



## **MOROCCO**

### **Follow-up to the Recommendations of the Committee against Torture in the Context of the Fourth Periodic Review of Morocco**

**1 October 2012**

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## Introduction

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In the context of the examination of the fourth periodic report of Morocco (CAT/C/MAR/CO/4) on 1 and 2 November 2011, the Committee against Torture had requested that, within a year, the State party provide it with information relative to the follow-up given to several of its concluding observations. The Moroccan authorities have therefore provided some comments on the Committee's concluding observations.

It should be noted that Alkarama had, in the context of the periodic review, presented a detailed alternative report. Our organization now submits, for the Committee's consideration, observations and remarks on the comments provided by the State party, particularly concerning the recommendations made in paragraphs 5, 7, 8, 10, 15 and 17 of the Committee's concluding observations.

We note that, following the adoption of the new Moroccan Constitution, and in particular article 22, which criminalizes torture, the State party has issued repeated statements regarding its intention to combat torture and the impunity of its perpetrators.

Morocco invited the Special Rapporteur on Torture to visit the country's detention facilities in September 2012, and is considering ratifying the Optional Protocol of the Convention against Torture. The Constitution's express provision for the criminalization of torture offers hope of genuine progress; however, no legislative provision has been adopted since and several fundamental problems remain, such as the absence of any serious inquiry into the allegations of torture made by several prisoners, the persistent impunity of perpetrators and the continued detention of several people convicted solely on the basis of confessions obtained under torture.

### **1. Criminalization and imprescriptibility of torture and basic legal safeguards: recommendations 5 and 7 of the concluding observations**

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#### **1.1 Criminalization and imprescriptibility of torture**

**In paragraph 5 of its concluding observations, the Committee against Torture recommends that "The State party should ensure that the bills currently before Parliament extend the scope of the definition of torture to conform to article 1 of the Convention against Torture. The State party should also make certain that, in keeping with its international obligations, anyone who commits acts of torture, attempts to commit torture, or is complicit or otherwise participates in such acts is investigated, prosecuted and punished without the possibility of availing themselves of any statute of limitations".**

Despite the Moroccan authorities' repeated promises to revise the Criminal Code in order to conform to article 1 of the Convention, no change has been made to Law No. 43.04 regarding the definition of torture as stated in the comments by the State party on the concluding observations of the Committee.<sup>1</sup>

The definition of torture under article 231.1 of the current Criminal Code refers to the three main components of the offence, provided in article 1 of the Convention, namely: the fact of having inflicted "severe pain or suffering, whether physical or mental", the fact that it was committed intentionally by a public official or at his/her instigation or with his/her express or implicit consent, and finally, the fact of having sought to intimidate or coerced a person in order to obtain information or a confession. The Moroccan authorities claim to have presented a broader definition than in the Convention, particularly due to the fact that Moroccan law replaces the reference to an "act" by which pain or suffering is

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<sup>1</sup> *Réponses des autorités marocaines aux Observations finales du Comité contre la torture*, p.2, lines 4 and 5 (Comments by the Government of Morocco on the concluding observations of the Committee against Torture – Only available in French). Please note that this law is indicated in the Moroccan authorities' response as being "law 04.43", rather than "law 43.04", as it was referred to in the official gazette in February 2006 when it was published.

inflicted, with the more general "anything that causes" pain or suffering, a choice of words which may have the advantage of taking omissions into account.

As for the imprescriptibility of the crime of torture, articles 2 and 6 of Law No. 35.11, dated 17 October 2011, deal with the imprescriptibility of public prosecution overall, but do not specifically focus on the crime of torture.

## **1.2 Basic legal safeguards**

**It was also recommended that the State party "should make certain that the bills currently under consideration ensure that all suspects will have the right to enjoy, in practice, the basic safeguards provided for by law, which include their right to have access to counsel at the time of their arrest, to be examined by an independent physician, to contact a relative or friend and to be informed of their rights and the charges against them, and to be brought before a judge without delay. The State party should take the necessary steps to ensure that people have access to their lawyers as soon as they are taken into custody, without any need to obtain prior authorization, and to put in place a system for the provision of effective legal assistance free of charge, particularly in the case of persons at risk or who belong to vulnerable groups" (paragraph 7 of the Committee's concluding observations).**

The State party has indeed made changes in terms of basic legal safeguards, but while Law No. 35.11 of 17 October 2011, adopted a few days before the Committee's examination of the State party's periodic report, does provide for access to legal assistance, the other basic safeguards remain inadequate.

