



## **Second round**

# **Universal Periodic Review: Morocco**

## **Submission to the Summary of Information Provided by Outside Parties**

**Alkarama, 21 November 2011**

1. General Context and Recent Developments
2. The Right to Due Process
3. Secret Detention and Torture
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1. This contribution to the Office of the High Commissioner for Human Rights' summary of stakeholders' information is made in the context of the second cycle of the Universal Periodic Review with respect to the general human rights situation in Morocco and the recommendations made to the State party in 2008. The issues raised by Alkarama in November 2007 as part of the first review of Morocco remain largely valid.

## **1. General Context and Recent Developments**

2. Following the ascension of King Mohammed VI to the throne in 1999, reforms in various sectors were initiated, particularly in the harmonization of domestic law with international law. However, while a number of important texts have been adopted, the revision of the Penal Code is still pending.
3. In addition, the weight of past events continues to weigh on the human rights situation in the country. The transitional justice process which was undertaken in 2004 with the creation of the Equity and Reconciliation Commission (IER) with the objective to investigate two types of violations – enforced disappearances and arbitrary detention committed by agents of the State between 1965 and 1999 has proven itself to have been rather weak. Neither the objective of establishing the "historical truth" nor the project to implement a strategy to combat impunity has been achieved to date. The IER undertook its mission at the same time as a wave of violent repression in the name of combating terrorism swept throughout the country, leading to serious violations of the basic rights of Islamist sympathizers and activists. The repetition of human rights abuses such as abductions followed by incommunicado detention and torture was not prevented by the recommendations of the IER. In this regard, Alkarama has submitted several dozen cases of serious violations to the Special Procedures and collected hundreds of testimonies over the past two years.
4. The recent history of Morocco is marked by social struggles in which the government attempts to diffuse protests by instituting some reforms, but fails to respond effectively to citizens' demands.<sup>1</sup> As such, the country did not avoid the recent upheavals shaking the Arab world since the end of 2010. The "February 20 Movement" (M20F) brought thousands of peaceful demonstrators into the streets throughout the country to challenge the government, although not the monarchy. They demanded constitutional reforms to ensure further democratization of state institutions and for more social justice. They also called for the arrest and trial of those responsible for crimes and economic predation, the opening of investigations into the arbitrary arrests and summary trials of thousands of people accused of terrorism since 2002, the release of prisoners of conscience, and the abolition of the Anti-Terrorism Law of 2003.
5. In general, the Moroccan authorities responded quickly and the King announced comprehensive institutional reform on 9 March 2011. Gatherings continued to be organized by the M20F until the adoption of the new Constitution in July 2011. The M20F then continued to call for a boycott it did not consider the legislative reforms to go far enough. While most of the rallies went relatively smoothly, abuses by the security forces and various forms of intimidation against activists and sympathizers were reported.
6. The new Constitution of 1 July 2011 introduced institutional reforms including some separation of powers and transfer of part of the prerogatives of the King to the Head of Government but did not establish a true constitutional monarchy. It is too early to measure the real impact of the reforms and if the new balance of powers and major institutions will be effective. The new Constitution requires the gradual adoption of a series of organic laws to give practical effect to the new system. It is only with the instauration of required organic laws and practical implementation that it will be possible to assess the political will to democratically reform institutions. It should be noted that it was before the constitutional reform that the National

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<sup>1</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).

Human Rights Institution (NHRI) has had its powers expanded and became the National Council for Human Rights (NCHR). The NCHR can now request the courts to open investigations into human rights violations. Thus, the Council opened an investigation into the death of Mr Kamal Omari on 2 June. Mr Omari was killed after having been severely beaten as part of a crackdown on demonstrations in May 2011 in Safi. However, the report of the Council on Mr Omari's case has yet to be made public.

