



**INTERNATIONAL COMMISSION OF JURISTS SUBMISSION
TO THE COMMITTEE AGAINST TORTURE
ON THE EXAMINATION OF THE FOURTH PERIODIC REPORT OF THE
KINGDOM OF MOROCCO UNDER THE CONVENTION AGAINST
TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING
TREATMENT OR PUNISHMENT**

Committee against Torture
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ICJ submission to the Committee against Torture on the Examination of the Fourth Periodic Report of the Kingdom of Morocco

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The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the examination by the Committee against Torture (the Committee) of the Fourth Periodic Report of the Kingdom of Morocco under the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention). This submission is focussed on torture under the Moroccan legal framework, and in the context of counter-terrorism law and practice.

EXECUTIVE SUMMARY

In this submission the ICJ provides alternative replies to aspects of some of the questions raised in the list of issues to be considered during the examination of the fourth periodic report of Morocco on 31 October-1 November 2011. The ICJ highlights the failure of the Moroccan authorities to comply with the Committee's previous recommendations, and to that end, incorporate into Moroccan domestic legislation a crime of torture as defined in the Convention; reform the Criminal Code and the Criminal Code of Procedure in accordance with international human rights law and standards; thoroughly investigate all alleged cases of torture and ill-treatment committed in the context of "combating terrorism"; and address the pressing issue of impunity for acts of torture and other serious human rights violations.

The ICJ is concerned that well-documented cases of torture and other ill-treatment that have occurred in the context of the United States proclaimed "war on terror" and the United States-led secret rendition program remain un-investigated, and that those allegedly responsible for these human rights violations remain unpunished. Suspects and convicted prisoners in these cases were subjected to various methods of torture and ill-treatment, including beating and tying in painful positions; painful binding; electric shocks; choking and strangling; suffocation by water; hanging from wrists; back bending; threats of rape and sexual assault; sleep deprivation, and genital mutilation. These practices violate Morocco's obligations under the Convention, and have been further exacerbated by the policy of secret detention, adopted in the context of the "war on terror" and carried out, on several occasions, by officers from the Moroccan Intelligence service, the General Directorate of Territorial Surveillance, *Direction Générale de la Surveillance du Territoire* (DST).

Finally, the ICJ concludes with a list of recommendations about what steps Morocco should undertake in order to improve its adherence to the Convention. The ICJ urges the Committee to call on the Moroccan authorities to fully investigate the role of the Moroccan security services in the "war on terror", including cases of "secret renditions", with a view to establishing the truth about human rights violations; holding those responsible for these violations to account; and ensuring that the victims' rights to a remedy and to reparation are fully granted.

INTRODUCTION

The ICJ is a non-governmental organisation founded in 1952, dedicated to the primacy, coherence and implementation of international law and principles that advance human rights. The ICJ takes an impartial, objective and authoritative legal approach to the protection and promotion of human rights through the rule of law. It provides legal expertise at both the international and national levels to ensure that developments in international law adhere to human rights principles and that international standards are implemented at the national level.

This submission does not represent a full alternative report, but is instead focused on three thematic areas: (i) torture under the Moroccan legal framework; (ii) torture and ill-treatment in the context of the “war on terror” and “secret renditions”; and (iii) torture and ill-treatment in the context of combating “terrorism” in Morocco. This submission only addresses aspects of relevant questions within the Committee’s List of Issues in that regard, but does not purport to respond to other questions raised by the Committee. The ICJ does not express a view one way or another on the remaining issues, nor concerning other articles, or other features of articles, in the Convention.

ICJ ALTERNATIVE REPLIES TO THE LIST OF ISSUES

In these alternative replies, the ICJ refers to aspects of the Committee’s List of Issues.¹

Articles 1 and 4

List of Issues, paragraph 1:

1. According to the State party’s report (paras. 15–22), article 231-1 of the Moroccan Criminal Code has been amended to include a definition of torture that is in strict conformity with article 1 of the Convention. Please clarify the scope of the definition of torture in the light of article 231-2, which reportedly refers only to “public officials” as bearing criminal responsibility for torture, and article 224, which contains a narrow definition of the term “public officials”. Please indicate whether an amnesty or a pardon may be granted to individuals convicted of committing torture.

