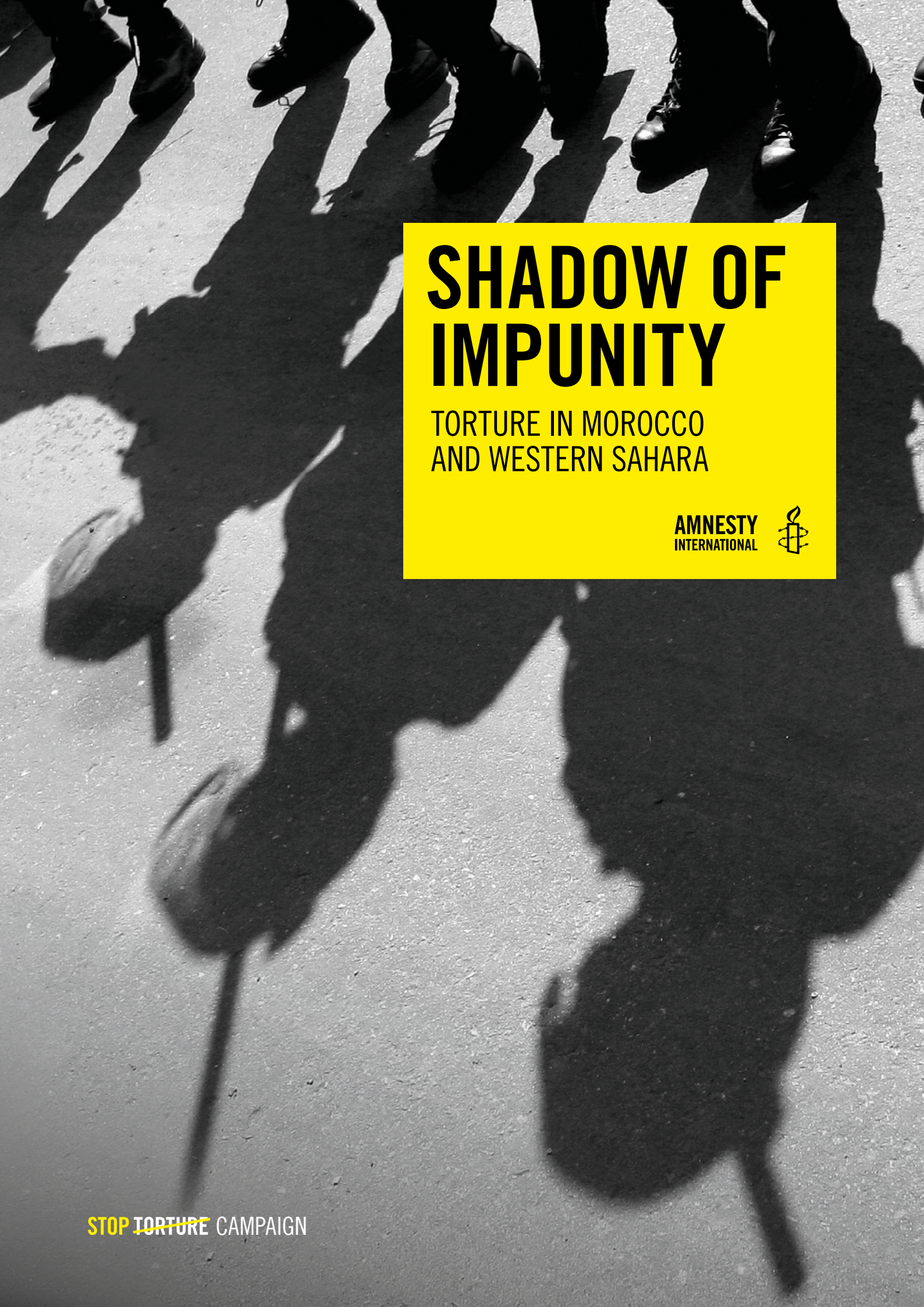




SHADOW OF IMPUNITY

TORTURE IN MOROCCO
AND WESTERN SAHARA

AMNESTY
INTERNATIONAL



STOP ~~TORTURE~~ CAMPAIGN

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AMNESTY
INTERNATIONAL



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GLOSSARY AND ABBREVIATIONS

* Indicates use of a pseudonym to protect confidentiality

Al-Adl Wal-Ihsan - Justice and Spirituality, an Islamist opposition movement which authorities regularly refer to as being “banned” although the group obtained legal registration following a judicial decision in 1990

Al-Tajdid Al-Tollabi - Student Renewal Organization, an Islamist student group close to the Justice and Development Party currently in government

Auxiliary Forces - Moroccan Auxiliary Forces (Forces Auxiliaires marocaines), a law enforcement unit often used to break up demonstrations

BNPJ - National Brigade of the Judicial Police (Brigade nationale de la police judiciaire), a police unit in charge of investigating particularly suspected offences under anti-terrorism legislation, among other serious offences

CMI - Mobile Intervention Unit (Corps mobile d'intervention), a law-enforcement unit with a riot police function

CNDH - National Human Rights Council (Conseil national des droits de l'Homme), Morocco's national human rights institution

CRDH - Regional Human Rights Commission (Commission régionale des droits de l'Homme), local branch of the CNDH

DGAPR - General Delegation for Penitentiary Administration and Reinsertion (Délégation générale de l'administration pénitentiaire et de la réinsertion), a government agency that oversees the administration of prisons

DGSN - General Directorate for National Security (Direction générale de la sûreté nationale), police force

DGST - General Directorate for the Surveillance of the Territory (Direction Générale de la Surveillance du Territoire), domestic intelligence agency

garde à vue detention - measure by which judicial police officers keep criminal suspects in their custody for the purpose of a preliminary investigation

IER - Equity and Reconciliation Commission (Instance équité et réconciliation)

Polisario Front - Popular Front for the Liberation of Saguia el Hamra and Rio de Oro (Frente Popular para la liberación de Saguia el-Hamra y Rio de Oro), a political organization that calls for the independence of Western Sahara and runs a self-declared government in exile from the Sahrawi refugee camps near Tindouf, in south-western Algeria

UNEM - National Union of Moroccan Students (Union nationale des étudiants du Maroc), including student members of Al-Adl Wal Ihsane and several left-wing currents such as the Baseist Democratic Path (Voie démocratique basiste, VDB), the Maoist Baseist Democratic Path, and the Progressive Baseist current, among others

20 February movement - Peaceful protest movement that emerged in 2011 and calls for greater respect for human rights, democratization, social justice and an end to corruption

EXECUTIVE SUMMARY

‘His Majesty King Mohamed VI informed me that he will not tolerate torture, although he could not rule out that there are isolated cases. Other officials acknowledged that torture was not State policy but that “bad habits” will take time to eradicate. Measures, including the installation of CCTV in police stations and training for officers, have been proposed. The litmus test of such commitments is accountability. Impunity is the most powerful fuel for human rights violations.’

Opening remarks by then UN High Commissioner for Human Rights Navanathem Pillay at a press conference in Rabat, Morocco, 29 May 2014

Moroccan authorities have repeatedly declared in recent years their determination to eradicate torture. Under King Mohammed VI, the ground-breaking transitional justice work of the Equity and Reconciliation Commission (IER) led to the acknowledgement of state responsibility for widespread torture, among other grave human rights violations, between Morocco's independence in 1956 and the end of former King Hassan II's reign in 1999, a period known as the “years of lead”. In 2006, legislators tightened the definition of torture in the Penal Code and Moroccan authorities accepted the competence of the UN Committee against Torture to receive communications by individuals alleging violations of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) in Morocco and Western Sahara. In 2011, Morocco's new Constitution further prohibited torture through its Article 22. Moroccan authorities also invited UN human rights bodies for country visits, including the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (Special Rapporteur on torture) in September 2012 and the Working Group on Arbitrary Detention (WGAD) in December 2013. In November 2014, Morocco acceded to the Optional Protocol to the

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), promising greater efforts to detect and prevent torture in detention.

Tangible change, however, requires more than ink on paper. As this report shows, torture and other ill-treatment in detention continue to be reported regularly across Morocco and Western Sahara, although on a lesser scale than in previous decades. These abuses persist due to the failure to implement existing safeguards, including investigating alleged torture. They are also fuelled by the resulting sense of impunity that casts a shadow over authorities' declared commitment to end torture.

This report draws on 173 cases of torture and other ill-treatment alleged to have taken place between 2010 and 2014. These cases were documented during fact-finding visits in 2013 and 2014 in 17 locations across Morocco and Western Sahara as well as ongoing monitoring. Amnesty International delegates met and interviewed numerous individuals previously arrested and detained, their families and lawyers, human rights activists and defenders, representatives of Morocco's National Council for Human Rights (CNDH), and Moroccan officials, and analysed legal and medical documentation. The organization's ability to conduct fact-finding visits to the country has been curtailed since the authorities' denial of entry to an Amnesty International delegation in October 2014, and the rejection of subsequent requests to enter Morocco until this report went to press. Amnesty International is pursuing its efforts to end this impasse in cooperation with the Moroccan authorities. A preliminary assessment of findings was communicated to the Moroccan authorities in a memorandum on 19 March 2015, and a response, appended to this report, was received on 20 April 2015.

Methods of torture and other ill-treatment documented by Amnesty International range from beatings and stress positions to asphyxiation and drowning techniques as well as psychological and sexual violence including rape threats, and rarely, rape. Ill-treatment also arises from harsh conditions of detention in the holding cells in police and gendarmerie stations where hygiene, food and medical care are reported to be cruelly lacking.

A wide range of people are tortured. Survivors whose experience is described in this report include protesters and activists challenging poverty, inequality or the exploitation of natural resources; political and student activists with left-wing or Islamist affiliations; supporters of Sahrawi self-determination; individuals accused of terrorism offences; and people suspected of ordinary crimes.

Such abuses can happen from the moment of arrest, in broad daylight or behind the tinted windows of vehicles used by security forces. Those arrested in the context of forcibly dispersed protests often reported violence upon arrest and subsequently. In particular, student activists but also bystanders arrested in the context of campus protests described how security officers brutalized and threatened them upon arrest before interrogators further ill-treated them in custody. Accounts of torture and other ill-treatment in plain view of other students on campus or fellow-detainees in security vehicles suggested that a brazen sense of impunity among some security forces. Similar accounts emerged with regard to torture and other ill-treatment in *garde à vue* detention suggesting a similar sense of impunity.

Student and Sahrawi activists and protesters repeatedly spoke of deliberate violence aimed at

dissuading them and onlookers from dissent, even if peaceful. Some Sahrawis including children said security officers detained them and beat them in vehicles before releasing them without formal arrest.

The continuum of violence that begins with arrest in public spaces, sometimes as security forces deploy excessive or unnecessary force to disperse protests, extends to coercion and violence in custody. The most striking pattern that emerged from Amnesty International's research was the use of torture or other ill-treatment during interrogations by police and gendarmes during *garde à vue* detention, often to force suspects to incriminate themselves or others in crimes they may not have committed.

The benefits of improved anti-torture legislation and safeguards are not being reaped due to a wide implementation gap. During *garde à vue* detention, key safeguards are routinely flouted, including the notification of families upon arrest, the right to legal counsel, the right to remain silent during questioning and the right not to be forced to self-incriminate. Detainees unable to access legal counsel during *garde à vue* detention are all the more vulnerable to torture and other ill-treatment. Judicial police officers also appear to focus on securing "confessions" of guilt at any cost. This appears to stem from the emphasis that Morocco's criminal justice system places on confessions as evidence for infractions and misdemeanours.

Forms of torture and other ill-treatment described cover a broad range, including threats and psychological pressure as well as sexual violence. Two men told Amnesty International that police officers raped with objects. The definition of rape currently included in the Penal Code is neither gender neutral nor broad enough to protect them.

In several cases documented by Amnesty International, security forces arrested individuals who appeared to be peacefully exercising their rights to freedom of expression, association and assembly. Courts then prosecuted them and sometimes sentenced them to prison terms on ostensibly trumped-up charges.

The Code of Criminal Procedure equips prosecutors and investigative judges to investigate alleged torture or other ill-treatment, including through medical examinations. It also requires investigating judges to issue reasoned decisions when they refuse to grant a medical examination requested by a defendant. However, in courts, prosecutors and judges alike largely failed to investigate reports of torture and other ill-treatment in cases documented by Amnesty International, reinforcing impunity. Accounts portrayed prosecutors and investigating judges often turning a blind eye to visible injuries, while complaints by defendants and their lawyers in courts repeatedly fell on deaf ears. Written complaints lodged with judicial authorities were equally ill-fated. When investigative judges were reported to have explicitly refused medical examinations, they also appeared to refuse without justifying their decision in breach of national legislation.

In the rare cases where courts granted medical examinations, they appeared to be sub-standard, losing precious evidence and skewing subsequent decisions not to open investigations into torture allegations. Medical examinations documented by Amnesty International were inadequate in several ways, contravening standards established in the Istanbul Protocol. They were carried out after significant delay, once physical injuries had

partially or fully healed. Some said security forces were present during the examination, making the detainee less likely to report abuses for fear of reprisals and potentially intimidating doctors. Others described cursory physical examinations. All except for Ali Aarrass said that psychological evaluations were not done. Several said those examined or their lawyers did not receive medical examination reports, or received them too late to be able to make use of them in court, in breach of national legislation. Others claimed that medical reports were inaccurate.

Four cases of suspicious deaths amidst allegations of abuse by security forces were also analysed, including two deaths in custody. In two cases, families told Amnesty International they had no knowledge of whether autopsies had been carried out and that they had received no autopsy report, while no requests for second autopsies by independent forensic pathologists were granted.

The deficit in investigations in relation to reports of torture or other ill-treatment rests in part on an erroneous interpretation that the burden to prove such allegations with complainants alone. In May 2014, the Minister of Justice and Liberties issued instructions to prosecutors and investigating judges to resolve this issue. While some courts have ordered medical examinations and investigations following allegations of torture, others have showed resistance, and it is still too soon to measure the full effect of the ministerial instructions.

The deficit in investigations also means that courts continue to use contested, torture-tainted “confessions” to secure convictions in spite of the legal ban on the use of coerced statements in proceedings. This problem is compounded by the excessive reliance on confessions within Morocco’s criminal justice system, and particularly for infractions and misdemeanours, frequently resulting in unfair trials. Since torture was criminalized in 2006, Amnesty International only documented one instance where a court overturned a conviction after recognizing that it relied on a confession extracted by torture in police custody.

Over the past year, the authorities have begun to prosecute and imprison individuals who reported abuses for “false reports” and “slander of security forces”, following complaints by security agencies. In particular, two activists were imprisoned following convictions for false allegations and slander against their alleged torturers although they had not identified them in their complaints. Such prosecutions are likely to deter victims from seeking justice and entrench impunity for state agents who commit serious violations of human rights.

Whereas Moroccan law bans the use of forced “confessions” in proceedings, courts relied on them as the main and sometimes the only evidence to secure convictions in virtually all cases studied by Amnesty International that involved prosecutions. This was despite defendants’ efforts to recant these “confessions,” report that they had been forcibly obtained and request their exclusion. This striking disparity between law and practice owes much to the lack of conclusive investigations into torture allegations, exacerbated by the interpretation of courts that the burden to prove alleged torture rests with complainants. Amnesty International has documented several cases where this provision was applied for more serious offences, including offences punishable by life imprisonment and the death penalty, such as under Morocco’s Law 03-03 on Combating Terrorism, despite the higher evidentiary standard required by law.

The lack of adequate investigations has compounded the prevailing impunity for past and present torture and other ill-treatment in Morocco and Western Sahara. Despite its achievements, the IER's limited mandate prevented it from establishing individual criminal responsibility, leaving victims and their families ill-equipped to successfully prosecute perpetrators in Morocco's courts. Meanwhile, authorities have yet to adequately investigate alleged secret detention and torture during the first decade of Morocco's counter-terrorism years following the 2003 Casablanca bombings. The failure to hold accountable any official for torture in relation to such high-profile events has overshadowed recent efforts to prosecute perpetrators in less politically sensitive cases.

Some complainants have opted to circumvent domestic barriers to accountability by seeking redress through foreign courts, particularly in France. Rather than investigating the allegations, Moroccan authorities brought counter-complaints on charges including defamation, public insult and false reporting, revealing a determination to escape accountability. A move to end the competence of French courts over abuses alleged to have taken place in Morocco through an agreement on judicial cooperation signed in January 2015 showed a worrying willingness by French authorities to shield Moroccan officials in their determination to escape accountability and repudiate their obligations under international law.

There is a yawning gap between declared commitments to end torture and the failure to investigate perpetrators and hold them accountable. Meanwhile, safeguards in law are routinely breached in practice. This dissonance raises the question of whether there is genuine political will to eradicate torture, which cannot be achieved without ending impunity and its corrosive effects on security forces. In this regard, some foreign governments have displayed a particularly unhelpful disposition to be satisfied with declarations of human rights reforms, even when these are contradicted by persisting violations on the ground, as if strategic cooperation to counter terrorism or control borders can only be done at the expense of human rights.

With judicial reforms, Morocco is at a crossroads. It is poised to reform its judiciary in a long-awaited process that could further strengthen safeguards during *garde à vue* detention, and resolve the investigative failings that are perpetuating impunity and fuelling persisting torture. If the reforms empower the courts and strengthen their independence, they could signal an end to the impunity for torture that has cast a shadow over Morocco and Western Sahara for decades.

Amnesty International is calling on the Moroccan authorities to confront torture by taking three key measures, among other recommendations included at the end of the report. These are:

- Ensuring lawyers are always present during police interrogations of all suspects.
- Ensuring prosecutors and judges investigate reports of torture and other ill-treatment when faced with signs or credible allegations, and that they are held accountable if they fail to do so.
- Protecting those who report torture from reprisals.

METHODOLOGY

This report draws on research from Amnesty International's ongoing monitoring of and visits to Morocco and Western Sahara in 2013 and 2014. During these visits, Amnesty International delegates met and interviewed victims of alleged torture and other ill-treatment between 2010 and 2014, including former detainees and families of alleged victims; lawyers representing clients during their detention and at trial; human rights activists and defenders, and representatives of the CNDH. Amnesty International delegates also interviewed individuals targeted for prosecution after they reported alleged torture or other ill-treatment as well as a death in custody.

In total, Amnesty International conducted 151 interviews in 17 locations across Morocco and Western Sahara, covering 173 reported cases of torture and other ill-treatment, and reviewed relevant laws as well as legal and medical documents related to a number of cases. Cases documented in this report exclude torture and other ill-treatment outside of *garde à vue* detention, except when it has contextual value.

Some of those who spoke to Amnesty International did so on condition of anonymity; consequently, they are not identified in this report. Others agreed to be interviewed but did not consent to their stories being told, even anonymously, for fear of retaliation. Therefore, although most of those who agreed to be interviewed by Amnesty International and consented to their names being published are activists and protesters, including many students and Sahrawis, the spectrum of people interviewed also includes individuals held for ordinary criminal offences. The wealth of information gathered through these testimonies has enabled Amnesty International to identify some patterns in the conduct of security forces and the way the Moroccan authorities deal with allegations of torture and other ill-treatment.

Finally, Amnesty International notes with appreciation that during visits to the country its representatives were able to meet and discuss some of these issues with officials in both Rabat and Laayoune. However, the organization deeply regrets that its ability to conduct fact-finding visits to the country has been curtailed by the authorities' denial of entry to an Amnesty International delegation in October 2014 and the subsequent failure to obtain a clear answer as to whether any visit of the organization would require prior authorization by the authorities.

Amnesty International sent a preliminary assessment of its findings, some case details, and requests for further information to the Moroccan authorities in a memorandum on 19 March 2015. The Moroccan authorities responded on 20 April 2015 in a document containing general comments with regard to Amnesty International's assessment of torture and other ill-treatment in the country (sections 1, 2, 5 and annex 2 of the response); specific information on a number of individual cases of individuals alleging torture or other ill-treatment (sections 3 and 4 of the response); as well as an annex summarizing Moroccan authorities' recent efforts in the field of human rights, in general, and to combat torture, in particular (annex 1 of the response).

The Moroccan authorities' general comments on Amnesty International's memorandum, information on their efforts to combat torture, as well as most responses on individual cases have been reproduced in full as an annex at the end of this report. Responses concerning three cases initially featured in section 3 of the Moroccan authorities' response have not been included in order to protect the privacy of individuals who consented to be included in confidential correspondence between Amnesty International and the Moroccan government but did not consent to their names being published.

The Moroccan authorities' response to Amnesty International's memorandum includes information on relevant national legislation and official efforts to combat torture. However, the response unfortunately does not engage with several core issues presented in the memorandum, including the implementation gap concerning existing safeguards against torture in *garde à vue* detention and in courts, as well as issues relating to the quality of medical examinations ordered by courts. Moreover, the authorities expressed their wholesale rejection of Amnesty International's findings.

Responses on individual cases contained information about judicial proceedings against some defendants who alleged they were tortured or otherwise ill-treated during police interrogation. Such responses did not address the failure to implement legal safeguards against torture in during *garde à vue* or the apparent sub-standard quality of expert medical evidence raised in a number of individual cases. The authorities also frequently stated that the absence of visible injuries in court, or the absence of medical evidence of injury, proved that complainants were falsely alleging torture or other ill-treatment. These remarks confirm Amnesty International's analysis of issues relating to the misuse of medical evidence and the problematic interpretation of the burden of proof in relations to investigations into alleged torture and other ill-treatment, covered in chapter 3 of this report.

Amnesty International intends to pursue its dialogue with the Moroccan authorities on these cases and issues. Amnesty International's current work on torture in Morocco and Western Sahara is part of the organization's global Stop Torture campaign, launched in May 2014 and marking the 30th anniversary of the Convention against Torture.¹

¹ Further information about Amnesty International's Stop Torture campaign is available here <https://www.amnesty.org/en/campaign-stop-torture/>

1. ABUSED UPON ARREST

‘I discovered that we get tortured in our own country.’

Khadija*, a student who reported being tortured following her arrest by security forces during a campus protest

Khadija* is a soft-spoken, first-year student at Sidi Mohamed Ben Abdellah University in Fes. Not an activist herself, she happened to walk past a protest at the university’s Dhar El Mehrnaz campus that was being violently dispersed as she was returning to her dorm room after class on 29 March 2014. She described to Amnesty International her arrest and torture by police officers:

“On my way back from class, three CMI riot police came up to me from behind and tripped me. I fell and they tore my headscarf off and hit me. Then they dragged me by the legs, face down, to their van. Inside, about 10 more officers were waiting. That’s when they hit me the hardest. During half an hour or longer, they beat me, called me a prostitute, insulted my mother and threatened to rape her...”

“At the police station, they put me in an office with the door open. Police kept walking in and out, pulling me one way and the other, threatening to rape me, trying to pull my clothes off... Some said: ‘If we see you at university again, we’ll rape you’. Each time a new officer came in, I hoped he would have some compassion, but he would just threaten to rape me or insult me while others laughed...”

Khadija said that police officers released her without charge at 9pm that night. Left without money, she had no option but to risk her safety and walk from the city centre to the student dormitories alone at night.

“I discovered that we get tortured in our own country, and police officers don’t respect women. They say Morocco is a democratic country with human rights and freedoms. But I found out that’s not at all the case. Those who don’t have money have nothing.”²

Khadija’s story is far from isolated. Yet, torture is a criminal offence under Moroccan law. Over the past decade, Moroccan authorities have increased the force and reach of the prohibition on torture. Before 2006, torture was prohibited under Article 399 of Morocco’s Penal Code but not defined. The Penal Code was later amended to include a specific

² Interview, Fes, 2014.

definition of torture under Article 231-1 which drew substantially on Article 1 of the UN Convention against Torture (see box below):

In 2011, the new Constitution specifically outlawed torture under Article 22, and broadened the scope of the prohibition as follows:

"No person, private or public, may harm another person's physical or moral integrity in any circumstance. No person may inflict on another, under any pretext, treatment that is cruel, inhuman, degrading or harms their dignity. The practice of torture, under any form, and by any person, is a crime punished by the law."

In the context of current judicial reforms, the Minister of Justice and Liberties has recently unveiled a draft bill to amend the Penal Code that similarly broadens the definition of torture to cover any perpetrator inflicting acute physical or mental pain under any motive, and also includes complicity and explicit or tacit consent.³

Although they are prohibited in law, torture and other ill-treatment persist in practice in Morocco and Western Sahara. Amnesty International's research has revealed a continuum of violence spanning public spaces to police custody and places of detention. Protesters or bystanders arrested during forcibly dispersed protests are particularly at risk of abuse following arrest. Such abuse includes excessive or unnecessary force during apprehension, violence in the immediate aftermath of arrest including in security vehicles, as well as during interrogation in *garde à vue* detention.

These findings echo an earlier assessment by the Special Rapporteur on torture, Juan E. Méndez, following his visit to the country in 2012:

*"The Special Rapporteur examined cases of violence against protestors after arrest, including beatings carried out during transfer to police stations and during interrogation and the coercion into confessions which later had been used before the courts to secure a conviction and prison sentence."*⁴

The following accounts from students from cities across Morocco offer a striking illustration of the way in which security forces treated some of them after arresting them in the context of campus protests. Students active in the UNEM student union and its diverse currents including the leftist Baseist Democratic Path (VDB) in Fes said that security forces who arrested them subsequently questioned them on their affiliation to the activist group, rather than on the charges that were later brought against some of them.

A seasoned VDB activist, **Aicha El Bouche** had gone through a similar ordeal to Khadija's

³ Ministry of Justice and Liberties, Draft Penal Code bill, 31 March 2015, http://www.justice.gov.ma/App_Themes/ar/img/Files/القانون%20مشرع%20الجنائي.pdf

⁴ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, Addendum, Mission to Morocco, UN Doc. A/HRC/22/53/Add.2 (2013) para. 23.

after her arrest at the same campus a year earlier. On 15 April 2013, students were boycotting exams in a protest in the science faculty. When security forces raided the campus, she sought refuge in a dormitory room nearby where she and 10 other female students barricaded themselves. She said some students in the room attempted to film the dispersal in the science faculty from a window, attracting attention from security forces.

Aicha El Bouche told Amnesty International of the violence she and the other students faced following their arrest in the dorm room. She described how on their way out of the room, security forces formed two rows and forced them to walk in the middle while they hit, dragged, insulted and threatened to rape them. She said that threats and intimidation continued inside a police van as officers transferred them to a local police station:

“CMI officers photographed us, insulting us with really dirty language and calling us prostitutes. Their chief superintendent came and threatened us, saying ‘we will rape you in every possible way, you’ll see things you never imagined’. One student had a nervous breakdown from all the threats and was sent to hospital.”⁵

Three days later, at the same campus, police arrested then third-year philosophy student **Boubker Hadari**, 26, from the same student activist group. He told Amnesty International that officers arrested him while he was occupying the roof of the science faculty library. He described the security forces’ violence that left him with multiple fractures and broken vertebrae in the following terms:

“At least four CMI officers arrested me on the roof and beat me on the spot. They hit me on the head and all over my body with their batons. Then one of them said, ‘throw the dog’, and they threw me off the roof, which was two storeys high. I awoke in a pool of blood on the ground, and found them surrounding me, shouting insults and taking pictures. They even insulted me in the ambulance on the way to hospital, and called my mother dirty names.”⁶

⁵ Interview, Fes, 29 May 2014.

⁶ Interview, Fes, 11 June 2013.



Photo: Student Boubker Hadari showing an x-ray of his fractured vertebrae after he said riot police pushed him off a roof during a campus protest on 18 April 2013.

On 6 May 2013, during a protest outside the Fes Court of First Instance in solidarity with students arrested after an exam boycott at Sidi Mohamed Ben Abdellah University, police officers arrested student and VDB activist **Mohamed El Harrass**. He told Amnesty International that following his arrest, he was put in a blue police van, where police kicked him with steel-capped boots, pulled out clumps of his hair, and attempted to rape him with a baton. He said officers then put him in another police vehicle where further torture awaited:

*"[An officer in the van told the others], 'Make him fly away from Morocco' and indeed it felt like flying when they slapped my face violently left and right, again and again, right on my ears... They started beating me hard with their batons all over my limbs, especially on my legs. It wasn't enough for them when I collapsed onto the ground, and they carried on kicking me with their boots until my nose started to bleed profusely. I lost consciousness."*⁷

The young man told Amnesty International that torture continued during his interrogation in *garde à vue* when police officers questioned him about his affiliation with the VDB activist group. He said they forced him to sign an incriminating interrogation report by threatening to rape him with a bottle. His lawyer told Amnesty International:

⁷ Interview, Fes, 11 June 2013; written statement, 12 May 2013.

“When the prosecutor pleaded in court, it became clear that the issue was my client’s political views. The prosecutor’s whole argument was an assault on Che Guevara, Lenin and Marx!”⁸

The pervasive nature of torture and other ill-treatment is particularly salient in the following accounts by students arrested several months earlier as security forces dispersed a protest on a different campus of the same university in Fes. On 14 January 2013, security forces dispersed a peaceful occupation of university administration offices by students calling for access to new dormitories. Several students arrested that day on the Fes-Saiss campus spoke of security forces using excessive and unnecessary force against protesters and bystanders alike. They told Amnesty International that security forces beat them immediately following arrest and during interrogation to force them to sign statements incriminating them in offences, including “sequestration” of university administrators during the occupation.

Student **Mohamed Fizazi**, 22, who was present when the security forces dispersed the protest, died in hospital on 25 January 2013, days after security forces reportedly assaulted him. Local human rights activists and his family said they had been approached by eyewitnesses who spoke to them on condition of anonymity. They said the eyewitnesses claimed that as many as eight officers assaulted Mohamed Fizazi, beating him on his head, chest and body. In a media interview, the deceased student’s relative explained his family’s request for an independent autopsy.⁹ His family told Amnesty International that they were not able to confirm whether such an autopsy had taken place, adding that they had not received an autopsy report. They said that the authorities announced an investigation into Mohamed Fizazi’s death after the family lodged a complaint with the General Crown Prosecutor at the Fes Court of Appeals, but that they neither informed them of findings nor made such findings public.¹⁰

On the day of the protest, security forces arrested second-year masters’ student **Abdelghani Moummouh** on campus. He said he was not involved in the occupation and believes he was targeted as he is a member of the Al-Adl Wal-Ihsan opposition Islamist movement. He told Amnesty International that security forces abused him and other students after arresting them:

“Security forces beat me inside a police van... They hit us with wooden sticks on our heads and sensitive parts of our bodies. I was in that van with two other students. They made us lie on our bellies while they beat us, five of them in addition to the driver. They showed no pity... They also threatened us with rape.”¹¹

⁸ Interview, Fes, 11 June 2013.

⁹ “Maroc: La famille de Mohamed Fizazi réclame une autopsie” [excerpt from Fes News feature], 23 January 2013, <https://www.YouTube.com/watch?v=mHMspyKM4YI>.