## 2. The Right to Due Process

7. All of Moroccan civil society is unanimous in the opinion of the necessity and urgency of **reforming the justice system** and regularly calls for the establishment of an independent, credible, competent, and accessible court system, given the numerous problems which currently plague it. Victims of violations, their families, their lawyers, and various NGOs consider the current system as being riddled with corruption and under the direct influence of the executive branch. The lack of independence of the judiciary carries with it serious consequences for the rights of individuals, particularly people who have been accused of undermining the security of the State, suspected of terrorist activities, or persecuted for "press crimes." The **excesses of the fight against terrorism** following the attacks in Casablanca in May 2003 continue to be a problem. While the security policy first manifested itself in mass abductions, secret detentions, and acts of torture, it is visible today in the unfair trials that continue to date. Procedural irregularities are quasi-systematic during investigation, which are examined summarily, and intended solely for the prosecution. Other irregularities include the lack of witnesses during hearings and lack of confrontation with accusers, as well as the use of statements obtained under torture during police custody as the sole pieces of evidence against defendants.
8. The instrumentalisation of the justice system by the Executive is equally visible in various **trials against the media**. These have become veritable legal battles during which grave procedural irregularities are never considered by judges. These court cases seriously calls into question the principle of freedom of expression in Morocco and undermine any efforts to liberalize the system. The recent case of the journalist Rachid Niny, the editor of the largest Arabic-speaking Moroccan daily Al Massae, aptly demonstrated these concerns. Charged with "breach of institutions and public figures" he was sentenced on 9 June 2011 to a one year of imprisonment by the trial court of Casablanca. These charges stemmed from a series of columns in which he described, among other things, human rights violations in the country. Activists and human rights NGOs have unanimously denounced the pressures and persecution that he has suffered. Civil society has not failed to point out that the revision of the Press Code is still pending and that it is unacceptable that journalists continue to be sentenced to prison for their writings.

## 3. Secret Detention and Torture

9. **Secret detention** is still a major problem in Morocco. Long periods of incommunicado detention and the extension of police custody to its maximum legal limit are designed to enable the extraction of confessions from suspects through torture or by other means of coercion. Since the enactment of the 2003 terrorism law, the maximum length of custody is 96 hours, and can be renewed twice, making it a total of 12 days, which is excessive. However, even this length is often exceeded and custody is all too often incommunicado. The warrantless arrest of suspects and the falsification of the date of arrest continue to be practiced. Arrestees are not informed of their rights and do not have access to a lawyer, and their families often do not know what has become of them following arrest.
10. A number of victims continue to report having been taken to the detention centre at Temara where the Directorate of Territorial Surveillance is headquartered. They are then handed over to the police court legally empowered to begin preliminary investigations, and to present suspects to the court. Numerous cases indicate that the "confessions" recorded in the transcripts of the judicial police have false arrest dates placed on them when the maximum length of detention is exceeded. Regarding confessions, it is common that judges do not attempt to corroborate the accused's preliminary statements with other elements of proof, even when the person states that

he or she was tortured. Numerous court are based solely on the confessions of the accused, in the absence of any material evidence. The judge never questions the transcripts of the preliminary investigation established by the judicial police and criminal convictions are handed down on the basis of the transcript alone, a clear violation of Article 293 of the Criminal Procedure Code which states that any statement obtained through torture is void. When the defendants demand to confront witnesses or police who inflicted torture upon them, most often during the first audience, the judge dismisses this possibility, an explicit violation of Section 135 of the Code of Criminal Procedure. This carries grave consequences for the fairness of the trial in which the defence is deprived of the possibility of refuting the accusations put forward by the public prosecutor.

11. Following the wave of arrests in Casablanca during the months of March and April 2010, numerous people were detained in secret for several weeks. They reappeared when they were presented to the judge of the Court of Appeal in Rabat on 6 May 2010. In October 2010, another wave of arrests in several cities across the country took place and those arrested were also held incommunicado beyond the legal limit allowed for police custody.
12. While the Moroccan authorities claim to combat the use of torture, it is clear that those arrested, especially in cases of so-called 'terrorism', continue to be systematically tortured.
13. Article 74 paragraph 8 of the Code of Criminal Procedure expressly requires the public prosecutor to order a medical exam as soon as he or she becomes aware of an act of violence or a request for investigation is made. Requests for medical examinations made to the judge are almost never taken into account even though he or she can often see firsthand the signs of torture at the time of the defendant's first appearance. The judge will also often delay their request for an exam so that the effects of violence have time to fade away or disappear completely. The collusion of the justice system is the main reason that the security forces can continue to torture suspects with impunity, especially Islamists who are often accused without any evidence of terrorist activities.