On 14 February 2006, the Moroccan Criminal Code was amended by Law No. 43-04, with a view to bringing the Moroccan Code’s definition of torture into compliance with the Convention’s definition. Under Article 231-1 of the Moroccan Criminal Code, torture refers to:²

“any act that causes severe physical or mental pain or suffering intentionally inflicted by a public agent or upon his instigation or with his express or tacit consent, upon a person for the purpose of intimidating or pressuring him or for pressuring a third person, to obtain information or a confession, to punish him for an act that he or a third party committed or is suspected of having committed, or when such pain or suffering is inflicted for any other objective based on any form of discrimination”.

The definition in the Moroccan Criminal Code covers “the purpose”, as opposed to “such purposes”, implying that the list of purposes is exhaustive, which is not the intent of the Convention definition. This definition therefore does not fully incorporate all the purposes of torture, nor does it fully encompass situations of acquiescence, complicity, or other participation in torture by public officials. It thus, falls short from the definition provided for by the Convention.

Under Article 224 of the Moroccan Criminal Code, “Public Agents” are:

“all persons who, in some capacity, have a paid or unpaid function or mandate, even a temporary one, and who work in that capacity for the State, public administration, local authorities, public institutions or other public services.”

¹ Committee Against Torture, *List of issues to be considered during the examination of the fourth periodic report of Morocco (CAT/C/MAR/4)*, UN Doc CAT/C/MAR/Q/4 (2011); and *Réponse écrites du Royaume du Maroc à la liste des points à traiter (CAT//C/MAR/Q/4) à l’occasion de l’examen du quatrième rapport périodique du Maroc (CAT/C/MAR/4)*, UN Doc CAT/C/MAR/Q/4/Add.1 (2011).

² Dahir n° 1-06-20 of 14 February 2006. Official Gazette n° 5400 of 2 March 2006.

Public agents are far too narrowly defined under Article 224. The definition omits, significantly, persons exercising State power or authority, even though they may not directly work for one of the included public institutions or agencies. Under the international law governing State responsibility, the State is responsible for the conduct of otherwise private persons when they act under the instructions or under the direction or control of the State, or when they are empowered by the State to exercise elements of governmental authority. It is therefore incumbent upon States parties to treat such persons as public authorities for the purposes of discharging its obligations under the Convention.³

Morocco accepted a broader definition of “public official” when it became party to the UN Convention against Corruption, which defines a public official as including:⁴

“(i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a “public official” in the domestic law of a State Party.”

In addition, Article 231-1 omits any reference to the various forms of complicity and participation as required under article 4 of the Convention, in including in respect to acts of torture or ill-treatment inflicted by or at the instigation of or with the consent or acquiescence of persons acting in an official capacity.

Also, under Article 231-2 of the Moroccan Criminal Code: “A Public Agent who practice torture as defined under Article 231-1 is punished with imprisonment ranging from five to 15 years and a fine ranging from 1,0000 to 30,000 Dirhams”. This does not provide for sanctions against superior authority, including public officials where they knew that the crime of torture was about to be, was being, or had been committed. It also fails to take necessary and reasonable measures to prevent or stop the crime. In its General Comment No 2, the Committee pointed out that:⁵

“...those exercising superior authority – including public officials – cannot avoid accountability or escape criminal responsibility for torture or ill-treatment committed by subordinates where they knew or should have known that such impermissible conduct was occurring, or was likely to occur, and they failed to take reasonable and necessary preventive measures.”

Under international law, torture is absolutely prohibited - at all times and in all places. Article 2(2) of the Convention provides:

“No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”

Both the Committee, in its General Comment No 2, and the UN General Assembly have affirmed repeatedly that the prohibition against torture is a peremptory norm of international law.⁶ The peremptory nature of the prohibition against torture makes the crime of torture not subject to prescription, including any statute of limitation. Legal procedural

³ International Law Commission, Articles on State Responsibility, as adopted by the UN General Assembly in its resolution 56/83, UN Doc A/Res/56/83 (2001), articles 5 and 8.