¹⁰ Interviews, Fes, 1 May 2013; see also “Report of the Al Karama Human Rights Forum about the death of student Mohamed Fizazi”, 31 January 2013, <http://www.maghress.com/hibapress/97050>

¹¹ Interview, Fes, 1 May 2013.

He described how officers later beat him at the police station during *garde à vue* and hit him on the head to force him to sign an interrogation report he was not allowed to read.

Many students described security forces abusing them in broad daylight and in front of bystanders on campuses. Even when students reported that torture or other ill-treatment took place in security vehicles or other closed spaces, they said violence was inflicted in front of other detainees. In other words, these officers seemed to make little effort to avoid witnesses when breaking the law. These accounts suggest a brazen sense of impunity among security forces unconcerned by the unlikely prospect of disciplinary action or prosecution.

In the accounts of students below, security forces detained and tortured or otherwise ill-treated students before planned protests in an apparent effort to dissuade them from activism. In some cases, officers seem to have made a deliberate effort to brutalize student activists publicly to deter other students from engaging in activism and protests.

This was the case for several students arrested on the campus of Ibn Tofail University in Kenitra in 2014 and 2012, most of whom are VDB student activists and in particular, members of its Progressive Baseist current who are reported to be particularly active in the city.

Student and activist of the Progressive Baseist student faction **Zakaria Rakkass** told Amnesty International that police officers arrested him on 19 January 2014 on the eve of a planned peaceful protest by students calling for broader access to graduate study and criticizing government plans to privatize Morocco's universities. He said they beat him in order to persuade members of UNEM, in particular the Progressive Baseist faction, to cancel the protest. He told Amnesty International that over three hours, uniformed and plainclothes police as well as CMI officers held him in a police van and tortured him:

"They beat me on the head, giving me an open cut that took seven stitches to close. They also insulted me and said: 'Tomorrow, don't go down to university to debate with students'. I was at university at 8am, and plainclothes police arrested me straight after I got off the bus... Then one officer told me 'I told you yesterday not to go to university, now you will see' and he punched me with a handcuff on the mouth, cutting my lip open."¹²

Two years earlier similar events happened on the same campus. On 27 March 2012, security officers, called in to disperse student protests, beat Progressive Baseist student faction activist **Abderrazak Jkaou** on campus and left him unconscious. Several witnesses confirmed the following account that the 27-year old student gave to Amnesty International:

"It was brutal violence – as if the perpetrators took pleasure in beating me. Officers surrounded me... Some carried long wooden sticks. They beat me from head to toe. Then a plainclothes officer gripped a handcuff in his fist and punched me between the eyes. I was knocked out and fell. Then the others came and stamped on my bladder until I urinated. They beat me until I passed out, then threw me outside the campus, as a warning to other students. The students thought I was dead."

¹² Interview, Kenitra, 30 June 2014.

When he returned to campus the following day, security forces arrested him along with dozens of other students as they dispersed the protest. He said that officers abused him upon arrest and then took him to the police station where police further ill-treated him during interrogation.

Other students arrested on the Ibn Toufail campus on 28 March 2012 reported similar violence by security forces during arrest and transfer to the local police station, including beatings and rape threats. Student activist **Mourad El Houari** said that when security forces arrested him, a plainclothes officer punched him on the nose, causing him to fall and injure the back of his head. He described how plainclothes officers and members of the Auxiliary Forces beat and kicked him when he was on the ground, and repeatedly threatened to rape him with their batons. He said that two officers dragged him to the main gate where two rows of security officers beat him with sticks and batons. He told Amnesty International that security forces then transferred him to a police station where officers beat him in a basement room before interrogators further ill-treated him.¹³



Photo: Science Faculty, Dhar El Mehraz campus, Sidi Mohamed Ben Abdellah University in Fes

¹³ Interview, Kenitra, 30 June 2014.

Sahrawis also reported that security officers tortured or otherwise ill-treated them upon arresting them during forcibly dispersed protests in southern Morocco and Western Sahara. Some of those who were formally arrested and charged reported further torture or other ill-treatment during interrogations. Others stated that they were detained in vehicles without being ever formally arrested or taken to a police or gendarmerie station.

Eight Sahrawis interviewed by Amnesty International in Western Sahara reported that security officers beat, threatened and insulted them while detaining them in security vehicles without formal arrest, before releasing them. In some of these cases, victims were younger than 18 and therefore children under international law. All said they were released in deserted, remote areas on the outskirts of the cities where they were detained.

Brahim*, a 16-year-old Sahrawi boy, said he was arrested by police on 21 December 2013 in Laayoune in the Maatalla district after clashes broke out between police and Sahrawis watching a football match. He told Amnesty International:

“About 12 police in blue uniforms hit me with metal bars, with their helmets, kicked me, and slapped me – that lasted about 20 minutes. Then they took me out of the van, and they kept beating me, until one of them kicked me in the nose and I fainted.

“I woke up in a public hospital in town, surrounded by plainclothes police with walkie-talkies. Medical staff wiped the blood off my nose and released me saying I had nothing, but by the time I got home, my nose and hand were really swollen.”

On 30 December 2013, his parents filed a complaint with a copy of a medical certificate, but it was still unanswered when Amnesty International met him in June 2014.¹⁴

Omar*, a 14-year-old Sahrawi boy, said that plainclothes police arrested him in Smara in October 2013, a month after he took part in a peaceful protest for self-determination of Western Sahara. He said that seven officers detained him in a police vehicle, slapped him, and hit him on the shoulders and legs, ordering him to tell them who incited him to demonstrate. He said they released him on a road and it took him three hours to walk home in the dark. He said Moroccan officials refused to accept a complaint his parents attempted to lodge.¹⁵

Mehdi*, another 16-year-old Sahrawi boy, told Amnesty International:

“Plainclothes police took me into a car and hit my head with a rock – they also beat my back with a stick. In hospital, they stitched me up with no anaesthetic, it hurt – and they gave me

¹⁴ Interview, Laayoune, 10 June 2014. Amnesty International accessed a copy of the complaint and accompanying medical certificate.

¹⁵ Interview, Smara, 12 June 2014.

no medical certificate. I was still dizzy and vomiting but they sent me home.”¹⁶

The Special Rapporteur on torture and the WGAD both noted a similar trend of alleged informal detention in security vehicles accompanied by torture or other ill-treatment in Western Sahara, following country visits in 2012 and 2013 respectively.¹⁷ In their response to these UN bodies, the Moroccan authorities have denied the occurrence of such abuses:

“Concerning the other particularly serious allegation reported by the Special Rapporteur on ‘the alleged abandonment of victims in rural areas after subjecting them to violence’, the Moroccan authorities consider that this is an unfounded allegation... Moroccan authorities and national institutions, including CNDH, national and international NGOs, treaty bodies complaint mechanisms, such as Special Procedures, have never received any allegations, information or testimonies whatsoever concerning ‘abandonment in rural areas’.”¹⁸

Many of the students above who were presented to court after *garde à vue* detention told Amnesty International that they told prosecutors and investigating judges of the violence to which they had been subjected. In a few cases, courts ordered medical examinations, but no investigations were opened in spite of the availability of witnesses, including co-detainees and students who saw the reportedly violent arrests on campus. Perpetrators were not disciplined, prosecuted, or held to account, lawyers told Amnesty International.

Amnesty International has also seen copies of complaints filed by some Sahrawi victims and their relatives with relevant judicial authorities as well as regional commissions of the CNDH with regards to reported torture or other ill-treatment in security vehicles without formal arrest. Likewise, Amnesty International was unable to confirm whether or not any of the complaints resulted in investigations, disciplinary proceedings, prosecutions or convictions.

¹⁶ Interview, Smara, 12 June 2014.

¹⁷ Report of the Special Rapporteur on torture, Mission to Morocco, UN Doc. A/HRC/22/53/Add.2 (2013) para. 63; a similar observation is included in Report of the Working Group on Arbitrary Detention, Addendum, Mission to Morocco, UN Doc. A/HRC/27/48/Add.5 (2014) para. 64.

¹⁸ Report of the Special Rapporteur on torture, Addendum, Mission to Morocco: comments by the State on the report of the Special Rapporteur, UN Doc. A/HRC/22/53/Add.5 (2013) para. 62; Rapport du Groupe de travail sur la détention arbitraire, Additif, Mission au Maroc: commentaires de l’Etat sur le rapport du Groupe de travail sur la détention arbitraire, UN Doc. A/HRC/27/48/Add.7 (2014) para. 112 (French only).

THE PROHIBITION ON TORTURE

The explicit inclusion of complicity and tacit consent are key elements to ensure that all those responsible for torture are held to account.

Article 1 of the Convention against Torture defines torture as

“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 a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

Law no. 43-04 of 14 February 2006 amended the Penal Code to include a specific definition of torture under Article 231-1:

“any act, committed intentionally by a public official or someone acting at his behest or with his express or tacit consent, by which acute physical or mental pain is 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 relating only to legal sanctions or caused by such sanctions or that is inherent to such sanctions.”¹⁹

Although the 2006 definition drew extensively on the Convention against Torture, its scope is more restricted: it does not specifically define complicity in acts of torture, nor explicit or tacit consent on the part of persons acting in an official capacity, triggering renewed calls by the Committee against Torture and the Special Rapporteur on torture to further amend the definition in this regard.²⁰

Moroccan authorities have responded to these calls in the context of the current judicial reforms process. The Minister of Justice and Liberties has recently unveiled a draft bill to amend the Penal Code which broadens the definition of torture to include any perpetrators inflicting acute physical or mental pain based on any motive, explicitly includes complicity and explicit or tacit consent.²¹

¹⁹ Translation into English as featured in the Report of the Special Rapporteur on torture, Mission to Morocco, UN Doc. A/HRC/22/53/Add.2 (2013).

²⁰ Concluding observations of the Committee against Torture, Morocco, UN Doc. CAT/C/MAR/CO/4, (2011) para. 5; Report of the Special Rapporteur on torture, Mission to Morocco, UN Doc. A/HRC/22/53/Add.2, 28 February 2013, para. 10.

²¹ Ministry of Justice and Liberties, Draft Penal Code bill, 31 March 2015, http://www.justice.gov.ma/App_Themes/ar/img/Files/القانون%20مشروع%20الجناي%20.pdf

2. VIOLENT INTERROGATIONS

‘Police officers blindfolded me. They handcuffed my wrists and ankles to a bar and suspended me, facing the floor. One of them would sit on my back and laugh. They beat me... The handcuffs cut through my skin to the bone.’

Mohamed Lamine El Bakkari, 37, arrested in Boujdour, Western Sahara in November 2013

As he was describing his ordeal to Amnesty International, **Mohamed Lamine El Bakkari** pulled up his sleeves. The scars on his wrists were still obvious over seven months after his arrest around 30 November 2013, after he joined fellow Sahrawis in peaceful protest in Boujdour, Western Sahara. He went on to describe how officers in a local police station had tied him to a wooden plank at the knees, hips and hands, and beaten the soles of his feet with a stick. The officers, he said, repeatedly asked him why he protested, questioned him about other demonstrators, and called him a “separatist” and “Polisario agent”. They also asked him whether he had travelled to Algeria or was friends with Sahrawis convicted following the dispersal of the Gdim Izik protest camp in 2010.

Mohamed Lamine El Bakkari said that after the torture he was too weak and shocked to utter a single word. He described his transfer to Laayoune the following day, during which police officers slapped him and blew cigarette smoke in his face. He said the Crown Prosecutor failed to ask about his visible injuries or even speak to him, ordering police officers to take him away to prison. He was later sentenced to a one-month prison term after being convicted of assaulting a member of the public, a local activist told Amnesty International.²²

The combination of torture techniques described by Mohamed Lamine El Bakkari was not widely reported. However, his account otherwise illustrates the main trend that emerged from Amnesty International’s fact-finding in Morocco and Western Sahara. Most people interviewed described torture and other ill-treatment during interrogation in *garde à vue* detention at police or gendarmerie stations. Accounts portrayed interrogators forcing detainees to “confess” their guilt or to implicate others in offences, at the expense of the presumption of innocence and of the accuracy of information collected.

²² Interview, Boujdour, 14 June 2014.

ISOLATED AND VULNERABLE

Garde à vue detention is a measure by which judicial police officers keep criminal suspects in their custody for the purpose of a preliminary investigation. Judicial police officers currently include police officers as well as some gendarmes. Since 2011, it also includes officers of the General Directorate for the Surveillance of the Territory (DGST).

Its duration is limited by law, with longer periods allowed in cases of suspected terrorism offences. Those suspected of ordinary offences can be held for up to 48 hours with the option of a 24-hour extension granted by the Office of the Prosecution. Those suspected of terrorism can be held for 96 hours, a detention period that is renewable twice with the approval of the Office of the Prosecution, bringing it to a total of 12 days (Article 66 of the Code of Criminal Procedure).

The vulnerability of detainees to torture and other ill-treatment in *garde à vue* detention is rooted in their isolation from the outside world, increasing their dependence on arresting officers. The risk of abuse was significantly higher when the DGST, a domestic intelligence agency, reportedly held detainees incommunicado, sometimes for months, in the Temara detention centre near Morocco's capital Rabat, a pattern documented by Amnesty International and other human rights organizations up to 2011.²³

Although Amnesty International has documented no such secret detention after 2011, it continues to receive numerous reports of unacknowledged detention in recognized facilities in contravention of legal safeguards. Article 67 of Morocco's Code of Criminal Procedure requires judicial police officers to use "all possible means" to immediately inform the families of people placed in *garde à vue* detention.

However, in virtually every case documented by Amnesty International, arresting officers failed to notify families until the final hours of *garde à vue* detention that their relatives had been arrested or to warn that they would be presented in court. Several family members reported that police and gendarmerie stations that they contacted denied holding their relatives who were in fact in their custody. Others said that while officers might confirm that an individual was under arrest, they often failed to disclose where they were holding them.

The right to legal counsel is featured in Article 66 of the Code of Criminal Procedure, which allows suspects to instruct a lawyer from the beginning of *garde à vue* detention. It also enables suspects to have a 30-minute confidential communication with their lawyer before the end of the first half of the main period of *garde à vue* detention, subject to authorization by the Office of the Prosecution. For offences punishable by more than five years' imprisonment and if required by the needs of the investigation, the Office of the Prosecution can delay the communication up to an additional 12 hours after the first half of *garde à vue*

²³ Amnesty International, *Morocco/Western Sahara: Torture in the "anti-terrorism" campaign - the case of Temara detention centre*, June 2004, (Index: MDE 29/004/2004); Human Rights Watch, *Morocco: Stop Looking for Your Son - Illegal Detentions under the Counterterrorism Law*, 25 October 2010. See also Chapter 5.

detention (up to the 48th hour following arrest).²⁴

Judicial police officers and the Office of the Prosecution can further delay detainees' communication with their lawyers in cases involving terrorism offences, among other serious crimes.²⁵ In such cases, communication with a lawyer can be delayed until just before the end of the fourth day following arrest. The prosecution can delay the communication for up to an additional 48 hours if required for the purpose of the investigation.

In cases documented by Amnesty International, practical access to legal counsel during *garde à vue* detention remained elusive. Suspects were interrogated without having been able to instruct or consult with a lawyer. Families were often those who instructed lawyers on behalf of their detained relatives, and the delay in notifying families therefore had a knock-on effect on how swiftly lawyers could access their clients. In practice, lawyers were rarely able to contact their clients before the end of *garde à vue* detention.

A second obstacle to access to legal counsel in *garde à vue* detention is the current lack of a functioning legal aid system. The Bar Associations of Morocco, a nationwide organization grouping all local Bar Associations, has been locked in a dispute with the Ministry of Justice and Liberties over legal aid payments for many months. It has suspended its legal aid work, with many lawyers preferring to provide services free of charge rather than accepting conditions proposed by the government.²⁶

In addition, in cases documented by Amnesty International courts often authorized the full legal extent of *garde à vue* detention and ordered prolonged pre-trial detention with little or no justification. This has had the practical effect of prolonging isolation and vulnerability to torture and limiting channels for reporting abuses. The practice of disproportionately long or poorly justified pre-trial detention is also inconsistent with the presumption of innocence and amounts to punishment according to the Human Rights Committee, the expert UN body tasked with overseeing the implementation of the International Covenant on Civil and Political Rights (ICCPR), to which Morocco is a state party.²⁷

The fact that **Zine El Abidine Erradi** knew his rights as a member of the Moroccan Association for Human Rights (Association marocaine des droits humains, AMDH), a prominent human rights group, was no protection during his interrogation by police in the

²⁴ Current domestic legal standards on access to lawyers were amended by royal decree 35-11 of 17 October 2011. Previously, suspects could only communicate with their lawyers after the first 48 hours in the event of an extension of their detention.

²⁵ Offences relating to criminal gangs, homicide, poisoning, abduction, hostage-taking, counterfeiting or falsifying currency, drugs, weapons and ammunition, explosives or the protection of public health.

²⁶ Lawyers have complained that the fees are too low (between 1,200 and 200 dirhams, or approximately US\$127 and 212) and that the proposed mode of payment through courts rather than Bar Associations would trigger delays and lack of recognition for actual casework.

²⁷ Human Rights Committee, General Comment 32, Article 14, UN Doc. CCPR/C/GC/32 (2007) para. 30.

southern port town of Sidi Ifni. He said plainclothes officers in an unmarked car arrested him on 2 October 2012, a few days after he took part in a peaceful protest for employment in the port. He described to Amnesty International the moment of his interrogation following his arrest on 2 October 2012 when he requested access to a lawyer:

“Police didn’t blindfold or beat me but they insulted me, they insulted people from Sidi Ifni in general, and especially my tribe, the Ait Baamrane. They pushed me around while I was handcuffed to a chair, ordering me to speak. When I asked for a lawyer, one officer scoffed, ‘do you think you’re in Sweden?!’”

He said that following his arrest police insulted him and held his hand to force him to sign an interrogation report without letting him read it. The Court of First Instance in Tiznit subsequently convicted him on charges including participation in an unauthorized protest and obstructing a public road during a previous protest on 9 April 2011 and sentenced him to 10 months in prison, reduced to six months on appeal. Several others arrested in relation to the same protest reported they were also coerced to sign interrogation reports. They were later convicted and sentenced to prison terms ranging from four to six months. Zine El Abidine Erradi was arrested and ill-treated only days after meeting the Special Rapporteur on torture, Juan E. Méndez, in Laayoune.²⁸

THE RIGHT TO LEGAL COUNSEL

Everyone arrested or detained has a right to legal counsel under international law. Access to detainees by lawyers is also an important safeguard against torture and other ill-treatment.

The right to legal counsel is explicitly provided in the case of persons facing criminal charges in Article 14(3) of the ICCPR, to which Morocco is a state party. In its jurisprudence, and recently in an authoritative General Comment on Article 9 of the ICCPR, which concerns the right to liberty and security of person, the Human Rights Committee has clearly stated that “States parties should permit and facilitate access to counsel for detainees in criminal cases, from the outset of their detention.”²⁹

Both the Human Rights Committee and the Committee against Torture have emphasized that the right of detainees to have prompt access to a lawyer is also an important safeguard against torture and other ill-treatment.³⁰ The right to legal counsel includes the right to access a lawyer, to consult a lawyer in confidence,³¹ to have the lawyer present during interrogation,³² and be able to consult them during that time.

²⁸ Interview, Sidi Ifni, 17 May 2014.

²⁹ Human Rights Committee, General Comment No. 35, Article 9, UN Doc. CCPR/C/GC/35 (2014) para. 35.

³⁰ Human Rights Committee, General Comment 20, Article 7, UN Doc. HRI/GEN/1/Rev.1 (1992) paras. 30, 11; Committee against Torture General Comment 2, UN Doc. CAT/C/GC/2 (2008) para. 13.

³¹ Human Rights Committee, General Comment No. 32, Article 14, UN Doc. CCPR/C/GC/32 (2007) para. 34.

³² Concluding observations of the Committee against Torture, Ireland, UN Doc. CCPR/C/IRL/CO/3 (2008)

FORCED INCRIMINATION

Moroccan legislation includes several fair trial guarantees related to the conduct of police interrogation. These include the presumption of innocence (Article 23 of the Constitution and Article 1 of the Code of Criminal Procedure). They also include the right to remain silent during police questioning (Article 23 of the Constitution and Article 66 of the Code of Criminal Procedure). The Code of Criminal Procedure specifically obliges judicial police officers to inform anyone arrested of their right to remain silent during police questioning and explicitly bans the use of coercion to secure suspects' signature of interrogation reports (Article 293). This prohibition is also apparent in the definition of torture which includes any act by which:

*"acute physical or mental pain is inflicted on a person in order to intimidate him or her, or to pressure that person, or someone else, to obtain information or indications."*³³

Article 289 of the Code of Criminal Procedure further states that interrogation reports and other statements drafted by judicial police officers are only valid insofar as their form is in conformity with the law, and that their contents include things personally seen or heard by the drafting officer and that fall within his or her competence.

Yet, the accounts below portray interrogators attempting to force suspects to sign incriminating interrogation reports – frequently without allowing them to read the documents. Part of the problem is the fact that Moroccan legislation gives considerable weight to confessions as evidence to prove infractions and misdemeanours.³⁴ Article 290 of Morocco's Code of Criminal Procedure states that, for infractions and misdemeanours, courts should assume police interrogation reports are trustworthy, unless proven to be inaccurate.

The Special Rapporteur on torture has recognized the unfortunate effect of this disposition in effectively creating an incentive to use force to secure "confessions", and has specifically called on Moroccan authorities to amend Article 290 in order to raise the evidentiary standard for infractions and misdemeanours.³⁵

para. 14; Republic of Korea, UN Doc. CCPR/C/KOR/CO/3 (2006) para. 14; Netherlands, UN Doc. CCPR/C/NDL/CO/4 (2009) para. 11; and Turkey, UN Doc. CAT/C/TUR/CO/3 (2010) para. 11.

³² Committee against Torture annual report, UN Doc. A/52/44 (1997) para. 68.

³³ Article 231-1 of the Penal Code as translated in the Report of the Special Rapporteur on Torture, Mission to Morocco, UN Doc. A/HRC/22/53/Add.2 (2013).

³⁴ In Moroccan law, offences punishable by five years' imprisonment or less, as defined in Articles 17 and 18 of the Penal Code.

³⁵ Report of the Special Rapporteur on Torture, Mission to Morocco, UN Doc. A/HRC/22/53/Add.2 (2013) para. 87(f).

THE PRESUMPTION OF INNOCENCE AND THE RIGHT TO SILENCE

The right to a fair trial entails not forcing suspects to incriminate themselves and allowing them to remain silent during their investigation and trial.

The presumption of innocence is provided explicitly in Article 14(2) of the ICCPR.

The right of an accused to remain silent during police questioning and at trial stems from two internationally protected human rights: the right to be presumed innocent (Article 14(2) of the ICCPR) and the right not to be compelled to testify against oneself or to confess guilt (Article 14(3)(g) of the ICCPR).³⁶

Interrogations not guided by the presumption of innocence risk diverting the focus of interrogators towards securing admissions of guilt, and away from establishing fact. This focus on confessions may incite interrogators to resort to torture or other ill-treatment in the face of refusal by defendants to confess, including intimidating defendants during interrogation by repeatedly insinuating their guilt.

Article 11 of the Convention against Torture provides for constant review of interrogation practices “with a view to preventing any cases of torture”. Establishing standardized and transparent rules for the conduct of interrogations which authorities review on a regular and systematic basis is a way to ensure that the presumption of innocence is implemented in practice.

Police officers arrested 20-year-old **Hamza Ljoumai** on 4 June 2013 in Smara, Western Sahara and accused him of violence during protests for self-determination that later escalated into clashes with security forces on 22 and 23 May 2013. He told Amnesty International:

“At the police station, officers started insulting me. They took me to an office, handcuffed my wrists and ankles to a chair, blindfolded me and started the interrogation. They asked about people who were at the demonstration with me while slapping me. Then they took me to a cell with no food, took my jacket and left me a foul-smelling cover for the night. For the first two days, they took me back and forth between the cell and the interrogation room, where they slapped me. On the third day at the police station, officers gave me many pages to sign – they didn’t let me read them. They beat me to sign them.”

He added that during his second court hearing he told the investigative judge about his treatment at the police station and the forced signature of his interrogation report, but the judge remained silent and disregarded his complaint.³⁷

Police officers arrested **Salouh Mailass** at his home on 28 May 2013 in relation to the same protests. He told Amnesty International that at the police station, interrogators stripped him down to his shorts, handcuffed his wrists, tied his ankles with rope, and suspended him on a

³⁶ Concluding observations of the Human Rights Committee, France, UN Doc. CCPR/C/FRA/CO/4 (2008) para. 14; Concluding observations of the Human Rights Committee, Algeria, UN Doc. CCPR/C/DZA/CO/3 (2007) para. 18. See similarly *Murray v United Kingdom* (18731/91); European Court of Human Rights, Grand Chamber (1996) para. 45.

³⁷ Interview, Smara, 12 June 2014.

bar across the ceiling face-down in the “airplane” position as they hit him with their batons and other objects. He added that officers staged scenes for photographs in between torture sessions to portray good conditions of detention, bringing him food and clothes provided by his family and the families of other detainees and swiftly taking them away after the 10-minute photo-shoot. He said that at the end of his *garde à vue* detention, police officers forced his fingerprints onto an interrogation report without allowing him to read it.

On the basis of the forced “confessions”, judicial authorities accused a group of five protesters including both young men of offences including “violence against public officers”, “participating in an armed gathering”, “placing objects on a road obstructing traffic”, “damaging public property”, and attempted “arson”. The court ordered their pre-trial detention for the following five months before releasing them on bail after their second hearing with the investigative judge. Their case remains open while hearings have been repeatedly postponed.

Sahrawis in southern Morocco reported similar abuses. Families of those arrested in Assa, Zag and Guelmim in southern Morocco following protests and clashes in September 2013 told Amnesty International that gendarmes and police officers tortured and otherwise ill-treated their relatives in detention and forced them to sign or fingerprint interrogation reports.

In September 2013, security forces violently dismantled a peaceful protest camp in Tizimi, near the city of Assa. The Ait Oussa Sahrawi tribe had established the camp to call on the authorities to enforce their property rights following a land dispute with another tribe. Following the dismantling, men and women from the Ait Oussa tribe took to the streets in several cities in southern Morocco and Western Sahara. While some protests were peaceful, others escalated into stone-throwing between youths and law enforcement forces.

Further demonstrations broke out after one protester **Rachid Chine**, 20, was hit by one or more projectiles on 23 September 2013 in front of a mosque in the town of Assa during a confrontation between protesters and gendarmes, and died shortly thereafter. A video shows the young man dying minutes after one of several projectiles fired in his direction hit him in the abdomen.³⁸ His mother initially called for an independent autopsy outside of Morocco.³⁹ Authorities announced that an investigation was opened into his death but findings have not been made public. Rachid Chine’s body was eventually buried outside the city to avoid further unrest, local activists told Amnesty International.⁴⁰

Fearing retaliation, relatives of detainees arrested following Rachid Chine’s death asked Amnesty International to withhold identifying details. Some also asked for details of specific torture techniques to be withheld. One relative said:

³⁸ “The moment of the shooting of youth Rachid Chine by a gendarmerie car”, YouTube, 23 September 2013, <https://www.YouTube.com/watch?v=Sft6EwXUdZo>

³⁹ “Statement by the mother of the deceased who died during the clashes in Assa”, YouTube, 23 September 2013 (Arabic), <https://www.YouTube.com/watch?v=FXAAGNG1JXU#t=126>

⁴⁰ Interviews, Guelmim, 15-16 May 2014.

"We were worried when Ali didn't come home in the evening so the next morning I went to hospital. They told me he had been brought in a Honda the previous night, unconscious from beatings, but they didn't tell me the police brought him in."*

She added that Ali was returned to police custody where he was tortured and interrogated over three days and forced to sign an incriminating report he was not allowed to read. She said that his mother was only allowed to see him fleetingly at the police station:

"When his mother saw him she cried, and he did too, from seeing her suffering. He spoke of the torture and she saw his wounds but there was no time to take pictures."

Another relative described her first encounter with Moustapha* in prison:

"He was full of bruises. He told me they tortured him the night he was arrested, until he signed, although he was innocent. When he resisted signing, they threw water on him and gave him electric shocks. We went to the police station at the time, but they wouldn't let us see him."



Photo: Junction between Gulemim and Assa, southern Morocco, where reports of protesters being tortured and otherwise ill-treated following arrest by gendarmes and police in September 2013 emerged.

Amnesty International also documented cases of reported use of torture or other ill-treatment to force children to incriminate themselves. Relatives of juveniles arrested by police officers and gendarmes in the three cities said the juveniles were often interrogated without being allowed to communicate with their legal guardians or lawyers, in violation of Moroccan law.⁴¹ They added that the children were forced to fingerprint incriminating reports while being hit and slapped on the head and ears until they were dizzy, while others were given electric shocks.

A relative spoke of one child's visible trauma and how it prevented him from speaking out:

"When we saw him two days after police arrested him, he had not eaten for two days and was terrified. Every time he hears the word 'police' he is terrified. He said that he was beaten but he wouldn't talk about it at first. They put him in pre-trial detention right away and we couldn't see him except from afar."

Another relative told Amnesty International:

*"I saw the children's bruises when they came out of the gendarmes' custody and saw the investigating judge. They said they were innocent and told the court they had been beaten – but no medical examination was ordered, and the judge accepted the interrogation report as fact."*⁴²

In other cases, suspects were tortured or otherwise ill-treated for refusing to sign interrogation reports or for not responding to specific questions, they told Amnesty International.

"I refused to sign the interrogation report, so they hit me again. They hooked a handcuff inside my cheek and yanked at it like they were going to pierce my skin."

This is how **Abdelaziz Redaouia**, 34, described his torture by officers of the National Brigade for the Judicial Police (BNPJ) after his arrest on 5 December 2013 in Tangiers where he was on holiday. The French-Algerian dual national said that plainclothes officers arrested him and transferred him to the BNPJ's offices in Casablanca where police officers first accused him of a carjacking, then illegal possession of firearms, and finally drugs offences.

He said BNPJ officers tortured him to force him to sign an interrogation report that he was not allowed to read, and to incriminate others in crimes they did not commit. He said the officers forced his head under water, used a car battery to give him electric shocks on his genitals, and beat the soles of his feet while he was suspended. He added that there was no interpreter during the interrogation, which was led in Arabic, a language which he barely understands.

Abdelaziz Redaouia said that he told the court on several occasions that officers had tortured

⁴¹ Article 460 of the Code of Criminal Procedure.