#### **4. Prison Conditions**

14. In September 2010, the official number of prisoners stood at 63,124 while the number of official spaces available is 40,000. Those awaiting trial make up 42% of the prison population while those already convicted make up 58%. Overcrowding in prisons is itself a form of abuse: each inmate receives an average area of 1.5 square meters, while the international standard varies from 3 to 6 square metres.<sup>2</sup> Even more concerning, many detainees, especially so-called "Islamists", suffer torture, cruel, inhumane, and degrading treatment and collective punishment. Alkarama is testimony to the sheer magnitude of this phenomenon in all prisons in the Kingdom from the numerous statements it has received in this regard. Even recently, our organization has been informed of the severe torture of many people, including Messrs Abdel-Samad Al Missimi, Adil Al Ferdawi, and Amrani Moulay Omar Hadi in the new prison Toulal, near Meknes visited on 15 August 2011.<sup>3</sup>
15. The deplorable conditions of the prisons is made worse by prison management's treatment of inmates accused of terrorism, for example during the transfers of prisoners which are an opportunity for government employees to commit serious abuses. A multiple-prison transfer of over a hundred prisoners to Kenitra central prison took place at dawn on Saturday, 9 October 2010. Using the same *modus operandi*, the guards awakened the prisoners in the middle of the night and forced them into trucks, while they were handcuffed and blindfolded. They were subjected to serious violence from the guards during transport. Upon arrival, they were stripped

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<sup>2</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 30 September 2011).

<sup>3</sup> Available at [http://www2.ohchr.org/english/bodies/cat/docs/ngos/Alkarama\\_CAT47\\_Morocco.pdf](http://www2.ohchr.org/english/bodies/cat/docs/ngos/Alkarama_CAT47_Morocco.pdf) (accessed 30 September 2011).

naked and met by other guards who appeared overexcited, who proceeded to insult, threaten, and beat them.<sup>4</sup>

16. Prisoners are subjected to such humiliating conditions of detention leading to frequent hunger strikes and protest movements. On the margins of the M20F, on 16 May 2011, the Zaki prison in Salé was witness to a huge revolt by political prisoners who had, for the majority, been convicted in the Casablanca attacks of May 2003, following unfair trials. One of their main demands was to be tried again by impartial and independent courts and given a guarantee that they will get a fair trial or a royal pardon. They also protested against their conditions of detention.

## **5. The Rights of Migrants**

17. Morocco is a land of emigration and immigration. In recent years the country has become a transit point for thousands of sub-Saharan refugees, forced to stay in the country because of the many obstacles preventing them from continuing their journey (increasingly tight border controls, sea patrols, danger of the crossing, high costs, etc.) Law 03-03 on "the entry and residence of foreigners, emigration and illegal immigration" was adopted in 2003 in a tense security environment. Its objective was clearly to deny access to Moroccan territory and prevent the residence of "any alien whose presence poses a threat to public order..." (article 4). This often means trampling on basic human rights of migrants, and it was not until April 2010 that a decree clarifying the mode of application of the law was issued.
18. Illegal emigration is now punishable by law and the Moroccan authorities are constrained by the European states, the final destination of migrants, to take back illegal migrants which they themselves have refouled. The fight against illegal immigration resulting from the strategy established by the *Hague Programme* in 2004 by the European Union (EU) has degenerated into a veritable manhunt. The opening of internment centres on the one hand and police raids followed by brutal expulsions on the other all occur under the watchful eyes of the EU. Between August 19 and September 10, 2010, for example, security forces broke up several makeshift camps in many cities such as Oujda, Al Hoceima, Nador, Tangier, Rabat, Casablanca and Fez using bulldozers or even helicopters (as happened at Nador) to destroy the tents and houses of migrants. Six to seven hundred of them were arrested and brought to the Algerian border without food or water. Among them were children and pregnant women. Repressive policies carried out by the EU and Moroccan authorities continue to force migrants and asylum seekers to settle more or less temporarily in Morocco, and places them in a very vulnerable situation.

## **6. Recommendations**

1. In the context of judicial reform, immediately adopt a new Penal Code as well as a new Press Code.
2. Ratify the Rome Statute to truly combat impunity.
3. Ensure that the forthcoming adoption of the Organic Law on the Higher Judicial Council is made in conformity with the Basic Principles on the Independence of the Judiciary.
4. Repeal and/or revise all of the anti-liberty provisions of the Anti-Terrorist Law of 03-03, in particular the provisions concerning the definition of terrorism infractions and police custody.
5. Guarantee the efficiency of the national preventative mechanism as provided for by OPCAT (ratified in September).

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<sup>4</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 30 September 2011).