⁴ United Nations Convention against Corruption, 14 December 2005, 2349 UNTS 41, article 2(a).

⁵ Committee Against Torture, General Comment 2, *Implementation of article 2 by States parties*, UN Doc CAT/C/GC/2 (2008), para 26.

⁶ *Ibid* at para. 1; and see, for example, UN General Assembly 64/153, UN Doc A/RES/64/153 (2010).

obstacles, which preclude the initiation or continuation of legal proceedings, constitute a major impediment to the prosecution of perpetrators of gross human rights violations. In Morocco, under the Moroccan Criminal Procedure Code, the statute of limitation for the crime of torture is 20 years.⁷ This prevents any judicial proceedings in the majority of cases of torture documented in the Report of the Equity and Reconciliation Commission, a Government-created truth commission, including the cases of 89 detainees who died while at custody in Tazmamert (31 cases), Egdez (32 cases), Kal'at Meggouna (16 cases), Takounit (8 cases), Krama (1 case), and Sadd Elmensour Addhabi (1 case).⁸ The Equity and Reconciliation Commission in its findings considered decades of serious human rights violations in Morocco, including torture, enforced disappearances, unlawful killings and secret detentions.

Furthermore, under the Moroccan Criminal Code, the crime of torture is not excluded from the provisions of Articles 51 and 53 related to amnesties and pardons respectively. In its General Comment No 2, the Committee has confirmed that:⁹

“...amnesties or other impediments which preclude or indicate unwillingness to provide prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment violate the principle of non-derogability.”

The use of torture and other forms of ill-treatment in Moroccan prisons and detention facilities has been exacerbated by the conditions of detention provided for the Moroccan legal framework, in particular the Criminal Procedure Code and the Counter-Terrorism Act No. 03-03 of 28 May 2003. Amendments to Article 66 of the Criminal Procedure Code of October 2002 allow, in “terrorism” cases, for extending the length of *garde à vue* (detention in police custody) to 96 hours, renewable twice upon authorisation from the public prosecutor. Furthermore, during the *garde à vue*, the representative of the public prosecution, at the request of the police, may also delay the defendant’s contact with a lawyer, for up to 48 hours as from the first renewal, meaning that a “terrorist” suspect might be prevented from communicating with a lawyer for the first 6 days of *garde-à-vue*. Under international standards, anyone arrested or detained has the right to be assisted by a lawyer without delay and to communicate and consult with his lawyer without interception or censorship and in full confidentiality. This right may be delayed only in exceptional circumstances and must comply with strict criteria determined by law. In any event, the person deprived of liberty should have access to a lawyer within 48 hours of their arrest or detention.¹⁰

In addition, although Article 293 of the Criminal Code of Procedure prohibits the use of “confessions” obtained through torture and other ill-treatment, stating that a “confession” obtained through “*violence or coercion shall not be considered as evidence by the court*”, this Article remains largely disregarded by Moroccan courts, in particular in cases related to “terrorism”.

Article 2

List of Issues, paragraphs 9 and 10:

9. The Committee understands that, pursuant to Act No. 03-03 of 28 May 2003 on combating terrorism, the Code of Criminal Procedure was amended to allow for the extension of pre-arraignment detention in terrorism-related cases for up to 12

⁷ Article 5 of the Code of Criminal Procedure: Dahir n° 1.02.255 of 3 October 2002, Official Gazette n° 5078 of 30 January 2003.

⁸ Report of the Moroccan Truth Commission, *Instance Équité et Réconciliation*, available at: http://www.ier.ma/article.php3?id_article=1435.

⁹ Committee Against Torture, General Comment 2 (above note 4), para 5.

¹⁰ Principle 7 of the UN Basic Principles on the Role of Lawyers; Human Rights Committee, Concluding Observations of the Human Rights Committee on Israel, UN Doc CCPR/CO/78/ISR, para 13; and *Brannigan and McBride v United Kingdom* [1993] ECHR 21, para 64.

days and of the period in which detainees are denied contact with their lawyers to up to 6 days. Please provide statistical information on how often this provision has been applied during the reporting period and the steps taken by the State party to ensure that basic legal guarantees for suspects are upheld, in particular the right to consult a lawyer promptly upon being taken into official custody. Please clarify the definition of "terrorism" used in this Act.