⁴² Interviews, Guelmim, 16 May 2014.

him, but judicial authorities ordered no medical examination or investigation. On 18 February 2014, the Criminal Chamber of the Tangiers Court of Appeals convicted him of possession of drugs, trafficking and fraud, and sentenced him to two years in prison and a fine, upheld on appeal. The conviction relied on his unsigned, tainted interrogation report. The court also convicted three other defendants in the same case. Abdelaziz Redaouia added that he reiterated his torture allegations to a representative of the Office of the Prosecution while on hunger strike in August 2014 in the wake of his appeal trial, but that judicial authorities ordered no investigation or medical examination.⁴³

Plainclothes police stopped **Sharif Talhaoui** in Agadir on 24 July 2013 for a routine identity check. The young man, who had been involved in the 20 February protest movement, said that after they checked his name, they became aggressive and started to insult him. He said they hit and kicked him in the police van that took him to Ait Melloul police station. There, he said, officers left him handcuffed to a chair for eight hours without food or water, and a further 48 hours in a holding cell without food.

On 26 July, officers transferred him to Marrakesh police headquarters, where he was left handcuffed to a chair for the first day. He said that on the second day, officers interrogated him about activists belonging to the 20 February movement, punching and slapping him to force him to accuse them of offences they had not committed. He told Amnesty International that he resisted their attempts to force him to sign several untruthful interrogation reports, and described his interrogation in these words:

“Four well-built officers came and said: ‘You have two options. Either you answer our questions, or we will beat you up in ways you’ve never seen’. They threatened to rape me with a bottle and give me electric shocks.”

Sharif Talhaoui told Amnesty International that when the Crown Prosecutor at the Marrakesh Court of First Instance saw him on 29 July 2013, he interrupted him and his lawyer when they tried to report the torture. His lawyer said that the court did not order an investigation or medical examination. On 9 September 2013, the court convicted him in relation to his participation in protests on 20 February 2011 solely on the basis of an interrogation report which he did not sign, he said. He was sentenced to one year in prison, reduced to six months on appeal.⁴⁴

Another account describes torture being used not only to attempt to force the signing of a pre-written interrogation report, but also to produce other fabricated evidence. **Walid El Ouazzani** was arrested with another student on 27 April 2014 in Fes for alleged involvement in the killing of a student three days earlier. He and several other students arrested at the

⁴³ Communications with Abdelaziz Redaouia and his family on 28 May 2014 and 18 August 2014; Criminal Chamber of the Tangiers Court of Appeals, Decision 1062, File 2601/14-664, 9 June 2014; “Trois Français d’origine maghrébine en vacances au Maroc arrêtés, torturés, condamnés”, Mediapart, 13 June 2014, <http://blogs.mediapart.fr/blog/marie-jo/130614/trois-francais-dorigine-maghrebine-en-vacances-au-maroc-arretes-tortures-condamnes>

⁴⁴ Interview, Marrakesh, 30 June 2014.

same time told Amnesty International that at Fes police headquarters, police officers tortured the other arrested student, whose screams they heard. Students who shared his holding cell told Amnesty International that they noticed his obvious injuries. Walid El Ouazzani said that officers interrogated him separately and focused on his Marxist politics and an assault he had suffered the previous month during a peaceful student occupation.⁴⁵

He told Amnesty International:

“They blindfolded me and started hitting me on the right ear. Then they threatened to rape me and pulled my pants off and tried to rape me with a bottle. Then they tied me in the roast chicken position on a metal bar suspended on ropes, and would hit me, then swing me, and I would get hit again – my right ear was still bleeding from the blows. While they beat me, they would order me to speak.

“Then they used another kind of torture. They tied my hands behind my back and started slamming my shins with a big stick as I lay on the floor. One of the officers would raise my chin with the tip of his shoe when he wanted to speak to me.”



Photo: Philosophy student Walid El Ouazzani reported that Fes police tortured him in custody in April 2014.

⁴⁵ Digital photographs purporting to represent him in hospital with injuries he sustained on the night of 5 March 2014 can be viewed at these links: http://vdbunem.blogspot.co.uk/2014/03/05-201.html?sm_au=iVWWF8srLQ8t8ZQF; http://vdbunem.blogspot.co.uk/2014/03/chu-06-2014.html?sm_au=iVWWF8srLQ8t8ZQF

Walid El Ouazzani told Amnesty International that, after the torture, an officer took him to the police's car park and forced his fingerprints on a motorbike, which the officer accused him of using after killing the student. Walid El Ouazzani said he laughed and explained that he didn't know how to ride a motorbike. The officer responded by grabbing his head and hitting it several times against a wall. The student was taken back to the interrogation room and again beaten. An officer held his hand to force him to sign an interrogation report he had not been allowed to read. He was then released without charge.⁴⁶

In practice, judicial police officers appear to often focus on securing interrogation reports at the expense of other forms of evidence, even when material evidence and witnesses are readily available. When investigative judges then rely on police interrogation reports, courts' appreciation of facts and evidence becomes skewed. In cases documented by Amnesty International, courts have also relied heavily or exclusively on such interrogation reports in several cases involving felonies although Article 290 should only apply to infractions and misdemeanours. In several instances, accounts by lawyers and court decisions indicated that the prosecution alluded to the existence of material evidence during proceedings but failed to produce the evidence in court.

For nearly four years, protesters have been holding a sit-in on Mount Alebban in the Atlas Mountains to protest against a silver mine nearby in Imider. The sit-in began in August 2011 with local youth demanding employment in the mine. The demands then expanded to include environmental concerns, including the use of local water sources by the mine to the detriment of the household and agricultural needs of villagers in the area, as well as pollution through toxic waste from the mine.

Since then, several silver mine protesters have been arrested, prosecuted and convicted on what appear to be trumped-up criminal charges. Relatives of **Lahcen Oumni** reported that he was ill-treated by gendarmes following arrest. Gendarmes arrested the father of four on 5 February 2013 and forced him to incriminate himself under the threat of torture, his brother told Amnesty International. His request to read the document before affixing his fingerprint to it was apparently met with insults.⁴⁷ Although he recanted the coerced statement in court, the written judgment of the first instance hearing shows that the judge relied on the gendarmes' interrogation report to convict the 41-year-old man of theft of silver and sentence him to two years in prison, increased to three years on appeal.⁴⁸

The aunt of car mechanic and silver mine activist **Moustapha Ouchtoubane**, 29, said he lost consciousness after gendarmes sprayed him with engine starter fluid following his arrest on 5 October 2011. She told Amnesty International:

"Gendarmes in Tinghir sprayed him with a substance that made him pass out, and then they put his fingerprints on some documents."

⁴⁶ Interview, Fes, 29 May 2014.

⁴⁷ Interview with the brother of Lahcen Oumni, Imider, 3 July 2014.

⁴⁸ Criminal Chamber, Ouarzazate Court of Appeals, Decision 56, Case 2013/30, 7 March 2013.



Photo: Wall painting of jailed activist Moustapha Ouchtoubane on Mount Alebban near the Imidr silver mine

According to his aunt, gendarmes accused the activist of having stolen silver from the mine and hidden it in the company car he used, but failed to produce the silver during the hurried trial. Moustapha Ouchtoubane refuted the police accusations in court. On 1 December 2011, he was convicted of silver theft and sentenced to four years in prison.⁴⁹

Gendarmes who arrested silver mine activists **Omar Moujane**, 25, **Ibrahim Hamdaoui**, 24, and **Abdessamad Madri**, 22, on 1 March 2014 did not even question them, their families told Amnesty International. They too said that gendarmes sprayed engine starter fluid in the young men's faces, making them lose consciousness.⁵⁰ Omar Moujane told Amnesty International he had no recollection of signing any interrogation reports or of putting fingerprints on them. He added:

"Gendarmes hit me on the head with a big flashlight while they detained me in Tinghir. They also sprayed me in the face, and kicked me. I fainted and woke up with a broken tooth."

The three men refuted the "confessions" contained in interrogation reports and denied the charges, but were nevertheless convicted in two parallel prosecutions largely on the basis of the "confessions", as well as earlier, similarly contested "confessions" during interrogation in 2011.

The first prosecution was a misdemeanours case relating to events in 2011 when the Imider silver mine protests began. All three were convicted on 24 March 2014 of taking part in "organizing unauthorized demonstrations", "obstructing the right to work", "damaging public property" and "rebellion", while Abdessamad Madri was also convicted of "armed assault" for allegedly throwing stones. The Court of First Instance in Ouarzazate sentenced Omar Moujane and Ibrahim Hamdaoui to six months' imprisonment and a 1,000 dirham fine (approximately US\$100), and Abdessamad Madri to one year's imprisonment and a 3,000 dirham fine (approximately US\$300). The prison sentences were increased by six months on appeal.

The second prosecution was a felonies case including charges of "resisting arrest", "armed assault" for allegedly throwing stones at other youths, assault of a villager, theft of silver and protesting against the silver mine. All three were convicted on 24 April 2014 of theft, forming a criminal gang, obstructing traffic on a public road, damaging industrial equipment, insulting and using violence against a public officer, in addition to assault and battery. They were sentenced to three years' imprisonment and ordered to pay 60,000 dirhams

⁴⁹ Interview, Imider, 3 July 2014; Criminal Chamber, Ouarzazate Court of Appeals, Decision 11/206, File 11/203, 1 December 2011.

⁵⁰ People previously detained told Amnesty International that gendarmes often used engine starter fluid to induce loss of consciousness. According to the manufacturer of the brand reportedly used, the effects on human health are the following: "Inhalation: Acts as a narcotic or general anaesthetic. May cause irritation of the respiratory tract with cough and also signs and symptoms of intoxication, with incoordination, blurred vision, headache, analgesia, unconsciousness, cardiac irregularities, and respiratory failure due to depression of the central nervous system. Breathing high vapour concentrations may cause heart rate irregularities, possibly fatal, particularly in persons with heart disease."

(approximately US\$6,035) compensation to the mining company.⁵¹ They were cleared of the charge of forming a criminal gang on appeal but their sentences were upheld.⁵²

Amnesty International has been informed that although the three men contested the content of their interrogation reports and stated they had not made such statements during interrogation, they made no reference to their alleged ill-treatment at trial and only disclosed this information to their lawyer once they had been convicted, as they were unaware of their rights and feared that they might face repercussions if they told the court of their ill-treatment.



Photo: Activist Yassine Madri, speaking of the ill-treatment of his brother Abdessamad following his arrest by gendarmes in March 2014, at an assembly of the Imidr silver mine peaceful protest movement

⁵¹ Interviews with family members, Imider, 3 July 2014, and lawyer, Ouarzazate, 2 July 2014; Ouarzazate Court of First Instance, Decision 133, Adult file 14/77, 24 March 2014; Criminal Chamber, Ouarzazate Court of Appeals, Decision 69, File 2014/41, 24 April 2014.

⁵² Correspondence from the Interministerial Delegation for Human Rights to Amnesty International, 30 March 2015 (N. 20151743).

In practice, torture and other ill-treatment usually contain a blend of physical and psychological violence which intertwine and overlap. In the two cases below, the psychological pressure put on detainees to force them to incriminate themselves is particularly salient.

Gendarmes arrested student **Yassine Lmsiah** on 1 May 2014 in Fes in connection with the killing of student Abderrahim Hasnaoui⁵³ and transferred him to judicial police custody. In a written account of his *garde à vue* detention,⁵⁴ he stated that an officer threatened to torture him and said he had previously tortured other students. The following day, Yassine Lmsiah said police officers beat him until he lost consciousness using “limb extension” – whereby a stick is inserted behind the knees and the victim is then pulled and twisted by the arms causing intense pain and bruising. Yassine Lmsiah also alleged that the same officer who threatened him on the first day threatened to arrest his sister and assault her in front of him in order to coerce him into signing an incriminatory statement. He said that when he still refused, police officers took him to his home and briefly arrested his sister, then assaulted him again as they drove him back to the police station. There, officers reportedly insulted his sister in front of him, calling her a prostitute, causing him to hit his head against the wall in frustration.⁵⁵

Mbarek Daoudi, a former soldier in the Moroccan army and supporter of self-determination for Western Sahara, and his two sons **Brahim** and **Hassan**, then 17, were arrested at their home in Guelmim on 28 September 2013 in relation to unrest following the dismantling of the Tizimi protest camp and the killing of a protester in a nearby town (see above). Their family reported that officers forced them to strip naked in front of each other, beat them, fracturing one of Mbarek Daoudi’s ribs, and forced them to sign incriminating statements. Mbarek Daoudi lodged a written complaint with the CNDH.⁵⁶ However, judicial authorities did not open an investigation or order a medical examination. Hassan Daoudi was released uncharged but Brahim Daoudi was convicted of theft and violent protest charges.

Mbarek Daoudi was placed in pre-trial detention in Salé 1 Prison near Rabat to await trial before a military court on separate charges, including possession of ammunition without a licence and attempt to manufacture a weapon; he remained there in pre-trial detention for 17 months. His lawyer said that in March 2015, authorities transferred him to Guelmim where a civilian court tried him on charges of possessing a knife with intent to cause harm, and wearing an official uniform without a licence. The court cleared him of the first accusation and convicted him of the second, imposing a fine of 1,000 dirhams (approximately US\$100) and a three-month prison sentence increased to six months on appeal, his lawyer said. He

⁵³ See Chapter 1.

⁵⁴ Student movement struggles (blog), “Political prisoner Yassine Lemsiah, prisoner number 89587, Testimony about torture”, 4 June 2014, <http://vdbunem.blogspot.co.uk/2014/06/89587.html>

⁵⁵ Interview, Fes, 29 May 2014.

⁵⁶ Amnesty International accessed a copy of the complaint received by the CNDH on 12 November 2013.

remains detained.⁵⁷

Individuals recently held in *garde à vue* detention also painted a consistent picture of extremely poor conditions in the holding cells of police and gendarmerie stations that amount to ill-treatment and also constitute psychological torture (see box below). Most described an absence of beds; unhygienic cells containing pungent and sometimes overflowing toilets; near-systematic deprivation of food and sometimes drinking water; and inadequate medical care in cases of injury or illness. Similar hardship awaits those placed in pre-trial detention or imprisoned, revealed by a comprehensive study by the CNDH.⁵⁸

PSYCHOLOGICAL TORTURE

Although the Convention against Torture equally prohibits psychological and physical torture, psychological torture remains insufficiently understood and recognized.

The Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) includes a non-exhaustive list of techniques of psychological torture, including, among others:

“(m) Conditions of detention, such as a small or overcrowded cell, solitary confinement, unhygienic conditions, no access to toilet facilities, irregular or contaminated food and water, exposure to extremes of temperature, denial of privacy and forced nakedness;

“(n) Deprivation of normal sensory stimulation, such as sound, light, sense of time, isolation, manipulation of brightness of the cell, abuse of physiological needs, restriction of sleep, food, water, toilet facilities, bathing, motor activities, medical care, social contacts, isolation within prison, loss of contact with the outside world (victims are often kept in isolation in order to prevent bonding and mutual identification and to encourage traumatic bonding with the torturer);

“(o) Humiliation, such as verbal abuse, performance of humiliating acts;

“(p) Threats of death, harm to family, further torture, imprisonment, mock executions;

“(q) Threats of attack by animals, such as dogs, cats, rats or scorpions;

“(r) Psychological techniques to break down the individual, including forced betrayals, accentuating feelings of helplessness, exposure to ambiguous situations or contradictory messages;

⁵⁷ Written testimony by Mbarek Daoudi on circumstances of arrest and detention, 1 November 2013. Amnesty International also accessed a copy of a complaint on torture filed with the CNDH on 12 November 2013. Correspondence from the Interministerial Delegation for Human Rights to Amnesty International, 30 March 2015 (N. 20151743).

⁵⁸ CNDH, *Crisis in Prisons: A Shared Responsibility - 100 Recommendations for Protecting the Rights of Prisoners*, (2012), <http://www.cndh.ma/an/thematic-reports/crisis-prisons-shared-responsibility-100-recommendations-protecting-rights>

(s) *Violation of taboos;*

(t) *Behavioural coercion, such as forced engagement in practices against the religion of the victim (e.g. forcing Muslims to eat pork), forced harm to others through torture or other abuses, forced destruction of property, forced betrayal of someone placing them at risk of harm;*

(u) *Forcing the victim to witness torture or atrocities being inflicted on others.”*⁵⁹

In addition to rape threats in the immediate aftermath of arrest described previously, several men and women told Amnesty International that security officers threatened to rape them with batons or glass bottles during interrogation in *garde à vue* detention, and on some occasions accompanied the verbal threats by sexual touching and by forcible stripping.

In two instances, Amnesty International received detailed allegations that security officers raped young men with glass bottles during *garde à vue* detention while attempting to force them to incriminate themselves. Amnesty International received similar allegations in the cases of seven members of the Al-Adl Wal-Ihsan Islamist movement arrested in Fes, and of Sahrawis arrested in the Gdim Izik case in 2010.⁶⁰

Rape by state officials, including police officers, has been unequivocally defined as torture by international criminal tribunals,⁶¹ as well as by UN and regional human rights bodies.⁶² Those alleging rape or threats of rape in the cases below were all men. However, the definition of rape in the Penal Code is restricted only to a man's forced sexual penetration of a woman; it does not reflect the internationally recognized definition of rape, which is gender neutral and also includes rape using objects (see box below).

Student and VDB activist **Mohamed Ghallo** alleged that police raped him and otherwise tortured him following arrest on 18 May 2011 after he took part in protests in the Lido

⁵⁹ Office of the High Commissioner for Human Rights, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Istanbul Protocol”), UN Doc. HR/P/PT/8/Rev.1 (2004), para. 143.

⁶⁰ See chapter “Shadow of impunity” below.

⁶¹ See, for instance, *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgment of 2 September 1998, para. 687; *Prosecutor v. Zejnil Delalic*, Case No. IT-96-21, ICTY Trial Chamber II, Judgment of 16 November 1998, paras 475-496, 943, 965; *Prosecutor v. Anto Furundzija*, Case No. IT-95-17/1-T, ICTY Trial Chamber, Judgment of 10 December 1998, paras 264-9.

⁶² See, for instance, Interim Report of the Special Rapporteur on Torture to the General Assembly, UN Doc A/55/290 (2000), para. 5; Human Rights Council, Report of the Special Rapporteur on Torture, UN Doc. A/HRC/7/3, 15 January 2008, paras 34-6; *Aydin v. Turkey*, European Court of Human Rights, Reports 1997-VI (57/1996/676/866), Judgment of 25 September 1997, para. 86; *Fernando and Raquel Mejia v. Peru*, Inter-American Commission on Human Rights, Report No. 5/96, Case No. 10.970, 1 March 1996; para. B(3)(a); *Almonacid Arellano et al. v. Chile*, Preliminary objections, merits, reparations and costs, Inter-American Court of Human Rights, Judgment of 26 September 2006, Series C No. 154, para. 82.4.

neighbourhood in Fes. He told Amnesty International following his release that judicial police officers stripped him naked and raped him with a baton during his first day in *garde à vue* detention. He stated in a written account as well as in a filmed account to fellow students that officers urinated into his mouth, forcing him to swallow the urine shortly following his arrest and before his transfer to a police station. He also alleged that during interrogation, officers suspended him by his wrists, ankles and knees in the “roast chicken” and “airplane” positions, burnt his right leg with a cigarette, beat and insulted him while questioning him about his activism within the UNEM and VDB student groups. On the fourth day, he alleges, officers forced him to sign a document that they did not allow him to read, pushing him to the ground and attempting to strangle him while threatening to further torture him.⁶³

He stated that the court refused to exclude his interrogation report, without adequately investigating his allegation that it had been coerced. He said he was medically examined twice during his 11-month pre-trial detention but was not informed of the findings, which were also not transmitted to his lawyer. The Criminal Chamber at the Fes Court of Appeals convicted him in April 2012 but released him on account of the time he had already served in detention.⁶⁴

Others told Amnesty International that police officers threatened to rape them during *garde à vue* detention, including five Sahrawi men and a then 17-year-old boy arrested on 9 May 2013 on suspicion of violent protest during a demonstration for self-determination in Laayoune five days earlier. One of the men, **Mohamed Ali Saidi**, 27, said officers threatened to rape him among other forms of torture and ill-treatment during his three-day detention. He told Amnesty International:

“They threatened to rape me with a bottle – they brought the bottle in front of me. It was a glass bottle of Pom’s [popular Moroccan apple-flavoured soft drink].”

He also said:

“They whipped the soles of my feet with ropes, while I was suspended in the roast chicken position, and they also dipped our feet in iced water... While I was suspended in the roast chicken position, they put a towel in my mouth and choked me by pouring water up my nose. Then they poured urine. Then they... took my clothes off except my underwear, and whipped

⁶³ “Morocco: comrade Mohamed Ghaloud’s testimony about torture he was subjected to in prison”, 8 June 2011, <http://www.marxy.com/africa/morocco/torture-comrade-mohamed-ghaloud090911.htm>; “Speech by comrade Mohamed Ghaloud” in six parts, YouTube, 28 May 2012 – Part 1: <https://www.youtube.com/watch?v=JMTSI5axWHU>; Part 2: <https://www.youtube.com/watch?v=gluB76KjY14>; Part 3: <https://www.youtube.com/watch?v=DgierwBwe7s>; Part 4: <https://www.youtube.com/watch?v=5LMb7VXFvcg>; Part 5: <https://www.youtube.com/watch?v=ynv2dMibfaU>; Part 6: <https://www.youtube.com/watch?v=ZLHGjjK28KI>

⁶⁴ Interview, Fes, 11 June 2013 and written statement dated 8 June 2011.

me on the thighs with belts.”⁶⁵

Mohamed Garnit, 24, arrested the same day, said that officers twice threatened to rape him with a glass bottle, including on the first day of detention after they had stripped him to his underwear. He said they also threatened to kill him, beat him and suspended him in the “roast chicken” position, and stuffed a rag soaked in urine and bleach into his mouth. Officers held his hand forcing him to sign several interrogation reports, and forced his fingerprint on other documents, he stated. He said he later found out his “confessions” implicated two other individuals whom he did not know at the time – Abdessalam Loumadi and Mohamed Baber.⁶⁶

All six detainees told the investigative judge they had been tortured and ill-treated, including to secure “confessions”, their lawyer told Amnesty International. Mohamed Ali Saidi said he showed the investigative judge the marks on his face, which the judge ignored. Families of the six lodged complaints with the Crown Prosecutor, but judicial authorities opened no investigation in the cases of the five adults, their lawyer said. The court ordered a medical examination for the 17-year-old boy. It was conducted belatedly on 17 June 2013, six weeks after his arrest, and concluded that there was no medical evidence he had been tortured, his lawyer told Amnesty International.⁶⁷

All six were charged and the five adults were placed in pre-trial detention. Judicial authorities reversed their decision to release the 17-year-old boy on bail shortly after he spoke of his torture to local human rights defenders and to Amnesty International.⁶⁸ After more than five months in pre-trial detention in Laayoune Local Prison and a hunger strike to protest against repeated postponements of their court hearings, the court released the five adults on bail on 23 October 2013 during their first trial hearing. A juvenile judge tried the 17-year-old separately and convicted him on 2 July 2014, sentencing him to a five-month prison term based on his reportedly forced “confession,” his lawyer said.

Abdelmoutaleb Sarir, a 29-year-old Sahrawi man, was arrested by police officers in Laayoune on 19 February 2014 on suspicion of attacking police officers and other offences. His brother visited him in prison five days. His lawyer and family told Amnesty International that police had raped him with a glass bottle during interrogation at a police station in Laayoune and forced him to sign an interrogation report without allowing him to read it. He told the investigative judge he had been tortured and forced to sign an interrogation report, and requested a medical examination and an investigation into his torture, his family and lawyer

⁶⁵ Interview, Laayoune, 13 June 2014.

⁶⁶ Interview, Laayoune, 13 June 2014.

⁶⁷ Communications with lawyers, families and human rights defenders, May-August 2013. Amnesty International had access to complaints regarding torture lodged with authorities by the family of Mohamed Ali Saidi with the General Prosecutor of the Laayoune Court of Appeals on 17 May 2013 and by the family of the 17-year-old boy.

⁶⁸ See Amnesty International, “Further information: Six tortured and detained in Western Sahara” (Index: MDE 29/006/2013).

said. His family lodged complaints for torture and rape, but neither a medical examination nor an investigation was ordered.⁶⁹

The interrogation report, which contained admissions of guilt and implicated other Sahrawi protesters in criminal offences, was later used to convict Abdelmoutaleb Sarir. On 10 September 2014, the Criminal Chamber at the Laayoune Court of Appeals convicted him of charges including forming a criminal gang, arson, obstructing a public road, damaging public property, insulting and assaulting security officers, and armed gathering and carrying weapons with the intention to threaten the safety of people and property, and sentenced him to 10 months in prison, upheld on appeal.

SEXUAL VIOLENCE AS TORTURE

Rape by state agents, including in custody, is torture.

Rape by state officials, including police officers, has been unequivocally defined as torture by international criminal tribunals,⁷⁰ as well as by UN and regional human rights bodies.⁷¹ Rape and other forms of sexual assault on women and girls have also been defined as acts of gender-based violence which constitute discrimination as prohibited by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to which Morocco is a state party.⁷²

Rape is defined in Article 486 of Morocco's Penal Code as the act by which "a man has sexual relations with a woman against her will". It fails to recognize that rape can be perpetrated with objects, and that it goes beyond vaginal penetration and can be perpetrated on men, as evidenced in this report.

In comparison, international standards offer a broader definition, which is also gender-neutral to protect all victims of rape regardless of their gender and that of the perpetrator. The Rome Statute of the International Criminal Court provides guidance for drafting a new definition in its "Elements of Crimes":

"the perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body" and

⁶⁹ Amnesty International also accessed a copy of a complaint on torture including rape lodged by his father with the General Prosecutor at the Laayoune Court of Appeals on 24 February 2014.

⁷⁰ *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgment of 2 September 1998 §687; *Prosecutor v. Zejnil Delalic*, Case No. IT-96-21, ICTY Trial Chamber II, Judgment of 16 November 1998 paras. 475-496, 943, 965; *Prosecutor v. Anto Furundzija*, Case No. IT-95-17/1-T, ICTY Trial Chamber, Judgment of 10 December 1998 paras 264-9.

⁷¹ Interim Report of the Special Rapporteur on Torture to the General Assembly, UN Doc A/55/290 (2000) para. 5; Human Rights Council, Report of the Special Rapporteur on Torture, UN Doc. A/HRC/7/3 (2008) paras. 34-6; *Aydin v. Turkey*, European Court of Human Rights, Reports 1997-VI (57/1996/676/866).

⁷² UN Committee on the Elimination of Discrimination against Women, General Recommendation 19, Violence against women, UN Doc. HRI/GEN/1/Rev.1 (1992) para. 23.

“the invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.”

Threats of torture, such as rape, regardless of whether they are carried out, also constitute torture and other ill-treatment. The Committee against Torture has recognized that the threat of torture is comprised within the concept of mental suffering prohibited by the Convention.⁷³

⁷³ Committee against Torture, UN Doc. A/45/44 (2000) para. 190.

3. SEE NO EVIL: INVESTIGATIVE FAILINGS

‘No son, you hit your own head against a wall.’

A Crown Prosecutor’s response to a report of beatings by police, according to Youssef Lembidaie

Sahrawi activist **Youssef Lembidaie**, 26, recalled with disbelief the words of the Crown Prosecutor while bruises and cuts were still fresh on his face after he had told him that police officers beat him in custody. The young man told Amnesty International he had given the Crown Prosecutor at the Court of First Instance in Tiznit the names of the three police officers who abused him after his arrest on 6 May 2013 in Sidi Ifni. He said the officers beat him on his face, chest and shins during interrogation while he was blindfolded and handcuffed. The Crown Prosecutor did not order a medical examination or open an investigation.

Youssef Lembidaie added that, days earlier, the Crown Prosecutor had also failed to request that his younger brother receive a medical examination despite his bruised face and swollen, cut eye. Five days before arresting Youssef Lembidaie, police officers had arrested **Karim Lembidaie**, 22, who works nightshifts in the port of Sidi Ifni. He too described to Amnesty International how police officers beat him and forced him to affix his fingerprint on an interrogation report. His lawyer later told the court that his client could not verify the contents of the interrogation report because he is illiterate.

The interrogation report incriminated the brothers in an alleged unauthorized public gathering, an armed gathering, rebellion, insulting public officers, assaulting public officers, and obstructing a public road in relation to the unemployed graduates’ protest in Sidi Ifni on 29 April 2013. Both brothers were later convicted of the charges and sentenced to a fine and eight months in prison, which they served in full.⁷⁴

This young man gave a vivid description of judicial authorities’ deliberate disregard of allegations of torture or other ill-treatment. It echoes a trend previously noted by the Special Rapporteur on torture after his visit to Morocco and Western Sahara in September 2012.⁷⁵

⁷⁴ Interviews, Sidi Ifni, 17 May 2014. Amnesty International also accessed a letter sent by the AMDH to the Minister of Justice and Liberties dated 15 May 2013 regarding his torture in *garde à vue* detention and visible injuries on his face during his first appearance in court.

⁷⁵ Report of the Special Rapporteur on torture, Mission to Morocco, UN Doc. A/HRC/22/53/Add.2

This disregard of signs and reports of torture or other ill-treatment stands in stark contrast with the multiple ways in which national legislation empowers prosecutors and judges to inquire into reported abuses.

Morocco's Code of Criminal Procedure features specific provisions that enable prosecutors (Articles 73 and 74) and investigating judges (Articles 88 and 134) to order medical examinations upon request by detainees, or when they have visible signs of injury or illness. It further specifies that investigative judges cannot refuse such requests without issuing a reasoned decision (Article 88). The Code of Criminal Procedure also details specific steps that prosecutors must take after receiving complaints or reports alleging offences, including searching for perpetrators, arresting them and referring them for prosecution (Articles 40 and 49).

The Code of Criminal Procedure also includes safeguards to avoid conflicts of interest for those investigating suspected abuses by judicial police officers. It assigns the supervision of investigations of alleged offences by judicial police officers to courts in different districts. If a suspected officer operates nationally, such as officers of the BNPJ or the DGST, a judge from the criminal chamber of the Court of Cassation leads the investigation (Article 268).

In spite of these multiple safeguards, Amnesty International has received numerous accounts of courts failing to investigate alleged torture and other ill-treatment. In cases documented by the organization, prosecutors and judges ordered few medical examinations, and opened even fewer investigations. When investigative judges were reported to have explicitly refused medical examinations, they also refused without justifying their rejection in a reasoned decision even though that is required by Moroccan law.

This failure prevents judicial authorities from gathering sufficient evidence to allow for criminal prosecutions, and effectively entrenches impunity. To remedy this failure, the Minister of Justice and Liberties circulated instructions to prosecutors and judges on 29 May 2014, encouraging them to order medical examinations when faced with reports of torture or other ill-treatment.⁷⁶ In a public statement on 11 June 2014, he further stated that he would make public the conclusions of investigations on torture.⁷⁷ On 8 September 2014, the DGSN circulated a memorandum on this subject to all facilities intended for *garde à vue* detention.⁷⁸ It is still too soon to see the full impact of these ministerial instructions in

(2013).

⁷⁶ Rapport du Groupe de travail sur la détention arbitraire, Additif, Mission au Maroc: commentaires de l'Etat sur le rapport du Groupe de travail sur la détention arbitraire, UN Doc. A/HRC/27/48/Add.7 (2014) para. 132 (French only).

