legitimate authority". Article 2 of the Convention provides clear instructions that "the order of a superior officer or authority may not be invoked to justify torture." However, the 2006 Law is silent on this point, and it does not address the issue of exemption from liability of public officials either. Nor does the Code provide explicit exceptions of articles 49, 51, 53, and 54 that refer to grounds for cancellation, exemption, or suspension of sentences. The legislation fails to expressly state whether or not the crime of torture is immune from prescription, while the Convention provides that "no amnesty, no statute of limitation is permitted with respect to crimes of torture." Beyond a legal definition and the repressive regime, criminalization of torture should focus on the modalities of repression, and obviously on the concrete means available for victims to bring perpetrators to justice.

In practice, it is extremely rare that court proceedings lead to the conviction of the officials involved. Serious violations were reported during the riots in Sidi Ifni in the summer of 2008. A committee composed of 14 NGOs<sup>57</sup> led an investigation alongside a parliamentary committee dispatched for this purpose. This committee published a damning report on the crackdown.<sup>58</sup> In contrast, the report of the parliamentary committee in December 2008 acknowledged abuse by the officials but considered there to be no evidence regarding allegations of murder, rape, and other violations of international human rights conventions. Only those activists who challenged the official findings were prosecuted.<sup>59</sup>

---

<sup>56</sup> The original version of article 231 set out that "all magistrate, all public servant, all agent or person employed by the authorities or law enforcement agency who uses violence against people while carrying out, or in the course of carrying out their function without good cause is to be sanctioned, according to the gravity of these violations, as set out in article 401 to 403. These articles moderate the severity of sanctions, particularly for violations leading to disabilities, which can go from one month's imprisonment and a fine to 20 years' imprisonment. Other aggravating factors can also be taken into account when the torture was aimed at certain categories of individuals. (Original: L'article 231 originel disposait que « tout magistrat, tout fonctionnaire public, tout agent ou préposé de l'autorité ou de la force publique qui sans motif légitime, use ou fait user de violences envers des personnes dans l'exercice ou à l'occasion de l'exercice de ses fonctions, est puni pour ces violences et selon leur gravité, suivant les dispositions des articles 401 à 403 ; ces articles modulent les peines selon la gravité des violences ayant entraîné des incapacités et prévoient selon cette gravité des peines pouvant aller d'un mois d'emprisonnement d'un mois et amende à la réclusion criminelle de vingt ans). D'autres circonstances aggravantes peuvent être appréciées lorsque la torture a touché certaines catégories de personnes.)

<sup>57</sup> These include the AMDH, the *Ligue marocaine de défense des droits de l'Homme*, the *Observatoire marocain des prisons* and *Attac Maroc*.

<sup>58</sup> Aziz El Yaakoubi, "Le retour de la torture" (The Return of Torture) in *Le Journal Hebdomadaire*, No. 394, week from 2 to 8 May 2009.

<sup>59</sup> Brahim Sbaâ Allil, a member of the national office of the *Centre marocain des droits humains* and Chair of the organisation's Sidi Ifni section was very quickly charged with contempt and spreading false information to public officials



Many of them complained in 2009 that none of the complaints filed by NGOs on behalf of the hundreds of victims of abuse by the police received any results from the judicial authorities. There are fears that these files will all be closed definitively, without the possibility for victims to obtain recognition of the serious violations they suffered<sup>60</sup>, or to determine, at the judicial level, who was responsible for these violations.

## 5.2 Status of confessions during trials

Long periods of secret detention and maximum extensions of periods of custody are often designed to extract confessions under torture or through other forms of pressures or constraints. As shown by the many cases brought to the attention of Alkarama and listed below, these “confessions” are recorded in the transcripts (*procès verba*) of the judicial police who often register false arrest dates when the period of police custody surpasses the legal limit.

Article 293 of the Code of Criminal Procedure provides that a confession, like any other evidence, is subject to the discretion of judges. In terms of admission into evidence, however, Moroccan judicial practice has repeatedly established that judges are content and willing to admit confessions without attempting to corroborate the confession with other evidence, even if the person recants before the judge and claims to have been tortured. Many cases that are submitted to the courts are based solely on confessions by the accused, in the absence of any material evidence. The judge never rejects the minutes of the preliminary investigation established by the judicial police and the resulting criminal convictions sometimes lead to very heavy sentences, in clear violation of Article 293 of the Criminal Procedure Code (that clearly states that any confession obtained by torture is void).

Although the right of the accused to confront their accuser, from the investigation phase onwards, is expressly provided by Article 134 of the Code of Criminal Procedure<sup>61</sup>, this is not generally respected in practice. When defendants, especially during their first appearance, demand to confront witnesses or even the police officer who tortured them, the judge dismisses the possibility. This carries grave consequences for the right to a fair trial when the defence is unable to refute the accusation of the prosecution from the very beginning of the proceedings.

Paragraph 8 of article 74 of the Code of Criminal Procedure requires the Prosecutor of the King to order a medical examination if he or she is asked to investigate an act of violence or if such an act is brought to its attention. Paragraph 5 of article 135 also requires the judge to order immediate medical examination of any person claiming to have been abused or if he or she finds evidence that the person has undergone such treatment. It is clear that these articles relating to medical examinations of victims of torture are not respected in practice. Victims’ requests for medical examinations are not taken into account by the judge even when the signs of torture are visible firsthand to them. It also appears that if judges do call in experts to evaluate claims of torture, it is at the last possible moment so that the effects of the torture will have disappeared or faded away. In the case of the seven prisoners of Al-Adl Wal Ihssan which Alkarama submitted to the Special Rapporteur on Torture in August 2010 and lists below, these victims were subjected to serious abuses during their period of custody. When they asked the judge to order a medical examination in order to have their torture formally recognized, it was only granted twelve days later.

In general, most victims are afraid that if they make a request for medical examination they will only worsen their situation because of their complete lack of faith in the justice system, which does not aim for comprehensive understanding of the phenomenon of torture. Only a few structures created by human rights activists or by former victims of torture allow victims to speak out.<sup>62</sup> If victims of torture are allowed a medical examination when they are in prison, the report of the doctor, if any, is not

---

and was sentenced to 6 months imprisonment for having stated, during a press conference which took place in the context of these events, that there had been “deaths and rape” during the riots.

<sup>60</sup> It was established that serious violations took place against both men and women in the street or in police stations, and there are numerous allegations of police brutality, torture, and in particular of rape.

<sup>61</sup> Article 135 of the code of criminal procedure establishes that the judge may immediately conduct an interrogation and confrontation in case of an emergency such as the state of a witness or if clues are about to disappear

<sup>62</sup> Namely the *Centre d'Accueil et d'Orientation des Victimes de la Torture* – CAOVT (Centre for the Reception and Orientation of Victims of Torture).

made available. Deaths due to torture also emphasize the acute gaps and shortcomings in forensic medicine in Morocco.<sup>63</sup>

### 5.3 Police Custody: a Questionable Legal Device

The framework of police custody is determined by Articles 66 and 80 of the Criminal Procedure Code which distinguish between egregious violations that do not require prior authorization of prosecutors to hold suspects, and ordinary crimes which do. In both cases, however, the law does not specify the need for a written order, except for the renewal of the custody period, which raises questions about whether custody took place and creates doubt as to the exact date of arrest.

The distinction between offences *in flagrante delicto* and ordinary infractions does not appear to affect the duration of police custody, which is supposed to be limited to 48 hours. Paragraph 1 of article 80 stipulates that a detainee must be brought before the prosecutor before the expiry of this period. Only after the hearing may the prosecutor grant written permission to extend detention for a period of 24 hours. In the case of a threat to State security, police custody is set at 96 hours, renewable once with the written consent of the prosecution.

It should be noted that Law No. 03-03 relative to the fight against terrorism<sup>64</sup> came to supplement the general provisions of the Criminal Code by extending time limits on custody which were already excessive. This law brought the term of custody to 96 hours, renewable twice; in other words, detainees may be held for up to 12 days, normally also upon written consent from the prosecution. Communication with a lawyer is only possible when the renewal of custody is granted. In terrorism cases, such communication can be delayed by request of the judicial police, although this delay should in principle not be extended more than 48 hours following the first extension. In other words, terrorism suspects may be deprived of all contact with the outside world for six days before being allowed to communicate for half an hour with a lawyer, an excessive period of time given the fact that the law in question presents itself as being respectful of international law standards relating to detention.

The Code of Criminal Procedure does not expressly consider the possibility of the legal conditions of detention not being met, such as when a detention exceeds legal limits. The minutes prepared by the judicial police during the initial investigation benefit from probative force under article 289 of the Code of Criminal Procedure - it is therefore impossible for the defense to challenge them before a trial court. The judicial system as it currently operates is not able to guarantee the right to defense and it remains illusory to try to raise questions of legal technicalities, or even accusations of serious violations.

As such, the dysfunctions related to custody have been further accented by the fight against terrorism in Morocco, and highlights the need to ensure that anti-terrorism measures are properly framed and limited to a maximum.