10. With reference to paragraph 5 of the conclusions and recommendations of the Committee, please comment on allegations by NGOs, including Amnesty International and Human Rights Watch, that individuals in terrorism cases have been: arrested outside the normal legal framework, without a warrant and by unidentified plain-clothes officers from the National Surveillance Directorate (DST); held in undisclosed locations for periods longer than the 12 days authorized by the Counter-Terrorism Act No. 03-03 of 28 May 2003; subjected to torture and ill-treatment; and asked by police to sign a statement without having been given access to a lawyer. In this regard, please comment on allegations made by the individuals named below, who claim that they were placed in incommunicado detention and held in Temara prison. Please indicate whether the allegations were investigated and led to prosecutions and, if so, what the outcome was of these procedures:

- (a) Mehdi Meliani;
- (b) Younes Zarli;
- (c) Yassir Outmani;
- (d) Salah Nachat;
- (e) Aziz Denkir;
- (f) Youssef al-Taba`i.

Also please comment on other allegations that the following persons were tortured at Temara prison:

- (a) Mohamed Gatit;
- (b) Hammou Hassani;
- (c) Noreddine Gharbaoui.

In the aftermath of the 2003 terrorist attacks, the Moroccan Parliament adopted a new anti-terrorism law,¹¹ introducing a range of additional terrorism offences, including *apologia* and incitement,¹² without requiring either intent to incite or a concrete risk of violence. Special rules under the anti terrorism law, applicable to terrorism cases, such as prolonged *garde-à-vue* without access to a judge and/or a lawyer, have facilitated torture and other ill-treatment. Judges have decided most cases on the basis of forced "confessions", inaccessible evidence and in rushed proceedings.

The ICJ has received consistent and credible reports of mass arrests which took place after the 2003 attacks and of terrorist suspects being held in the unacknowledged detention facility in Témara run by the DST, including the following individuals referred to in the List of Issues:

- **Hammou Hassani** was arrested in Nador, in the north of Morocco, on 15 December 2004 by officers of the DST on the ground of *illegal possession of weapons*. He was transferred to Témara detention centre where he was subjected to several methods of torture and ill-treatment. These included electric shocks; suffocating by water; the insertion of a pen into his penis; systematic beatings; and "the airplane" torture method, where the victim's body is forced into the shape of an airplane. The feet are closed together; the person's head is bent down until it cannot go down any further, while the arms are held up to the highest point. He was sentenced to death in 2005. The sentence has so far not been carried out.

¹¹ Act No. 03-03 of 5 June 2003 of Morocco (anti-terrorism law).

¹² Articles 218(2) and 218(5) respectively of the Criminal Code of Morocco.

- **Bouchta Charef** was detained in Syria for 11 months in 2008 at the instigation of the Moroccan intelligence services. He was then deported to Morocco in 2009. He was detained for 38 days in Témara and subsequently transferred to Zaki Prison at Salé. While in Témara, he was reportedly subjected to several methods of torture and ill-treatment, including rape (by inserting a bottle into his anus), beating on his genitals and other physical assaults. On 28 April 2011, he was sentenced to 10 years' imprisonment by the Criminal Court of Appeal in Salé for belonging to a terrorist group responsible of recruiting Moroccan "terrorists" and sending them to Iraq and Afghanistan to carry out suicide bomb attacks.
- Between 16 and 17 May 2011, in Zaki Prison at Salé, more than three hundred detainees on terrorism-related grounds took part in a protest against their detention conditions. Most detainees have claimed that they were subjected to secret incommunicado detention and to torture and other ill-treatment. At least 30 detainees and eight prison guards were reportedly injured during the protest. Some of these detainees were transferred to Toulal Prison at Mèknes, including **Adel Elfardaoui, Abellah El-Manfaa, Abd Assamad El-Msimi** and **Youssef Khoudri**.