⁷⁷ Ministry of Justice and Liberties, Statement published on 11 June 2014, <http://www.justice.gov.ma/ar/Actualites/Detail/?Detail=330>; Maghreb Arabe Presse, Travaux du Conseil du gouvernement du jeudi 12 juin 2014, <http://www.maroc.ma/fr/actualites/travaux-du-conseil-de-gouvernement-du-jeudi-12-juin-2014>

⁷⁸ Correspondence from the Interministerial Delegation for Human Rights to Amnesty International, 30 March 2015 (N. 20151743).

practice. Nonetheless, they are a welcome recognition of the implementation gap between law and practice regarding the investigation of torture allegations, and an important first step towards its resolution.

THE OBLIGATION TO INVESTIGATE

The Moroccan authorities are obliged to ensure prompt and impartial investigations into allegations of torture and other ill-treatment under Articles 12, 13 and 16 of the Convention against Torture.

The promptness of the investigation includes the time at which it was opened, as well as its expediency, in order to ensure that evidence, including medical evidence, can be gathered before being eroded.

The investigation of reported torture and other ill-treatment is also vital for the realization of justice and reparation. Facts documented during the investigation may facilitate the prosecution or disciplinary sanctions, depending on the severity of the violation, for state officials or individuals acting at the behest of the state whose responsibility is suspected, as well as demonstrate the need for full reparation from state authorities, including financial compensation, medical care and rehabilitation.⁷⁹

The procedure for investigating alleged torture or other ill-treatment is defined in the Istanbul Protocol and the UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Principles on the Investigation of Torture).

Authorities must promptly ensure that alleged torture and other ill-treatment are investigated impartially and independently from suspected perpetrators and the agency to which they belong.⁸⁰ Authorities should also open investigations even when no formal complaint is made if there are other indications that torture or other ill-treatment has occurred.⁸¹

The European Court for Human Rights⁸² and the Special Rapporteur on torture have argued that where allegations of torture are made or where suspects are injured during *garde à vue* detention, the burden to prove that abuse did not occur rests with the prosecution.⁸³

According to international human rights standards, complainants and their legal representatives should have access to all information, including evidence, relevant to the investigation, and be allowed to present other evidence.⁸⁴ The findings of the investigation should be made public in a detailed report.⁸⁵

⁷⁹ Istanbul Protocol para. 77; Principles on the Investigation of Torture, para. 1(c).

⁸⁰ Istanbul Protocol paras 85-87; Principles on the Investigation of Torture para. 2.

⁸¹ Istanbul Protocol para. 79; Principles on the Investigation of Torture para. 2.

⁸² ECHR, *Aksoy v. Turkey*, 18 December 1996, para. 61.

⁸³ Report of the Special Rapporteur on Torture, UN Doc. E/CN.4/2003/68 (2002) para. 26(k).

⁸⁴ Principles on the Investigation of Torture para. 4.

⁸⁵ Principles on the Investigation of Torture para. 5(b).

BURDEN OF PROOF OF TORTURE AND OTHER ILL-TREATMENT

It is essential to have a clear understanding of which party has the responsibility to prove or disprove torture or other ill-treatment once a court has been confronted with clear signs or an explicit allegation. Dispositions in the Code of Criminal Procedure mentioned above, and in particular the requirement for an investigative judge to provide a reasoned decision for rejecting medical examinations, suggests that a large part of the burden of proof rests with courts. Instructions circulated by the Minister of Justice and Liberties reinforce this interpretation, while international human rights bodies have argued that in such cases the burden of proof should rest with the prosecution (see box above).

Defence lawyers were shocked to see the injuries of student **Mohamed El Harrass**⁸⁶ when he appeared before the Prosecutor after two days in *garde à vue* detention in Fes in May 2013. His lawyer told Amnesty International:

“His eyes were bruised, he had open wounds. His injuries were obvious and visible to all those who were in court. As his defence team, we decided to retreat from the hearing in protest at the prosecutor’s refusal to order a medical examination. The court tried to force the hearing to go ahead in our absence.”

Mohamed El Harrass told Amnesty International that the Crown Prosecutor at the Fes Court of First Instance asked no questions about his wounds and turned down a request for a forensic medical examination. The student secured an examination by a prison doctor two weeks later, but he said the doctor produced a certificate that significantly downplayed his injuries.⁸⁷ Mohamed El Harrass was convicted and sentenced to one month in prison and a fine based on an interrogation report he said he was forced to sign under the threat of rape with a bottle.⁸⁸

Upholding existing legal safeguards and recent instructions by the Minister of Justice and Liberties remains an uphill struggle, as evidenced by judicial authorities’ recent handling of torture allegations in Kenitra. Police officers arrested 10 students at Ibn Toufail University in Kenitra on 3 November 2014 for allegedly insulting public officers, participating in an unauthorized protest and rebellion, following protests for affordable transport between the campus and student accommodation.

During their first appearance at the Kenitra Court of First Instance on 5 November 2014, the Deputy Crown Prosecutor granted a student access to hospital following reported illness and fainting⁸⁹ but refused lawyers’ requests for forensic medical examinations of some of the students who alleged they had been tortured or otherwise ill-treated by police during their arrest and interrogation in *garde à vue* detention, despite traces of beatings shown to the

⁸⁶ See Chapter 1.

⁸⁷ It stated that his injuries had caused 15 days of total temporary incapacity.

⁸⁸ Interview with Mohamed Harrass and his lawyer, Fes, 11 June 2013.

⁸⁹ The Deputy Crown Prosecutor later released the student on bail to allow her to access medical care in a private hospital.

court. A defence lawyer described the hearing:

“The court took a strange position: they said we saw red marks on the students’ bodies, but claimed they correspond to old injuries – but we said that’s up to the expert to establish the origin of the injuries, and the court cannot make a medical diagnosis. We invoked Moroccan law, as well as Morocco’s international obligations and the Minister’s memorandum requiring medical examinations when allegations of torture are made. But the Deputy Crown Prosecutor persisted in his refusal.”

Lawyers told Amnesty International that the Prosecutor upheld his refusal during a second hearing on 12 November 2014, before being summoned and questioned by the General Inspection of the Ministry of Justice and Liberties for refusing to order the medical examination. He subsequently ordered a medical examination, which was reportedly not carried out.

On 24 December 2014, the court convicted all 10 students, as well as another student arrested subsequently, on charges of rebellion, armed gathering and assaulting security forces, and sentenced them to prison terms ranging from a two-month suspended sentence to 10-month prison terms.⁹⁰

Abdelaziz Miftah, a 24-year-old Sahrawi student activist, told Amnesty International that police officers arrested him on 14 February 2014 in Laayoune as he returned from his university in Agadir to visit his parents, weeks after he took part in an international student activism festival in Ecuador.⁹¹ He said police officers kicked and punched him and threatened him with rape in their duty vehicles after arresting him. He said they beat him while asking questions about his trip to Ecuador and his relationship with the Polisario Front. He added that once officers took him to the local police station, they heard his parents were there asking after him, so they washed the blood off his face and let him wear a *djellaba* (robe) over his bloodstained clothes. He said that pain and headaches kept him awake all night after the blows he had received on the head, and he asked in vain for officers to take him to hospital. He described his encounter with the Crown Prosecutor at the Laayoune Court of First Instance after two days in *garde à vue* detention:

“When I saw the Crown Prosecutor, I took my djellaba off and showed him my bloodstained clothes. He asked me if I had hit police officers, but I told him they had beaten me in their cars.”

The Crown Prosecutor failed to order a medical examination or investigation into the reported ill-treatment. Abdelaziz Miftah was released on bail and later convicted in his absence of insulting public officers and assault, and sentenced to a two-month suspended prison term.⁹²

On 7 and 8 August 2013, police officers arrested six men and one boy in Guelmim, southern

⁹⁰ Communication, 20 November 2014.

⁹¹ World Youth and Students Festival in Ecuador, December 2013.

⁹² Interview, Laayoune, 13 June 2014.

Morocco, for allegedly assaulting police officers earlier on 7 August 2013. The arrests took place following a football match during which Moroccan and Sahrawi supporters reportedly clashed. **Hassan Daoudi**, who was 17 at the time; his brothers **Taha**, 27, and **Omar**, 28; **Mustapha Ouhcine**, 33; **Hamza Bazzi**, 21; and **Omar Laaouissid**, 62, were reportedly tortured or otherwise ill-treated during interrogation. Several said the violence left clear marks on their bodies and clothes which were seen by the Deputy Crown Prosecutor during their hearing on 10 August 2013, but he failed to act.

Taha Daoudi's family told Amnesty International that beatings left him with two broken ribs and unconscious for six hours. He was taken to the regional hospital in Guelmim where staff refused to provide a medical certificate, according to the family.⁹³ Mustapha Ouhcine said that Auxiliary Forces and police officers hit him with wooden sticks as he lay on the ground with his wrists handcuffed behind his back, including near his right eye, which remains damaged.⁹⁴ Omar Laaouissid said officers stamped on his hand and put cigarettes out on his left leg and back. He told Amnesty International:

"I showed the Deputy Crown Prosecutor my injured hand and cigarette burns, but he dismissed the claim that I had been tortured."⁹⁵

Their lawyers said the court later rejected their request for the forced interrogation reports to be excluded as evidence, saying there was no evidence to prove the confessions were coerced.⁹⁶ All seven defendants were convicted of "insulting and assaulting public officers", "insubordination" and "damaging property" and sentenced to prison terms ranging from six months to one year. Although they refused to sign their interrogation reports, the judge still referred to them as incriminating evidence in his judgment.⁹⁷

Mohamed Garnit⁹⁸ told Amnesty International that he had shown his injuries to the investigative judge at the Criminal Chamber of the Laayoune Court of Appeals and told him that police officers had tortured him, but the judge failed to order an investigation or medical examination into the alleged violations. The young man recalled:

"They took us to see the investigative judge on Sunday, early, when the court was empty. When I showed him my injuries, and told him that police officers tortured me, he threw his hands up in the air and said: 'What do you want me to do? Do you want me to go with you and hit them?'"⁹⁹

⁹³ Interviews, Guelmim, 15 May 2014.

⁹⁴ Interview, Guelmim, 15 May 2014.

⁹⁵ Interview, Laayoune, 10 June 2014.

⁹⁶ Interview, Guelmim, 15 May 2014.

⁹⁷ Court of First Instance in Guelmim, Decision 188, Felonies case 2013/182, 19 August 2013.

⁹⁸ See Chapter 2.

⁹⁹ Interview, Laayoune, 13 June 2014.

Yassir Noujaji told Amnesty International that following his arrest and ill-treatment with his brother **Mohamed**, not only did the Crown Prosecutor at the Court of First Instance in Tiznit ignore their visible injuries and reports that riot police beat them, but he sent them back for re-interrogation at the same police station because they had refused to sign their interrogation reports. This put them at risk of further abuse.

Police arrested the brothers on 16 March 2014 outside the football stadium in Sidi Ifni after Yassir Noujaji, 29, complained about the abusive way the riot police were searching youths entering the stadium. He told Amnesty International that an officer then started beating his 22-year-old brother and another officer punched Yassir in the nose, causing it to bleed, before the officers arrested the two brothers. He said that officers then beat them both in the police car during their transfer to the local police station. He added that judicial police officers interrogating them did not abuse them, but riot police officers who returned from the football stadium were allowed to enter the interrogation room where they threatened to kill Mohamed Noujaji and to rape them both with a bottle.

Yassir Noujaji said that although he attempted to lodge a complaint for assault against the officer who first beat his brother outside the stadium, officers at the police station pressured them to sign another statement saying Mohamed Noujaji and the officer exchanged blows and reconciled, under threat of placing both brothers in pre-trial detention.¹⁰⁰

Faced with courts' failure to investigate torture and other ill-treatment, survivors must overcome numerous obstacles to prove they were abused. Torture in custody is rarely perpetrated in front of witnesses. Suspects are often kept in *garde à vue* detention up to the maximum period allowed by the law, during which marks and injuries can begin to heal and fade. They are subsequently placed in pre-trial detention, preventing them from seeking medical examination and documenting their injuries independently. Even when they access hospitals, they rarely secure adequate medical certificates. A further obstacle is the poor quality of medical care in prisons, including medical examinations of new detainees, required by Law 23-98 on prisons but rarely implemented in the cases documented by Amnesty International.

Some survivors told Amnesty International they had initially failed to speak out due to trauma and the fear that they would be punished with harsher sentences, but that after their conviction they felt they had nothing to lose. However, few knew how to file complaints unless assisted by human rights groups, as many could not afford to pay for legal advice. Several said that they had not lodged a complaint because they had no faith in public institutions.

In spite of these obstacles, many survivors of torture and other ill-treatment deployed substantial efforts to try to access justice. In cases documented by Amnesty International, detainees revealed their injuries in court and spoke out about their torture and other ill-treatment. Defence lawyers requested investigations and medical examinations, and invoked the invalidity of coerced statements in interrogation, citing Moroccan and international law. Complaints were lodged with prosecutors, others were addressed to the Ministry of Justice

¹⁰⁰ Interview, Sidi Ifni, 17 May 2014.

and Liberties, while others were sent to Morocco's national human rights institution, the CNDH. Reports of torture and other ill-treatment were also channelled through the press and human rights groups.

The case of **Abdallah Boukaioud** is one of several where families told Amnesty International that judicial authorities refused to accept complaints of torture that they tried to lodge. Policemen from Laayoune arrested the 27-year-old Sahrawi protester on 27 October 2013 in relation to clashes between protesters and security forces in Guelmim after a peaceful protest camp was forcibly dismantled and a protester was shot dead in neighbouring Tizimi and Assa.¹⁰¹ His family told Amnesty International that judicial police officers beat him during interrogation and forced him to put his fingerprint on an incriminating statement he was not allowed to read. They added that the Deputy Crown Prosecutor refused to take the written complaint they attempted to lodge at the first opportunity, during their son's first hearing in court on 30 October.

They said the police beatings left him with visible bruises on his face, shoulders and back and a head wound that was still bleeding when the Deputy Crown Prosecutor saw him at the end of his *garde à vue* detention. However, neither the Deputy Crown Prosecutor nor other judicial authorities ordered a medical examination. On 23 May 2014, the Criminal Chamber of the Agadir Appeals Court convicted Abdallah Boukaioud of charges including armed gathering, insulting and using violence against police and Auxiliary Forces officers, and damaging public property, and sentenced him to four years' imprisonment.¹⁰²

The family of Sahrawi self-determination activist **Abdessalam Loumadi** told Amnesty International that they lodged many complaints about his alleged torture and other ill-treatment while their lawyer raised the issue in court, without success. The young man was arrested in Laayoune on 21 January 2014 on suspicion of involvement in throwing a Molotov cocktail at a police van, setting a seat on fire and injuring a policeman. His family reported that during his *garde à vue* detention, officers blindfolded him, suspended him from the ceiling by his ankles and wrists, and span him until he was dizzy. They said the officers also beat him and punched him in the face, threatened him with rape, and forced him to sleep while handcuffed. His family said that interrogators tortured him after he refused to sign a police interrogation report that officers did not allow him to read.

¹⁰¹ See Chapter 2.

¹⁰² Interview, Guelmim, 16 May 2014.



Photo: Unmarked car believed to belong to security officers following Amnesty International delegates during interview with the family of prisoner Abdessalam Loumadi at their home in Laayoune, June 2014.

According to his family, Abdessalam Loumadi's injuries were still visible when his hearing before an investigative judge took place on 24 January 2014. They said that he showed the wounds and marks to the judge, saying officers had forced him to sign the interrogation report without reading it. They said he repeated his allegations during subsequent hearings, in vain. On 28 January, Abdessalam Loumadi's mother attempted to lodge a written complaint with the General Crown Prosecutor in Laayoune. After he refused to accept it, she posted it to him using recorded delivery on 30 January 2014.¹⁰³

Abdessalam Loumadi started a hunger strike on 23 January, demanding access to pen and paper to write a torture complaint to the General Crown Prosecutor. He suspended his hunger strike on 10 February when a representative of the Office of the Prosecution came to meet him, before resuming it in March 2014 to protest against judicial inaction regarding the complaint.

Despite these numerous complaints, Amnesty International could not confirm that judicial authorities opened an investigation or ordered a medical examination. The Criminal Chamber of the Laayoune Court of Appeals admitted the young man's contested "confession" as evidence and convicted him of charges that included forming a criminal gang on 7 May 2014 and sentenced him to 10 months' imprisonment and a fine.¹⁰⁴

¹⁰³ Amnesty International saw the complaint and the receipt from the post office confirming the complaint was sent by recorded delivery on 30 January 2014.

¹⁰⁴ Interviews with family, 9 June 2014.

Many individuals who sought medical examinations in public hospitals said that doctors refused to provide medical certificates when told that injuries were inflicted by security forces. Other individuals who were transferred to hospital for emergency care for injuries sustained during *garde à vue* detention noted that their admission and release from hospital were not recorded on the hospital register and they were not given medical certificates. This left them with no evidence of injuries sustained or the medical care they had received.

Courts' interpretation of the burden of proof appears to be a key factor in their failure to initiate investigations into alleged torture or other ill-treatment. Their interpretation seems to be that the burden to prove alleged torture or other ill-treatment rests with the complainant. However, they show little disposition to assist complainants in making their case by often refusing to order medical examinations explicitly requested by complainants. In doing so, they leave victims, and in particular those placed in pre-trial detention, with no means to gather evidence in order to access justice, or at least obtain the exclusion of a forced "confession" from proceedings.

Cases documented by Amnesty International including those featured above show that prosecutors and judges have repeatedly allowed contested statements in proceedings without investigating alleged torture during interrogation. However, the onus should be on the prosecution to prove that contested statements have not been obtained using torture and other ill-treatment, in line with Morocco's human rights obligations. The Special Rapporteur on torture has stated that:

*"Where allegations of torture or other forms of ill treatment are raised by a defendant during trial, the burden of proof should shift to the prosecution to prove beyond reasonable doubt that the confession was not obtained by unlawful means, including torture and similar ill-treatment."*¹⁰⁵

SUB-STANDARD MEDICAL EVIDENCE

Medical examinations are an important and useful element within investigations into allegations of torture and other ill-treatment. Two conditions are necessary for medical examinations to be successful: they must be performed adequately in line with international standards, and courts must not misinterpret their results. Specifically, the absence of medical evidence is no proof that torture has not occurred, as marks can fade with time, and many forms of ill-treatment, including physical and psychological torture – for instance, some forms of sexual violence – leave few or no visible marks. The Istanbul Protocol was devised to ensure medical examinations are thorough and rigorous enough to address such challenges (see box below). Crucially, medical examinations are no substitute for other aspects of investigations, including questioning witnesses and searching for material evidence on location.

Moroccan legislation allows prosecutors and judges to instruct medical experts in the course of their investigations. The Code of Criminal Procedure also allows complainants and their legal representatives to access reports by experts, including medical experts, called in to

¹⁰⁵ Report of the Special Rapporteur on Torture, UN Doc. E/CN.4/2003/68 (2002) para. 26(k).

testify; judges must notify them of conclusions reached by experts, and give them the opportunity to comment and request further demands, especially for any additional or counter-examination (Article 208). Any refusal to comply by investigative judges must be justified, and can be appealed (Articles 222-224).

Law 45-00 on judicial experts sets out conditions for medical professionals to present medical evidence before courts. These conditions include being a Moroccan national, working within the district over which the court in question has jurisdiction, and being registered as a judicial expert with the Court of Appeals in the relevant jurisdiction or at the national level. However, this law does not provide clear procedures to be followed during medical examinations and reporting or refer to any international standards in this regard.

When the Kenitra students who said police tortured them in 2012¹⁰⁶ saw the General Crown Prosecutor on 31 March 2012, several had visible injuries, including bruising, swelling and cuts on their faces and bodies, as well as bloodstained clothes, they told Amnesty International. The General Crown Prosecutor noted the injuries and, unusually, agreed to the lawyers' request for medical examinations. The examinations were performed several weeks later and lawyers told Amnesty International that ensuing reports concluded that the students were injured. However, the students said that many of their visible injuries had faded by the time of the examinations. Several students stressed the fact that the doctor did not touch them during the brief examination or ask about non-visible symptoms or injuries, and did not conduct psychological assessments. Student **Brahim El Guelai** recalled:

"The examination came late and my injuries were nearly gone. He only looked at us and didn't ask questions or touch us. It was only protocol, examinations took five minutes per person. He didn't ask any questions related to non-visible injuries, about headaches or about psychological trauma. The medical certificates underestimated the injuries of some comrades who still had very visible injuries."

The court opened an investigation which was not conclusive, prompting students to send further complaints to the General Crown Prosecutor from prison. The court later sentenced all 11 students to six-month prison terms for insulting and assaulting security officers, rebellion, damaging public property, carrying weapons and attempted breaking entry into a private residence. In reaching its verdict, the court relied on the police interrogation reports that the defendants said they had been forced to sign.¹⁰⁷

Security forces arrested student **Othman Ouzoubair** in his home town of Taroudant on 4 February 2013, in relation to alleged offences during the campus protests in Fes-Saiss on 14 January 2013.¹⁰⁸ He told Amnesty International that police officers interrogated him about the Al-Adl Wal-Ihsan movement, to which he belongs, rather than about the campus events, while abusing him. He said they blindfolded him and made him kneel on the floor with his

¹⁰⁶ See Chapter 1.

¹⁰⁷ Criminal Chamber of the Kenitra Court of Appeals, Case 12/2610/273, Decision 629, 24 October 2012.

¹⁰⁸ See Chapter 1.

hands tied behind his back while they beat, kicked and slapped him. He added that they forced him to sign a document under the threat of further blows. On 7 February 2013, an investigative judge saw his injuries during a hearing and ordered a medical examination.

The student said that his injuries had faded by the time a doctor visited him in prison weeks after the abuse. He noted that the doctor did not conduct a detailed physical examination, but only looked at him and asked him whether he was hurt. When he told the doctor of recurring pain, including headaches, he said the doctor replied that he was fine and did not order additional tests. The student said that the court did not receive the medical examination report in time for his conviction and sentencing. His lawyer said the court admitted the contested interrogation report as evidence towards his conviction. He was found guilty of taking part in an armed gathering and assaulting public officers, and sentenced to a fine and three months in prison.¹⁰⁹

Similarly in the case of **Ahmed Berkia**, the court ordered a medical examination of his co-defendant but the results were never communicated to the defence and he was eventually convicted solely on the basis of his co-defendant's contested "confession". Royal gendarmerie officers arrested the 38-year-old waiter and father of two in Fes on 16 October 2013, accusing him of armed robbery and assaulting a security guard. His brother told Amnesty International that before the arrest, gendarmes investigating the robbery first approached Ahmed Berkia for questioning as a witness. Although he knew nothing of the incident, he went out of his way to cooperate, travelling 63km from Fes to a gendarmerie station in the town of Hamria for questioning. Following his arrest, officers reportedly tried to coerce him into incriminating himself by signing a pre-written interrogation report, but he refused.

A second suspect was then arrested, who implicated Ahmed Berkia and a third defendant in a forced "confession" after gendarmes hit him, he later told the court. He told the General Prosecutor and investigative judge that he had "confessed" in order to stop an assault on him by gendarmes. His lawyer told Amnesty International that on 18 October 2013, the court granted a request for a medical examination, but he was not informed of its outcome nor given a copy of the medical report, and Amnesty International could not confirm whether the examination was performed. Seeking medical evidence is not the only way to inquire into alleged torture or other ill-treatment. However, judicial authorities did not open an investigation into these allegations, his lawyer said. On 26 June 2014, a court convicted all three defendants of armed robbery, abduction and assault and battery. The conviction of Ahmed Berkia relied solely on the contested "confession" while those of the two other defendants relied heavily on that statement. All three were sentenced to 10-year prison terms, reduced to five years on appeal.¹¹⁰

Some of the survivors who spoke to Amnesty International described symptoms such as dizziness, loss of consciousness, recurring headaches, nausea and vomiting after they said

¹⁰⁹ Interview, Fes, 1 May 2013, 11 May 2013, and correspondence on 11 July 2013.

¹¹⁰ Communication with lawyer, 19 November 2014; Criminal Chamber, Fes Court of Appeals, Decision 2014/2610/207, File 591, 26 June 2014.

security officers hit them on the head, which could indicate traumatic brain injury. None of them had medical examinations or scans that would have detected such injury. Many other methods of torture and other ill-treatment leave few or no visible marks beyond swelling or bruising that often fade in days.

Such were some of the injuries that 10 students from Cadi Ayyad University in Marrakesh said they sustained. Students from the Maoist current of the VDB activist group at the Cadi Ayyad University in Marrakesh, who were accused of planning violent protest on campus, stated that plainclothes police officers tortured them immediately after their arrest on 15 February 2013. In a letter leaked from prison, student **Aziz El Bour** said he was tortured in his apartment: security officers whipped his back and the soles of his feet with electric cables, and later pulled his trousers down and pinched his genitals with pliers.¹¹¹ Another student from the same group told Amnesty International:

“Three men came into our room. One carried a thick wooden stick, one carried a baton, and one had a long knife. At first I wondered if they were thieves – it took me about 10 minutes to realize that they were police... They took us out of the room, handcuffed us and started beating us. During two hours they beat us, and pinched us with a staple remover until blood flowed. They also put out cigarettes on us...”¹¹²

Aziz El Bour, Mohamed El Mouaden, Hicham El Meskini, Abdelhaq Talhaoui, Boujamaa Jamou, Mohamed Ahrik, Hamid Zaddou, Ibrahim Najimi, Hamid El Baghdadi and Mohamed El Ouakkassi were determined to document the torture they said they were subjected to following their arrest on 15 February 2013. They refused to speak during their first trial hearing on 15 April 2013 in protest against their torture, and instructed their lawyers to demand that they be medically examined. After initial resistance, the court belatedly granted their request, and the students were examined in Ibn Tofail Hospital. The students said that a senior police officer was present and speaking to the doctor throughout the brief examinations, during which they remained handcuffed. They were not offered scans or magnetic resonance imagery despite complaining of dizziness, headaches and nausea following blows to their heads, nor were they assessed psychologically. One student told Amnesty International:

“The doctor just wiped the blood off my head wound and told me I’m fine, it’s nothing, that’s a light injury. He didn’t even ask how this injury came about.”

Lawyers told Amnesty International that the Crown Prosecutor subsequently told the court that the examinations concluded the students had not been ill-treated. The report from this medical examination was not communicated to the students or their legal counsel, prompting lawyers to request the first instance judge to order a new medical examination. The court did not respond.

The case of **Ali Aarrass** is exceptional in that he had multiple medical examinations in the

¹¹¹ Written statement received on 5 July 2013.

¹¹² Written statement received on 5 July 2013.

context of a broader investigation during which he was questioned at length. Following a claim filed with the Committee against Torture on 3 October 2011 by the dual Belgian-Moroccan national alleging he was tortured during secret detention in Morocco in December 2010,¹¹³ the General Crown Prosecutor at the Rabat Court of Appeals ordered a forensic medical examination. This was only started on 8 December 2011, nearly a year after the alleged torture. The examining doctors, appointed by judicial authorities, concluded that Ali Aarrass showed no signs of torture and the investigation was closed on 18 April 2012.¹¹⁴

Ali Aarrass and his lawyers alleged the medical examination report was inaccurate. At their request, two independent forensic experts assessed the medical examination report and concluded that both the examination and the report fell well short of standards outlined in the Istanbul Protocol.¹¹⁵ Subsequently, the Special Rapporteur on torture and an independent forensic doctor who visited Ali Aarrass on 20 September 2012 challenged the conclusion of the 8 December 2011 medical examination and said they detected signs of torture compatible with his testimony.¹¹⁶

On 19 May 2014, the UN Committee against Torture found that the Moroccan authorities had violated the Convention against Torture, including by failing to adequately investigate Ali Aarrass' allegations of torture, noting that the authorities had failed to subject him to a medical examination until a year after the alleged torture in spite of early complaints and requests for medical examinations, and noting the independent expert reports.¹¹⁷ Two days later, judicial authorities reopened the investigation into his torture and later ordered a new examination.

Ali Aarrass' lawyers informed Amnesty International that judicial authorities failed to notify Ali Aarrass or his lawyers of the investigating judge's decision to order the medical examination on 19 September 2014, breaching Article 196 of the Code of Criminal Procedure and depriving them of the opportunity to comment on the choice of the medical experts or the scope of their work within the three-day window specified in the article.

¹¹³ See Chapter 4.

¹¹⁴ Committee against Torture, Communication No. 477/2011, UN Doc. CAT/C/52/d/477/2011 (2014).

¹¹⁵ Independent expert Jonathan Beynon was selected from the Independent Forensic Expert Group of the International Rehabilitation Council for Torture Victims (IRCT), a group of highly-qualified medical professionals trained in the Istanbul Protocol. Dr Jonathan Beynon, Evaluation of the Conformity of the Medico-Legal Report Conducted at Ibn Sina Hospital, "Rabat on the 8th December 2011 on Mr Aarrass Ali with International Standards for the Medical Evaluation of Alleged Victims of Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment", 13 June 2012 (English); Dr Hicham Benyaich, "Evaluation of the Forensic Medical Report relative to Mr Ali AARRASS", 21 September 2012.

¹¹⁶ The conclusions of the visit by the Special Rapporteur on torture and the independent forensic expert who accompanied him are mentioned in paragraph 10.8 of the decision by the Committee against Torture below.

¹¹⁷ Committee against Torture, Communication No. 477/2011, UN Doc: CAT/C/52/d/477/2011 (2014) paras 2.6, 10.4, 10.6.

The examination was carried out in November 2014 over several days, in the absence of an independent monitor proposed separately by his lawyers and Amnesty International. At the time this report was being finalized, the medical report had not been communicated to Ali Aarrass or his lawyers.

Medical examinations described above and otherwise documented by Amnesty International were inadequate in several ways, contravening standards established in the Istanbul Protocol. They were carried out after significant delay, once physical injuries had partially or fully healed. Some said security forces were present during the examination, making the detainee less likely to report abuses for fear of reprisals and potentially intimidating doctors. Others described cursory physical examinations. All except for Ali Aarrass said that psychological evaluations were not done. Several said those examined or their lawyers did not receive medical examination reports, or received them too late to be able to make use of them in court, in breach of national legislation. Others claimed that medical reports were inaccurate.

In several cases illustrated above, the judicial authorities compounded these failings by misinterpreting examination reports, taking the absence of physical injuries as proof that torture or other ill-treatment did not occur. In such cases they took no initiatives to investigate alleged torture beyond ordering medical examinations, except in the case of Ali Aarrass. In that sense, the whole investigative process rested on the outcome of medical examinations, which were generally sub-standard. Inadequate medical examinations effectively biased the entire investigative process, and contributed to sustaining impunity.