### 5.4 The Question of Impunity

**The issue of impunity and its different manifestations** is directly related to the lack of independence and impartiality of the judiciary. One can easily identify a first form of impunity resulting from the attitude of the police and the judicial authorities which deny and obstruct allegations of torture and/or ill treatment. This is one reason why members of the security services can continue to torture suspects without facing consequences for their actions, or are simply submitted to disciplinary action without being called to face criminal responsibility. These practices have become systematized in the crackdown on the Moroccan Islamist movement whose members are often accused, without evidence of any terrorist activities, and who are then tried in manifestly unfair trials after having been tortured.

The process initiated by the ERC, which excludes the determination of individual criminal responsibility for serious violations in the period concerned, has strengthened the belief that members of the security services will never be held accountable for their actions.

---

<sup>63</sup> There is a real shortage of forensic experts, particularly for courts of appeal, which is a source of great difficulty. The forensic science academy – the only forensic unit headed by a Professor of Forensic Medicine in Morocco – is in Casablanca.

<sup>64</sup> Law No. 03-03 on the fight against terrorism was adopted in summary following the Casablanca attacks of 16 May 2003; it was promulgated by *Dahir* No. 1-03-140 of 28 May 2003 and published in official bulletin No. 5114 of 5 June 2003.

Although the ERC called for a “strategy to fight against impunity” and the ratification of the Rome Statute in the final recommendations of its 2006 report, these recommendations have not been implemented and this important convention which was signed by Morocco in September 2000 has not yet been ratified.

The State party affirmed that harmonization of domestic legislation and the reform of its criminal policy is needed to ensure better protection of human rights. Law No. 22-01 on the new Code of Criminal Procedure intended to bring about a new era of increased concern for the rights of litigants. It entered into force in 2002.<sup>65</sup> However, Law No. 03-03 of 28 May 2003 halted this process and inaugurated a return to past practices. The argument that domestic legislation should guarantee better protection of human rights than international law has fizzled out.

Civil society considers that given this state of affairs, ratification of the Rome Statute would be the most effective way to fight against impunity and put a stop to ongoing violations. This ratification would in no way prevent national courts from trying perpetrators of crimes falling under the jurisdiction of the ICC provided they were effectively independent.

## **6 Arbitrary and Secret Detention**

---

Following the attacks of 11 September 2001 on the United States and the rise of the fight against international terrorism, a crackdown was launched in Morocco. It rapidly worsened in the wake of the attacks of 16 May 2003 in Casablanca that killed 45 people including the 12 perpetrators of the attack. Thousands of suspects were arrested, often through the services of the General Directorate of Territorial Security (DST) whose official mission is “to ensure the protection and safeguarding of state security and its institutions.”<sup>66</sup> The agents of these services often travel in civilian clothes and unmarked cars, making arrests without warrants.

Suspects are typically transferred to the headquarters of the DST located in Temara, near Rabat, where they are held for weeks or months. Families are not informed of the whereabouts of their loved ones and it is common that the authorities deny their detention. The practice of incommunicado detention resembling a “temporary enforced disappearance” remains in use. In many cases, victims are then transferred to a police station to open up a preliminary investigation that is dated from the transfer to avoid exceeding the limits placed on the custody period.

Being accused of belonging to a terrorist group, preparing for terrorist act and/or endangering the security of the State often results in long sentences being imposed in unfair trials, for which evidence relies solely on confessions extracted under torture during the period of secret detention.

### **6.1 Mass Arbitrary Arrests in 2002-2003**

Dozens of arrests have been carried out since 2002 for political reasons, but the mass campaign of arrests, a veritable campaign of punishment, was triggered against Islamic opposition circles following the attacks of May 2003. All branches of the security forces were involved and all regions of the country were affected. Meanwhile, individual arrests of the better-known figures of the opposition were made by agents of the DST or the National Brigade of the Judicial Police (NBJP).

Security forces entered working-class neighbourhoods considered to have Islamists sympathies, particularly in Fez and Casablanca and took thousands of suspects from their homes by force. These arrests were not made on the basis of their alleged involvement in crimes, but only their alleged membership of an Islamist movement based on their beards or particular clothing. Most were mistreated during their interrogation. While some were released after being registered in police registries, others were accused of involvement in these attacks. Their defence lawyers unanimously assert that their clients were being prosecuted on the basis of files which were totally devoid of any evidence.

**Mr Abdelwahab Al-Hammami** was arrested on 8 October 2002. Three months later, he was sentenced to two years in prison by the Court of First Instance of Fez, for an alleged assault that he has always denied and for which he provided an alibi. His conviction was based solely on confessions

---

<sup>65</sup> Law No. 22-01 enacts the code of criminal procedure promulgated by *Dahir* No. 1.02.255 of 3 October 2002.

<sup>66</sup> Majdoulein El Atouabi, Karim Boukhari, Lahcen Aouad, “DST, le service de tous les secrets” (DST, the Secret Service with all the Secrets), *Tel Quel online* No. 317, 24 March - 4 April 2008, [http://www.telquel-online.com/317/couverture\\_317.shtml](http://www.telquel-online.com/317/couverture_317.shtml) (accessed 9 March 2011).

extracted under torture. While serving his prison sentence at Ain Qadous, DST agents visited him in prison pretending that they wanted to help him because of the judicial mistake of which he was the victim. He then signed documents that he could not read because he is illiterate, which were subsequently used against him to bring him back to court for his alleged involvement in the Casablanca bombings (which had occurred after he had been in prison for 8 months). He was sentenced to 25 years in prison, and two months later was transferred to the central prison of Kenitra. The DST had in fact created a case against him, also implicating other people, for allegedly forming a terrorist cell composed of Mostapha ben Amara, arrested 20 October 2002, as well as Miloud Bouaicha and Youcef Al-Kafi, who were all sentenced to 20 years in prison.

**Mr Miloud Bouaicha** was returning home from work on 21 August 2002 around 5pm when he was taken by men in two 4x4 vehicles without license plates. Men in civilian clothes rushed towards him, tied up his hands, placed a blindfold over his eyes, and forced him into a car. He was taken to an unknown location, which later proved to be the regional headquarters of the DST in Fez. When he refused to sign statements, the officers threatened to rape his mother and his wife, so he complied. When brought before a judge, the judge promised to obtain his release due to inconsistencies in his case but in the meantime he was detained in Ain Qadous prison. When the attacks in 2003 occurred he was accused of being involved in these attacks and of being part of a terrorist cell of which he had never met any of the members. He was sentenced to 20 years in prison and transferred to Kenitra Central Prison.

**Mr Youcef Al-Kafi**, born in 1973, was abducted by DST agents in Fez on 8 October 2002 and taken to their headquarters where he was immediately tortured. Brought before a judge three days later he was transferred to Ain Qadous without any acknowledgment that his confession had been made under torture, the marks of which he still bore on his face. He was accused of belonging to a terrorist group, yet knew none of its members. As in the cases of Mr Al-Hammami and Mr Bouaicha, he was subsequently accused of involvement in the attacks of May 2003 and was sentenced to 20 years in prison on 23 June 2003. In August 2003 he was transferred to the prison in Kenitra, where he was brutally beaten and placed in solitary confinement for six months without any contact with the outside world.

While many observers and human rights defenders estimate that in the years 2002-2003 the number of arrests climbed into the thousands (up to 5000), the Minister of Justice at the time, Mr Mohamed Bouzoubaâ, stated in 2004 that the arrests had not exceeded 2000 people<sup>67</sup>. Arrests linked to the 2003 attacks continued until 2004.

These arrests were made without respect for any domestic or international laws. They took place day and night in the homes of suspects, their place of work, or on the road by officers in uniform and civilian clothing who carried out arrests in large groups without warrants. The victims' homes were systematically searched without search warrants, and were often vandalized with computers, documents, and other objects removed. Family members also suffered from intimidation and violence. Sometimes the wife or another family member was brought to the detention centre and forced to witness the torture in order to intensify pressure on the suspect. **Mr Abdelaziz Boukhelifi**, who was arrested on 10 June 2002 in Mohammedia and accused of assaulting a security guard, testified that he was held incommunicado in Temara, then transferred to the police station in Al-Maarif in Casablanca where the NBJP "did not hesitate to bring his family to pressure him and push him into signing a confession."<sup>68</sup> He was sentenced to 30 years in prison for his involvement in the attacks in Casablanca, which happened after he had been imprisoned for almost a year. He spent ten months in prison in Okasha and six months in Salé before being transferred to the central prison in Kenitra.

Many suspects have been detained incommunicado for weeks, or months, at different locations despite the maximum period of detention under the Criminal Code being 12 days for terrorism offences. Often, prisoners did not know where they were being held, and their families were generally unaware of their fate, despite Moroccan law requiring that they be informed immediately after the arrest. In addition, they did not have access to a lawyer, despite the Terrorism Act providing for

<sup>67</sup> Omar Dahbi, "L'ère de Tazmamart est révolue" (The Era of Tazmamart has Passed), *Aujourd'hui le Maroc*, 5 July 2004, <http://www.aujourd'hui.ma/imprimer/?rub=actualite&ref=16806> (accessed 26 August 2011)

<sup>68</sup> *Demain Online*, "Enième témoignage accablant contre l'Etat marocain" (Nth Devastating Testimony against the Moroccan State), 7 May 2011, <http://www.demainonline.com/2011/05/07/un-autre-temoignage-accablant-contre-letat-marocain/> (accessed 27 August 2011).

access to a lawyer after six days in custody. To hide the true length of custody, DST agents resort to falsification of arrest dates on the minutes forwarded to judicial authorities.