This is due to the fact that the changes made, notably in article 66 of this law, do not provide for access to counsel at the time of arrest but only "before the expiry of half the initial period of custody", which does not expressly mean that this happens "as soon as the person is taken into custody" as is stated by the State party in its comments<sup>2</sup>. Indeed, half the initial period of custody can last up to 12 hours for common law defendants and up to 48 hours for defendants accused of terrorism. This still seems excessive to us.

In addition, this law does not include any specific provision regarding access to an independent physician, particularly at the end of the legal period of custody.

Finally, with regard to the defendants' right to contact relatives or friends, experience has shown us that, in most cases, the relatives of the detainees are not immediately notified of the arrest and remain completely unaware of their fate, until the day of their appearance before the public prosecutor, particularly in cases involving terrorism.

## **2. Enforcement of the anti-terrorism law and extraction of confessions under torture: recommendations 8 and 17 of the concluding observations**

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### **2.1 Concerning the revision of the anti-terrorism law and its continued enforcement**

**Paragraph 8 of the concluding observations of the Committee against Torture recommends that the State party "revise Anti-Terrorism Act No. 03-03 in order to improve the definition of terrorism set forth therein, reduce the maximum amount of time during which a person can be held in police custody to the absolute minimum and permit access to counsel at the start of the period of detention. The Committee recalls that under the Convention no exceptional circumstance whatsoever may be invoked as a justification of torture and that, in accordance with various resolutions of the Security Council, notably Security Council resolutions 1456 (2003) and 1566 (2004), and other resolutions on the**

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<sup>2</sup> *Ibid.*, p.3, line 13

**subject, any measure taken to combat terrorism must fully comply with international human rights law”.**

Despite these recommendations, Anti-terrorism Law No. 03-03 still remains in force, unaltered. It has not been revised to address the issues of the definition of terrorism or the period of custody and the basic safeguards of the defendants.

Thus, this same vague and broad definition of terrorism remains applicable, as does the option to prosecute individuals for the advocacy of, and incitement to, terrorist acts. These offences are defined in a particularly vague manner, and without the accusations necessarily involving a risk of violent action.

To this day, several people remain in detention after having been convicted in accordance with this law, while others are still being arrested or extradited under this law, including for political reasons.

**Mr Hicham Bouhaili Zriouil**, a Belgian citizen of Moroccan origin who was accused of terrorism and arrested in Syria on 25 July 2011, was extradited to Morocco by force and for unknown reasons on 11 October 2011, although Belgium, his country of citizenship, had issued an international warrant for his arrest.

Upon his arrival in Morocco, Mr Bouhaili Zriouil was placed in secret detention and interrogated for more than a week by security services and coerced into testifying against himself.

He was accused of “forming a terrorist group in order to commit acts of terrorism, and deliberate attacks on the life and safety of others”, of “threatening national security”, of “incitement to intimidation and violence”, and of “incitement of others to commit terrorist crimes”. Despite having categorically denied all of these accusations, he was sentenced to twenty years in prison by the Criminal Court of Rabat on 23 February 2012. The judge’s reasoning for this sentence was solely based on the transcripts of the preliminary investigation by the Moroccan security services and on statements from Mr Zriouil’s hearing, conducted during his detention, a period in which he was subjected to threats and cruel, inhuman and degrading treatment. Like in most terrorism cases, the prosecution did not produce any proof or material evidence that could justify this conviction.