The CNDH has identified some of the failings of medical reporting, including with respect to medical evidence and expert advice sought by courts. It has argued that such failings are caused by inadequate forensic medical capacity and quality, and has recommended the creation of a legal and regulatory framework for forensic medicine, in addition to institutional control and support through an inter-ministerial commission or a national institute for forensic medicine.¹¹⁸

Drawing on the CNDH's recommendations, the Ministry of Justice and Liberties put forward a draft bill on forensic medicine in February 2014.¹¹⁹ The initiative represents welcome recognition of the need to improve the quality of medical evidence admissible in courts, attention to the issue of forensic medicine and the proposal to dedicate greater resources to forensic medicine. It would also complement Law 45-00 on judicial experts currently regulating medical evidence with standing in courts.

¹¹⁸ Conseil national des droits de l'Homme, *Les activités médico-légales au Maroc: la nécessité d'une réforme globale*, 8 July 2013, http://www.ccdh.org.ma/sites/default/files/documents/tude_Medecine_legale_version_francaise_texte_integral-3.pdf

¹¹⁹ The Ministry of Justice and Liberties submitted the draft law to the general secretariat of the government, in charge of supporting ministries to draft legislation, in February 2014. The Council of Ministers has yet to discuss and approve the draft law before presenting it to Morocco's legislature.

STANDARDS FOR MEDICAL EXAMINATIONS

Forensic medical examinations are part of investigations into allegations of torture and other ill-treatment.¹²⁰ International standards for forensic medical examinations are included in the Istanbul Protocol, which has been adopted by the UN as standards for forensic medical examinations of alleged torture victims.¹²¹

Intentionally neglecting evidence and falsifying reports to cover up torture and other ill-treatment constitutes participation in such violations or crimes.¹²² Conversely, adequate forensic medical examinations and reporting are one of the most effective torture-prevention tools.

According to the Istanbul Protocol, forensic examination must be carried out by independent medical experts, if possible with relevant forensic experience in documenting torture wounds, in full conformity with medical ethics, including informed consent. Examinations must be carried out in a timely manner, in particular while injuries are still evident; take place in adequate conditions for the examination, ensuring a climate of trust; include a physical examination as well as a psychological evaluation; and comply with the ethical obligation of accurate medical reporting. Reports should be confidential, and communicated to the subject of the examination and their chosen representative. A second, counter-examination by an independent forensic doctor should be permitted if requested.

The absence of medical evidence should not be taken to mean that there has been no torture and other ill-treatment. The Subcommittee for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Subcommittee for the Prevention of Torture), the UN body charged with assisting states parties to the OPCAT in proactively preventing torture and other ill-treatment, has recommended that “proof of torture cannot and should not rely solely” on forensic medical evidence.¹²³

Examining doctors and other health professionals must be impartial.¹²⁴ The Subcommittee for the Prevention of Torture noted “that it is crucial that doctors and other health professionals be effectively independent from police and penitentiary institutions, both in their structure – human and financial resources – and function – appointment, promotion and remuneration.”¹²⁵ International human rights standards specify that authorities must securely transmit a copy of the medical report to the subject of

¹²⁰ Principles on the Investigation of Torture, para. 2.

¹²¹ Interim report of the Special Rapporteur on Torture, UN Doc. A/69/387 (2014) para. 24.

¹²² Istanbul Protocol, para. 53.

¹²³ Report on the visit of the Subcommittee on the Prevention of Torture to Mexico, UN Doc. CAT/OP/MEX/1 (2010) para. 87.

¹²⁴ Principles on the Investigation of Torture §2. This corresponds to the duty to carry out “impartial” investigations into torture and other ill-treatment, in Articles 12 and 13 of the Convention against Torture.

¹²⁵ Second annual report of the Subcommittee on the Prevention of Torture, UN Doc. CAT/C/42/2 (2009) para. 2.

the medical examination, or his or her nominated representative.¹²⁶

The Special Rapporteur on torture has emphasized the importance of not restricting the pool of forensic doctors to officially accredited experts, by allowing non-governmental health experts to review state examinations and conduct independent assessments.¹²⁷

INVESTIGATING SUSPICIOUS DEATHS

Autopsies are a vital component of investigations into suspicious deaths, including where there are allegations of torture or other ill-treatment. Article 77 of Morocco's Code of Criminal Procedure states that the prosecution can require expert advice to determine the cause of death when a body is found and the cause of death is unknown or suspicious. Article 208 states that the investigative judge or magistrate must summon the parties to inform them of experts' conclusions and give them the opportunity to comment, specifically about requests for complementary or counter-examination, and that such requests may only be rejected through a reasoned decision. The article further specifies that parties have a right to access a copy of the expert's report.

In four cases of deaths in *garde à vue* detention and in the context of police use of force during protests documented by Amnesty International, including the deaths of student Mohamed Fizazi¹²⁸ and protester Rachid Chine,¹²⁹ these safeguards appear to have been partly flouted. Families faced obstacles in their quest to find out how their loved ones died and in accessing information about autopsies. In two cases, families told Amnesty International they had no knowledge of whether autopsies had been carried out and that they had received no autopsy report, while no requests for a second autopsy by an independent forensic pathologist were granted.

Karim Lachkar died on 27 May 2014 hours after he was arrested at around 3.30am during an ID check at a police checkpoint in El Hoceima, as he was returning home by car with three friends. One of them, Rabie Lablak, who witnessed the incident, told Amnesty International that Karim Lachkar was not the driver and refused to hand over his ID. According to Rabie Lablak, Karim Lachkar then ran off but was caught by the police officers and arrested. He said he noticed a wound that Karim Lachkar had on his forehead when the officers who caught him brought him back to their car. The witness told Amnesty International that Karim Lachkar then said out loud "look what they did to me" pointing to his injury. Rabie Lablak said an officer in plain clothes told him that Karim Lachkar had sustained the injury when he fell during the chase that preceded his arrest. Rabie Lablak told Amnesty International that officers then took Karim Lachkar to a local police station. He followed around half an hour later, and saw Karim Lachkar sitting near the entrance. He said Karim Lachkar looked ill and asked him to fetch some water, but then appeared to be asleep when he returned with it. Officers then took Karim Lachkar to the Mohamed V Regional

¹²⁶ Principles on the Investigation of Torture, para. 6(c).

¹²⁷ Interim report of the Special Rapporteur on Torture, UN Doc. A/69/387 (2014), para. 53.

¹²⁸ See Chapter 1.

¹²⁹ See Chapter 2.

Hospital, where a doctor certified that he was dead on arrival, Karim Lachkar's family said.

Following his death, the family allege, officers initially sought to conceal that he had been in custody, and then suggested that his death was due to a cardiac arrest, an allergy, too much alcohol, or perhaps an adverse reaction to a tranquilizing injection he was administered during *garde à vue* detention because he was "shouting". They said that officers encouraged them to bury the body immediately and without an autopsy. Family members who saw Karim Lachkar's body in the morgue told Amnesty International that he had fresh injuries on his forehead, chin, arms and legs; these injuries are visible in photographs seen by Amnesty International.

Following press publication of photographs showing injuries on Karim Lachkar's body, the General Crown Prosecutor at El Hoceima Court of Appeals announced that an investigation into the death was opened on 28 May. Initially, this was conducted by the local judicial police before the BNPJ took over. An autopsy conducted on 28 May resulted in an initial finding that death was due to a cardiac arrest caused by an existing heart condition, or an excess of alcohol, or psychological pressure. The autopsy report included a request for additional sample analysis to complete the assessment.¹³⁰ Karim Lachkar's family told Amnesty International that their lawyer only received the results of the sample analysis in August, after the authorities publicly announced that Karim Lachkar had died of the effects of alcohol and cocaine consumption on a weak heart.¹³¹

Karim Lachkar's lawyer and family have raised concerns about the investigation into his death, including police officers' failure to transfer him to hospital immediately after his arrest given his reported fall and associated injuries. Rabie Lablak told Amnesty International that officers who questioned him after his arrest repeatedly tried to make him omit any reference in his interrogation report to Karim Lachkar's allegation that his head wound had been inflicted by the police, and his lawyer filed a complaint for falsification of police reports in this regard.¹³² His family informed Amnesty International that while a new investigation has been opened, they have yet to be summoned by the investigative judge close to a year after Karim Lachkar's death.¹³³

In addition, the lawyer representing Karim Lachkar's family told Amnesty International that he was allowed to see the investigation file only on 2 July, but found that important evidence was then missing, including 18 photographs of the place of arrest, CCTV footage from inside the police station, and original police reports made within minutes of Karim Lachkar's arrest.¹³⁴ Two weeks after Amnesty International visited El Hoceima to investigate Karim

¹³⁰ Dr Hicham Benyaich, "Autopsy on the body of the deceased Karim Lachkar" (autopsy report), 28 May 2014, Forensic Institute, Ibn Rochd University Hospital.

¹³¹ Maghreb Arabe Presse as quoted in Medias24, "Mort de Karim Lachkar: affaire classée", 5 August 2014, <http://www.medias24.com/A-suivre/13548-Mort-de-Karim-Lachkar-affaire-classee.html>

¹³² Interviews, El Hoceima, 5 July 2014.

¹³³ Interview, 25 March 2015.

¹³⁴ Interviews, El Hoceima, 5 July 2014.

Lachkar's death, the director of the DGSN filed a complaint against witness Rabie Lablak and journalist Hamid El Mahdaoui for "publicly insulting" the police force as well as "false reporting" on the death and "slandorous denunciation" of police officers, both told Amnesty International.¹³⁵

Mohamed Ajedjig's sister told Amnesty International that gendarmes took him into custody after he was injured in a motorcycle accident on 24 April 2014. She said gendarmes took him to Inezgane Provincial Hospital, where she saw him lying unconscious, covered in blood and handcuffed. She described how gendarmes refused to take him to another hospital for a brain scan as medical staff requested, asserting that he was merely drunk, and took him instead to the El Kalaa gendarmerie station where his family found him moaning and unresponsive when they saw him the following day. His sister said his clothes were soaked in urine and he had open wounds on his arms and head, a swollen forehead and bruising under his eyes, suggesting he may have had a brain haemorrhage. She reported that gendarmes told her father that Mohamed Ajedjig was high on drugs and refusing to cooperate during interrogation to tell them where he had procured the pills. However, she said that witnesses then told her that officers had handcuffed him to the upper part of his cell door that night, so that he was forced to remain standing for several hours while injured.

Next morning, she said she saw paramedics taking her brother out of the gendarmerie station on a stretcher, still handcuffed and suffering convulsions, and placed in an ambulance. His sister accompanied him to the hospital. There, she said, a gendarme initially told doctors he had fallen ill only that morning until Mohamed Ajedjig's sister challenged this and the gendarme acknowledged that Mohamed Ajedjig had been involved in a motorcycle accident two days earlier. Doctors then sent him for a brain scan that showed he had suffered a fractured skull and a brain haemorrhage. He died later that same day. Subsequently, the authorities announced an investigation but when they spoke to Amnesty International his family were unaware of its outcome, and unable to access the autopsy report.¹³⁶

INVESTIGATING SUSPICIOUS DEATHS

Establishing whether torture or other ill-treatment has taken place is of particular concern when deaths in custody occur, and authorities should ensure that any grounds for suspicion are adequately investigated.

The death of a person deprived of liberty often raises concerns over the way he or she has been treated, thus triggering the obligation of states parties to the Convention against Torture to "proceed to a prompt and impartial investigation".¹³⁷ The UN Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, known as the Minnesota Protocol, building and elaborating on the earlier

¹³⁵ Amnesty International accessed a copy of a court summons indicating the charges against Rabie Lablak and Hamid El Mahdaoui under Articles 263-265 and 445 of the Penal Code.

¹³⁶ Interview, Agadir, 14 May 2014. Amnesty International also accessed medical records for Mohamed Ajedjig.

¹³⁷ Convention against Torture, Articles 12, 13; Principle 34 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, contains detailed guidance on investigations, including into death in custody, and should therefore be followed as routine practice where there is suspicion of death related to torture and other ill-treatment.¹³⁸ The Special Rapporteur on torture has further recommended that, in cases of deaths in custody, the family should be allowed to request an additional autopsy by an independent health professional of their choice.¹³⁹

PROSECUTED FOR 'FALSE REPORTS', PUBLIC INSULT, DEFAMATION OR SLANDER

On 11 July 2014 the Minister of Justice and Liberties reiterated the Moroccan authorities' commitment to preventing and investigating instances of torture and other ill-treatment, but warned that "the Office of the Prosecution will undertake necessary legal proceedings when faced with false reports or attempts to harm the reputation of individuals or institutions."¹⁴⁰ Since then, three individuals have been convicted of making false allegations, of whom two are currently imprisoned, and several others are facing prosecutions, in addition to a Paris-based human rights NGO (see below).

Indeed, several provisions in Morocco's Penal Code criminalize "offending public officers" and slander. For example, Articles 263 and 264 of the Penal Code define the false reporting of an offence as an insult to public officers and include punishments of one month to one year in prison as well as fines. Article 445 of the Penal Code relative to false and slanderous complaints provides for punishments ranging from six months' to five years' imprisonment and fines. They should not be criminal offences but at most a matter for civil litigation.

Amnesty International is especially concerned about the use of the charge of "false reporting" against people complaining about torture and other violations. This specific offence should be repealed or amended to only criminalize false statements made with malicious intent and resulting in harm, over and above harm to reputation, which should be a matter for civil litigation. Making a false statement to a judicial authority would be better dealt with under provisions of the Penal Code dealing with perjury.

Amnesty International is also concerned that the latter part of the Minister's statement, and the prosecutions that followed it, could deter genuine victims of abuse from informing the authorities for fear that they will be accused of making false allegations and defaming or insulting the police, and so directly impede the Moroccan authorities' efforts to eradicate torture or other ill-treatment.

Wafae Charaf, 27, an AMDH member in Tangiers and a political activist with the Democratic Path party, said she was abducted from a trade union protest in Tangiers on 27 April 2014 by two individuals in plain clothes. She said in a complaint to judicial authorities that they

¹³⁸ Interim report of the Special Rapporteur on Torture, A/69/387,(2014) paras 34, 68(d).

¹³⁹ Interim report of the Special Rapporteur on Torture, UN Doc. A/69/387 (2014) para. 39.

¹⁴⁰ Ministry of Justice and Liberties, Statement published on 11 June 2014, <http://www.justice.gov.ma/ar/Actualites/Detail/?Detail=330>; Maghreb Arabe Presse, Travaux du Conseil du gouvernement du jeudi 12 juin 2014, <http://www.maroc.ma/fr/actualites/travaux-du-conseil-de-gouvernement-du-jeudi-12-juin-2014>

forced her into an unmarked vehicle, blindfolded and beat her, and threatened further violence if she did not stop her activism, and released her after about three hours. Three days later, she lodged a complaint for “abduction and torture” with the General Crown Prosecutor at the Tangiers Court of Appeal, with a medical certificate of her injuries.¹⁴¹ Tangiers judicial police questioned her the same day in relation to her complaint, before the BNPJ took over the investigation and questioned her several times over the following weeks.

BNPJ officers interrogating Wafae Charaf reportedly committed to protect her from further assaults if she withdrew her complaint, but she insisted that it was her right to file a complaint and have it adequately investigated. They reportedly questioned her at length on the workers’ councils in Tangiers and political activism within the Democratic Path party, although it was not relevant to her complaint. She reportedly fainted on several occasions during questioning and was later admitted to a private clinic. There, doctors found she was under significant psychological pressure and concluded she was not fit for interrogation until her mental health improved, but the BNPJ continued to question her.

Police officers arrested Wafae Charaf on 8 July 2014 before charging her with “falsely reporting” an offence and slander and placing her in pre-trial detention. On 12 August 2014, the Tangiers Court of First Instance convicted Wafae Charaf on all counts, sentenced her to a one-year prison term, fined her and ordered her to pay 50,000 dirhams (approximately US\$5,044) in compensation to the police. According to a defence lawyer, the court refused defence requests to call certain witnesses and to disclose prosecution evidence allegedly obtained through the interception of phone messages. Her sentence was increased to two years on appeal. Amnesty International considers Wafae Charaf to be a prisoner of conscience and is calling for her immediate and unconditional release.

Sixty-six-year-old **Aboubakr El Khamlichi**, a former political prisoner during the “years of lead” and also an active member of the AMDH and Democratic Path party, was arrested on 10 July, charged with complicity in falsely reporting an offence and slander and released on bail. He had been present at the trade union protest on 27 April and accompanied Wafae Charaf to hospital later that night and on subsequent occasions, but was not involved in filing her complaint with the judicial authorities. On 12 August 2014, the Tangiers Court of First Instance acquitted Aboubakr El Khamlichi. He was found guilty on appeal and sentenced to a one-year suspended prison term. Amnesty International calls for the conviction against Aboubakr El Khamlichi to be quashed.

In the case of activist **Oussama Housne**, the judicial authorities appear to have taken the absence of physical injuries at the moment when the young man was offered and declined a medical examination as proof that torture or other ill-treatment did not occur. The 23-year-old member of the AMDH and 20 February movement activist, alleged that three men in plain clothes abducted him on 2 May 2014 as he was leaving a protest in solidarity with detained fellow activists. He said the men drove him to a remote location, beat and burned

¹⁴¹ Amnesty International has accessed a copy of the complaint and an accompanying medical certificate delivered by a doctor at Mohamed V Hospital in Tangiers on 28 April 2014 noting bruising on her arms and right hip. Complaint for abduction and torture to the General Crown Prosecutor at the Tangiers Court of Appeals, 30 April 2014 (number 3104/14/45).

him, and raped him with their fingers. He recorded his allegations in a video that was posted on YouTube, prompting the BNPJ to summon him for questioning.

On 1 June, the Crown Prosecutor accused Oussama Housne of falsely alleging torture because he had refused a medical examination and he was arrested and charged with “falsely reporting” an offence and defaming police officers. However, Oussama Housne’s lawyer told Amnesty International that his client refused the examination because it had been proposed over three weeks after the reported assault, by which time his physical injuries had healed. The Prosecutor appears to have concluded that the absence of visible physical medical evidence meant that the young man was lying about alleged torture or other ill-treatment, an erroneous inference which the Subcommittee for the Prevention of Torture and the Istanbul Protocol have explicitly warned against. On 23 July, the Casablanca Court of First Instance convicted him and sentenced him to three years in prison. According to his lawyer, the court refused to allow the defence to call witnesses to testify to Oussama Housne’s disturbed state following the alleged assault on 2 May.

Amnesty International is also concerned that judicial authorities acted on complaints filed by the director of the DGSN against witness **Rabie Lablak** and journalist **Hamid El Mahdaoui** in relation to the case of Karim Lachkar at the Court of First Instance in Casablanca. Both told Amnesty International that they were being prosecuted for “publicly insulting” the police force, “false reporting” and “slandorous denunciation” in relation to the death.¹⁴² Hamid El Mahdaoui’s told Amnesty International that in the complaint the director of the DGSN also requested a 10-year ban on his professional activity as a journalist under Article 87 of the Penal Code. The complaint was announced only two weeks after Amnesty International’s visit to El Hoceima to gather information about the death of Karim Lachkar.

Action by Christians Against Torture (ACAT-France) received a court summons on 23 January 2015 which mentions Adil Lamtasi in relation to a complaint for defamation, fraud and false reporting on torture.¹⁴³ Moroccan news sources announced that Moroccan authorities filed complaints against individuals and organizations who filed complaints for torture against Moroccan officials in France and to UN bodies. Among those reportedly named in the authorities’ complaints are Zakaria Moumni, and ACAT-France itself as well as two torture complainants it supported, Ennaama Asfari and Adil Lamtasi. The articles cited complaints made to UN expert human rights bodies as the cause for the complaints against the NGO and

¹⁴² A defence lawyer confirmed the charges to Amnesty International, who also accessed a copy of a court summons indicating charges against Rabie Lablak and Hamid El Mahdaoui under Articles 263-265 and 445 of the Penal Code.

¹⁴³ Amnesty International, FIACAT (Fédération internationale de l’ACAT), FIDH (Fédération internationale des ligues des droits de l’homme), Fondation Alkarama, Human Rights Watch, Ligue des droits de l’homme, OMCT (Organisation mondiale contre la torture), REDRESS, REMDH (Réseau euro-méditerranéen des droits de l’homme), TRIAL (Track Impunity Always), “10 ONG inquiètes des mesures d’intimidation exercées contre les victimes de tortures et une ONG qui les représente”, 9 February 2015. <http://www.acatfrance.fr/communique-de-presse/9-ong-inquietes-des-mesures-dintimidation-exercees-contre-les-victimes-de-tortures-et-une-ong-qui-les-represente>

three people alleging they were tortured.¹⁴⁴

PROTECTION FOR COMPLAINANTS

State authorities are obliged to protect alleged victims and witnesses against any retribution or intimidation, including threats of counter-charges, as a result of making complaints of torture or other ill-treatment.¹⁴⁵

The Subcommittee on Prevention of Torture has stated: *“In the system of justice the complainant should be safeguarded against reprisals, e.g. charges with defamation of authorities in case the medical/psychological examination fails to positively demonstrate exposure to torture beyond ‘any reasonable doubt’.”*¹⁴⁶

The Subcommittee for the Prevention of Torture, echoing the Istanbul Protocol, has explicitly stated that the absence of physical injuries does not prove the absence of torture and other ill-treatment.¹⁴⁷ As mentioned above, physical injuries can fade with time, while some torture techniques leave little or no physical traces.

Furthermore, lodging complaints about torture or other ill-treatment is also protected under the right to freedom of expression as provided by Article 19 of the ICCPR. Even where the reputation of others may be harmed, imprisonment is never an appropriate penalty. The Human Rights Committee has stated that imprisonment for defamation is an inherently disproportionate restriction on expression and is never appropriate. In relation to the criticism of public figures, it has stated that acts of criticism or expression considered to be injuring to a public figure should not be sufficient to justify the imposition of penalties, and that all public figures are legitimately subject to criticism and political opposition. It has held that acts such as “lese majesty, desecration, disrespect for authority, disrespect for flags and symbols, defamation of the head of state and the protection of the honour of public officials... and laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned. States parties should not prohibit criticism of institutions, such as the army or the administration.”¹⁴⁸

¹⁴⁴ See Fouad Harit, “ACAT, Asfari, Lamtasi et Moumni: le Maroc contre-attaque!”, Afrik.com, 26 March 2014, <http://www.afrik.com/acat-asfari-lamtasi-et-moumni-le-maroc-contre-attaque>; Mohamed Chakir Alaoui, “Le Maroc n’a pas retiré sa plainte contre Moumni”, Le360.ma, 12 June 2014, <http://www.le360.ma/fr/politique/le-maroc-na-pas-retire-sa-plainte-contre-moumni-16607>

¹⁴⁵ Principles on the Investigation of Torture para. 3(b), “Alleged victims of torture or ill-treatment, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation that may arise pursuant to the investigation. Those potentially implicated in torture or ill-treatment shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as those conducting the investigation.”

¹⁴⁶ Second annual report of the Subcommittee on the Prevention of Torture, UN Doc. CAT/C/42/2 (2009) para. 36.

¹⁴⁷ Second annual report of the Subcommittee on the Prevention of Torture, UN Doc. CAT/C/42/2 (2009), Annex VII, paras 7, 9.

¹⁴⁸ Human Rights Committee, General comment No. 34, Article 19, UN Doc. CCPR/C/GC/34 (2011) paras. 37-38.

4. TORTURE-TAINTED CONVICTIONS

‘Many individuals have been coerced into making a confession and sentenced to prison on the sole basis of that confession.’

Working Group on Arbitrary Detention following its December 2013 visit to Morocco and Western Sahara¹⁴⁹

In virtually all cases studied by Amnesty International in which torture or other ill-treatment was alleged and that involved prosecution, judicial police officers or gendarmes forced individuals to sign interrogation reports that were often the main and sometimes the only evidence to secure conviction. This was despite defendants' efforts to signal to judicial authorities that these “confessions” – which they usually recanted in court – were coerced.

The use of “confessions” tainted with torture allegations persists despite Article 293 of Morocco's Code of Criminal Procedure that prohibits the use of confessions obtained through force or duress in proceedings, and states that “the author of the violence or duress is exposed to sanctions included in the Penal Code.”

The striking disparity between the law and how it is applied is partly explained by the absence of conclusive investigations into alleged torture, a failing exacerbated by courts that often interpret the burden of proof for torture as resting with the person raising allegations of torture or other ill-treatment, as illustrated in the previous chapter.

A related contributing factor is the frequent reliance by courts on police interrogation reports to establish guilt, at the expense of material evidence or statements by witnesses summoned to court and available for examination and cross-examination, based on Article 290 of the Code of Criminal Procedure. Amnesty International has documented several cases where this provision was applied for more serious offences, including offences punishable by life imprisonment and the death penalty, such as under Morocco's Law 03-03 on Combating Terrorism, despite the higher evidentiary standard required by law.¹⁵⁰

These findings are consistent with determinations by the WGAD that the detentions of Ali

¹⁴⁹ Report of the WGAD, Mission to Morocco, UN Doc. A/HRC/27/48/Add.5 (2014), Summary.

¹⁵⁰ Human Rights Watch, *Just Sign Here: Unfair Trials Based on Confessions to the Police in Morocco*, 21 June 2013.

Aarrass, Mohamed Dihani, Abdessamad Battar and Mohamed Hajib are arbitrary because of grave violations to their right to a fair trial, including the reliance on forced “confessions” to convict them. Moreover, the WGAD, following its country visit in December 2013, declared that it was concerned by the reliance on confessions to secure convictions. It added that it had received numerous testimonies of “confessions” extracted under torture.¹⁵¹

In the cases documented by Amnesty International, judges often refused to summon witnesses in court or admit the statements of exculpating witnesses, while the prosecution frequently offered little material evidence of guilt. In some cases, courts released defendants on bail after several months in pre-trial detention, but their cases have stayed open for years, and statements obtained through torture and other ill-treatment have remained in use in the proceedings.

PROHIBITION OF FORCED CONFESSIONS AS EVIDENCE

The use of coerced “confessions” as evidence in judicial proceeding violates the prohibition of torture as well as the right to a fair trial, as spelled out in Article 15 of the Convention against Torture and Article 14 of the ICCPR.¹⁵²

Article 15 of the Convention against Torture, to which Morocco is a state party, provides:

“Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.”

In its authoritative General Comment on Article 7 of the ICCPR, which prohibits torture and other ill-treatment, the Human Rights Committee has stressed the non-derogable prohibition on admitting any statement or evidence obtained through torture or other ill-treatment in any proceedings. This ban is an important way of discouraging such abuses and upholding the right to a fair trial.¹⁵³

The Special Rapporteur on torture produced a detailed report on this matter and noted: “The ineffectiveness of efforts to put an end to the practice of torture or other ill-treatment is often the result of the fact that State

¹⁵¹ Déclaration lors de la conférence de presse du Groupe de travail sur la détention arbitraire à l'issue de sa visite au Maroc (9-18 décembre 2013), 18 December 2013 (French only), <http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=14121&LangID=F>

¹⁵² Article 15 of the Convention against Torture states: “Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.” The ban on torture or other ill-treatment to extract “confessions” is further detailed in the interpretation of the Convention against Torture made by the Committee against Torture in its General Comment on the implementation of Article 2 by states parties, UN Doc. CAT/C/GC/2/CRP.1/Rev.4 (2007) para. 6.

¹⁵³ “It is important for the discouragement of violations under article 7 that the law must prohibit the use of admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment”, Human Rights Committee, General Comment 20, Article 7, UN Doc. HRI\GEN\1\Rev.1 (1992) paras 30, 12.

authorities continue to admit tainted evidence during trials.”

He added: “Courts should never admit extra-judicial confessions that are not corroborated by other evidence or that have been recanted.”¹⁵⁴

Trials resulting in the conviction of individuals based on forced confessions are also unsafe and any resulting imprisonment constitutes arbitrary detention, in violation of the right to liberty and security of person as provided, for instance, in Article 9 of the ICCPR. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has stated:

*“Where allegations of torture or other forms of ill treatment are raised by a defendant during trial, the burden of proof should shift to the prosecution to prove beyond reasonable doubt that the confession was not obtained by unlawful means, including torture and similar ill-treatment.”*¹⁵⁵

UN human rights bodies and experts have consistently criticized states where torture or other ill-treatment is inflicted in order to obtain “confessions” and where courts do not diligently and consistently reject their admissibility.¹⁵⁶ The risk of police reverting to torture and other ill-treatment to extract “confessions” is particularly high where confessions are sufficient to obtain a conviction in court. For this reason, the Committee against Torture, the UN expert body charged with overseeing the implementation of the Convention against Torture, has consistently criticised such situations, for instance where “the current investigation system in the State party relies on confessions as a common form of evidence for prosecution, thus creating conditions that may facilitate the use of torture and ill treatment of suspects”. The Committee against Torture repeatedly recommended that states parties “should review cases of convictions based solely on confessions,” and that they “take the measures necessary to ensure that criminal convictions require evidence other than the confession of the detainee” as well as welcomed “the fact that law enforcement personnel do not rely on confession statements unless other independent evidence has been obtained”.¹⁵⁷

The Special Rapporteur on torture has similarly commented that “At the heart of ‘widespread torture’ lies a system where the presumption of innocence is illusory [and] primacy is placed on obtaining confessions.”¹⁵⁸ He emphasized that, among other things, “a criminal justice system which relies heavily on obtaining confessions for instituting prosecutions, makes the risk of torture and ill-treatment very real.”¹⁵⁹

¹⁵⁴ Report of the Special Rapporteur on torture, UN Doc. A/HRC/25/60 (2014) para. 64.

¹⁵⁵ Report of the Special Rapporteur on torture, UN Doc. E/CN.4/2003/68 (2002) para. 26(k).

¹⁵⁶ See for instance the Committee against Torture’s concluding observations on the periodic reports of state parties, Report of the Committee against Torture UN Doc. A/65/44 (2009-10) paras 50(18), (25) (Azerbaijan); paras 53(9), 21 (Moldova); Report of the Special Rapporteur on Torture, UN Doc. A/61/259 (2006) paras 44-65.

¹⁵⁷ Report of the Committee against Torture, UN Doc. A/63/44 (2007-8) paras 42(14), 37(20), 45(14)

¹⁵⁸ Report of the Special Rapporteur on torture, Addendum, Mission to Jordan, UN Doc. A/HRC/4/33/Add.3 (2007) para. 63.

¹⁵⁹ Report of the Special Rapporteur on torture, Mission to Jordan, UN Doc. A/HRC/4/33/Add.3 (2007) para. 55(e).