The thousands of testimonies gathered from people who were arrested and arbitrarily or secretly detained reveal the passage of many through the secret centre of Temara, establishing its central role in counter-terrorism measures.

## 6.2 Temara, Main Secret Detention Centre

Many people have reported being taken to the Temara detention centre, where the services of the **General Directorate for Territorial Surveillance (more commonly known as the DST)** have their headquarters, before being handed over to the judicial police, which is legally empowered to start the procedure for preliminary hearings and present suspects to the prosecution. The Committee has previously expressed serious concerns with regard to the numerous allegations of torture involving the DST. Moroccan authorities have therefore tried to clarify its role and functions. Nevertheless, in many situations, agents of the DST do not act in accordance with the law. Following a periodic review by the Committee in 2004, the Government admitted that the agents of the DST (in conjunction with agents of the *Gendarmerie*) defer suspects to the judicial authorities in some cases. It should be emphasized that DST officers responsible for the arrest of suspect are not empowered to arrest, detain, or interrogate people.

Temara is not only a secret detention centre, it is actually a "secret centre," or at least was previously, as it was not previously known as a place of police custody. Since 2002, dozens of testimonies of people arrested as part of the "war on terror" have revealed the existence of this centre. Among the suspects detained at the time, many had been arrested by agents of the DST and brought directly to Temara while others were arrested or abducted by other services before being brought there. Others were even transferred to Temara in the context of "extraordinary renditions."

"The headquarters of the DST in Temara in a suburb of Rabat is not a simple office complex. It is spread over several acres where satellite dishes are installed. One can see other types of antennas and even a kind of two-lane road that can allow the landing of small planes, such as a Cessna. What is not visible, however, is the subterranean prison, where the cells are used as torture chambers, as have testified several guests, foreign and domestic, who were 'invited there'." <sup>69</sup>

The authorities have always denied that the DST maintains a detention centre in Temara. In 2004, Justice Minister Mohamed Bouzoubaâ said that no secret detention centres existed in Morocco, adding that: "the Temara centre is under the jurisdiction of the national security services which means that it is submitted to the control of the judicial authorities."<sup>70</sup> No NGO has been allowed to visit this centre to date, even though other detention centres have been inspected. Some confusion centres around the legal status of the DST, which is presented as falling under the Ministry of the Interior in the same way as the police does, and therefore being subjected to prosecutorial review. In reality, however, the DST is an institution that is not subject to civilian control, and its agents – as mentioned above – do not necessarily share the same qualities as police officers.

To protest against the existence of this secret detention centre, the activists of the 20 February Movement organized an assembly on 15 May 2011 in front of the centre as part of the "day of action against secret detention". A large police contingent was deployed to prevent the demonstrators from approaching the place. Many people were injured and required hospitalization.<sup>71</sup>

With the DST and the NBJP responsible for implementation of counter-terrorism measures, a large number of suspects have been interviewed by agents of both services at Temara. Prisoners are completely isolated from the outside world in underground cells. The interrogations usually take place during in the days following arrest in order to extract signed confessions, by which the suspects will be tried and sentenced to heavy penalties.

---

<sup>69</sup> *Demain Online*, "Bienvenue au siège de la DST à Temara" (Welcome to the DST Headquarters in Temara), containing a video with satellite pictures of the DST headquarters and testimonies of those tortured, 19 April 2011, <http://www.demainonline.com/2011/04/19/bienvenue-au-siege-de-la-dst-a-temara/> (accessed 25 August 2011)

<sup>70</sup> *Idem*.

<sup>71</sup> Bassirou Ba, "Manifestation devant le centre de détention de Temara" (Protest in Front of Temara Detention Centre), *Aufait Maroc*, 15 May 2011, <http://www.aufaitmaroc.com/actualites/maroc/2011/5/15/la-police-soppose-plusieurs-blesses> (accessed 12 August 2011).

Alkarama submitted the case of **Mr Said Ezziouani** to UN Special Procedures on 25 June 2010. A 30-year-old man residing in Casablanca, agents of the DGST kidnapped Mr Ezziouani from the street on 12 April 2010 and immediately took him to the Temara detention centre where he was detained for 14 days before being taken to the police station in Al-Maarif in Casablanca. He was stripped of all of his clothes upon arrival, bound, and violently beaten, especially about his face. He was interrogated during several successive nights of sleep deprivation. He was also given water that contained narcotics. When he was transferred to Casablanca, he was again beaten violently by police officers on several occasions. He was held in secret for 24 days without any contact with the outside world<sup>72</sup>.

**Mr Younes Zarli**, 29 years old and married with one child, was living in Casablanca when he was abducted at the entrance to his home by agents of the DGST and held incommunicado for 16 days in Temara. He was denied any contact with the outside world before being brought before the investigating judge of the Court of Appeal in Rabat on 6 May 2010. M. Younes Zarli reported that upon arrival at the centre, he was stripped of all of his clothes and beaten. During subsequent interrogations, he was repeatedly administered drugs. He was also threatened that his family would be brought to Temara if he did not admit to all of the acts that he was being dictated to admit to. Transferred to the police station at Al-Maarif, he continued to be detained in secret for many days before the lawyer hired by his family finally learned of his whereabouts.<sup>73</sup>

**The National Brigade of the Judicial Police (Brigade nationale de la police judiciaire - BNPJ)** is a special unit of the National Police attached to the General Directorate for National Security (*Direction générale de la Sûreté nationale* - DGSN). The Code of Criminal Procedure defines its investigative activities. The Brigade has national powers and jurisdiction to intervene in cases deemed "sensitive." It appears clear to Alkarama, however, that it regularly exceeds its powers by carrying out illegal detentions. Its methods resemble those of the intelligence services with which it closely collaborates. The NBJP is responsible for a number of warrant-less arrests and periods of custody exceeding the legally allowed lengths of time. Terrorism suspects in particular are presented before a Prosecutor of the NBJP without any concern for irregularities in the conditions of custody. The combined action of these security services, often in competition, is particularly problematic in Morocco.

### 6.3 Secret Detention Remains an Issue

The maximum statutory period of custody prescribed by the Anti-Terrorism Law was systematically exceeded in the periods both before and after the 2003 bombings, and some victims were disappeared for months. At present, although the duration of custody has tended to decrease, it still commonly exceeds the legal limit and, worst of all, still often takes place in secret. Warrantless arrests and the falsification of dates of arrest continue. Those arrested are not informed of their rights and are not provided access to a lawyer, while their families remain unaware of their fate.

**Mr Rachid Almakki**, 33 years old, was arrested in Casablanca on 22 April 2010 by agents of the DST without an arrest warrant and was detained in an unknown detention centre. Upon being informed of this arrest, our organisation submitted an urgent appeal to the Working Group on Enforced and Involuntary Disappearances, following which the authorities responded that M. Almakki had been arrested on 7 August 2010 and presented to prosecutors on 17 August. They denied the whole three-month period during which he was held in secret.<sup>74</sup>

In the waves of arrests in Casablanca during March and April 2010, many people were held secretly for weeks on end. They reappeared only after their hearing before the investigating judge of the Court of Appeal in Rabat in 6 May 2010. **Mr Adnan Zakhbat**, aged 27 and married with two children, lives with his family in Berrechid, located 70 km south of Casablanca. Four plainclothes officers abducted him on 29 March 2010 at 1pm in front of Zahra Mosque located on the main entrance road to the city. He was held incommunicado in Al-Maarif in Casablanca for over a month during which he had no contact with the outside world.<sup>75</sup>

<sup>72</sup> Alkarama, *Morocco: Forced Confessions Threaten Heavy Sentences*, 28 June 2010, [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=547](http://en.alkarama.org/index.php?option=com_content&view=article&id=547) (accessed 9 March 2011).

<sup>73</sup> Idem.

<sup>74</sup> Alkarama, *Morocco: Abductee Remains Disappeared, Authorities Deny Arrest*, 27 July 2010, [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=561](http://en.alkarama.org/index.php?option=com_content&view=article&id=561) (accessed 9 March 2011).

<sup>75</sup> Alkarama, *Morocco: Resurgence of disappearances - Adnan Kakhbat is the latest victim*, 16 April 2010, [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=494](http://en.alkarama.org/index.php?option=com_content&view=article&id=494) (accessed 9 March 2011).

In October 2010, another wave of arrests in cities throughout Morocco took place. Those arrested were held incommunicado, including **Mr Hicham Chaide**, 32, father of two, a student living with his family in Casablanca. He was arrested on 16 October in the late evening near the town of Mohammedia by five plainclothes officers who did not present an arrest warrant. Hands bound, he was taken to an unknown destination. His family immediately sought to know the reasons for his arrest and contacted several police stations in Casablanca, the DGSN and the Department of Justice. No reply was given until his family finally learned that on 10 November 2010 he had been presented to a court in Salé. He was therefore held in secret for 26 days, during which time he was deprived of all contact with the outside world.