## **2.2 Coerced confessions and their use as evidence**

**It was also recommended that the State should “take all steps necessary to ensure that criminal convictions are based on evidence other than the confession of the persons charged, especially when such persons retract their confessions during the trial, and to make certain that, except in cases involving charges of torture, statements made under torture are not invoked as evidence in any proceedings, in accordance with the Convention.**

**The State party is requested to review criminal convictions that have been based solely on confessions in order to identify cases in which the conviction was based on confessions obtained under torture or ill-treatment. The State party is also invited to take the appropriate remedial measures and to inform the Committee of its findings” (paragraph 17 of the Committee’s concluding observations).**

It remains a fact that, in terrorism cases, judges have little respect for international fair trials standards, thus contravening both domestic legislation and the State party’s international commitments by accepting police statements containing confessions obtained under torture as sole evidence. Alkarama has documented numerous cases where there was no material evidence, testimony or any other proof to substantiate the accusations. This judicial practice became widespread following the attacks in Casablanca in 2003 and continues to this day. In the recent *Prosecution vs. Mr Abdessamad Bettar*, the accused was sentenced to ten years in prison by the Salé court of law on 9 March 2012, solely on the basis of the transcripts of the preliminary investigation carried out by the police during the accused’s 12 days in custody.

As usual, there was no material evidence or proof to substantiate the charges made against him. Furthermore, and despite insistent requests from the defence, none of the 45 so-called witnesses introduced by the police and the prosecution during the preliminary investigation were subpoenaed to the hearing to give testimony or to confront the accused.

**Mr Mohamed Hajib** (mentioned in our alternative report submitted to the CAT) **and numerous other prisoners** continue to stage protests and hold hunger strikes so as to expose the unfairness of their trials, and specifically their convictions, which were solely based on transcripts submitted by the police containing confessions obtained under torture, even though they had reported this torture to the public prosecutor's office and to the judges at various stages of the investigation and trial proceedings.

Despite these actions and numerous promises made by the authorities to review the cases of these prisoners, only three of them have been released.

### **3. Use of torture in cases involving security concerns: recommendation 10 of the concluding observations**

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**Paragraph 10 of the Committee against Torture's concluding observations recommended that the State party "immediately take substantive steps to investigate acts of torture and to prosecute and punish those who have committed such acts. The State party should ensure that law enforcement officers do not engage in torture through, inter alia, an unambiguous reaffirmation of the absolute prohibition of torture and a public condemnation of that practice by, in particular, the police, prison personnel and members of DST. It should also be made very clear that anyone who commits such acts or is complicit or otherwise participates in such acts will be held personally responsible before the law and will be subject to criminal prosecution and the appropriate penalties".**

Putting into force these recommendations, the Minister of Justice and Liberties did indeed publicly condemn the practice of torture on 15 May of this year. While speaking before the *Chambre des Conseillers* (Chamber of Counsellors), Mr Mustapha Ramid denounced the practice of torture and cruel treatment in police stations and stated that it would no longer be tolerated. He encouraged citizens who had been victims of such acts to refer the matter to their town prosecutor, or to the Ministry of Justice if the former failed to take any action<sup>3</sup>.

Barely a month later, **Mr Rachid Qarmouti**, who had been taken into custody at the Al Maarif police station in mid-May 2012, appeared in court and informed the prosecutor of the acts of torture he had been subjected to during his detention, which included several of his teeth having been pulled out.

As the prosecutor ignored his request to open an investigation, his family brought the matter to the attention of the local media. Consequently, the Minister of Justice requested an investigation and insisted a medical examination be conducted in order to verify these allegations.

The authorities appointed a dental surgeon who examined Mr Rachid Qarmouti and concluded that there were no traces of violence and that "his teeth had fallen out by themselves."<sup>4</sup> Mr Qarmouti nevertheless maintained his allegations, stating that the surgeon had specifically told him that fear of getting into trouble with the police had led him to provide such a conclusion.

While the attention given to this case can be seen as a victory, the fact remains that the investigation requested by the Minister of Justice should have been conducted by an independent expert. This would have reinforced its credibility.

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<sup>3</sup> Hespress.com, "The Government no longer condones the practice of torture in police stations" (article in Arabic). <http://hespress.com/societe/54005.html> (accessed on 5 September 2012).

<sup>4</sup> L'opinion, *Le ministère de la Justice dément, sur la base d'un rapport d'expertise: "Rachid Karmouti n'a fait l'objet ni d'enlèvement ni de torture"* (The Ministry of Justice refutes, on the basis of a medical report: "Rachid Kamouti was neither kidnapped nor tortured" – article in French). [http://www.lopinion.ma/def.asp?codelangue=23&id\\_info=25976](http://www.lopinion.ma/def.asp?codelangue=23&id_info=25976) (accessed on 5 September 2012).