According to information provided by one of their lawyers, Abdessamad El-Idrissi,¹³ who visited them in Toulal prison on 15 August 2011, the four detainees were subjected to torture and ill-treatment on 1 August. Some of them were reciting the Qu'ran at night when the prison guards ordered them to stop. When Abellah El-Manfaa refused to obey their order, they took him out of his cell and beat him. When Adel Elfardaoui, Abd Assamad El-Msimi and Youssef Khoudri protested against the treatment of Abellah El-Manfaa, they were also taken out of their cells and subjected to severe beatings. The four were reportedly subjected to rape (by penetration of the anus with sticks) and kept in solitary confinement for a week. Judicial authorities in Mèknes have opened an investigation into these allegations.

Article 3

List of Issues, paragraph 27:

27. Please comment on allegations that the Government of Morocco has cooperated with other Governments in counter-terrorism activities, including in the context of the "war on terror", by operating unofficial detention facilities, receiving individuals transferred by the security or intelligence forces of other States and facilitating the transfer of such individuals to the custody of other States where they face a risk of torture and ill-treatment. Please indicate in your reply whether any Government agencies or State bodies have conducted any investigations into the matter and, if so, what their findings were. Please comment specifically on allegations by Binyam Mohamed, a British resident, that he was transferred to the custody of Moroccan agents in 2002, held in incommunicado detention at an unknown facility in Morocco and tortured. Please also comment on the case of Ramzi Benalshibh and allegations that he was transferred to and interrogated in Morocco, and then transferred out of the country. Also please comment on the case of Mohamed Gatit, who was reportedly tortured in the Temara detention centre over the course of 18 days in November 2009 after being transferred to the custody of Moroccan officials by Algerian security officials.

Secret rendition refers to the process of seizing and transferring individuals pursuant to counter-terrorist operations conducted outside the normal legal framework, and procedures that bypass all judicial and administrative due process, effectively placing those individuals outside the protection of the law. Although the practice of secret rendition following 11

¹³ Four *salafist* detainees subjected to rape at Mèknes prison, at: http://assabah.biz/index.php?option=com_content&view=article&id=14179:2011-08-18-09-08-38&catid=67:cat-nationale&Itemid=600.

September 2001 has been orchestrated by the United States, it has involved the complicity and participation of a number of other States, including Morocco. In the case of Morocco, the cooperation of local authorities with other governments in undertaking counter-terrorism activities, including in the context of the “war on terror”, has resulted in many serious human rights violations, including torture and other ill-treatment, enforced disappearances, secret detention and secret renditions of terrorist suspects. Such renditions involve transfers to States where the person is at risk of torture, ill-treatment or other serious human rights violations, in breach of the principle of *non-refoulement*. In addition to causing severe physical pain, these transfers to unknown locations and unpredictable conditions of detention increase the mental strain on the detainees as well as their sense of isolation, making them more vulnerable to torture and other ill-treatment. In many cases, persons are subjected to prolonged incommunicado detention, which can itself constitute a form of torture or ill-treatment.

Morocco has been central to an international network of renditions. It has acted as a transit, source and destination country. Morocco has secretly arrested numerous terrorist suspects, including, amongst others, Binyam Mohamed Al Habashi, Ramzi Bin Al-Shibh, and Mohammed Haydar Zammar. Some of these secret detentions occurred under the High Value Detainee Programme run by the United States Central Intelligence Agency (CIA).

- **Binyam Mohamed Al Habashi** is an Ethiopian citizen with resident status in the United Kingdom since 1994. He travelled to Afghanistan in 2001 and spent some time there before crossing into Pakistan and seeking to return to the UK. Pakistani officials at Karachi Airport arrested him on 10 April 2002 for attempting to travel on a false passport. His first rendition occurred on 21 July 2002. He described how unidentified people:¹⁴

“dressed in black, with masks, wearing what looked like Timberland boots, stripped him naked, took photos, put fingers up his anus and dressed him in a tracksuit. He was shackled, with earphones, and blindfolded, before being forced onto an aircraft and flown to Morocco.”

Binyam has described various secret detention facilities in which he was held in Morocco, including one prison that was submerged “almost underground” and one more sanitary place in which he was apparently placed to recover from injuries sustained from his torture. Between July 2002 and January 2004, Binyam was tortured on numerous occasions by a team of interrogators and other officials, most of whom were Moroccan.