**Mr Azzedine Braik**, aged 22 and married with two children, is a shopkeeper residing in Fez. He was abducted on 30 October 2010 at 6pm by four plainclothes officers while he was on Ain Smen street in Fez. The officers forced him into their vehicle and took him to an unknown destination. His wife witnessed his abduction and immediately went to the nearest police station, then to the central police station in Fez to learn the reason for his arrest. The police officers said they had no information about him. His family then filed a complaint of kidnapping with the Prosecutor of Fez and also notified the Minister of Justice by post<sup>76</sup>, to no avail.

**Mr Abdellatif Kouibaat**, aged 26 with one daughter, lives in Casablanca and was abducted on 27 October 2010 between 5.30pm and 6.00pm in front of Sidi Moumen cemetery near his home. According to witnesses, three agents in civilian clothing took him.

**Mr Badr Kounine**, 21 years old and a resident of Casablanca, was abducted on 27 October 2010 at the same time and under the same circumstances. The families of Mr Kouibaat and Mr Kounine immediately went to the neighborhood police station and demanded to know the reasons for the arrest of their sons. They received the response that no information about them was available.<sup>77</sup> It was not until 4 January 2011 that their families were made aware of their fate and allowed to visit them: the Ministry of the Interior announced the arrest of 27 people and MM. Kouibaat, Kunin, and Braik's names were included on this list. In total, they remained detained in secret for over two months without any contact with the outside world or any legal protection. They continue to be detained in Salé Prison to date.

#### 6.4 "Extraordinary Renditions"

After the attacks of 11 September 2001 on the United States, Morocco actively cooperated in the international fight against terrorism. In practice, the CIA transported suspects to countries where they are secretly detained and tortured in the presence of US agents. There is evidence that at least 28 CIA flights have landed in Morocco since 2001.<sup>78</sup>

One of the most emblematic cases is that of **Binyam Mohamed**, an Ethiopian national living in the UK and arrested in Pakistan. He was transferred on 22 July 2002 to Morocco and held incommunicado for 18 months in Temara prison before being transferred to Afghanistan, and then to Guantanamo Bay. He reports that he was tortured during the entire period of detention in Morocco: "At its worst, the torture involved stripping Binyam naked and using a doctor's scalpel to make incisions all over his chest and other parts of his body: *"One of them took my penis in his hand and began to make cuts. He did it once and they stood for a minute, watching my reaction. I was in agony, crying, trying desperately to suppress myself, but I was screaming. They must have done this 20 to 30 times, in maybe two hours. There was blood all over. They cut all over my private parts. One of them said it would be better just to cut it off, as I would only breed terrorists."*<sup>79</sup>

**Mohammed Zammar**, a German of Syrian origin, was arrested in early December 2001 at Casablanca airport and held in secret for two weeks before being transferred to Damascus. He was interrogated by Moroccan and American officials.

<sup>76</sup> Alkarama, *Morocco: Three young men abducted by government agents in Casablanca*, 17 November 2010, [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=622](http://en.alkarama.org/index.php?option=com_content&view=article&id=622) (accessed 9 September 2011).

<sup>77</sup> Alkarama, *Morocco: Three young men abducted by government agents in Casablanca*, 17 November 2010, [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=622](http://en.alkarama.org/index.php?option=com_content&view=article&id=622) (accessed 9 September 2011).

<sup>78</sup> Stephen Grey, *Ghost Plane. The true Story of the CIA Torture Program*, St. Martin's press, New York, 2006.

<sup>79</sup> Dick Marty, *Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states*, 12 June 2006, p. 46.

As part of “extraordinary renditions” and also “diplomatic assurances,” suspects have been deported to Morocco where they risked being tortured. Five Moroccans (Abdallah Tabarak, Yacine Chekouri, Brahim Benchekroun, Mohamded Mazouz and Mohamed Ouzar), who had stayed in Pakistan in late 2001 and who were held incommunicado for two years and eight months on the US base at Guantanamo, were handed over to Moroccan authorities in August 2004. They were incarcerated at the DST centre in Temara before appearing in court in December of that year.<sup>80</sup>

In recent years European authorities have deported Moroccan nationals (who often also held a second, European, nationality) to Morocco because they did not have a case to bring charges against them. **Mr Ali Aarrass**, a Belgian-Moroccan national living in Spain, was accused by Moroccan authorities of belonging to a terrorist group called “Abdelkader Belliraj.” He was held in Spain from April 2008 following an extradition request by Morocco, to give time for the Spanish justice system to fully examine the facts of the case, which they did – leading to his full exoneration. Despite this, on 19 November 2010, the Spanish Council of Ministers approved his extradition to Morocco. The United Nations Human Rights Committee received an urgent request for interim measures and on 26 November 2010, asked Spain not to extradite Mr Aarrass. For their part, the Belgian authorities did not intervene on behalf of their national. The Spanish authorities extradited Mr Aarrass in mid-December to Morocco. Fifty days following his “arrival” in Morocco, his family still did not know where he was and what fate had befallen him. It was later confirmed that he had been severely tortured while in secret detention.

Alkarama also alerted the Special Procedures about the case of **Mr Abou Elkassim Britel**, an Italian citizen of Moroccan origin, who was the victim of “extraordinary rendition” involving the Pakistani, American, and Moroccan authorities. In March 2002, Mr Britel was arrested in Pakistan on the sole grounds that he had infringed on the law on immigration. During his first interrogation in Lahore he was tortured by agents of the Pakistani security services. He was then transferred into US custody where he was the victim of an illegal transfer to Morocco on 24 May 2002. In Morocco, he was held incommunicado and tortured in Temara for more than a year. He was released without trial on 11 February 2003 but was re-arrested on 16 May 2003 while preparing to return to Italy where he normally resides. He was again brought to Temara where he was held in secret and severely tortured. He was then convicted on the sole basis of transcripts signed under torture and sentenced to 15 years imprisonment by the Court of Appeal in Rabat on 3 October 2003, which was reduced to 9 years on 7 January 2004. While being transferred to Kenitra prison on 9 October 2009, he was again the victim of cruel and humiliating treatment (see below).<sup>81</sup>

Another case brought to the attention of the Working Group on Arbitrary Detention on 26 July 2011 by our organisation is that of 30-year old **Mr Muhammad Hajib**, a German and Moroccan national, and an economics graduate and entrepreneur in Germany. He was arrested in July 2009, one month after his arrival in Pakistan where he was studying religion with the *Tablighi* movement to which he belongs. This apolitical religious Muslim movement is engaged in missionary activities and is registered in Pakistan. Regardless, Mr Hajib was imprisoned in Quetta for six months without being subject to legal proceedings or specific charges. Faced with particularly difficult conditions of detention, he began a hunger strike on 3 February 2010. He was released without trial a few days later and a senior Pakistani police official said that there were no charges against him and did not provide any reason for his arrest and detention.

After his release, Mr Hajib visited Morocco via Germany on 17 February 2010. Upon his descent from the plane, he was met by five men who handcuffed him and sent him to the police station at Al-Maarif where he was tortured. His family was only informed of his detention four days later. Mr Hajib was brought before the investigating judge in Salé 12 days later on the grounds of belonging to a terrorist group and for conspiracy. During his appearance before the judge he reported his torture by the police in Al-Maarif and stated that he had been forced to sign a document that did not correspond to his statements. He had in fact been threatened that his wife would be brought to him and raped in front of him in order to get him to sign the documents. The judge ignored his claims. Despite the absence of any material evidence against him, Mr Hajib was remanded in custody at the prison of

<sup>80</sup> Abdellatif Mansour, *Sites noirs de la CIA au Maroc* (Black Sites of the CIA in Morocco), Maroc Hebdo International No. 682 - of 20 to 26 January 2006, [http://www.maroc-hebdo.press.ma/Site-Maroc-hebdo/archive/Archives\\_682/html\\_682/sites.html](http://www.maroc-hebdo.press.ma/Site-Maroc-hebdo/archive/Archives_682/html_682/sites.html) (accessed on 12 August 2011)

<sup>81</sup> Alkarama and ACLU, *Morocco: Italian 'Extraordinary Rendition' Victim Still Held In Morocco Based on Tortured Confession*, 25 June 2009, [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=254](http://en.alkarama.org/index.php?option=com_content&view=article&id=254) (accessed 9 March 2011).



Salé. To protest his unjust prosecution, M. Hajib began a hunger strike on 10 May 2010. On 24 June 2010, following 46 days of hunger strike, he was brought before a trial court and sentenced following a summary trial to ten years in prison on the pretext of having fought against the US and Pakistani armies in Afghanistan.<sup>82</sup>

## 7 Torture

---

Secret detention is synonymous with the systematic use of torture in order to extract confessions that can then be used to convict suspects. It is rare that the judge pays attention to allegations of torture raised by defendants or orders an investigation. The security forces therefore continue to torture suspects with impunity, in particular Islamist opponents who are accused of terrorist activities, often without evidence.

### 7.1 2002-2003: Torture Used to Combat Terrorism

The majority of those arrested after September 2001 or in the aftermath of the attacks on Casablanca in May 2003 suffered torture during their period of custody, which in some cases was prolonged over several months, according to our organisation's research. Upon their arrest or abduction, they were subjected to extreme violence. Generally, suspects are arrested by various different security services but more often than not by the DGST. They are arrested at their homes, in the street, or at work, often by several plainclothes officers who use violence against them, and in some cases against members of their families present. They are routinely bound, blindfolded, and taken to an unknown location, which usually turns out to be the centre of Temara or the police station at Al-Maarif in Casablanca.