Sahrawi self-determination activist **Mohamed Dihani**, 28, is serving a five-year prison sentence in Kenitra Central Prison for forming a criminal gang intending to commit acts of terrorism in relation to alleged plans to carry out attacks. He told the court during his trial, and Moroccan authorities through multiple complaints that DGST intelligence officers tortured him while holding him incommunicado in the Temara detention centre between 28 April and 28 October 2010. He said that officers beat him, threatened to rape him with a bottle, and suspended him by the wrists for over six hours on one occasion, leaving him with a lasting shoulder injury. He reported that during the torture, officers forced him to sign incriminating interrogation reports he was not allowed to read.¹⁶⁰

On 27 October 2011, the Salé annex of the Rabat Court of Appeals, which specializes in terrorism cases, convicted Mohamed Dihani on the basis of his “confessions”, which he recanted in court. The court sentenced him to 10 years in prison, reduced to six on appeal and to five after a further appeal after cassation. To date, none of the multiple complaints of torture and other ill-treatment filed since 2010 by Mohamed Dihani, his family and his lawyer are known to have triggered an investigation or medical examination.¹⁶¹

The WGAD has recognized Mohamed Dihani’s detention as arbitrary and called on the authorities to immediately release him, investigate his complaints of torture, and compensate him.¹⁶² The WGAD decision and Mohamed Dihani’s contention that he was convicted on the basis of a forced “confession” was at the core of his request for cassation, although the court did not discuss this issue. His lawyer described the 8 January 2014 cassation hearing in the following terms:

“The court asked Mohamed whether he had signed the police statement, and he said he had signed it under torture. The court asked whether he recognized the content of the statement, and he said no, it was not truthful. Then the judges discussed only the lightening of the sentence on humanitarian grounds. We included the WGAD decision in the request for cassation but they did not engage with it.”

Security forces arrested craftsman **Abdessamad Bettar**, 31, in Asfi on 5 May 2011 in connection with the 28 April 2011 bombings in Marrakesh which killed 17 people and injured over 20. His family told Amnesty International that officers tortured him while they held him in custody for 12 days at the BNPJ national offices in Maarif, Casablanca, where officers held him incommunicado without allowing him access to a lawyer or notifying his family of his arrest.

¹⁶⁰ Amnesty International has accessed copies of multiple complaints alleging torture during DGST custody sent to judicial authorities and the CNDH between 2010 and 2013. An Amnesty International delegate also heard his account before the court during his appeal hearing on 15 April 2013.

¹⁶¹ In 2013, Amnesty International sought information from the Moroccan authorities on the apparent lack of investigation into these torture allegations despite the many complaints. Amnesty International’s letter to the Minister of Justice and Liberties dated 26 April 2013 (Ref: TG MDE 29/2013.005); Amnesty International, “Morocco - Western Sahara: Exclude “confessions” obtained under torture in trial of Sahrawi activist” (Index: MDE 29/003/2013).

¹⁶² WGAD, Opinion No. 19/2013 (Morocco), UN Doc. A/HRC/WGAD/2013/19 (2014).

Abdessamad Bettar reported to the UN WGAD that he bore signs of torture during his first hearing on 17 May 2011 and told the investigative judge at the Salé annex of the Rabat Court of Appeals that BNPJ officers had tortured him during interrogation and forced him to sign an incriminating statement. His lawyer also told Amnesty International that, while in his presence, his client mentioned to the court that he had been tortured. His brother added that he had addressed a number of complaints about torture to the General Crown Prosecutor, the Ministry of Justice and Liberties, as well as the CNDH which he delivered in person. In spite of all these steps, judicial authorities ordered no investigation or medical examination.¹⁶³

On 28 October 2011, Abdessamad Bettar was convicted of setting up a group intending to plan acts of terrorism, conducting activities within an unauthorized association, holding public meetings without prior authorization, and failing to denounce plans to commit acts of terrorism to the authorities. His lawyer told Amnesty International that his conviction relied solely on tainted evidence from the interrogation report he said he was tortured to sign and which he recanted in court, as well as “confessions” of other defendants in the same case also reportedly obtained by torture. The court sentenced him to four years’ imprisonment, increased to 10 years on appeal.

On 30 April 2013, the WGAD recognized Abdessamad Bettar’s detention as arbitrary because of the absence of a legal basis for his detention, citing the fact that his prosecution was based on vague charges, and because his imprisonment was the result of an unfair trial based on “confessions” extracted under torture. The WGAD recommended his immediate release, access to reparation, and the opening of an independent investigation into his incommunicado detention. Abdessamad Bettar remains in Asfi Local Prison.¹⁶⁴

Café owner **Ali Aarrass**, 53, is currently serving a 12-year prison sentence in Salé II Local Prison following a conviction for allegedly participating in and procuring arms for the “Belliraj” terrorist network”.¹⁶⁵ In his ruling convicting the dual Belgian-Moroccan national on 24 November 2011, the judge cited the “confession” Ali Aarrass recanted in court and alleged was extracted under torture as “valid and sufficient evidence” of his guilt.

Ali Aarrass was detained in Morocco after his forcible return from Spain on 14 December 2010, despite warnings by the UN Human Rights Committee and Amnesty International that he would be at risk of incommunicado detention, torture and other ill-treatment, and unfair trial in Morocco. The Committee later found Spain to have breached its obligations under the Optional Protocol to the ICCPR by failing to respond to the provisional measure.¹⁶⁶

¹⁶³ Interview with lawyer, 6 September 2013; interview with brother, June 2014; Amnesty International has obtained copies of some of these letters and complaints.

¹⁶⁴ WGAD, Opinion No. 3/2013 (Morocco), UN Doc. A/HRC/WGAD/2013/3 (2013).

¹⁶⁵ For a detailed analysis of human rights violations in the Belliraj case, see Human Rights Watch, *Just Sign Here: Unfair Trials Based on Confessions to the Police in Morocco*, 21 June 2013.

¹⁶⁶ On 25 November 2010, the Human Rights Committee issued a provisional measure against Spain against Ali Aarrass’ extradition to Morocco. Human Rights Committee, Communication No. 2008-2010, Ali Aarrass v. Spain, UN Doc. CCPR/C/111/D/2008/2010 (2014); Amnesty International, “Spain: Further

He stated that security and intelligence officers detained and tortured him for 10 days in several locations including the DGST-run detention centre in Temara. He described torture including beatings, electric shocks, rape with a bottle, simulated drowning, mock execution with a gun, food and sleep deprivation, and an injection that triggered delirium and unconsciousness. He said he was coerced to sign interrogation reports in Arabic that he was unable to read at the time.¹⁶⁷

His family told Amnesty International that, when they first learned of his whereabouts on 27 December 2010, they arranged for a lawyer to visit him in Salé II prison who noted his injuries and obvious psychological trauma. Other prisoners in Salé II at the time also told Amnesty International of Ali Aarrass' physical injuries and severe trauma upon admission at the prison. It is therefore likely that such injuries would have been visible during his earlier appearance before an investigating judge on 24 December 2010, but no medical examination or investigation was ordered.

Ali Aarrass' lawyers wrote to the Minister of Justice on 11 February 2011, requesting a forensic medical examination by an independent expert. The minister turned down the request on 18 March 2011. On 13 May 2011, his lawyers filed a complaint of torture and other ill-treatment with the General Crown Prosecutor at the Rabat Court of Appeals, and on 15 September 2011, his lawyers requested that the court exclude his "confession" from proceedings on the grounds that it had been obtained through torture.

In spite of these multiple complaints, and his lawyers subsequent complaints for torture, judicial authorities failed to adequately investigate alleged torture and dismissed his complaint on 29 September 2011, weeks before his conviction by the Criminal Chamber of the Salé annex of the Rabat Court of Appeals. The WGAD and UN Committee against Torture later concluded that his trial was unfair and breached Morocco's international obligations. The WGAD determined that his detention was therefore arbitrary and called for his immediate release and that he be granted adequate compensation, but Moroccan authorities continue to detain Ali Aarrass to this day.¹⁶⁸

Meanwhile, Moroccan authorities reopened their investigation into his allegations of torture on two occasions following a claim filed on behalf of Ali Aarrass with the UN Committee against Torture on 3 October 2011. The first reopening of the investigation in late 2011 led to a dead end after a medical examination ordered by the General Crown Prosecutor at the Rabat Court of Appeals concluded that he had not been tortured.¹⁶⁹ The authorities reopened the investigation again on 21 May 2014, two days after the UN Committee against Torture found that the Moroccan authorities had violated the Convention against Torture and called

information: Man returned to Morocco from Spain: Ali Aarrass" (Index: EUR 41/005/2010).

¹⁶⁷ Committee against Torture, Communication no 477/2011, UN Doc. CAT/C/52/D/477/2011 (2014).

¹⁶⁸ Committee against Torture, Communication no 477/2011, UN Doc. CAT/C/52/D/477/2011 (2014) para. 10.8; WGAD, Opinion no. 25/2013 (Morocco), UN Doc. A/HRC/WGAD/2013/25 (2013), para. 34.

¹⁶⁹ See Chapter 5 for detail on medical examinations.

on the authorities to open an impartial and thorough investigation.¹⁷⁰ The investigation is ongoing. However, at the time this report was finalized the investigative judge had not heard any witness or suspect in the case, according to Ali Aarrass' lawyers.

Dual German-Moroccan national **Mohamed Hajib**, 33, is currently serving a seven-year prison sentence in Tiflet Local Prison. Security officers arrested him on 18 February 2010 in Casablanca airport on suspicion of terrorism after his return via Germany from Pakistan where he had been travelling and taking part in religious activities with the Tablighi Jamaat movement. His family told Amnesty International that officers tortured him for at least three of his 12 days in *garde à vue* detention at the BNPJ headquarters in Maarif, Casablanca, and forced him to sign an interrogation report without allowing him to read it, by hitting him and threatening to harm his mother and wife. Amnesty International wrote to the then Minister of Justice, Mohamed Naciri, on 27 March 2010 urging his intervention to ensure that Mohamed Hajib was treated humanely and given a fair trial, including by ensuring that statements extracted under torture or duress were not used as evidence in trial proceedings. The organization did not receive a response.¹⁷¹

On 24 June 2010, the Salé annex of the Rabat Court of Appeals convicted Mohamed Hajib of intending to form a band intending to commit acts of terrorism, and for gathering funds towards such acts of terrorism, solely on the basis of his allegedly forced "confession" and sentenced him to 10 years' imprisonment. The sentence was confirmed at the first appeal stage, but reduced to five years after a second appeal trial after cassation. On 26 November 2012, the WGAD determined that Mohamed Hajib's detention was arbitrary because he was convicted on the basis of a confession obtained under torture, and urged Moroccan authorities to release him immediately and grant him adequate reparation. However, he remained detained while serving a two-year sentence for "rebellion" during the 2011 riots in Salé prison.¹⁷²

Hamid Barka, 22, and **Ichou Hamdane**, 38, who regularly protested on Mount Alebban in the Atlas Mountains against the nearby Imider silver mine, were arrested on 28 and 30 December 2013 respectively during a stop-and-search operation. Local sources told Amnesty International that while he was held in *garde à vue* at the Royal Gendarmerie station in Tinghir, gendarmes pressured Hamid Barka to sign his interrogation report under the threat that further charges would be added if he refused, including sanctioning him for not carrying his national identity card.¹⁷³ According to reports gathered by Amnesty International, a local

¹⁷⁰ The violations included the absence of basic guarantees to prevent the torture of people in detention (Articles 2 and 11), partly due to Law 03-03 on countering terrorism; the lack of independent forensic examinations and investigations despite multiple requests by Ali Aarrass and his lawyers (Articles 12 and 13); Committee against Torture, Communication No. 477/2011, CAT/C/52/d/477/2011.

¹⁷¹ Amnesty International's letter to the Minister of Justice, dated 27 May 2010 (Ref: TG MDE 29/2010.007).

¹⁷² WGAD, Opinion No. 40/2012 (Morocco), UN Doc. A/HRC/WGAD/2012/40 (2012)

¹⁷³ Article 65 of the Code of Criminal Procedure allows judicial police officers to request individuals to take any measures they deem necessary for the purpose of verifying their identity. Failure to comply is punishable by one to 10 days' detention and a fine between 200 and 1,200 dirhams (approximately

official came to the royal gendarmerie drunk and was allowed into the cell where Hamid Barka was held, where he punched him, and added “the keys to your cell are in my hands”.

Although their *garde à vue* interrogation reports included “confessions” to all the charges against them, Hamid Barka and Ichou Hamdane refuted all charges in court. Judicial authorities nevertheless prosecuted them in two parallel cases for misdemeanours including “insulting” and “using violence” against gendarmes, “theft”, “obstructing traffic on a public road”, and “forming a criminal gang”, and felonies including “assault and battery”, “armed assault and battery”, “threatening violence”, “rebellion” and “organizing an unauthorized protest.” The charges related to alleged stone-throwing at gendarmes, the assault of a villager, theft of silver and protests against the silver mine.

They were convicted on all counts, except for the rebellion charge, in judgements that relied heavily on the forced “confessions” included in the interrogation reports. The ruling in the misdemeanour case referred to the fact that defendants recanted their statements in *garde à vue*, but dismissed such recanting as an attempt to evade responsibility. It further stated that the contested statements in *garde à vue* “were beyond doubt because they were so clear and detailed”, and referred explicitly to Article 290 of the Code of Criminal Procedure.¹⁷⁴ The felonies ruling also referred to the recanting but did not detail on what precise grounds guilt was established.¹⁷⁵

Hamid Barka and Ichou Hamdane were respectively sentenced to 18 months and 10 months’ imprisonment, and 5,000 dirhams (approximately US\$500) and 2,000 dirhams (approximately US\$200) in fines for misdemeanours, increased to two and three years on appeals. On 27 March 2014 they were sentenced to three years’ imprisonment for felonies, increased to four years on appeals.

Ezzeddine El Attass, a 26-year-old supporter of the 20 February movement, was arrested on 10 December 2012. His family told Amnesty International that Ezzeddine El Attass told them that, while in *garde à vue* detention at a police station in Meknes, officers beat and insulted him and threatened to rape him if he did not confess to terrorism offences in relation to his alleged participation through his activities on Facebook in a group planning violent acts on Moroccan territory, before forcing his fingerprints onto an interrogation report that they did not allow him to read. He was then transferred to the BNPJ headquarters in Casablanca, where they said he was again subjected to torture or other ill-treatment to force him to sign a second interrogation report that he was not allowed to read. Interrogating officers only informed him of his right to instruct a lawyer after three days in *garde à vue* detention, while his family was not notified immediately of his arrest, his lawyer told the court during his trial hearing on 24 April 2013.¹⁷⁶

US\$20 to 120).

¹⁷⁴ Ouarzazate Court of First Instance, Case 2013/360 (misdemeanours in flagrante), number 52, 13 February 2014, p. 3.

¹⁷⁵ Criminal Chamber of the Ouarzazate Court of Appeal, Case 2013/202, number 40, 27 March 2014.

¹⁷⁶ Court of Appeals Instance in Rabat, Decision 07, Case 2628/2013/2, 9 May 2013, p. 7.

His family told Amnesty International that when Ezzeddine El Attass first had access to a lawyer, he instructed him to file a complaint for torture with the Crown Prosecutor at the Court of First Instance. However, the Crown Prosecutor's secretary stated that the only valid avenue for complaints was for Ezzeddine El Attass to lodge a complaint himself from prison, his family said. They added that he then attempted to do so but the prison director refused to take his complaint. Amnesty International accessed a copy of a letter containing allegations of torture which his family subsequently addressed to the Minister of Justice and Liberties on 24 May 2013. His lawyer told Amnesty International that, by the time he was convicted, the authorities had ordered no investigation or medical examination into his alleged torture or other ill-treatment in *garde à vue* detention. On 9 May 2013, the Criminal Chamber within the Salé annex of the Rabat Court of Appeals convicted him of participating in a cell planning acts of terrorism and other crimes, relying on the contested interrogation report, and sentenced him to three years in prison, reduced to two years and six months on appeal.

In a rare decision, the Criminal Chamber of the Agadir Court of Appeals quashed a guilty verdict for drugs charges against a detainee who alleged torture, in August 2014. The court granted a medical examination which was performed in the Guelmim military hospital. It concluded that he had been tortured in *garde à vue* detention including though beatings, blows to the head that perforated his eardrum, and cigarette burns, following his arrest in Guelmim in June 2014. Authorities announced an investigation into the alleged torture, and have yet to make conclusions public.



Photo: Agadir Court of Appeals whose landmark ruling in August 2014 overturned a conviction based on a torture-tainted police interrogation report.

5. SHADOW OF IMPUNITY

‘I learnt that Morocco is untouchable. But what I want is a court case. I want them in front of me, I want them prosecuted. I won’t give up.’

El Mostapha Naim, a French-Moroccan citizen seeking justice for alleged abduction, secret detention and torture in 2010

While torture and other ill-treatment are no longer systematic in Morocco and Western Sahara, lack of accountability remains strikingly widespread. Efforts to hold those responsible for torture or other ill-treatment to account are overshadowed by continuing impunity for past abuses. The overwhelming lack of adequate investigations into allegations of torture means that even fewer prosecutions are opened, in spite of official efforts to improve accountability for torture by strengthening the prohibition on torture in national legislation.

Those responsible for abuses during the “years of lead” (1956-1999) continue to escape accountability in spite of achievements during Morocco’s transitional justice process led by the Equity and Reconciliation Commission (IER) after it was established in 2003. Similarly, lack of accountability for more recent, high-profile reported torture against terrorism suspects, Sahrawi protesters arrested in relation to the Gdim Izik events and members of the Al-Adl Wal-Ihsan Islamist movement also casts a long shadow on attempts by survivors of torture and other ill-treatment to secure justice, and dwarfs recent efforts by the judiciary to secure accountability in less-publicized cases.

Several individuals alleging torture during detention in Morocco have turned to foreign courts in France in their quest for justice and accountability. Their efforts may soon be jeopardized by a proposed amendment to the judicial cooperation agreement between Morocco and France which would involve the transfer of such complaints to Morocco.

ELUSIVE ACCOUNTABILITY FOR PAST ABUSES

The IER’s work led to some groundbreaking developments with regard to the right to truth and recognition of state responsibility in grave human rights violations including torture. However, the IER fell short of identifying individual perpetrators and its mandate excluded holding individual perpetrators accountable. By the time the transitional justice process was concluded in 2010, Amnesty International’s assessment was the following:

“The IER’s mandate did not encompass all human rights violations committed between 1956 and 1999, and regrettably, despite outcries by victims and human rights organizations, excluded the identification of perpetrators of grave human rights violations. While the IER interpreted its mission more widely and addressed certain violations initially left outside its

*mandate, it was not as innovative and assertive in challenging the exclusion of justice from its work. Particularly disappointing was its failure even to recommend that perpetrators of human rights violations are held accountable. To date, the overwhelming majority of Moroccan officials alleged to have committed gross human rights violations during the period covered by the IER's mandate have not been brought to justice; and there are no indications of the authorities' intention to do so in the future. Instead, the official discourse promotes the notion of "reconciliatory justice rather than accusatory justice", which translates into impunity for grave human rights violations."*¹⁷⁷

When the IER's work came to an end, King Mohammed VI entrusted Morocco's national human rights institutions to implement its recommendations, including a national strategy to combat impunity.¹⁷⁸ However, 10 years after this recommendation was made, courts have yet to hold officials responsible for human rights violations during the "years of lead" to account. UN human rights bodies including the Committee against Torture and the Special Rapporteur on torture have voiced their concerns on this point and warned of the resulting climate of impunity.¹⁷⁹

Shortly before the transitional justice process began, Morocco's economic hub Casablanca was hit by an attack on 16 May 2003 that killed 45 people. Numerous allegations of torture and other ill-treatment in detention in order to extract forced "confessions" emerged after hundreds were subsequently arrested on suspicion of involvement in or planning of violent acts. Many of those alleging torture said they were secretly detained by the DST intelligence agency in Temara, near Rabat. This pattern was documented by Amnesty International and other human rights organizations up to 2011.¹⁸⁰ The Committee against Torture, the Special Rapporteur on torture and most recently the WGAD have also raised concerns over consistent reports of secret detention in Temara, which they urged Moroccan authorities to investigate adequately.¹⁸¹

Human rights groups and UN bodies also raised concerns related to allegations of extraordinary rendition to Morocco by the United States government in the wake of the 11

¹⁷⁷ Amnesty International, *Broken Promises: The Equity and Reconciliation Commission and its Follow-up* (Index: MDE 29/001/2010), p. 5. On impunity, see also pp. 34, 35 and 39.

¹⁷⁸ IER, *Final Report, Volume 4: The Components of Reform and Reconciliation*, 2009, p. 82

¹⁷⁹ Consideration of reports submitted by States parties under article 19 of the Convention, Concluding observations of the Committee against Torture, Morocco, UN Doc. CAT/C/MAR/CO/4 (2011) paras 16, 29; Report of the Special Rapporteur on Torture, Mission to Morocco, UN Doc. A/HRC/22/53/Add.2 (2013) paras 12, 29.

¹⁸⁰ Amnesty International, *Morocco/Western Sahara: Torture in the "anti-terrorism" campaign - the case of Temara detention centre*, June 2004, (Index: MDE 29/004/2004); Human Rights Watch, *Morocco: Stop Looking for Your Son - Illegal Detentions under the Counterterrorism Law*, 25 October 2010.

¹⁸¹ Concluding observations of the Committee against Torture, Morocco, UN Doc. CAT/C/MAR/CO/4 (2011) para. 14; Report of the Special Rapporteur on Torture, Mission to Morocco, UN Doc. A/HRC/22/53/Add.2 (2013) para. 18; Report of the WGAD, Mission to Morocco, UN Doc. A/HRC/27/48/Add.5 (2014) para. 26.

September 2001 attacks,¹⁸² including well-publicized allegations made by Binyam Mohamed that he was tortured between July 2002 and January 2004 following his rendition to Morocco. Amnesty International wrote to the Moroccan authorities about his case at the time.¹⁸³

The Moroccan authorities have consistently denied the past or present existence of secret detention on a DGST-operated site in Temara, as well as any involvement in rendition by the US government.¹⁸⁴ However, in the face of growing concerns by UN human rights bodies and civil society groups, they allowed visits to the official DGST offices in Temara. In 2004, authorities allowed a visit of by the General Crown Prosecutor in Rabat who stated he failed to find any evidence of secret detention. The General Crown Prosecutor was allowed to visit again on 18 May 2011, accompanied by representatives of the CNDH and a parliamentary delegation. All three parties declared finding no evidence of secret detention in Temara.¹⁸⁵

However, the UN Committee against Torture noted that the way in which the visits were organized and carried out was not made public, leading to continuing concerns that secret detention and torture may have occurred at that location, and renewed calls to investigate.¹⁸⁶ In response, Moroccan authorities stated that it was “unacceptable” to question the CNDH’s credibility.¹⁸⁷ In 2014, the Minister of Communication dismissed once more allegations of past secret detention in Temara as “baseless”.¹⁸⁸ One week later on 21 May 2014, in an

¹⁸² Concluding observations of the Committee against Torture, Morocco, UN Doc. CAT/C/MAR/CO/4 (2011) para. 11; Report of the WGAD, Mission to Morocco, UN Doc. A/HRC/27/48/Add.5 (2014) para. 27. Amnesty International, *USA: Crimes and impunity: Full Senate Committee report on CIA secret detentions must be released, and accountability for crimes under International law ensured*, April 2015 (Index AMR 51/1432/2015).

¹⁸³ Amnesty International’s letter to the Minister of Justice dated 19 June 2009 (Ref: TG MDE 29/2009.010).

¹⁸⁴ Information received from the Government of Morocco in response to the concluding observations of the Committee against Torture, UN Doc. CAT/C/MAR/CO/4/Add.1 (2013) para. 45.

¹⁸⁵ Maghreb Arabe Presse, “Siège de la DST: Le procureur général du Roi réfute l’existence de lieu de détention secrète”, 18 May 2011. CNDH, “Press release on visit conducted by CNDH president and secretary general to DST headquarters in Temara”, undated; Au Fait Maroc, “Selon des parlementaires et le CNDH: “Le siège de la DGST à Temara n’abrite aucun centre de torture””, 19 May 2011.

¹⁸⁶ Concluding observations of the Committee against Torture, Morocco, UN Doc. CAT/C/MAR/CO/4 (2011) para. 15.

¹⁸⁷ Report of the Special Rapporteur on Torture, Mission to Morocco: comments by the State on the report of the Special Rapporteur, UN Doc. A/HRC/22/53/Add.5 (2013) para. 50; Rapport du Groupe de travail sur la détention arbitraire, Additif, Mission au Maroc: commentaires de l’Etat sur le rapport du Groupe de travail sur la détention arbitraire, UN Doc. A/HRC/27/48/Add.7, 3 September 2014, paras 47, 52 (French only).

¹⁸⁸ Maghreb Arabe Presse, “Ministre de la Commuication: le Maroc a adopté une politique volontariste visant la promotion des droits de l’Homme et le comparer à d’autres pays est inconcevable”, 13 May 2013.

unexpected twist, judicial authorities reopened their investigation into allegations of torture by Ali Aarrass, including on a DST-operated site in Temara. The investigation, which is a notable exception to the trend of denying and failing to investigate alleged torture during secret detention in Temara, was ongoing when this report was finalized.

In December 2014, the US Senate Select Committee on Intelligence (SSCI) published the executive summary of its report on the secret detention programme operated by the Central Intelligence Agency (CIA) following the 11 September 2001 attacks in the USA. Names of countries that collaborated with the CIA by hosting secret detention facilities or by holding detainees for the CIA remain classified, as does the full SSCI report. However, cases including that of Binyam Mohamed mentioned above suggest that Morocco may have been on the list.

Likewise, accountability has remained elusive in two other high-profile cases in 2010 involving members of the Al-Adl Wal-Ihsan Islamist movement, and Sahrawis arrested in the wake of the Gdim Izik events, as judicial authorities have stalled or shelved complaints containing allegations of torture. A lawyer for seven members of Al-Adl Wal-Ihsan in Fes who complained they had been tortured following their arrest and detention by the BNPJ on 28 June 2010¹⁸⁹ told Amnesty International:

"The first time they appeared in court, it was so obvious they had been tortured that some court workers cried. Especially when they saw Azeddine Sleimani and Tarek Malha, who were so weak they had to be dragged into the courtroom. But authorities did nothing about their complaints for torture. Nothing new has happened for the two torture victims who were initially questioned. There's no time limit: judicial authorities can postpone indefinitely."

Relatives of **Mohamed Sleimani, Abdalla Balla, Bouali Mnaouar, Hicham Houari, Azeddine Sleimani, Hicham Sabbah** and **Tarek Mahla** had told Amnesty International at the time that they were tortured including with electric shocks to their genitals and other sensitive body parts; beatings on the soles of their feet (*falaqa*); being suspended by their hands and legs; having dirty liquids poured over rags stuffed in their mouth, causing a drowning sensation; and, in the case of at least five of them, being raped with objects. The men alleged that they were forced to sign statements which they were not allowed to read, under threat that they would be thrown from a window if they refused.

Judicial authorities took some steps to investigate the allegations, including a medical examination ordered by the investigative judge in response to requests by defence lawyers and performed on 12 July 2010. Judicial authorities later shelved most complaints and summoned only two men, Hicham Houari and Hicham Sabbah, for questioning. The investigation is not known to have progressed since then.

However, the men were charged with "belonging to an unauthorized association", "forming a criminal gang", "abduction and detention of an individual" and "torture" and the prosecution proceeded. On 21 December 2010, the Criminal Chamber at the Fes Court of Appeals

¹⁸⁹ Amnesty International, "Seven detainees allege torture in Morocco", 21 July 2010, (Index: MDE 29/015/2010).

cleared the seven defendants, before they were convicted on appeal on 9 December 2011 and sentenced to suspended sentences of up to six months' imprisonment. Their conviction relied partly on police interrogation reports the men said had been signed under torture, their lawyer told Amnesty International.

Likewise, complaints of torture and other ill-treatment filed on behalf of Sahrawis arrested in 2010 have been stalled or shelved. Dozens of reports of torture emerged after the arrest of Sahrawis following the forcible dismantling of a protest camp in Gdim Izik near Laayoune, Western Sahara, on 8 November 2010. Eleven members of the Moroccan security forces and two Sahrawis were killed in the violence that erupted during and following the dismantling, while some 200 were reported to have been arrested on 8 November or subsequent days.¹⁹⁰

Detainees have reported torture or other ill-treatment in the custody of the Royal Gendarmerie and police in Laayoune during pre-arraignment detention, including to extract "confessions." Suspects held in in Salé 1 Local Prison have made similar allegations of torture or other ill-treatment during the first weeks of detention. Torture methods allegedly included rape using bottles, beatings, suspension by the knees in the "roast chicken" position, electric shocks, pulling out fingernails, and throwing cold water and urine on detainees.¹⁹¹

At the time, Amnesty International criticized the trial of the 24 Sahrawi civilians by a military court, depriving them of their right to a fair trial. The Rabat Military Court that tried 24 Sahrawi men arrested in relation to the Gdim Izik events failed to investigate reports that they were tortured in detention, including during interrogation when they were forced to sign incriminating statements.¹⁹² The court failed to take action when confronted with reports of torture made by all 24 detainees during the trial, in addition to the earlier reports made by at least 17 of the 24 men before an investigative judge.¹⁹³

On 17 February 2013, the Military Court of Rabat convicted the 25 defendants in a decision that relied heavily on the contested "confessions" and found them guilty of membership of a criminal organization, violence against Moroccan public officers and desecration of a corpse, and handed down sentences ranging from two years' to life imprisonment.¹⁹⁴ One person was

¹⁹⁰ Amnesty International, *Morocco/Western Sahara: Rights Trampled: Protests, violence and repression in Western Sahara*, (Index: MDE 29/019/2010), p. 6.

¹⁹¹ Human Rights Watch, *Just Sign Here: Unfair Trials Based on Confessions to the Police in Morocco*, June 2013

¹⁹² Amnesty International, "Morocco/Western Sahara: Convicted Sahrawis must receive fair trials in civilian courts", 18 February 2013.

¹⁹³ Human Rights Watch, *Just Sign Here: Unfair Trials Based on Confessions to the Police in Morocco*, June 2013. Amnesty International has seen complaints of torture during *garde à vue* detention filed by the prisoners' families with the judicial authorities and the CNDH.

¹⁹⁴ The 24 are Ahmed Sbai, Mohamed Bachir Boutanguiza, Sidi Abdallah Abhah, Mohamed Bani, Brahim Ismaili, Sidahmed Lemjayed, Abdallah Lekhfawni, Abdeljalil Laâroussi, Naâma Asfari, Hassan Dah, Cheikh Banga, Mohamed Bourial, Mohamed Tahlil, Mohamed Lamine Hadi, Abdallah Toubali, El Husain Zaoui, Daich Daf, Mohamed Embarek Lefkir, Mohamed Khouna Babeit, Larbi Elbakai, Mohamed

tried in his absence and given a life sentence.

The 24 men were also interviewed by the Special Rapporteur on torture in September 2012, and by the WGAD in December 2013. The Special Rapporteur expressed concern at the lack of investigations into the torture allegations, while the WGAD called on the authorities to investigate torture allegations and review the verdicts in light of the principle that no civilian should be tried before a military court.¹⁹⁵

Meanwhile, some 200 Sahrawi men and children arrested in relation to the events, some of whom were kept in pre-trial detention in Laayoune Local Prison for several months. Several of them also reported torture and other ill-treatment. Amnesty International obtained copies of complaints filed by many of them with Moroccan judicial authorities and the regional office of the CNDH in Laayoune. Their lawyers told Amnesty International that authorities ordered no investigation or medical examinations into these allegations.