Binyam also described the torture and ill-treatment he was subjected to in Morocco to his lawyer:¹⁵

“They came in and cuffed my hands behind my back. Then three men came in with black ski masks that only showed their eyes. One stood on each of my shoulders and the third punched me in the stomach. The first punch... turned everything inside me upside down. I felt I was going to vomit. I was meant to stand, but I was in so much pain I’d fall to my knees. They’d pull me back up and hit me again. They’d kick me in the thighs as I got up. They just beat me up that night... I collapsed and they left. I stayed on the ground for a long time before I lapsed into unconsciousness. My legs were dead. I could not move. I’d vomited

¹⁴ Official flight records obtained by the Council of Europe investigation committee presided over by Swiss Senator Dick Marty show that the known rendition plane, N379P, took off from Islamabad on 21 July 2002 and flew to Rabat, Morocco.

¹⁵ See, Council of Europe Parliamentary Assembly, Committee on Legal Affairs and Human Rights, Rapporteur Dick Marty, *Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states*, Doc. 10957, 12 June 2006. Binyam Mohamed Al Habashi: paras 193-214.

and pissed on myself.”

At one point, interrogators stripped Binyam naked and used doctor’s scalpel to make incisions all over his chest and genitals:¹⁶

“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.”

- **Ramzi Mohamed Bin Al-Shibh**, a Yemeni citizen, was arrested in Karachi, Pakistan, on 11 September 2002, and was held in CIA custody for several years. Alleged to be one of the main conspirators in the September 11 attacks, he was subjected to rendition by the end of 2002 to Morocco where he allegedly spent more than five months in detention. In early September 2006, he was transferred to US military detention at Guantánamo Bay, Cuba, where he remains. In 2010, reports emerged that the recordings of Bin Al-Shibh, two videotapes and one audiotape, were found in 2007 under a desk at the CIA. According to US officials, the videos show Ramzi Bin Al-Shibh sitting at a desk answering questions at a Moroccan-run facility the CIA used near Rabat in 2002.¹⁷

Ramzi Bin Al-Shibh was reportedly subjected to systematic beating, including slapping, punching, kicking to the body and face; prolonged nudity; sleep deprivation and prolonged stress standing position, during which his wrists were shackled, above his head, to a bar in the ceiling for up to two or three days continuously.

While he awaits his trial before a Military Commission at Guantanamo Bay, under procedures that do not meet international fair trial standards, serious concerns continue to be raised about his mental health and the fact that he might not be competent to stand trial or able to participate in his own defence. According to his lawyer, the medication being administered to him “is a psychotropic drug prescribed to persons with schizophrenia”, and it remains unclear whether Bin Al-Shibh “has been diagnosed with schizophrenia or if the drug is being used for behavior control”.¹⁸ It also remains unclear to what extent the torture and other ill-treatment he was reportedly subjected to in the CIA-run detention facilities, including in Morocco, contributed to his actual mental condition.

In addition to the individual cases raised in paragraph 27 of the List of Issues, the ICJ brings the following case to the Committee’s attention:

- **Muhammad Haydar Zammar**, a German national who renounced his Syrian citizenship on 17 March 1982, was suspected of involvement with the “Hamburg Cell” whose leaders are presumed responsible for the 11 September 2001 attacks. On 27 October 2001, he left Germany for Morocco and spent a few weeks there. Zammar was arrested by Moroccan intelligence agents at the airport in Casablanca in early December 2001; interrogated by Moroccan and US intelligence officials for over two weeks, and then flown secretly to Syria. Moroccan officials referred to his arrest as a

¹⁶ Ibid.

¹⁷ CIA tapes of 9/11 detainee’s interrogation don’t show torture, official says at: <http://www.washingtonpost.com/wp-dyn/content/article/2010/08/17/AR2010081700373.html>.

¹⁸ Judge Lets 9/11 Defendants Urge Detainee to Appear, at: <http://www.washingtonpost.com/wp-dyn/content/article/2008/09/22/AR2008092203047.html>.