Since 2007, the National Association for the Support of Political Prisoners, or *Annassir*<sup>83</sup>, has provided our organisation with a sample of documented cases of approximately 300 people arrested between 2002-2003, most of whom were imprisoned at Kenitra. Some of them passed through Zaki prison in Salé before being transferred to the central prison. Detainees have an average age of 35-40, nearly two-thirds are married, and almost all were sentenced to heavy terms: 10% were sentenced to death, more than 30% to life imprisonment, and more than 30% to sentences of 20-30 years in prison. Those sentenced to life in prison or the death penalty while in Salé are transferred to other prisons, including that of Kenitra. Others are serving sentences of 5-30 years in prison.

Almost all of the victims were detained in secret for a period ranging from a few days to more than three months (Mustapha Al-Kamrimi was detained in secret detention for almost 15 months at the Security forces centre in Nador, and at the Temara centre). More than 60% were held in custody beyond the allowed 12 days, already considered excessive. The majority of prisoners passed through the DST centre at Temara.

Torture in Morocco is widespread and systematic. It is practiced at all stages of detention and continues to be practiced after the person is tried and convicted with total impunity, at the hands of the prison staff or the members of the DST. Many detainees are imprisoned in solitary confinement for periods ranging from a few days to more than 30 days (Abdelwahab Rabi' spent more than 60 days in solitary confinement) in Kenitra. In the prison of Salé, Tawfiq Yathrib, Hichem Derbani, and Merouane 'Assoul spend three, six, and ten months, respectively, in solitary confinement.

Prisoners at Kenitra have reported torture methods similar to those used during the long periods of custody at Temara, such as being beaten (most reported this), and 40% reported being subjected to waterboarding (*'le chiffon'*), electric shocks all over the body in more than 30% of cases, more than 40% reported being suspended. Other methods include lacerations, the introduction of objects into the anus and threats of rape for almost two-thirds of inmates. In addition, forced nudity, insults and blasphemy, and the deprivation of food, water and sleep were all common. Guards regularly rob the prisoners and loot the baskets of food that their families bring them.

In the testimonies Alkarama has obtained, those arrested between 2002-2003 also suffered the torture recorded by *Annassir*, and list other abuses: sleep deprivation, other forms of waterboarding or submersion in a basin filled with excrement, *falaqa*, not being allowed to use the toilet, being

---

<sup>82</sup> Alkarama, *Morocco : German-Moroccan citizen arbitrarily detained and accused of terrorism*, 25 July 2011, [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=807](http://en.alkarama.org/index.php?option=com_content&view=article&id=807) (accessed on 9 March 2011).

<sup>83</sup> *Annassir* was created by families of Islamic detainees with the aim of defending the rights of these detainees, imprisoned under the anti-terrorism law after the 16 May Casablanca attacks.

handcuffed or blindfolded for extended periods, cigarette burns, particularly on sensitive areas, stretching of the legs until the muscles tear, epilation of the beard, asphyxiation with a bag, being held in painful positions, confinement in small rat- and insect-infested cells, simulated execution, injection of narcotics, and being held in small and overcrowded cells. The forms of torture most frequently reported by the detainees were of being suspended, the threat of rape of mothers and wives, sodomy with different instruments, electric shocks, and sleep deprivation.

The consequences of such treatment are very severe and long term, especially as those who are injured or sick are cared for in a rudimentary fashion until their lives are in danger. Victims suffer loss of hearing and sight, fractures, wounds, infections, depression, nervous breakdowns, insomnia, nightmares and other psychological disorders.

## 7.2 Torture Persists Despite Authorities' Commitments

While Moroccan authorities claim to combat the use of torture and to train their security personnel on its eradication, it is clear that many of those arrested, especially terrorist suspects, are still systematically tortured. Alkarama has alerted the UN Special Procedures to many cases, including these below, already submitted to the Special Rapporteur on Torture. The following examples illustrate not only the violence employed during arrests but also the methods of torture used and the efforts made to conceal its marks (some methods of torture having already been mentioned above).

**Mohamed Slimani TLEMCANI, Abdallah BELLA, Hicham Didi HOUARI, Hicham SABBAH, Azeddine SLIMANI, Bouali MNAOUER et Tarik MAHLA**, seven leaders of the *Al Adl Wal Ihsan* (Justice and Spirituality Movement) were arrested without warrants on 28 June 2010 around 4.30am at their respective homes in Fez by officers from the BNJP of Casablanca. These forces also conducted searches outside of legal hours. The officers not only used brutal force against those they arrested but also against their family members – including the women and children – whom they awoke, insulted, and threatened with weapons. The men were then handcuffed and blindfolded, beaten, and threatened with rape and death before being loaded into vehicles and taken to an unknown location, which turned out to be the seat of the Judicial Police in Casablanca, 300km away. Deprived of all contact with the outside world, they were submitted to physical and psychological torture for three days without interruption. They were beaten on all parts of their bodies with sticks and clubs, hung from the ceiling, and some were raped with various objects while others were threatened with rape. Completely naked, they were subjected to waterboarding (chiffon) and electric shocks on all sensitive parts of their bodies. They were then forced, with beatings and death threats and while blindfolded, to sign transcripts they were not allowed to read or know the content of. Despite the precautions taken by their torturers not to leave any marks, the victims bore visible traces of torture that were obvious at the time of their first appearance before the investigating judge of Fez on 1 July 2010. Victims asked the judge to assign a medical expert to examine them for torture, which he did not concede to until 12 days later, so that the marks of torture had time to disappear or at least reduce.<sup>84</sup> On 21 December 2010, all seven men were tried and charged with "belonging to an unauthorized organization," "conspiracy," "torture," and "abduction and detention of a person." The court of Fez acquitted them and they were released,<sup>85</sup> although the Prosecutor has appealed the decision.

**Doha Aboutabit**, a 25-year-old French-Moroccan doctor, lived in Rabat at the time of her arrest. She had returned to Morocco following her medical studies in France in April 2009 and in July 2009 was appointed as the head of a department at the hospital of Ait Qamra in the northern region of Al-Hoceima. On 3 December 2009 at 10am, she was arrested at her parents' home in Rabat by four police officers and taken to the Al-Maarif police station in Casablanca where she was held in custody for 12 days. Brought before the investigating judge of the Court of Appeal in Rabat, she was indicted and placed in Salé prison, where she continues to be held in custody today, accused of sending money to her brother to aid his terrorist efforts. According to the testimony of her parents following their first visit to the prison, Ms Aboutabit was in a deplorable psychological state after having been subjected to severe torture. She had been held in secret without any contact with the outside world

<sup>84</sup> Alkarama, *Maroc: La situation des droits de l'homme connaît une grave dérive* (Morocco: Serious Deterioration in the Human Rights Situation), 26 August 2010, [http://fr.alkarama.org/index.php?option=com\\_content&view=article&id=812](http://fr.alkarama.org/index.php?option=com_content&view=article&id=812) (accessed 9 March 2011).

<sup>85</sup> Alkarama, *Maroc : Acquittement et libération de sept membres dirigeants du mouvement Al Adl Wal Ihsan* (Morocco: Acquittal and Release of Seven Leading Members of Al Adl Wal Ihsan Movement), 22 December 2010, [http://fr.alkarama.org/index.php?option=com\\_content&view=article&id=870](http://fr.alkarama.org/index.php?option=com_content&view=article&id=870) (accessed 9 March 2011).

during this period. The police made all kinds of threats of physical harm including threats to burn her face and that she would never see her child again if she did not confess. All the confessions she signed were forced on her by her torturers, and she does not hesitate to say that she signed them because of the state of terror in which she was being kept. In Salé prison, she was also the victim of assault by the guards, as we describe below.<sup>86</sup>

**Fouzia Azougagh**, a young 25-year-old student, was abducted 18 February 2010 around 7pm in Taza, a small town in north-eastern Morocco. Two security officers in plainclothes were waiting for her to get off the bus. She was handcuffed and blindfolded and taken to the Temara security centre without knowing where she was. She protested her treatment to no avail, and then the endless interrogation sessions began. For 14 days, Ms Azougagh was interrogated for hours while handcuffed and blindfolded. DST agents questioned her on her activities for the student group UNEM and on her religious and political views. Each time, Ms Azougagh was bound to a chair, insulted and beaten. She was the victim of sexual abuse, threats of rape, and sleep deprivation. After two weeks of secret detention and torture, on 3 March 2010 Ms Azougagh was transferred to the premises of the judicial police at Al-Maarif in Casablanca. She was again handcuffed and thrown into a tiny, dark cell, where she was barely able to breathe. Again, she underwent physical and psychological torture that was aimed at getting her to sign confessions. On March 11, three weeks after her abduction, Ms Azougagh was brought before the investigating judge of the Court of Appeal in Rabat under the pretext of ties to a terrorism case. No lawyer was there to defend her. She told the judge that she had been mentally and physically tortured and forced to sign her "confessions." She protested against the illegality of her detention and was deferred to another Court of Appeal in Rabat, where she reaffirmed before the judges that she had been detained beyond the legal period and forced to sign confessions. The judges remained deaf to her claims and condemned her to six years in prison for "constituting a criminal group with the goal of preparing and committing terrorist acts" and the "exercise of an activity for an unauthorized association and holding meetings without prior authorization." Fouzia Azougagh remains in prison at Salé and is currently appealing her conviction.<sup>87</sup>