The failure to investigate individual responsibility and ensure accountability following high-profile allegations of torture since Morocco's independence has had the unfortunate consequence of dwarfing and overshadowing recent positive steps to end impunity. Such steps have included investigations and convictions of low-ranking officials accused of torture highlighted by Moroccan authorities in their submissions to UN human rights bodies, including the convictions of police officers in Laayoune and gendarmes in Kenitra for torture in 2006 and 2013, and an ongoing prosecution of gendarmes in Casablanca.¹⁹⁶

The information shared by the Moroccan authorities with regard to these prosecutions and convictions suggests that most have proceeded on charges of assault and battery rather than torture.¹⁹⁷

During her last visit to Morocco in May 2014, then UN High Commissioner for Human Rights Navanethem Pillay remarked:

"The litmus test of such commitments [to end torture] is accountability. Impunity is the most powerful fuel for human rights violations. But a single high-level prosecution of perpetrators

El-Ayoubi, Bachir Khadda, Taki El-Machdoufi (released), Sidi Abderrahmane Zayou (released). See Human Rights Watch, *Just Sign Here: Unfair Trials Based on Confessions to the Police in Morocco*, June 2013, p. 72.

¹⁹⁵ Report of the Special Rapporteur on torture, A/HRC/22/53/Add.2, para. 66(s); Report of the WGAD, Mission to Morocco A/HRC/27/48/Add.5 para. 83(v).

¹⁹⁶ Report of the Special Rapporteur on torture, A/HRC/25/60, para. 97(b); Rapport du Groupe de travail sur la détention arbitraire, Additif, Mission au Maroc: commentaires de l'Etat sur le rapport du Groupe de travail sur la détention arbitraire, UN Doc. A/HRC/27/48/Add.7, 3 September 2014, paras. 57, 129, 130 (French only).

¹⁹⁷ Information received from the Government of Morocco in response to the concluding observations of the Committee against Torture UN Doc. CAT/C/MAR/CO/4/Add.1 (2013) paras 1-8; Concluding observations of the Committee against Torture, Morocco, UN Doc. CAT/C/MAR/4 (2011) para. 58.

of torture or ill-treatment will send a big signal to State officials and the wider public that Morocco will, in deed, not tolerate the use of torture or other cruel, inhuman or degrading treatment. Allegations of torture must, without fail, be immediately investigated and evidence obtained under duress must be excluded, as clearly required by international and Moroccan law.”¹⁹⁸



Photo: Families of Sahrawi prisoners Abdhah Abdellahi, Abdallah Leghfawni, Sidi Ahmed Lemjayed and Abdallahi Taubali (clockwise from top left), who reported being tortured after their arrest following the Gdim Izik events in 2010.

¹⁹⁸ Opening remarks by UN High Commissioner for Human Rights Navanethem Pillay at a press conference in Rabat, Morocco, 29 May 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14652&LangID=E>

SEEKING JUSTICE ABROAD

Faced with judicial inaction in their quest for accountability and in particular unwillingness to investigate their torture allegations, some torture survivors formerly detained in Morocco began filing complaints in France.

Former world kick boxing champion **Zakaria Moumni** alleged he was tortured in detention during three days following his arrest at Rabat airport on 27 September 2010 on suspicion of fraud. He told Amnesty International he was subjected to beatings on the soles of his feet (*falaqa*), kicked, slapped, deprived of sleep, stripped naked, blindfolded and forced to stand or kneel or sit tied to a chair while being interrogated. He said that during his detention he was coerced to sign a statement he was not allowed to read. He added that he believed during his three-day detention he was held secretly in the DGST-run Temara detention centre.

One week after his arrest, on 4 October 2010, the Rabat Court of First Instance convicted Zakaria Moumni of fraud based on his contested “confession”, and sentenced him to three years’ imprisonment and a fine in an expedited trial without any legal representation, reduced to 20 months on appeal. Zakaria Moumni said to Amnesty International that he told the prosecution and the investigative judge at the time that he had been coerced into signing a statement he was not allowed to read and showed the court his injured shins, but no investigation was ordered. Amnesty International had also repeatedly raised its concerns about Zakaria Moumni’s allegations of torture, and called for an independent investigation at the time.¹⁹⁹

Following a royal pardon that released him from detention on 4 February 2012, Zakaria Moumni acquired French citizenship, allowing him to file a complaint for torture in Morocco in French courts. He spoke of his quest for justice:

*“I can identify all 13 people who tortured me. I see them every day, I live with them. Unlike the hundreds of Moroccans who’ve been tortured, I have the opportunity to seek justice through independent courts. I’ve kept competing under the Moroccan flag, even after being tortured – I have no issues with the state. I want justice. I don’t want another Moroccan to have to go through what I endured.”*²⁰⁰

Meanwhile, Moroccan authorities have filed a complaint for defamation against Zakaria Moumni in France in relation to two televised interviews in January 2015 where he described Morocco as “a country that continues to torture people”, evoked his complaint for torture and summarized his allegations.

El Mostafa Naim, 30, and a relative of **Oussama Zeria**, 31, both French-Moroccan nationals,

¹⁹⁹ Amnesty International letter to the Minister of Justice dated 19 November 2010 (Ref: TG MDE 29/2010.021); Amnesty International, *Moroccan authorities must fairly retry Zakaria Moumni* (Index: MDE 29/007/2011). See also Human Rights Watch, *Just Sign Here: Unfair Trials Based on Confessions to the Police in Morocco*, June 2013, pp. 23-36.

²⁰⁰ Interview, March 2014.

told Amnesty International that the two men were tortured in detention following their arrest on 1 November 2010 while they were on holiday. El Mostapha Naim also reported that DGST officials abducted him in Algeciras, Spain, and forced him onto a ferry bound for Morocco together with his pregnant wife.

El Mostafa Naim and a relative of Oussama Zeria told Amnesty International that, while the two men were not informed of the reason for their arrest, they were interrogated in relation to suspected terrorism offences, and later drugs offences. According to these reports, they were held secretly in Temara for 10 days where DGST officers tortured them. El Mostafa Naim said that officers gave him electric shocks under the kneecaps on two occasions, and kicked and punched him, leading him to become suicidal. Officers deprived Oussama Zeria of sleep, gave him electric shocks, punched and kicked him and beat him on the soles of his feet, his relative said. They added that after 10 days, DGST officers handed the two men over to the BNPJ, who further ill-treated them at their offices in Maarif, Casablanca, where they forced the two men to sign incriminating interrogation reports they were not able to read.

Both El Mostafa Naim and Oussama Zeria's relatives said the two men had been failed by Morocco's judiciary. El Mostafa Naim said that, during his first appearance in court on 13 November, his lawyer repeatedly told the Crown Prosecutor and investigative judge that he had been tortured. Oussama Zeria's relatives said he had visible injuries on his face during his hearing the same day, and told the court that he had been tortured and forced to sign the interrogation report. They said his right ear was still painful after his eardrum had been ruptured due to beatings in detention in Temara.

On 20 October 2011, the Casablanca Court of First Instance convicted both men and four other defendants on drugs-related charges. El Mostafa Naim and Oussama Zeria were sentenced to eight years' imprisonment, reduced to five years on appeal, and fines. The written judgment reveals that the convictions relied on the police interrogation reports and mentions that both men told the court that officers had "pressured" them to sign interrogation reports which they were not able to read and which they recanted in court.

The General Prosecutor at the Casablanca Court of Appeals opened an investigation into Oussama Zeria's torture allegations. In December 2014, judicial police officers questioned him in this regard. Several weeks later, judicial authorities informed him that the investigation was closed due to lack of evidence since he could not identify the perpetrators as he was blindfolded.²⁰¹

Oussama Zeria remains in prison in Morocco while El Mostapha Naim was transferred to France. At the time this report went to press, El Mostapha Naim told Amnesty International that he had still not been contacted by Moroccan authorities in relation to any investigation of his torture complaints. In France, he filed a lawsuit against the Moroccan authorities for torture in his capacity as a French national, with support from the French anti-torture NGO ACAT-France. He reflected to Amnesty International on his choice to pursue justice:

²⁰¹ Communications and correspondence with El Mostapha Naim and a relative of Oussama Zeria; Casablanca Court of First Instance, Decision 8716, Felonies case 2011/101/5145, 20 October 2011.

*"[Survivors of torture in Morocco] should all file complaints – but they're scared. Filing a complaint is a choice you have to make. Over there, I had a bad reputation because I never gave up."*²⁰²

However, a proposed amendment to the judicial cooperation agreement between France and Morocco threatens to jeopardize such attempts to access effective remedy through French courts. The amendment, which was agreed by representatives of the French and Moroccan governments on 31 January 2015, would see all complaints regarding alleged violations on Moroccan territory automatically transferred to Moroccan courts, even when the complainant is a French national and when the alleged offence is as serious as torture.²⁰³

OVERCOMING DOMESTIC OBSTACLES TO ACCOUNTABILITY

Those responsible for torture or other ill-treatment should be brought to justice. When domestic courts fail to hold them accountable, prosecutions in foreign courts, including through universal jurisdiction, can help put an end to impunity.

Universal jurisdiction is the ability of the court of any state to try persons for crimes committed outside its territory that are not linked to the state by the nationality of the suspect or the victims or by harm to the state's own national interests. It is particularly important for ensuring justice for crimes under international law including torture and other ill-treatment. State parties to the Convention against Torture have an obligation to exercise universal jurisdiction on torture suspects in their territory. If they are unable to prosecute, they must extradite that suspect to a state or international tribunal that is able and willing to do so.

Very few of those responsible for torture or other ill-treatment in Morocco and Western Sahara have been held to account. Ensuring that such crimes are promptly and independently investigated, and where sufficient admissible evidence is found, suspected perpetrators are prosecuted in fair trials, is one of the most effective way deter future torture; and it is the only way to ensure justice and reparation for victims. Where domestic courts are not able to investigate and prosecute effectively, universal jurisdiction can play an important role in the fight against impunity.

Bilateral judicial cooperation agreements should uphold and not obstruct universal jurisdiction. Likewise, such agreements should not obstruct the ability of nationals from one country to access effective remedy for offences alleged to have taken place in the second country by transferring complaints in the absence of guarantees that such allegations will be adequately investigated and that those responsible will be held to account.

²⁰² Interview, 20 May 2014.

²⁰³ ACAT, Amnesty International and Human Rights Watch, "France-Maroc. La France doit rejeter tout accord avec le Maroc qui favoriserait l'impunité des responsables de violations des droits humains" (Index: MDE 29/1412/2015)

6. CONCLUSION AND RECOMMENDATIONS

Morocco has taken important steps to address and prevent the serious human rights violation of torture and other ill-treatment, a violation that is prohibited by international and national law in all circumstances. It has long been a state party to the Convention against Torture, and in November 2014 acceded to the OPCAT, undertaking to improve prevention of torture and other ill-treatment through independent monitoring of places of detention. Its transitional justice process that began in 2003 accepted state responsibility for torture and awarded compensation for many survivors. In 2012 the authorities invited the Special Rapporteur on torture to visit the country. Such steps have been accompanied by unprecedented government pledges to eradicate torture and other ill-treatment.

Despite these positive developments, torture and other ill-treatment remain all too frequent, and torturers continue to get away with their crimes. Indeed, the authorities have persistently failed to address impunity. During the period of the work of the IER (2003-2010), victims were not allowed to reveal the identity of their torturers in the course of public hearings, and the resulting impunity left a dark legacy that lives on.

The cases reported to Amnesty International reflect a failing that the Special Rapporteur on torture, Juan E. Méndez, noted following his visit to Morocco and Western Sahara in September 2012, pointing to

“the apparent absence of prompt and thorough investigations into all cases of torture and ill-treatment, prosecution of the perpetrators, and the provision of effective remedies and reparations, including rehabilitation services, for all victims of torture and ill-treatment.”

The Special Rapporteur added that:

*“the practice of cruel treatment persists in ordinary criminal cases, and when there are highly charged events, such as a perceived threat to national security, terrorism or large demonstrations, there is a corresponding increase in acts of torture and ill-treatment during the detention and arrest process”*²⁰⁴

This finding also largely corresponds to the information that Amnesty International has obtained independently, much of it since the Special Rapporteur’s visit, suggesting that the deficiencies he identified have yet to be satisfactorily addressed by the Moroccan authorities.

The many accounts gathered for this report show that perpetrators do not attempt to hide their torture from colleagues. Indeed, on many occasions they invite other security officers or

²⁰⁴ Report of the Special Rapporteur on torture, Mission to Morocco, UN Doc. A/HRC/22/53/Add.2 (2013).

prison staff to join in. Such behaviour emphasizes how rife impunity remains.

At the heart of eradicating torture is ensuring accountability for perpetrators; and placing – and scrupulously implementing – safeguards, from requiring the presence of lawyers during police interrogation to ensuring that judicial and other authorities act on signs of torture and reject all statements obtained by torture to providing adequate forensic medical services to providing reparations to victims.

Current plans to reform the country's judiciary²⁰⁵ provide an unprecedented opportunity to end torture and other ill-treatment, as only a strong and truly independent judiciary will be equipped to tackle the accountability deficit and ensure proper investigation prosecution of torture. In this context, Amnesty International calls on Moroccan authorities to take the steps outlined below.

RECOMMENDATIONS

- Amend the definition of the crime of torture (Article 231 of the Penal Code) to ensure that it contains all elements of Article 1(1) of the Convention against Torture;
- Ensure that the definition of rape in Moroccan legislation (Article 486 of the Penal Code) is gender neutral and defined in such a way as to address and criminalize all forms of forced and coercive sexual invasion, including penetration by objects, in line with the highest international human rights law and standards;
- Strengthen safeguards against torture in *garde à vue* detention by amending the Code of Criminal Procedure, and specifically:
 - Ensure that all detainees are immediately informed of their rights and have a legally enforceable right to legal counsel of their choice promptly after arrest and to have a lawyer present at all times during interrogation (Article 66);
 - Ensure all police interrogations are video-recorded;
 - Ensure that national legislation, including Law no. 03-03 on Combating Terrorism as integrated in the Penal Code and Code of Criminal Procedure, is amended to bring it into conformity with Morocco's obligations under international human rights law; in particular, the length of time that a person can be held in *garde à vue* detention should be reduced to no more than 48 hours (Article 66);
 - Ensure that individuals taken into custody are held only in officially recognized places of detention and are registered in a centralized register of detainees accessible to their lawyers and families at all times upon request and without delay;

²⁰⁵ The charter for the reform of the Moroccan judiciary was published by the Ministry of Justice and Liberties in September 2013:

http://www.justice.gov.ma/App_Themes/ar/img/Files/Charte_Reforme_JusticeFr.pdf (French).

- Institute transparent rules for interrogation of suspects in *garde à vue* detention by judicial police officers that explicitly prohibit methods that amount to torture and other ill-treatment;
- Explicitly require that all detainees are promptly offered medical examinations upon being taken into custody, at entry, exit, during transfers, and periodically during detention, and that the records of such examinations are made accessible to detainees and representatives of their choice;
- Ensure humane conditions of detention in police and gendarmerie station as well as in prisons, including reducing overcrowding, ensuring access to adequate medical care, and ensuring prisoners are not subjected to any hardship or constraint other than that necessitated by the deprivation of their liberty;
- Institute effective safeguards against the use of statements obtained through torture and other ill-treatment in proceedings, including:
 - As per existing Article 293 of the Code of Criminal Procedure, ensure that no statement obtained under coercion including torture is invoked as evidence in any proceedings, except against the person accused of torture as evidence that the statement was made; the burden of proof lies with the prosecution to prove beyond a reasonable doubt that contested statements were freely given;
 - Ensure that statements or confessions made by a person deprived of liberty other than those made in the presence of a judge and with the assistance of a lawyer have no probative value in proceedings;
 - Ensure that reports prepared by the judicial police during the investigative phase remain inadmissible in trial court until the prosecution meets the burden of proving their veracity and legal validity according to the Code of Criminal Procedure;
 - Ensure persons convicted on the basis of “confessions” extracted under torture or ill-treatment, including those convicted by the Rabat military tribunal in the Gdim Izik case are promptly re-tried in civilian courts in fair proceedings that exclude such statements, or are released; and implement the decisions of the UN Working Group on Arbitrary Detention, including in the cases of Mohamed Hajib (No. 40/2012), Abdessamad Bettar (No. 3/2013), Mohamed Dihani (No. 19/2013), Ali Aarrass (No. 25/2013);
- Ensure that all reports of torture and other ill-treatment are promptly, impartially, independently and effectively investigated, including by conducting medical examinations in line with the Istanbul Protocol; support the full implementation of instructions by the Minister of Justice and Liberties issued on 29 May 2014 in this regard;
- Ensure that legal proceedings are postponed pending the outcome of such investigations; the scope, methods and findings of such investigations should be made public, and officials suspected of committing torture or other acts of ill-treatment should be suspended from active duty during the investigation;

- Repeal or amend the criminalization of “false reporting” and “slandorous denunciation” (Articles 264 and 445 of the Penal Code) to ensure that such charges cannot be brought against people making complaints of torture and other violations; if retained, such provisions should criminalize only false statements made with malicious intent and resulting in harm over and above harm to reputation, which should be a matter for civil litigation; any offence of making a false statement to a judicial authority, as currently included in Article 264, would be more appropriately dealt with under provisions of the Penal Code dealing with perjury;
- Provide full, prompt reparation for survivors of torture and other ill-treatment and their dependants, including restitution, fair and adequate financial compensation and appropriate medical care and rehabilitation, in accordance with international law and standards;
- Ensure effective monitoring of places of detention by:
 - Promptly instituting a truly independent and fully resourced National Preventive Mechanism in full accordance with the OPCAT;
 - Granting access to places of detention to national and international human rights groups, including by amending Article 84 of Law 23-98 on prisons.

ANNEX: RESPONSE FROM THE MOROCCAN AUTHORITIES

Réponses des autorités marocaines au Mémorandum d'Amnesty International

Campagne mondiale 'StopTorture'

1. Introduction

Les autorités marocaines ont pris connaissance du contenu du mémorandum «Torture et autres mauvais traitements» qu'Amnesty International leur a adressé dans le cadre de la campagne mondiale « Stop Torture » lancée le 13 mai 2014, en la remerciant d'avoir transmis son contenu pour leur permettre de communiquer leurs observations et données. Toutefois, elles souhaitent exprimer leur regret de ne pas avoir été saisies suffisamment à l'avance de ce document eu égard au nombre élevé des allégations rapportées.

De prime abord, les autorités marocaines souhaitent réitérer leur étonnement du choix d'Amnesty International de cibler le Maroc parmi les 5 pays retenus dans le cadre de cette campagne. Elles considèrent que la situation des droits de l'homme en général dans les pays concernés présente de nettes différences et des contextes nationaux différents, alors même qu'AI relève qu'elle a signalé dans le cadre de ses activités des cas de torture dans 141 pays et que 79 pays pratiqueraient encore la torture «à des degrés différents».

A priori, ce choix reste surprenant pour un pays comme le Maroc au regard de l'évolution qu'a connu et continue de connaître le Royaume qui a déjà obtenu des résultats tangibles aux vues de l'amélioration de la situation des droits de l'homme en général depuis plus de 20 ans, et en matière de lutte contre la torture en particulier.

Autrement dit, le Maroc n'a pas attendu le lancement de la campagne mondiale pour la mise en œuvre d'actions et mesures pour combattre la torture et autres mauvais traitements. De plus, les allégations présentées dans ce mémorandum ne sauraient remettre en question l'engagement irréversible des autorités en la matière.

Les efforts et progrès du Maroc sont reconnus à plus d'un titre sur le plan national et international, et continuent de s'inscrire dans plusieurs processus initiés et interdépendants, les autorités ayant pleinement conscience des difficultés et des défis à relever en la matière.

Aussi, Amnesty International devrait mesurer les efforts du Royaume en matière de droits de l'homme et la volonté politique ferme et résolue au plus haut niveau de les ancrer dans la continuité (Voir ANNEXE 1).

Les autorités marocaines ne sauraient accepter que le choix de cibler le Maroc dans la campagne et la publication dans ce cadre d'un document présenté sous la forme d'un mémorandum soit principalement motivé par la volonté de minimiser la dynamique actuelle et les progrès réalisés dans ce domaine.

Compte tenu à la fois de l'approche et la méthodologie adoptées par Amnesty International aisément contestables, les autorités marocaines ne peuvent que rejeter catégoriquement le contenu de ce document pour différentes raisons développées ci-après.

Les autorités marocaines considèrent que l'objectif premier de ce mémorandum est d'accabler le Royaume, ce qui ne permet aucunement de prendre la véritable mesure des avancées et réalisations sur l'ensemble du territoire national. En dépit de quelques avancées présentées en guise d'introduction, la plupart des réalisations et mesures concrètes sont en effet passées sous silence.

D'une part, la tonalité du mémorandum fait apparaître qu'Amnesty International a déjà établi sa conviction au regard de toutes les allégations rapportées, de l'utilisation de certaines méthodes, pratiques et autres mauvais traitements, ce qui induit inévitablement certaines dérives.

D'autre part, les autorités contestent la méthodologie adoptée pour la préparation du mémorandum que ce soit au regard des parties du document réservées à l'appréciation générale et conclusions que tire Amnesty International sur la question de la torture au Maroc, qu'au niveau des informations rapportées concernant les cas.

Tout d'abord, il s'avère que les informations collectées, notamment celles relatives aux cas, la question de l'impartialité se pose par rapport à la façon dont ces informations ont été collectées.

Les autorités marocaines regrettent que le mémorandum s'appuie essentiellement sur des sources choisies prétendues crédibles, alors qu'elles ne sont nullement représentatives de l'ensemble des parties prenantes dans le domaine des droits de l'homme. Les autorités relèvent une approche partielle résultant de la nature particulière des liens entretenus sur le terrain entre certaines personnes citées dans le mémorandum et certains représentants d'Amnesty International auxquels le Maroc n'oppose aucune entrave pour leur travail sur le terrain, ce qui est particulièrement grave pour une organisation qui a vocation, ou du moins prétend représenter toutes les potentielles victimes de violations des droits de l'homme.

Les autorités regrettent qu'AI n'ait pas procédé aux recoupements pourtant nécessaires en la matière avant de rapporter à l'état brut des déclarations somme toutes subjectives et donc relatives.

Par ailleurs, les autorités marocaines constatent avec regret que les informations qu'elles ont eu l'occasion de soumettre au sujet de plusieurs allégations et des

documents¹ demandés par Amnesty International auxquels il est fait référence dans le mémorandum n'aient pas été prises en compte, et s'étonnent qu'une copie de ces documents en question soient de nouveau demandée.

Il ressort de la lecture du contenu du mémorandum, que de nombreuses anomalies sont constatées à travers les allégations soulevées par les personnes choisies par AI (Voir annexe 2).

2. Observations relatives à l'appréciation générale d'Amnesty International concernant la pratique de la torture et autres mauvais traitements au Maroc.

Concernant l'appréciation générale d'AI se rapportant à la pratique de la torture et autres mauvais traitements au Maroc posée dans la partie 1 du mémorandum, et plus particulièrement les descriptions faites au titre de « modèles », « méthodes » ou « conduites » qu'elle aurait identifiées, les autorités marocaines les rejettent catégoriquement.

Elles contestent en effet ces conclusions basées sur une appréciation manifestement biaisée de la situation qui renvoie à une époque révolue, amenant les autorités à s'interroger sur l'objectivité de l'analyse et des éléments présentés. Il est totalement fait abstraction de ce qui a été concrètement réalisé au Maroc dans le cadre de son processus de justice transitionnelle, de la lecture courageuse de son passé et de la volonté politique ferme de tourner la page sur les violations graves et systématiques des droits de l'homme, y compris la torture. Les processus de réformes initiés depuis la fin des travaux de l'Instance Equité et Réconciliation dans ce cadre découlent essentiellement des recommandations de l'Instance. L'appréciation d'AI revient à dévaloriser l'expérience marocaine en matière de justice transitionnelle, ce que ne sauraient tolérer les autorités.

Concernant l'appréciation selon laquelle les principales garanties légales seraient bafouées pendant la garde à vue avec des conséquences sur le plan des investigations et d'éventuelles poursuites, les autorités marocaines considèrent que ces appréciations tendent délibérément à généraliser une situation sur la base de quelques cas isolés et choisis par AI selon des critères contestables.

¹ Lettre n° 0236 adressée le 26 janvier 2015 par la Délégation Interministérielle aux Droits de l'Homme contenant :

- la Circulaire du Ministre de la Justice et des Libertés du 29 mai 2014 adressée aux magistrats du Parquet mettant l'accent sur l'importance des expertises médico-légales dans le cadre des procédures légales ;
- la Circulaire du Délégué Général à l'Administration Pénitentiaire et à la Réinsertion datée du 03 juin 2014 à l'attention de l'ensemble des Directeurs des établissements pénitentiaires ;
- la Note du Directeur Général de la Sécurité Nationale datée du 08 septembre 2014 à l'attention des Centres de gardes à vue.

A ce titre, en 2014 il y a eu 5 poursuites engagées à l'encontre d'agents responsables de l'application de la loi sur la base de l'article 231 du Code pénal qui incrimine la torture. Par ailleurs le parquet a ordonné 48 expertises médicales conformément aux dispositions des articles 73 et 74 du Code de procédure pénale. Le juge d'instruction a ordonné 14 expertises médicales conformément aux dispositions de l'article 134 du Code de procédure pénale.

Par ailleurs, dans le cadre des processus de réforme et des efforts et avancées du Royaume en matière de droits de l'homme, les autorités marocaines souhaitent mettre l'accent notamment sur la réforme du Code de procédure pénale (CPP) actuellement en cours. Après discussion entre les différentes parties prenantes, le projet révisé du CPP est au Secrétariat Général du Gouvernement en vue de son adoption prochaine par le Parlement.

Le nouveau projet de CPP a pour objectif le renforcement de la protection des droits et des libertés, et notamment plusieurs garanties légales que ce soit au début de la procédure judiciaire, en favorisant entre autres un meilleur accès à l'avocat dans la phase préliminaire d'enquête, la possibilité de l'enregistrement audio-visuel des interrogatoires dans le cadre des enquêtes préliminaires, qu'au stade du procès en renforçant les garanties inhérentes au procès équitable.

Le projet a en effet introduit plusieurs révisions ou nouveautés :

- **L'assistance judiciaire** : le projet prévoit que les personnes arrêtées ou placées en garde à vue peuvent recourir à un avocat de leur choix ou demander la désignation d'un avocat dans le cadre de l'assistance judiciaire. En outre, l'avocat peut communiquer avec la personne dès la première heure de son arrestation. Par ailleurs, le projet prévoit également la présence de l'avocat auprès des personnes présentées sans pour autant être placées en garde à vue.
- **Concernant le registre informatisé** : La loi actuelle prévoit la nécessité de disposer d'un registre dont les pages sont cotées et paraphées par le Procureur du Roi, dans tous les locaux de garde à vue. Le projet de loi prévoit la possibilité de transmettre le contenu du registre immédiatement au registre informatisé national ou régional de la garde à vue.
- **Concernant l'enregistrement audiovisuel des auditions des personnes gardées à vue** : le projet prévoit que l'officier de police judiciaire doit procéder à l'enregistrement audiovisuel des interrogatoires des personnes placées en garde à vue pour des infractions criminelles ou délictuelles.
- **La détention préventive comme mesure exceptionnelle en l'absence d'une autre mesure possible.**
- **Concernant la notification de la famille**, le projet prévoit l'obligation pour l'officier de police judiciaire de faire mention de la qualité de la personne contactée, du moyen employé et de la date et heure de l'avis de la notification.

- **L'obligation pour l'officier de la police judiciaire de soumettre la personne placée en garde à vue à un examen médical** après avoir avisé le parquet lorsqu'il constate les symptômes d'une maladie ou des indices ou traces exigeant cette mesure. Ladite mesure doit être mentionnée dans le procès-verbal ainsi que dans le registre de la garde à vue ; le rapport médical sera annexé au procès-verbal qui doit être renvoyé au parquet.
- **L'obligation pour le Procureur ou le Procureur général du Roi de soumettre le suspect à un examen médical** lors de sa présentation soit suite à sa demande ou d'office après avoir constaté des traces justifiant l'effectuation de l'examen médical, **sous peine de nullité du procès-verbal de la police judiciaire.**
- Le projet du CPP prévoit que le Procureur Général du Roi effectue lui-même ou désigne un représentant pour **visiter les lieux privés de liberté** dès qu'il est informé d'allégations de détention arbitraire.

3. Les allégations de torture et autres mauvais traitements

Al Hoceima

Karim Lachkar

Des éléments de police en faction au barrage permanent installé à l'entrée de la ville d'Al Hoceima ont intercepté, le 27 mai 2014, vers 05h30, une voiture conduite par Mustapha Aberkane, accompagné de Abderrahim El Ouariachi, Rabi El-Ablak et Karim Lachkar.

Lors du contrôle d'identité des intéressés, Karim Lachkar, qui était en état d'ivresse, et qui a tenté de prendre la fuite a été poursuivi, arrêté et emmené au siège de la sûreté provinciale de cette ville, avant d'être évacué, suite à un malaise vers l'hôpital régional Mohamed V où l'équipe médicale des services des urgences a confirmé son décès à son arrivée.

Ils ont constaté également que le défunt portait deux écorchures superficielles au niveau du front et du menton, sans relever de traces de violence apparente.

Sur instructions du parquet général près la cour d'appel d'Al Hoceima, la dépouille mortelle a été transférée au centre médico-légal de Casablanca où une autopsie a été effectuée le 28 mai 2014. Le rapport d'autopsie a conclu que le décès est conséquent aux complications d'une cardiopathie ischémique d'origine athéromateuse décompensée par l'état de stress et éventuellement par l'état d'alcoolisation associé.

Le rapport d'autopsie précise en effet que l'examen externe du cadavre a mis en évidence des blessures superficielles tout en relevant des signes d'impact fronto-facial sous forme de dermabrasions frontale, nasale et mentonnière compatibles avec une chute sur la face

ayant été à l'origine d'une bosse frontale, mais sans lésion crânienne ou cérébrale associée.

L'autopsie a, également, révélé des signes de cardiopathie sous forme de séquelle d'un infarctus du myocarde ancien et un œdème pulmonaire bilatéral important.

Par ailleurs, des analyses toxicologiques ont été confiées au laboratoire de recherches et d'analyses techniques et scientifiques de la Gendarmerie Royale à Rabat. Les analyses effectuées sur le sang du défunt ont révélé la présence d'une substance narcotique (cocaïne).