“triumph of an international counterterrorism alliance, drawing on cooperation between the United States and Syria”.¹⁹

While in Syria, he was reportedly held in a prolonged solitary confinement in Far' Falastin Center, run by the Military Intelligence, “Al-Mokhabarat Al-Askariya”. At Far' Falastin, detainees are routinely subject to torture and ill-treatment. Methods used include, amongst others, severe beating; electric shocks; “the chair”, in which a victim's back is twisted over the empty frame of a metal chair, causing intense pain; and “the tire”, where the victim is forced into a car tire, his neck shoved against an inner rim, his back bent double and his knees against the other side of the inner rim. The victim is then beaten severely, especially on his head, his soles and his genitals.

Almost five years after his arrest in Morocco and secret rendition to Syria, Muhammad Haydar Zammar appeared before the Syrian Supreme State Security Court (SSSC) on 8 October 2006. On 11 February 2007 he was convicted for being a member of the Muslim Brotherhood and sentenced, after an unfair trial, to 12 years imprisonment under Law 49 of July 1980. Under this law, membership in the Muslim Brotherhood is punishable by death.

By engaging in these secret, illegal renditions and transfers, Morocco has violated its obligations under international law, including under the Convention. Secret detention itself constitutes a crime under international law, violating the absolute prohibitions against cruel, inhuman or degrading treatment and enforced disappearance. Victims have no access to the outside world; no knowledge of where they are or have been held; and no contact with their legal representative, their families or any persons other than their interrogators or guard.

Under international standards, detainees must be registered and held in officially recognised places of detention. However, Morocco has had a long and troubled history of resorting to secret detentions and enforced disappearances where victims have been held for years, and in some cases decades, in secret detention centres such as Qal'at M'gouna, Agdz, Derb Moulay Cherif in Casablanca, and Tazmamart. In the last ten years, several detainees subjected to rendition to Morocco by the United States, former detainees from Guantánamo Bay, and Islamist suspects arrested after the 2003 Casablanca attacks, in which 12 suicide bombers killed more than 40 people, have reportedly been held under the authority of the DST in Témara and subjected to ill-treatment and torture. The Témara detention centre is not listed as a detention facility under the authority of the Ministry of Justice and the Moroccan authorities have persistently denied its existence. The DST is not entitled under the law neither to arrest and detain terrorist suspects nor to question people. The legal basis for intelligence agents interrogating and detaining persons does not exist. Under the Moroccan law, officers of the DST are not members of the “Police judiciaire”, the only law enforcement corps empowered, under Article 18 of the Code of the Criminal Procedure, to arrest or detain criminal suspects. Consequently, the detention centre of Témara is not an authorised place of detention.

Credible reports have also emerged that the United States was helping Morocco to build another interrogation and detention facility for Al-Qaeda suspects at Ain Aouda, near the capital Rabat.²⁰ Although Moroccan authorities deny that detention and interrogation of “terrorist” suspects occur outside the ordinary legal framework, there is a strong sense that the intelligence services act in a climate of total impunity.

¹⁹ Peter Finn, “Al Qaeda Recruiter Reportedly Tortured”, *Washington Post*, 31 January 2003.

²⁰ “The terror prison US is helping build in Morocco” at:
<http://www.timesonline.co.uk/tol/news/world/article729946.ece>.

CONCLUSION

The ICJ is very concerned that the practice of torture and ill-treatment in Morocco has been widespread in the context of combating “terrorism”. The ICJ is also concerned that while the Moroccan Truth Commission (IER) were investigating the gross human rights violations committed between 1959 and 1999, including unlawful killings, summary executions, enforced disappearances, arbitrary detentions, and torture and ill-treatment, other serious human rights violations continued to occur in Morocco in the past ten years, in particular in the context of the “war in terror”. These violations included secret detentions, enforced disappearances, and the widespread use of torture and ill-treatment. The ICJ believes this was largely due to the failure of the IER and the Moroccan authorities to hold those responsible for past human rights violations to account. Moroccan security services act with impunity, unaccountable to either the courts or Parliament. They enjoy effective immunity from any legal proceedings over their role in the human rights violations committed over the past fifty years. The 2005 IER recommendations on reforming the Moroccan security services and the legal framework under which they operate are yet to be implemented.