Even though we have already mentioned it in our alternative report submitted to the Committee, we feel that the case of **Mr Ali Aarrass**, a Belgian citizen of Moroccan origin, is particularly indicative of the lack of seriousness of investigations into allegations of torture, especially in light of the recent evidence produced by the medical examination he underwent.

Mr Aarrass was arrested and taken into custody on 1 April 2008, in Algeciras, Spain. He was then extradited to Morocco on 14 December 2010, despite the Human Rights Committee's explicit request not to extradite him due to the risk of torture he would be exposed to in Morocco. Upon his arrival in Morocco, he was held incommunicado for more than 10 days, savagely tortured and coerced into signing a confession in Arabic, a language he does not read. On 24 November 2011, he was sentenced to 15 years in prison on the basis of this confession obtained under torture.

After referring the matter to the Committee against Torture, Mr Aarrass underwent a medical examination in order to verify his allegations. This rarely happens for the many prisoners convicted on the basis of confessions obtained under torture and whose allegations are completely ignored by judges.

This examination, which was conducted by three physicians appointed by the public prosecutor for the Court of Appeal in Rabat, led to the conclusion that there were no traces that could be linked to the acts of torture in question. An independent physician from the IRTC (International Rehabilitation Council for Torture Victims) reviewed the examination and found numerous flaws.

He underlined that this forensic report was "well below the international standards for the medical examination of victims of torture and other cruel, inhuman and degrading treatment, as defined by the Istanbul Protocol".

He particularly specified that this very brief forensic report "provided almost no details on the tests carried out, as well as an incomplete description of the results of these tests. [...] No attempt was made in the report to correlate the results of the physical examination with the allegations of torture, or with a previous history of trauma. [...] Nowhere was it stated that Mr Aarrass had consented to the examination, or under what conditions it took place (duration of the examination, whether other people were present, whether the prisoner was handcuffed or not, etc). [...] There were no supporting diagrams of the body, nor photographs appended to the report, which would have given a more precise indication of the anatomical position and of the nature of the marks in question. [...]"

The medical report did not mention any psychological or psychiatric evaluation, in spite of the concentration problems, the fear and the excessive level of stress described by the victim. This was a significant omission of the evaluation and of the report, which showed that the examination was not in accordance with the international legal standards for the evaluation of torture allegations".

We can therefore reasonably question the independence of the physicians appointed by the authorities of the State party to carry out medical examinations and investigate the allegations of torture, as in the case of **Mr Bouchta Charef**, which was used as an example by the Moroccan authorities in their reply to the concluding observations of the CAT.

It should be mentioned that, after a video of Mr Bouchta Charef was posted on YouTube on 19 April 2011, in which he testifies to the torture he was subjected to during his incommunicado detention, and notably to having been raped with a bottle by the guards, and to his appeal to independent medical associations to verify the abuse suffered by people detained in Moroccan prisons, the country's authorities started to pay particular attention to this case, which garnered a great deal of media coverage.

The examination in question had been carried out by physicians appointed by the Prison Service, and in the presence of members of the security services. Mr Charef stated that this examination had been another humiliating experience and disputed the conclusions of the experts by continuing to claim his right to be examined by independent physicians who could verify his allegations.

Therefore, the Minister of Justice's public condemnation of torture gave hope of concrete measures to eradicate this practice once and for all, starting with independent and serious investigations into the allegations of torture and the prosecution of the perpetrators.

However, all the cases mentioned above show that the Moroccan authorities' interventions in the most media-sensitive cases and the examinations conducted by physicians appointed by the authorities are inadequate. These physicians perform hasty examinations, and do so in the presence of members of security services. These conditions do not comply with the international legal standards for the investigation of torture and other cruel, inhuman and degrading treatment, as defined by the Istanbul Protocol.<sup>5</sup>

Moreover, the independent medical examiners put forward by associations to carry out medical examinations for prisoners claiming to have been tortured are systematically turned away by the Prison Service which, let us not forget, remains directly under the authority of the Crown and not of the Ministry of Justice.