On 8 November 2010, Moroccan security forces evacuated the camp of **Gdim Izik** by force. The camp had been set up by Sahrawi a few weeks prior outside the city of Laayoune to protest their marginalization and difficulty in finding work and housing. Clashes between police and camp residents began when police tried to dismantle the camp, and there were 13 deaths (11 police officers and 2 civilians). In the following weeks, almost 200 Sahrawi were arrested and submitted to torture and other ill-treatment. More than 130 were tried and 19 of those tried appeared before a military court. A commission of inquiry was established at the end of November and published its report in January 2011. The commission did not examine the police intervention after the evacuation of the camp or evoke the mass arrests or fates of the detainees, especially the torture that they had suffered (the report refers to "a few excesses when arrests were being made").<sup>88</sup>

We discussed the case of **Mr Ali Aarrass**, who was repatriated illegally from Spain to Morocco on 19 November 2010 where he was held incommunicado for almost two months above. His Belgian lawyers released a statement on 8 February 2011 in which they report the torture of Mr. Aarrass in police custody: "It was during this illegal period of detention that Mr Aarrass was tortured. He was deprived of sleep for several days and submitted to incessant interrogations. In addition to this, he was injected with chemical products, given electric shocks to the genitals, raped with a bottle, and subjected to many other abuses. It seems that during his first appearance before the judge, M. Aarrass was in such a poor condition that he was unable to participate. In his second appearance, his lawyer was allowed to accompany him but the judge refused to acknowledge the allegations of torture made by Mr Aarrass."<sup>89</sup> To date, no action has been taken on these complaints. At his first hearing in the Court of Appeal of Rabat on 21 April 2011, the court refused his request for release on bail that had been

<sup>86</sup> Alkarama, *Morocco: Mrs. Doha Aboutabit Physically Abused at Salé Prison*, 23 May 2011, [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=743](http://en.alkarama.org/index.php?option=com_content&view=article&id=743) (accessed 9 March 2011).

<sup>87</sup> Alkarama, *Maroc: Jeune étudiante torturée dans les geôles marocaines pour ses opinions politiques* (Morocco: Young Student Tortured in Moroccan Jails Due to her Political Views), 6 April 2011, [http://fr.alkarama.org/index.php?option=com\\_content&view=article&id=920](http://fr.alkarama.org/index.php?option=com_content&view=article&id=920) (accessed 9 August 2011).

<sup>88</sup> Reports of the Commission of Inquiry on the Events of "Gdim Izik" and the city of Laayoune, not dated, p. 22, <http://www.parlement.ma/fe/images/commission-d%27enquete/commission%20d%27enquete%20version%20Fr> (accessed 9 August 2011).

<sup>89</sup> Mr Christophe Marchand, *Ali Aarrass a été torturé* (Ali Aarrass was tortured), Cabinet d'avocats jus cogens, 8 February 2011, <http://www.freeali.eu/?p=535> (accessed 18 August 2011)

made by his lawyers. The family fears that his is an unfair trial, based on “confessions” extracted under torture. Since then, his trial has been postponed five times and he has filed a complaint of torture before the prosecution, informing the Minister of Justice and the Human Rights Advisory Council.

In recent years, various human rights organizations have reported cases of **death due to torture**. Alkarama documented the case of **Mr Abderrahim El-Ati**, a 23-year-old who lived in Azemmour, a town about 70km east of Casablanca where he was a carpenter. On 9 February 2010, he was arrested by several police officers at 12.45pm while he was with a friend at the weekly market. Many witnesses reported that during his arrest, he was brutally beaten by police officers before being taken to the local police station. Having learned of his brother’s arrest, Mr. Bouazza EL-ATI went to the police station at 3.30pm where he learned that his brother had been found dead in his cell an hour earlier. His body was brought to the provincial hospital of Al-Jadida. Questioning the suicide theory that the police put forward, his family hired a lawyer who immediately filed a complaint with the judge of the Court of Appeal in Al-Jadida for assault resulting in death, a complaint which was ignored until December 2010. An autopsy requested by the local prosecutor was conducted on 12 February 2010 at the medical centre in Casablanca and concluded that the death was a suicide by hanging. M. El-Ati’s family has disputed the findings.<sup>90</sup>

### 7.3 Torture in Prisons

In September 2010, the number of prisoners in Morocco was 63,124 and the number of people in custody was 80,000, even though the number of spaces in detention centres does not exceed 40,000. Those awaiting convictions make up 42% of the population while 58% have already been sentenced. Overcrowding in outdated prisons is a form of abuse: each inmate receives an average area of 1.5 square meters, while the international standard is 3 to 6 square meters.<sup>91</sup> Torture, ill-treatment, and collective punishment suffered by the detainees (especially Islamists) are also of serious concern. Alkarama’s assessment made on the basis of numerous testimonies demonstrates the extent of the phenomenon in all prisons in the kingdom:

Prisoners are subjected to humiliating conditions of detention, leading to frequent hunger strikes and protest movements. For example, the latest case occurred 16 May 2011 at Zaki prison in Salé where a prison revolt made up mostly of political prisoners who were convicted in the wake of the May 2003 terror attacks in hasty and unfair trials began. One of their main demands was for retrials by impartial and independent courts with all of the safeguards of a fair trial. They also protested their conditions of detention. The security services that intervened used tear gas and then rubber bullets, according to sources close to the detainees, causing an unknown number of wounded, some of whom were seriously injured.

**M. Mohamed Hajib**, a Moroccan and German national as described above, participated in this prison movement, and he was transferred to Toulal prison and kept in secret detention for 15 days without his family being notified of his transfer as retaliation for this. He was severely tortured, beaten, kept in painful positions for long periods, and threatened with rape. The German Consulate eventually traced his whereabouts and informed his family where he was. Fifteen days after his return to the prison in Salé, he attempted suicide and was rushed to the hospital. According to his family, he continues to suffer abuse in Salé Prison to this day.<sup>92</sup>

The section of the prison reserved for women, which was spared by the protest, was nonetheless occupied by special intervention forces. **Ms Doha Aboutabit**, whose case is described above, was brought before several special forces officers who knocked her down and violently beat her in front of the guards and prison authorities. During her father’s visit on Wednesday 17 May, the marks of her beatings remained visible on her face, and she complained of various other injuries and bruises on her body. She was completely unable to move her upper limbs, leading to fears that she is suffering from fractures. However, the prison administration did not see fit to give her a medical examination.

<sup>90</sup> Alkarama, *Morocco: Carpenter dies in police custody, autopsy claims 'suicide'*, 9 December 2010, [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=618](http://en.alkarama.org/index.php?option=com_content&view=article&id=618) (accessed 18 August 2011).

<sup>91</sup> Mohamed El Hamraoui, *Monde carcéral : Le rapport de l'OMP est sans appel* (Prison World: The OMP's Report is Final), 27 May 2011, [http://www.actuel.ma/Dossier/Monde\\_carceral\\_Le\\_rapport\\_de\\_lOMP\\_est\\_sans\\_appel\\_/543.html](http://www.actuel.ma/Dossier/Monde_carceral_Le_rapport_de_lOMP_est_sans_appel_/543.html) (accessed 12 August 2011).

<sup>92</sup> Alkarama, *Morocco : German-Moroccan citizen arbitrarily detained and accused of terrorism*, 25 July 2011, [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=807](http://en.alkarama.org/index.php?option=com_content&view=article&id=807) (accessed 18 August 2011).

The authorities continue to turn a deaf ear to the calls of detainees and reports by NGOs. In the case of Salé, the administration denies any use of violence. The General Delegation for Prison Administration and Rehabilitation said that "the fundamental rights accorded to prisoners in this context are preserved and they have not been subjected to injustice or negligence, torture or any treatment outside of the law." It denies "the information reported by some newspapers quoting human rights organisations on allegations of torture and deprivation of the legal rights of detainees in cases of terrorism and extremism and those involved on acts of vandalism in Salé prison."<sup>93</sup>

This kind of ill-treatment in prisons is not exceptional, and Alkarama has informed the Special Rapporteur on Torture about the torture and other ill-treatment suffered by detainees during the **transfer** at dawn on 9 October 2010, during which over 100 Moroccan prisoners were brought to the **Kenitra Central Prison**. This transfer took place simultaneously and with the same modus operandi in each case: the prisoners were awakened in the middle of the night by prison guards and handcuffed, blindfolded and forced into trucks. They were the victims of serious violence by guards and all of their belongings including their clothes were stolen. Upon arrival at Kenitra, they were met by guards who insulted, threatened, stripped, and beat them. Those prisoners who expressed the slightest protest were treated more harshly. They were suspended for hours by the wrists at the hands of the guards. Their "welcome" was directed by the warden Mustapha Hadjli, in person, and he encouraged his employees to torture the transferred prisoners. The transferred inmates were in large part Islamists sentenced to long sentences in unfair trials that had taken place in recent years. They came from six different prisons: Tangier, Fez, Meknes, Souk Larbaa, Beni Slimane, and Okasha (Casablanca). Families were allowed to visit their relatives on 11 October 2010 and found that they showed signs of beatings and torture. Moreover, family members were themselves the objects of humiliating body searches just to visit their loved ones<sup>94</sup>.