RECOMMENDATIONS

Against the background of the information provided within this submission, and in the context of the three thematic areas considered in this submission, the ICJ suggests that the Committee make the following recommendations to the Moroccan authorities:

Articles 1 and 4

1. Enact a crime of torture consistent with Article 1 of the Convention, which fully incorporates the purposes of torture and the complicity and participation of public officials, and which include appropriate penalties commensurate with the gravity of torture;
2. End the practice of prolonged incommunicado detention that can in itself constitute a form of cruel, inhuman or degrading treatment or even torture;
3. Review the legal period of *garde-à-vue* which was extended through the adoption of the Counter-Terrorism Act. No. 03-03 of 2003;
4. Ensure that no amnesties or pardons are granted for the crime of torture, and to that end, amend Articles 51 and 53 of the Moroccan Criminal Code;
5. Provide for commensurate sanctions against senior officials authorising, acquiescing or consenting, in any way, to acts of torture committed by their subordinates;
6. Ensure that the crime of torture is not subject to any statute of limitation, and to that end revoke Article 5 of the Criminal Procedure Code.

Article 2

7. Provide detainees with adequate guarantees against torture or ill-treatment, including the right to legal counsel from the moment of arrest and the right to challenge the lawfulness of detention before independent and impartial courts, and to that end, ensure that no information extracted through torture is used as evidence in trial proceedings;
8. Ensure that all detainees, without exception, are brought promptly before civilian, independent courts; that judiciary acts with deference for human rights, and that the courts are not manipulated for political reasons;

9. Ensure that the process leading to criminal prosecution meet international standards of impartiality of investigation, fairness of procedures in prosecution and fundamental standards of fair trial;
10. Ensure that members of the DST do not carry out arrests nor detain suspected "terrorists", including in unknown places of detention.

Article 3

11. End immediately the policy and practice of secret detention and secret rendition and ensure that the apprehension and transfer of suspects comply with the international standards, in particular with the absolute nature of the prohibition of torture and the principle of *non-refoulement*, where there is a risk of the detainee being subjected to torture, ill-treatment or other serious violations of human rights;
12. In accordance with Article 3 of the Convention, apply, under all circumstances, the *non-refoulement* guarantee to all detainees in custody, and ensure, to that end, that suspects have the possibility to challenge judicially the decisions regarding their transfer.

Article 11

13. Investigate and disclose the existence of all secret detention facilities, the authority under which they have been established and have operated, and the manner in which detainees are treated;
14. Register all detainees, including by disclosing their identity; the date, time and place of their detention; the identity of the authority that detained and interrogated them; the grounds for their detention, and the date and time of their admission to the detention facility;
15. Accept independent monitoring of detention facilities by allowing independent observers immediate access to detainees and prisoners, and to that end, accede to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Articles 12 and 13

16. Promptly, thoroughly and impartially investigate, in accordance with Article 12 of the Convention, all the allegations of torture and ill-treatment of convicted prisoners and detainees and bring to justice state officials and law enforcement officers who carried out, ordered, facilitated or acquiesced in such practices;
17. Adopt all necessary measures to prohibit and prevent enforced disappearance, and prosecute and punish perpetrators of this crime as well as ratify the Convention on the Protection of Enforced Disappearance;
18. Break the cycle of impunity that prevails over the involvement of Morocco's security services in human rights violations, and to that end, ensure that perpetrators, including members of the DST, are brought to justice;
19. Establish an independent Commission of Inquiry on the role of the Moroccan security services in the so-called war on terror, in particular cases of secret rendition and secret detention, with a view to establishing the truth about the human rights violations committed in this context; holding those responsible for these violations to account; and ensuring the victims' rights to an effective remedy and to reparation;

20. Implement the recommendations of the Moroccan Equity and Reconciliation Commission to reform the Moroccan security services and the legal framework under which they operate as well as reforming the judicial system and ensuring its independence in line with international standards.

Article 14

21. Ensure, in accordance with the Convention, that mechanisms to obtain full reparation are accessible to all victims of torture or ill-treatment.

Article 15

22. Order retrials for all those convicted after the 2003 attacks on the basis of evidence obtained through torture or other ill-treatment, and ensure that these retrials meet international standards of due process.