#### **4. Secret detention: recommendations 15 of the concluding observations**

**The concluding observations of the Committee against Torture recommend that the State party "ensure that no one is held in a secret detention facility under its de facto effective control. As often emphasized by the Committee, detaining persons under such conditions constitutes a violation of the Convention. The State party should open a credible, impartial, effective investigation in order to determine if such places of detention exist. All places of detention should be subject to regular monitoring and supervision" (paragraph 15).**

Secret detention continues to this day in Morocco, even though the State party, in its replies to the Committee's concluding observations, seems to avoid this issue by stating that a visit conducted at the headquarters of the General Directorate of Territorial Security (more commonly known as the DST) in Temara, had proven that there were no secret detention facilities there.

It should be pointed out that this three-hour visit, which took place on 18 May 2011 and was conducted by the Secretary General of the Human Rights Advisory Council and members of parliament, occurred in response to the 20 February Movement's call to gather at the DST headquarters, a well-known secret detention facility and a symbol of the repression of political opponents for many years.

The delegation "noted that during the tour of the different buildings of the DST headquarters, there was no indication that this facility was used for any illegal detention". The Moroccan authorities claim that this was an unannounced surprise visit and, as doubtful as this is, the conclusion drawn still does not prove that secret detention never took place in this facility. At the very most, it tells us that there was no evidence of secret detention at the time of the visit.

In light of the numerous testimonies of victims who claim to have been detained in this facility, its existence can no longer reasonably be denied.

Although this facility is perceived as a symbol of secret detention and torture, it is unfortunately not the only place in Morocco where secret detention takes place. This practice persists in police stations throughout the country and in other places that victims were unable to identify.

An independent and thorough investigation into the past or present status of the detention centre in Temara should have been conducted, particularly by hearing the numerous victims and witnesses who claim to have been held in secret and tortured there.

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<sup>5</sup> OHCHR, *Istanbul Protocol, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, New York and Geneva, 2004.  
<http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf> (accessed on 3 September 2012).

The only way to permanently eradicate this practice would be to put into place an independent monitoring of all detention facilities, without any exception. Morocco should therefore rapidly adhere to the Optional Protocol to the Convention against Torture as planned in the draft law adopted by the *Conseil des ministres* (Council of Ministers) on 9 September 2011, with a view to implementing the monitoring mechanisms required by this treaty.

## **Conclusion**

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A year after the State party's periodic review, it should be noted that despite a strong political will to combat this phenomenon, a desire which materialized when the Moroccan authorities invited the Special Rapporteur to visit the country, few recommendations have been implemented with the prospect of permanently eradicating the practice of torture in the country.

Legislative changes remain necessary in order to bring the definition of torture into line with the Convention.

Moreover, the State party has promised to review criminal convictions that had been solely based on confessions obtained under torture or ill-treatment, to take the appropriate remedial measures and to inform the Committee of its findings. This promise has not, as yet, been fulfilled.

As for the Anti-Terrorism Act of 2003, which has been the cause of numerous violations, no changes have been made and the basic legal safeguards relative to the individuals under arrest remain inadequate.

In turn, it seems unrealistic to combat torture if the government persists in denying the existence of detention facilities where people have admittedly been, and continue to be, held in secret for long periods of time. An independent body must start monitoring all of these facilities, as is required by the Optional Protocol to the Convention against Torture.

Finally, the State party should launch independent and impartial investigations into all cases involving allegations of torture, with the help of independent medical examiners and in accordance with the international standards established under the Istanbul Protocol. Fighting against the impunity for acts of torture indisputably remains the most effective way to put an end to this scourge.

We suggest that the Committee could grant an extension of the deadline for the State party's reporting on selected recommendations, so that it may truly implement the Committee's recommendations and therefore fully implement its international obligations.

Our organization will continue to ensure that the Government of Morocco respects its obligations in accordance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and in particular, the implementation of the Committee's concluding observations in relation to our mandate. We will do our best to continue to provide the Committee with information in writing in order to contribute to the implementation and development of human rights in Morocco.