Among the transferred prisoners was **Mr Youssef Al-Khammal**. His wife learned of his transfer on 15 October 2010. She found her husband in a state of shock, his body covered with injuries and contusions, notably on his hands and feet. He reported having been locked in solitary confinement with his hands and feet bound and being hung upside down for most of the day on Saturday, 9 October in the courtyard.<sup>95</sup>

**Mr Abou Elkassim Britel**, whom we discussed above, was forcibly removed from his cell by prison staff, blindfolded, and dragged to a police van without the opportunity to get dressed or bring any of his personal belongings with him. He was then brutally extracted from the van and thrown to the ground under a volley of punches and kicks by the guards all. He was then dragged into the prison where he was stripped naked by three officers and kept in this state for part of the day. He was subsequently thrown into a cell and deprived of food and water. When a family member was able to visit him on 11 October 2010, he was in shock, his body covered in wounds and bruises, and speaking with great difficulty. After the intervention of his wife, Italian consular officials were able to visit Mr Britel on 15 October under the supervision of the prison director.<sup>96</sup>

More recently, our organization has been informed by one of our correspondents on the ground, the lawyer Mr Abdul Samad Al-Idrissi, a member of Mountada (Forum) Alkarama, of the torture of some of his clients in the new prison of Toulal near Meknes. He visited the prison on 15 August 2011 and met with Messrs Abdel-Samad Al-Missimi, Adil Al Ferdawi, and Amrani Moulay Omar Hadi after being stringently screened. He was only authorised to interview the detainees in presence of the guards, and he and his clients were forced to speak in French so that the guards could not understand their conversation. The prisoners reported the following:

On the evening of 31 July 2011, prisoners who had a Koran were reading it aloud so that other prisoners could hear them through the wall. Suddenly, the guards arrived and violently extracted Abdullah Al Manfaa to beat him front of his cell. Hearing his screams, the other inmates began to protest, shouting and kicking at their cell doors. One of the guards named Ahmed and known by the

<sup>93</sup> *Aujourd'hui Le Maroc*, "Les détenus à la prison de Salé sont traités dans le respect de la loi (Salé Prison Detainees Are Treated in Conformity with the Law), 18 August 2011

<sup>94</sup> Alkarama, *Morocco: Prisoners Transferred en masse to Kenitra Central Prison*, 12 October 2010, [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=577](http://en.alkarama.org/index.php?option=com_content&view=article&id=577) (accessed 9 March 2011).

<sup>95</sup> Alkarama, *Morocco: Scores of detainees tortured in mass prison transfer*, 27 November 2010, [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=619](http://en.alkarama.org/index.php?option=com_content&view=article&id=619) (accessed 9 mars 2011).

<sup>96</sup> Alkarama, *Morocco: Italian 'extraordinary rendition' victim tortured during mass prison transfer*, 21 November 2010, [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=621](http://en.alkarama.org/index.php?option=com_content&view=article&id=621) (accessed 9 March 2011).

nickname "Ennaka" (meaning 'chief of the neighbourhood') then extracted Adil El Ferdawi from his cell to beat him on the head. He then removed Mr El Ferdawi's pants and undergarments while continuing to beat him, and then proceeded to pull him by the beard while calling him unmentionable names. Adil El Ferdawi then lost consciousness and "Ennaka" ordered a guard called Hadji to rape and sodomize him with the whip. The guard tied his wrists and feet with plastic ties which caused unbearable pain. They threw him to the ground and then took the other prisoners, Abdullah El Manfaa, Youssef Khoudri, and Abdu-Assamad El Missimi and beat and sodomized them violently. They then threw all of the prisoners in solitary confinement for a week. None of the victims were allowed to leave their cells until they signed a declaration attesting that they would not protest again.

## **8 The Externalization of Migration Policy**

---

### **8.1 Policy Defined by Europe...**

Morocco is a land of emigration and immigration. Many Moroccans left the country for economic reasons, seeking the resources to meet their and their families' needs in Europe. There are regular attempts to cross the 14km to Spain in makeshift boats. It is for this reason that Spain was the first country in Europe to try to stem the flow of people from Morocco. The flows were initially primarily made up of Moroccans, later becoming multinational with many other Africans transiting through Morocco. Migration from Morocco to Spain is now heavily sanctioned and the Moroccan authorities are forced to return deported migrants from European countries elsewhere in Africa because they did not have authorization to be in Europe. "Readmission" agreements have been signed with many countries in the Northern Mediterranean. Today, European States require the Moroccan authorities to take back, at their own cost, all migrants, regardless of their nationality, that have transmitted to Europe from Morocco.

In recent years, Morocco has become a place of transit for many sub-Saharan refugees in particular, forced to remain where they are because of the many obstacles standing in the way of continuing their journey (increasingly closed borders, sea patrols, danger of the crossing, high costs, etc.). Repressive European policies are implemented by the Moroccan authorities, forcing a large number of migrants and asylum seekers to settle temporarily in Morocco. Their numbers are not high, around 10 000 people, but all the states involved in this migration taking the maximum number of measure to prevent these people from arriving in Europe.

In this regard, European States have put different technical instruments in place, to which Morocco is also party: the Integrated System of External Vigilance (SIVE), founded in 1998 by the Spanish to control the coast; the European Agency for the Management of Operational Cooperation on External Borders (FRONTEX), active since May 2005 and mandated to inspect the Moroccan coastline as well as patrolling alongside the Moroccan Coast Guard to monitor maritime borders and conduct repatriation operations.

The European nations also make their financial aid to Morocco conditional on its efforts to reduce migration flows. Several agreements and programmes such as the 1996 association agreement and the MENA I and II programmes which concerned the 1996-2000 period contain a section regarding the combat against 'clandestine immigration'. Morocco's policy in this regard is therefore largely subordinate to that of Europe.

A strategy to "counter illegal immigration" was gradually put into place from 2005, namely led by the *Hague Programme* (2004-2009), adopted on 5 November 2004 by the European Union. The program aims to include countries neighbouring European territory in anti-migration policy to prevent migrants and refugees from arriving in Europe (*Hague Programme paragraph 1.6.3*) and to re-admit those who have been expelled from Europe (*Hague Programme paragraph 1.6.4*). These policies often result in the establishment of internment camps on the one hand and police raids followed by brutal expulsions on the other. This is all carried out under the benevolent eyes of the European States who only seek to establish their objective, above all other concerns.<sup>97</sup>

---

<sup>97</sup> Jérôme Valluy, *Contribution à une sociologie politique du HCR : le cas des politiques européennes et du HCR au Maroc* (Contribution to a Political Sociology of the UNHCR: European and UNHCR policies in Morocco), TERRA-Editions, collection Etudes, May 2007 <http://terra.rezo.net/rubrique42.html>, (accessed 19 August 2011).

## 8.2 ... Applied by Morocco...

Since November 2003, in the interest of "controlling migration flows," Morocco passed a law on "the entrance and residence of foreigners, illegal emigration and immigration" (Law No. 02-03)<sup>98</sup>. This law was introduced in Parliament at the same time as the anti-terrorism law in a political context which was dominated by the attacks of May 2003. This law manages illegal immigration in repressive manner, namely by condemning illegal migration and making the transportation of people a criminal offense punishable by prison terms.<sup>99</sup> This decree, which neglects the rights of migrants, was delayed from being issued until April 2010.<sup>100</sup>

After this law was passed, new institutions were created, or pre-existing ones strengthened, in order to better manage migration: the Observatory for Migration is responsible for developing national strategy to regulate migration flows, while the Directorate for Migration and Border Controls became operational in 2005. The security forces assigned to the borders have also been increased. In addition, the number of auxiliary forces responsible for border surveillance has been increased by 50% and all staff serving at the border receive special training.<sup>101</sup> As early as December 2004, cooperation between the Royal Gendarmerie of Morocco and the Spanish Guardia Civil was established with joint patrols in the Strait of Gibraltar, in the sea north of Morocco and around the Canary Islands.

Starting in early 2005 Moroccan authorities also began applying repressive policies on land, in the form of raids in the neighbourhoods or other places where thousands of migrants, mostly sub-Saharan Africans, are confined. This repression led to the tragedy of autumn 2005 when dozens of refugees attempting to cross the fences between Morocco and Spain at Ceuta and Melilla were shot by the security forces. Officially, 14 deaths were reported and thousands of others were expelled. The manhunt for refugees, which was carried out with the participation of Spanish border guards, was widely criticized. However, other similar events did not trigger the same response.

Between 23 December 2006 and 6 January 2007, raids in different parts of the country resulted in the arrests of 479 migrants, including pregnant women and children, asylum seekers, people who had obtained refugee status or people who were legally residing in the country. One woman who was six months pregnant at the time lost her unborn child and several cases of rape were documented. Various security forces have been mobilized for these operations: police, "security auxiliaries" (neighbourhood police informers), the gendarmerie and "auxiliary forces" under the direct supervision of the Ministry of the Interior "reinforced the ordinary police for wildcat raids and other such dirty work." Those arrested were forced onto buses and taken to Algeria where they were released into the wild in small groups at the border, while shots were fired into the air. On the other side of the border, Algerian soldiers did the same to prevent them from crossing the border. The manhunt lasted about ten hours before the migrants were able to reach Oujda, its suburbs, the forest or the university where there are informal migrant settlements.<sup>102</sup>

Since 2008, further raids have taken place in a number of towns, effecting hundreds of people. Individuals are targeted because of the colour of their skin, and carried out by plainclothes police officers. There is no distinction made for those who have refugee status or whether they have applied for asylum. Even if most of the people who are legally in the country are later released, it appears that among those detained, some do have refugee status. Held without contact with the outside world, they are then transported to Oujda.<sup>103</sup>

---

<sup>98</sup> *Dahir* No. 1-03-196 of 16 Ramadan 1424 (11 November 2003) promulgating Law No. 02-03 concerning the entry and stay of foreigners in the Kingdom of Morocco, emigration and irregular immigration. Official bulletin No. 5162 of 20 November 2003.

<sup>99</sup> See article 50 of Law No. 02-03 on illegal immigration from Morocco. This law provides for fines ranging from 3,000 to 10,000 and prison sentences ranging from one to six months or one or the other penalties (notwithstanding applicable provisions of the criminal code) for all person who quit the country illegally by land, sea or air.

<sup>100</sup> Decree No. 2-09-607 of 5 Rabii 1431 (1 April 2010), used for the application of Law No. 02-03 concerning the entry and stay of foreigners in the Kingdom of Morocco, emigration and irregular immigration.

<sup>101</sup> Gadem, *Rapport relatif à l'application par le Maroc de la Convention internationale sur la protection des droits de tous les travailleurs migrants et des membres de leur famille* (Report on the Application of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families), February 2009, p. 12, <http://www.gadem-asso.org/Rapport-sur-l-application-de-la> (accessed 19 August 2011).

<sup>102</sup> Jérôme Valluy, *Rounding up Black Africans in Morocco*, *Vacarme* 39, Spring 2007, <http://www.vacarme.org/article1357.html> (accessed 20 August 2011).

<sup>103</sup> Migreurop, *Les rafles de ressortissants subsahariens continuent au Maroc* (The Raids on People of Sub-Saharan Origin Continue in Morocco), February 2008, <http://www.migreurop.org/article1258.html> (accessed 20 August 2011).

On the nights of 28 and 29 April 2008, the Moroccan security forces intercepted two dinghies transporting more than 60 people that had departed from Al-Hoceima in the direction of the Spanish coast. One was forced to return, while the other, because the leader did not respond to the orders of the Navy, continued on its way. To stop it, the dinghy was punctured with a sharp instrument by the security forces. Twenty-nine people drowned, including four children and four women.<sup>104</sup>

In recent years, the raids have not only continued but also intensified in brutality. Between 19 August and 10 September 2010, security forces destroyed many makeshift settlements such as those in Oujda, Al-Hoceima, Nador, Tanger, Rabat, Casablanca, and Fez using bulldozers and even helicopters (as in the case of Nador) to destroy the tents and the homes of migrants. Six to seven hundred people were arrested and left at the Algerian border without water or food. Among them, there were women with children and pregnant women. The organization Doctors Without Borders treated some and found people suffering from "injuries related either directly or indirectly to the raids"<sup>105</sup>.

### **8.3 ... To the Detriment of the Rights of Refugees and Migrants**

Morocco has ratified the 1951 Convention on Refugees and created an Office for Refugees and Other Stateless People (BRA) which is charged with the administration of the asylum process and the national legal and administrative protection of refugees.<sup>106</sup> It has not established an asylum process in line with international standards and it does not recognize the status of political asylum granted by the UNHCR. Thus, political refugees do not have access to work, education, or medical services.

The UNHCR examines asylum applications while playing a leading role in the implementation of immigration policies, and participating in their development. The UN agency began operations in 2005, but had been virtually dormant until then. In late 2004, the UNHCR recognized 274 refugees under the Geneva Convention, while a few hundred applications remained pending. While the caseload has increased in recent years, the granting of refugee status is still based on criteria established in Europe and only applies to a minority of people. Between early 2005 and mid-2006 nearly 2000 asylum applications were filed with the UNHCR and only 500 received refugee status. Eighty percent of applications were rejected.<sup>107</sup> The consequence of this policy, presented as being more respectful of international law, actually leads to a narrower and stricter distinction between refugees, rejected asylum seekers and other refugees who have been forced to flee their countries for war or economic reasons.

While refugee status is supposed to provide protection, refugees recognized by the UNHCR – in the absence of recognition by the Moroccan authorities – are dependent on a very small amount of available aid. Worse, these refugees are not immune to raids and deportations despite the Geneva Convention and Moroccan law on the "entry and residence of foreigners, illegal emigration and immigration." Therefore, their right to asylum does not exist in practise.

Article 34 of Law 02-03 also provides that those rejected must be held "in premises outside of prison" while awaiting discharge. They are entitled to certain rights and the detention must be subject to review by a judge (Article 35). In reality, however, the real locations of detention fall outside of any legal framework and are not at all appropriate to their situation (military barracks, police stations, makeshift camps in forests, etc.). The length of detention is not supposed to exceed 26 days but is often much longer, without any means of redress for detainees. Regarding asylum seekers wishing to enter Moroccan territory, they are barred from crossing the border and have no ability to apply to stay legally, leaving them no option but to enter illegally.

The organization *Gadem* has received numerous testimonies of refugees who describe the extreme conditions of detention that they experienced while in custody: "Like sardines in a box in a cell where the smell makes you want to vomit. There was a Congolese girl in the same cell. We were about fifty in a cell of 2 square meters. Even sitting down was a problem. We had to squeeze in. We took turns

<sup>104</sup> AFVIC, *Rapport sur le naufrage d'Al Houceima* (Report on the Sinking of Al Houceima), 13 May 2008, [http://www.migreurop.org/IMG/pdf/rapport\\_pateras\\_2\\_\\_1\\_.pdf](http://www.migreurop.org/IMG/pdf/rapport_pateras_2__1_.pdf) (accessed 20 August 2011).

<sup>105</sup> Médecins sans frontières, *Morocco: MSF concerned over medical condition of migrants after mass expulsions by Moroccan police*, 30 September 2010, <http://www.msf.ca/news-media/news/2010/09/morocco-msf-concerned-over-medical-condition-of-migrants-after-mass-expulsions-by-moroccan-police/> (accessed 20 August 2011).

<sup>106</sup> Decree No. 5-57-1256 of 29 August 1957, enacted on 6 September 1957 providing the modalities for the application of the Convention on the Status of Refugees.

<sup>107</sup> Jérôme Valluy, *Contribution à une sociologie politique du HCR : le cas des politiques européennes et du HCR au Maroc*, op. cit., p.45.



sitting. We stayed there under the same conditions until that evening. We stayed at the Central Police Station eight days without brushing our teeth" [T., Rabat, 01/12/2008, GADEM].<sup>108</sup>

The European policy of outsourcing migration management has serious repercussions in Morocco. While many migrants are fleeing civil wars and other political conflicts (Congo, Ivory Coast, Niger, etc...), a majority are considered by the UNHCR as being economic refugees. Regardless, even if they are recognized as political refugees, they cannot rely on effective protection. Marginalized and treated as criminals, they are increasingly confronted with institutional and societal racism.

## **9 Conclusion**

---

Morocco is not immune to the upheaval affecting the Arab region, but has attempted to meet the demands of the national protest movement with constitutional reform. It is still too early to measure the impact this has had on the separation and balance of powers.

One of the most important demands of Moroccan civil society is the reform of the judicial system. This branch is viewed as corrupt and subject to manipulation by the executive. Its lack of independence has a direct effect on the situation of human rights in the country.

Following the attacks on New York City on 11 September 2001 and Casablanca in May 2003, a massive campaign of repression was carried out by the police and the judicial branch against Islamic circles. This came just as the Equity and Reconciliation Commission, established by King Mohammed VI, was trying to overcome past violations, all the while ignoring the ones currently taking place.

The current situation, marked by the resurgence of torture in all of its forms, unfair trials, and heavy prison sentences, has revived memories of Morocco's dark past, and raises questions about the real desire of the authorities to mark a definite break with the past. This situation is largely fostered by the climate of impunity that has been denounced without effect by NGOs, who for years have been calling on the authorities to implement concrete changes.

Alkarama hopes that the concerns raised in this report will be addressed constructively during the dialogue between the Committee against Torture and the representatives of the State Party in order to put an end to torture and other violations of human dignity and miscarriages of justice. This, we hope, will open the way for real democratic achievements in Moroccan society.

---

<sup>108</sup> Gadem, *Rapport relatif à l'application par le Maroc de la Convention internationale sur la protection des droits de tous les travailleurs migrants et des membres de leur famille*, op. cit., p. 49.