De même, conformément aux instructions du parquet général, une enquête judiciaire a été menée par la Brigade Nationale de la Police Judiciaire (BNPJ), qui a auditionné le 29 mai 2014, au siège de la Sûreté provinciale d'Al Hoceima, 17 personnes, dont les fonctionnaires de police qui étaient présents lors de l'interpellation du défunt, ceux ayant assuré la permanence relevant du district provincial de police, ainsi que ceux qui étaient à bord du véhicule de police, les éléments de la protection civile ayant évacué le défunt sur l'hôpital, ainsi que le gérant et les serveurs du "Bar Club Nautique" à Al Hoceima.

Dans leurs déclarations, les fonctionnaires de police et de la protection civile ont tous confirmé le fait que le défunt était encore vivant lors de son évacuation à partir du siège de la sûreté provinciale sur l'hôpital, tout en affirmant que le défunt n'a fait l'objet d'aucune violence.

Dans le cadre de cette enquête, les témoins oculaires Mustapha Aberkane, Abderrahim El Ouariachi et Rabie El Ablak ont été auditionnés le 28 mai 2014 et n'ont pas déclaré que les services de police auraient été impliqués dans le décès de Karim Lachkar, tout en affirmant que ce dernier n'a, à aucun moment, fait l'objet de violence de la part des éléments de la police au cours de son interpellation.

En outre, Abderrahim El Ouariachi a déclaré que le défunt, lors du contrôle d'identité, a pris la fuite en direction du lotissement "el fakir". Il a ajouté également qu'il a poursuivi le défunt en compagnie de deux éléments des services de police jusqu'au lotissement en question où il a constaté de visu la chute du défunt à deux reprises après avoir glissé sur les débris de matériaux de construction sur les lieux.

Abderrahim El Ouariachi a précisé par ailleurs que le défunt, qui était dans un état d'ébriété avancée, respirait difficilement, ce qui a nécessité son acheminement à bord d'une ambulance. Ces déclarations ont été corroborées par les deux autres témoins, Mustapha Aberkane et Rabie El Ablak.

Contrairement aux allégations rapportées par AI :

- L'interpellation de l'intéressé s'est effectuée dans le cadre des missions habituelles de la police et non pas comme il est mentionné dans le mémorandum pour « harceler » le défunt. Il s'agit d'un contrôle de police routinier au cours duquel l'intéressé a proféré des injures à l'encontre des policiers et a refusé de présenter sa carte d'identité.
- Les témoignages des personnes présentes lors des faits confirment que l'intéressé lors de son interpellation n'a pas subi de violence de la part des policiers et que les blessures qu'il portait sont dues à sa chute au moment de sa fuite.

- L'allégation selon laquelle « les officiers de police ont tenté de dissimuler sa détention », demeure infondée du fait que l'intéressé n'a à aucun moment fait l'objet d'un placement en garde à vue du fait qu'il a été immédiatement transféré vers l'hôpital en raison du malaise qu'il a eu suite à sa course poursuite.
- Pour ce qui est des déclarations de Rabie Lablak à AI que les policiers auraient tenté de le dissuader de soulever la présence de blessures sur Karim Lachkar alors que ses déclarations consignées dans le procès-verbal qu'il a relu et signé font état de l'existence de ces blessures.
- Effectivement, le corps du défunt présentait des blessures qui ont d'abord été constatées par les services d'urgences et ensuite lors de l'autopsie, mais il a été clairement établi que ces blessures ne résultaient pas de l'usage de violence de la part des policiers, et par conséquent ne pouvaient être la cause de son décès.
- L'allégation selon laquelle Karim Lachkar se serait vu administré une « injection tranquillisante » est dénuée de tout fondement du fait les services de Police ne sont pas habilités pour effectuer des soins médicaux ; le rapport d'expertise médicale n'a pas relevé la présence d'aucune substance tranquillisante.
- Concernant les allégations de falsification du procès-verbal, l'avocat de l'intéressé a déposé une plainte à ce sujet le 04 juillet 2014. Cette plainte a été classée sans suite dans la mesure où une enquête avait déjà été menée à ce sujet par la BNPI et déjà classée sans suite le 28 octobre 2014.
- Enfin, l'avocat des ayant-droits a déposé le 27 février 2015 une plainte directe devant le Juge d'instruction entre autres pour falsification lequel a rendu une décision le 15 avril 2015 la considérant irrecevable.

Meknès

Ezzedine El-Attas

Ezzedine El-Attas a été condamné à 3 ans et demi de prison ferme, le 09 mai 2013, ramenée en appel à deux années et demie le 05 août 2013, suite au démantèlement d'une cellule terroriste en avril 2012.

Contrairement aux allégations de l'intéressé, ce dernier a bénéficié de toutes les garanties prévues par la loi dès son placement en garde à vue, jusqu'à sa condamnation.

Durant sa garde à vue, il a eu accès à son avocat à la fin de la première période (96 heures) en conformité avec les articles 66 et 80 du code de procédure pénale.

Concernant les allégations de torture, une plainte pour torture a été adressée au Ministre de la Justice et des Libertés par sa mère Fatima Erradi le 09 décembre 2013, et a été instruite par le Parquet qui a décidé de son classement pour défaut de preuves avec la possibilité d'ouverture d'une nouvelle enquête en cas d'éléments nouveaux.

L'allégation selon laquelle les officiers l'ont forcé à apposer ses empreintes digitales sur son PROCÈS-VERBAL d'audition qu'ils ont fabriqué sans lui permettre de le lire, est un non-sens par le fait du caractère facultatif de la signature des PROCÈS-VERBAL selon les

dispositions de l'article 67 du CPP, de ce fait il relèvera de l'absurdité de forcer le mis en cause à signer ses déclarations du moment qu'il lui est loisible de refuser de signer le procès-verbal, sans pour autant porter atteinte à sa force probante. L'article 293 du Code de procédure pénale interdit l'admission de tout aveu ou déclaration faite sous la contrainte, et en cas de crime (fait grave puni de plus de 5 ans de réclusion), l'aveu même consigné dans le procès-verbal du mis en cause n'est admis qu'en tant que simples énonciations à l'adresse de la cour (article 291 du CPP).

Contrairement à l'allégation selon laquelle « le Directeur de prison aurait bloqué la plainte du concerné », ledit responsable a effectivement transmis, le 28 novembre 2013, la plainte au Procureur général.

Concernant l'allégation de menaces de viol rapportées à AI, il n'y est fait aucune référence dans le cadre de la plainte initialement déposée.

Fès

Concernant les cas **Mohammed Ghallot, Mohamed Fizazi, Abdelghani Moummouh, Younes Erroufi, Othmane Ouzoubair, Aicha El Bouche, Boubker Hadari, Mohamed El Harrass, Walid El -Ouazzani, . Mohammed El Katrani, Zakaria Berchida, Yassine Lmsiah**, il s'agit de personnes poursuivies suite à des troubles étudiants qu'a connus l'Université Sidi Mohamed Ben Abdellah de Fès entre 2013 et 2014. Contrairement à ce qui est rapporté par AI, sur les « manifestations pacifiques », il est souligné que les troubles en question ont été marqués par :

- L'homicide ;
- Les troubles à l'ordre public
- La violence à l'égard des éléments des forces de l'ordre ;
- L'obstruction du déroulement normal des cours ;
- L'occupation illégale des bâtiments publics
- Le saccage des services administratifs ;
- La destruction et vol de biens publics ;
- Les attroupements armés et obstruction de la voie publique par l'installation de barricades ;
- La prise en otage de fonctionnaires de l'Université ;
- Les outrages et les injures envers agents publics.

Devant cette situation, les éléments de police dépêchés sur place sont intervenus dans le cadre de la loi en concertation avec les autorités judiciaires. Ces interventions ont abouti à l'arrestation de plusieurs auteurs de troubles et ont permis le rétablissement de l'ordre et la reprise du bon fonctionnement des services universitaires.

Mohammed Ghallod

Mohammed Ghallod a été interpellé le 24 avril 2014, et placé en garde à vue, avant d'être mis sous mandat dépôt le 27 avril 2014, à la prison "Ain kadous" sur instructions du

Parquet général près la cour d'appel de Fès, pour son implication dans le décès de l'étudiant Abderrahim Hasnaoui .

Les allégations fantasmagoriques soulevées par le rapport (poulet rôti, l'avion ou encore le viol par des bouteilles en verre, etc), sont erronées et résultantes d'une approche biaisée tendant, vainement, à jeter le discrédit sur le déroulement de la procédure et de l'enquête, pour se soustraire des chefs d'inculpation retenus à sa charge dans le cadre de cette affaire, d'autant plus qu'au moment de son arrestation le sujet était recherché pour son implication dans dix affaires remontant à 2007, pour divers motifs :

- Contrairement aux allégations, le mis en cause qui a bénéficié des garanties légales pendant la garde à vue (son père a été informé de son arrestation, son procès-verbal qu'il a signé), n'a pas depuis la date des faits allégués déposé de plaintes ni devant le Procureur, devant le tribunal, sachant bien que les séquelles de viol par bâton, ainsi que les brûlures à la jambe par la cigarette ne cicatrisent pas facilement, d'autant plus que le concerné n'a pas prouvé à ce jour, alors qu'il est en liberté, ses allégations de violence sur son corps par moyen de certificat médical.
- Au moment où il a été déféré devant le parquet, il n'a à aucun moment soulevé ce qu'il prétend avoir subi, ni demandé de faire l'objet d'une expertise médicale. Le procureur n'a constaté aucune trace apparente de sévices qui l'aurait amené à ordonner une expertise médicale.
- Ces allégations n'ont pas non plus été soulevées devant le Juge d'instruction, que ce soit lors de la phase préliminaire, ou la phase de l'audition détaillée.
- Ce n'est que lors de son procès qu'il a soulevé les mauvais traitements ; cependant le Juge a estimé que ces allégations étaient infondées au motif qu'elles n'ont pas été soulevées plus tôt, rendant par définition difficile toute investigation en la matière.
- Par ailleurs, les allégations de l'intéressé rapportées par AI comportent des informations contradictoires, voire mensongères, notamment lorsqu'il déclare au début avoir été violé au moyen d'une bouteille en verre, et ensuite au moyen d'une matraque.
- Les descriptions rapportées par l'intéressé demeurent d'une part inconcevables en raison de leur gravité, et d'autre part, si les traitements décrits avaient véritablement été infligés, ils auraient nécessairement et incontestablement laissé des traces durables pouvant être détectées facilement.
- En outre, si ces allégations s'étaient avérées fondées, elles auraient été révélées au moment de son incarcération à la prison de Ain Kadous. En effet, le règlement pénitentiaire impose à l'Administration de soumettre tout nouveau détenu à un examen médical et il ne ressort pas du carnet médical du concerné que des traces de violences ou autres aient été apparentes sur son corps le jour de son arrivée.
- l'allégation selon laquelle le concerné prétend que «le quatrième jour les agents de police l'ont obligé à apposer ses empreintes digitales sur un document qu'ils ne lui ont pas permis de lire», est une affirmation mensongère, étant donné, que

le concerné a dument signé son propre procès-verbal (aucune trace d'empreinte digitale n'apparaît sur son procès-verbal d'audition) ; de même, a été placé en garde à vue pendant une période initiale de 48 heures, prolongée sur instructions du parquet pour 24 heures supplémentaire. Il s'avère que le mis en cause n'a passé que 58 heures en garde à vue au lieu de 72 heures légales, en contradiction avec ses déclarations d'avoir été maintenu pour quatre jours ;

- l'allégation selon laquelle «les garanties du procès équitable semblent être violées au cours de la procédure judiciaire engagée à son encontre sur la base de son procès-verbal d'audition qu'il dit avoir signé sous la contrainte» : le caractère facultatif de la signature : il paraît absurde dans la pratique policière, de contraindre quiconque à signer son procès-verbal, du moment qu'il lui est loisible de refuser de le signer, sans pour autant que sa force probante en tant que telle ne soit mise en doute (article 67 du CPP) ;
- l'allégation selon laquelle «le tribunal aurait refusé d'exclure son procès-verbal d'audition sans enquêter ...» : le pouvoir discrétionnaire du juge ;
- l'allégation selon laquelle le concerné qui aurait «été examiné, à deux reprises, par un médecin au cours de sa détention provisoire de 11 mois et que les conclusions desdits examens n'ont pas été communiqués ni à l'avocat, ni au tribunal» : les garanties de la défense accordées aux avocats leur donne droit à l'accès aux dossiers du client sans restrictions.

Mohamed Fizzazi

Suite à l'intervention des forces de l'ordre pour mettre fin à l'occupation des bâtiments administratifs de l'Université où un fonctionnaire était pris en otage , Mohamed Fizzazi a été blessé et transféré à l'hôpital pour être soigné. Il est décédé le 25 janvier 2013.

Suite aux allégations selon lesquelles les blessures de l'intéressé étaient causées par les coups qui lui auraient été infligés par huit policiers, une enquête a été ouverte sur instruction du parquet et une expertise a été effectuée. Les résultats de l'enquête n'ont pas permis d'établir l'implication des éléments des forces de l'ordre dans le décès de l'intéressé et aussi l'absence de témoins, notamment en raison des débordements qui ont régné au moment de l'intervention.

Abdelghanl Moummouh et Younes Erroufi

Interpellés le 14 janvier 2013, et placés sous mandat de dépôt à la prison "ain kadous" le 16 janvier 2013, puis condamnés le 21 février 2013, par le Tribunal de première instance à 6 mois de prison ferme, peine ramenée en appel le 12 novembre 2013 à 3 mois de prison ferme, pour séquestration de fonctionnaires et actes de violence contre les forces de l'ordre dans le cadre des incidents du 14 janvier 2013 survenus au sein de la cité universitaire "saïss" à Fès.

Les concernés ont eu accès à leur procès- verbal de police qu'ils ont signés, et n'ont pas soulevé avoir fait l'objet de mauvais traitements devant le Procureur du Roi, ni devant le

Juge d'Instruction. Ce n'est que lors du procès que leurs avocats ont prétendu que leurs clients ont été maltraités. Toutefois, le juge a estimé qu'il n'y avait pas lieu d'ouvrir une enquête au sujet de ces allégations.

En application des dispositions de l'article 73 du CPP, le parquet compétent n'a pas ordonné une expertise médicale pour motif d'absence de traces de violence apparentes, d'autant plus que l'intéressé n'a pas évoqué, lors de sa comparution devant le parquet, avoir été victime de violence.

Plus tard devant le tribunal, il a allégué que ses aveux étaient sous contrainte chose que ladite juridiction, et dans le cadre de son pouvoir discrétionnaire, n'a pas pris en compte.

Au demeurant, il s'avère qu'il s'agit manifestement d'une ligne de défense systématique qu'adoptent un bon nombre de personnes, pour semer le doute sur leur culpabilité et se soustraire de leurs responsabilités pénales, en prétendant la violation de leurs droits.

Othmane Ouzoubair

Interpellé le 4 février 2013, et placé sous mandat de dépôt à la prison "Ain kadous" depuis le 7 février 2013, puis condamné le 2 mai 2013 par le Tribunal de première Instance à 3 mois de prison ferme, peine confirmée en appel le 24 septembre 2013.

Lorsqu'il a été déféré devant le Parquet, il n'a pas soulevé l'allégation selon laquelle il aurait été maltraité durant sa garde à vue. Par contre, lors de sa comparution devant le Juge d'Instruction, il a déclaré avoir subi des sévices de la part de la police judiciaire et il a demandé une expertise médicale que le juge a ordonnée le 08 février 2013. Les résultats de cette expertise ont conclu à l'absence de traces de sévices sur son corps.

Si l'intéressé estimait qu'il y a eu un vice de procédure (non présentation du rapport médical lors du procès), il aurait dû le soulever au moment du procès.

Aïcha El Bouche

Interpellée le 25 avril 2013, et poursuivie en état de liberté, avant d'être condamnée le 13 mai 2013, par le Tribunal de première Instance à Fès à 3 mois de prison ferme, dans le cadre des troubles survenus entre le 15 et le 25 avril 2013 au campus "Dhar El Mehraz".

Lorsqu'elle a été déférée devant le Parquet, elle n'a pas soulevé l'allégation selon laquelle elle aurait été maltraitée et menacée de viol durant sa garde à vue, ni devant le Juge d'Instruction. Par contre son avocat a soulevé ces allégations devant le tribunal qui les a rejetées les considérant infondées.

Boubker Hadari

Boubker Hadari a été interpellé le 18 avril 2013, et acquitté le 20 novembre 2013 par le Tribunal de première Instance, avant d'être condamné le 2 décembre 2014 par la Cour d'appel à 6 mois de prison avec sursis pour son implication dans les troubles précités.

En premier lieu, concernant le caractère « pacifique » de l'occupation du toit de la Faculté de sciences, il est à relever que les agissements de Boubker Hadari ne reflètent en rien ce qualificatif de « pacifique ». En effet, l'intéressé a obstrué le déroulement normal des examens, injurié le personnel de l'Université et les forces de l'ordre, en les menaçant avec des cocktails Molotov.

Dans ce cadre, l'intervention des forces de l'ordre, présentes sur place pour assurer le déroulement normal des examens, s'est avérée nécessaire pour rétablir l'ordre. Lors de cette intervention, l'intéressé, en essayant de fuir, a sauté du toit où il se trouvait, et il est tombé ce qui lui a causé des blessures. Il a alors été emmené à l'hôpital.

Il convient de souligner que contrairement à l'allégation selon laquelle il aurait été insulté par des policiers lors de son transfert à l'hôpital, les forces de l'ordre ne sont pas habilitées à être présentes dans l'ambulance.

Ensuite, après son hospitalisation, il a été déféré devant le Parquet. Il n'a pas déclaré qu'il aurait été « jeté » du deuxième étage ni maltraité. Ce n'est que devant le Juge d'instruction lors de l'interrogatoire préliminaire qu'il a déclaré de façon contradictoire et imprécise ne pas savoir s'il était tombé ou s'il avait été poussé, lors de sa présence sur le toit et au moment de l'intervention des forces de l'ordre .

Durant l'audition détaillée, il a avancé une autre allégation selon laquelle il a été torturé par les forces de l'ordre.

Compte tenu de ce qui précède, des contradictions dans ses déclarations, le Juge a estimé que toutes ces allégations étaient infondées.

Mohamed El Harrass

Mohamed Harrass a été interpellé le 18 avril 2013, et poursuivi en état de liberté, avant d'être condamné le 5 juin 2013, par le tribunal de première instance à Fès à 1 mois de prison ferme dans le cadre des troubles précités.

Lors de l'intervention des forces de l'ordre pour l'évacuation de la bibliothèque universitaire occupée illégalement par des étudiants, l'intéressé a pris la fuite et s'est introduit dans un immeuble privé où il a été appréhendé en possession de pierres par les habitants de l'immeuble le confondant avec un voleur, et l'ont remis à la police.

Lorsqu'il a été déféré devant le Parquet, il n'a pas déclaré avoir été maltraité durant son interpellation, ni durant son transfert au commissariat, ni même qu'il a été menacé de viol.

Ensuite, devant le tribunal, son avocat a soulevé ces allégations. Pour autant, le tribunal a estimé que celles-ci étaient infondées. Par ailleurs, l'examen médical qu'il a subi au moment de son incarcération a permis d'établir que l'intéressé ne portait aucune trace de blessure laissant penser qu'il aurait subi ce qu'il a allégué.

Walid El –Ouazzani

En rapport avec les troubles étudiants survenus à Fès qui ont conduit à la mort de l'étudiant Abderrahim Hasnaoui, Walid El –Ouazzani a été entendu par la police le 21 avril 2014 à ce sujet, sans être placé en garde à vue, ni déféré devant le Parquet, ni poursuivi.

En l'espèce, les allégations rapportées sont totalement infondées.

Yassine Lmslah

En rapport avec les troubles estudiantins survenus à Fès qui ont conduit à la mort de l'étudiant Abderrahim Hasnaoui, Yassine Lmslah, suspecté d'être directement impliqué dans sa mort a été interpellé le 1^{er} mai 2014, et il est actuellement détenu à la prison d'Ain Kadous de cette ville.

Déféré devant le Procureur le 03 mai 2014, il n'a pas déclaré avoir été maltraité durant son interpellation et sa garde à vue.

Ensuite, le Juge d'instruction a décidé de le poursuivre et de renvoyer l'affaire devant le tribunal ; une audience est prévue le 21 mai 2015. Concernant les allégations rapportées par AI, l'intéressé avait la possibilité de les soulever devant le juge durant le procès.

Quant à l'allégation relative à la menace à l'encontre de la sœur du prévenu, il y a lieu de signaler qu'elle a elle-même été entendue sans être poursuivie pour avoir porté assistance à une personne en délit de fuite, en l'occurrence son frère. La sœur de l'intéressé a la possibilité de porter plainte auprès des autorités compétentes.

Kénitra

Abderrazak Jkaou, Achraf El Korchi, Brahim El-Gualai, Mourad El Houari, Ismail El Ahmar, Abderrazak Jkaou, Zakaria Rakkass, Ismail El Ahmar et AbderrahimTaouil

Il s'agit de personnes poursuivies suite aux troubles estudiantins qu'a connus l'Université Ibn Tofail de Kenitra en 2012 et en 2014. Ces troublés ont été marqués par :

- La violence à l'égard des éléments des forces de l'ordre, coups et blessures,
- Le port d'armes blanches, jet de pierre, jet de bouteilles contenant des substances dangereuses (soude) ;
- L'occupation illégale des bâtiments publics ;
- L'obstruction du déroulement normal des cours ;
- Le saccage des services administratifs ;
- La destruction et vol de biens publics ;

- Les attroupements armés et obstruction de la voie publique par l'installation de barricades ;
- La prise en otage de fonctionnaires de l'Université ;
- Les outrages et les injures envers agents publics.

Devant cette situation, les éléments de police dépêchés sur place sont intervenus dans le cadre de la loi en concertation avec les autorités judiciaires. Ces interventions ont abouti à l'arrestation de plusieurs auteurs de troubles et ont permis le rétablissement de l'ordre et la reprise du bon fonctionnement des services universitaires.

Concernant **Abderrazak Jkaou, Achraf El Korchi, Brahîm El-Gualai, Mourad El Houari et Ismail El Ahmar** poursuivis à la suite des troubles de 2012, ils ont été interpellés le 28 mars 2012, dans le cadre des affrontements avec les forces de l'ordre à la cite universitaire «saknia», et placés sous mandat de dépôt le 30 mars 2012. Ils ont été condamnés le 24 octobre 2012, à 6 mois de prison ferme.

Pour ce qui est des allégations de torture et mauvais traitements, une expertise médicale a été ordonnée par le Juge d'Instruction. Suite aux conclusions des rapports médicaux, le parquet a ordonné une enquête à ce sujet. Le 13 avril 2012, lors de l'audition des intéressés par la police judiciaire, ils ont refusé de faire des déclarations en l'absence de leur avocat, ce qui n'est pas permis par la loi dans ce cadre précis.

Pour approfondir l'enquête, ils ont été auditionnés par le Procureur devant lequel ils ont déclaré qu'ils ne sont pas en mesure de reconnaître les éléments qui les auraient violentés. Pour ces raisons, le parquet a classé la plainte.

Le 20 janvier 2014, un sit-in a été organisé par des étudiants devant l'entrée de l'Université pour protester contre la décision de clôturer les inscriptions à un master ce qui a empêché le déroulement normal des cours et du bon fonctionnement des services administratifs de l'Université.

L'intervention de la police pour rétablir l'ordre s'est heurtée à une réaction violente de la part des étudiants qui ont donné lieu à des actes de vandalisme à savoir, des blessures parmi les éléments des forces de l'ordre, et la destruction de biens privés.

Suite à ces troubles, **Abderrazak Jkaou, Zakaria Rakkass, Ismail El Ahmar et Abderrahim Taouil** ont été auditionnés par la police judiciaire, et il convient de souligner qu'une plainte a également été déposée par un groupe d'étudiants contre **Ismail Al-Ahmar** pour coups et blessures à leur encontre, et pour les avoir empêcher d'accéder à l'université, en présentant des certificats médicaux (incapacité 18 – 20 jours).

Lors de leur audition, les quatre mis en cause ont reconnu avoir participé audit sit-in et aux actes de vandalisme, y compris le fait d'avoir commis des actes de violence à l'encontre des éléments des forces de l'ordre.

Ensuite, lorsqu'ils ont été déférés devant le Procureur, ils sont revenus sur leur déclaration et **Zakaria Rakkass** seulement a déclaré qu'il a été frappé par la police et a demandé une expertise médicale.

Le Procureur a décidé de poursuivre les intéressés. Par la suite et lors de l'audience du 24 janvier 2014, l'avocat de **Zakaria Rakkass** a demandé une expertise médicale que le tribunal a rejetée la considérant inopportune.

Tiflet

Mohamed Hajib

Marocain naturalisé allemand, Mohamed Hajib a été Interpellé le 1er septembre 2009, par les services de sécurité du Pakistan, où il a côtoyé les opérationnels d' « Al Qaida », a été refoulé le 16 février 2010 vers l'Allemagne avant de regagner le Royaume le 18 février 2010 via l'aéroport Mohammed V de Casablanca, où il a été arrêté par les services de police, dans le strict respect de la loi et sous le contrôle effectif du parquet.

L'arrestation de l'intéressé et son placement en garde à vue, se sont déroulés conformément aux dispositions légales en vigueur et sous le contrôle effectif du parquet général compétent.

Le mis en cause a été présenté devant le parquet le 1^{er} mars 2010 après la prolongation de la période de garde à vue deux fois sur ordre du Procureur Général du Roi près la cour d'appel de Rabat, qui l'a renvoyé devant le Juge d'instruction lequel l'a auditionné en présence de sa défense.

L'enquête et les auditions ont été effectuées dans le strict respect de ses droits et sous contrôle effectif du parquet compétent.

Le juge d'instruction a décidé de poursuivre Mohammed Hajib, sous les chefs d'inculpation d'«appartenance à une association de malfaiteurs établie en vue de préparer et perpétuer des actes terroristes visant l'atteinte grave à l'ordre public par l'intimidation, la violence et la terreur, appartenance à une mouvance religieuse non reconnue et faux et usage de faux», conformément aux articles 218-1 , paragraphe 9 et 218-4 et 218-7 de la loi 03.03 sur la lutte contre le terrorisme, avant de renvoyer son dossier devant la Chambre criminelle qui l'a condamné à dix ans de prison ferme le 24 juin 2010, Jugement confirmé en appel.

En outre, il convient de relever que Mohammed Hajib est également le principal instigateur de la mutinerie des 16 et 17 mai 2011, à la prison de sale, en ameutant ses codétenus islamistes pour entreprendre des actes de sabotage et d'agression des forces de l'ordre, et prenant en otage six gardiens qui les a menacés d'immoler par le feu, suite à quoi il a été condamné à une peine supplémentaire de 2 ans de prison ferme.

Il a, à cet égard, été soumis à une mesure disciplinaire conformément aux dispositions légales en vigueur (article 55 de la loi 23/98 relative à l'organisation et au fonctionnement des établissements pénitentiaires), avant d'être transféré, à l'instar des autres prisonniers participant à ladite mutinerie à la prison de Meknès.

Durant sa détention, le concerne a jouit a de tous ses droits au même pied d'Egalité que ses codétenus.

A cet égard, il est à préciser, que le jugement a été cassé par la cour de cassation et renvoyé devant la cour d'appel de Rabat, laquelle a prononcé le 09 janvier 2012, un nouveau jugement fixant la peine à cinq ans d'emprisonnement ferme.

Concernant les allégations de mauvais traitements corporels et de torture par des fonctionnaires de la prison relatées dans le mémorandum :

Les allégations selon lesquelles Mohamed HAJIB aurait été victime d'actes de violence ou de torture de la part des fonctionnaires de la prison de Tiflet sont dénuées de tout fondement.

Concernant le dépôt d'une plainte par la famille du concerné auprès du ministère de la Justice et des libertés et le CNDH, en 2012 :

Suite à ladite plainte dénonçant les mauvais traitements qu'auraient subis Mohammed Hajib, lors de son incarcération, un examen clinique pratiqué par un médecin a démontré l'absence de tout signe de violence ou de torture durant son incarcération, contrairement aux allégations soulevées.

Témara- Casablanca- Salé

Abdessamad Bettar

Concernant l'arrestation d'Abdessamad Bettar et les allégations de torture lors de la garde à vue :

Abdessamad EL BETTAR a été Interpellé le 05 mai 2011, à Safi par les services de la BNPJ et ce, suite à sa dénonciation par son acolyte Adil ATMANI (auteur principal de l'attentat du 28 avril 2011, contre le café-restaurant «ARGANA» à Marrakech, condamné à la peine capitale) comme étant membre de sa cellule et pour l'avoir mis au courant des détails relatifs à la perpétration de l'attentat en question.

Le mis en cause a été présenté devant le parquet en date du 17 mai 2011, après la prolongation de la période de garde à vue à son encontre deux fois sur ordre du Procureur Général du Roi près la cour d'appel de Rabat (conformément aux dispositions de l'article 66 et 80 du CPP), qui l'a renvoyé devant le juge d'instruction lequel l'a auditionné en présence de sa défense.

L'arrestation de M. BETTAR et son placement en garde à vue se sont déroulées conformément aux dispositions légales en vigueur et sous le contrôle effectif du parquet général compétent.

Il a été condamné le 28 octobre 2011 à 04 ans de prison ferme, peine ramenée en appel le 09 mars 2012 à 10 ans de réclusion.

Les allégations concernant ce terroriste se trouvent trahies par ses convictions "Jihadi", des lors qu'il s'est rendu au cours du mois de janvier 2008, en compagnie de Hakim EDDAH (condamné à la peine capitale dans le cadre de cette même affaire) en Mauritanie puis au Mali dans l'espoir de concrétiser leur vœu «Jihadi». Devant l'échec de leur tentative d'entrer en contact avec des relais d'"AQMI", ils ont dû rebrousser chemin au Royaume à partir de l'Algérie.

Déterminé à réaliser son idéal, Abdessamad EL BETTAR s'est rendu vers la fin du mois d'avril 2008, à Tripoli en Libye, au même titre que ses complices Hakim EDDAH et Adil ATMANI, d'où ils comptaient rallier l'Irak, avant d'être interpellés et refoules le 01/07/2008 sur le royaume.

De même, Abdessamad EL BETTAR a reconnu avoir été informé dans l'après-midi du 28/04/2011 (jour de l'attentat) par son acolyte Hakim EDDAH que ce forfait est l'œuvre de leur Co-adepte Adil ATMANI, lequel lui a confirmé, deux jours plus tard, en être l'auteur.

À l'issue de l'enquête, le concerné a été poursuivi du chef de « constitution de bande criminelle en vue de commettre des actes terroristes et porter atteinte à la vie et à la sécurité des personnes, ainsi que du chef de fabrication, transport et utilisation d'explosifs en violation de la loi, dans le cadre d'un projet en bande visant à porter gravement atteinte à l'ordre public par des actes de destruction et de terrorisme et des homicides ». Il a été déclaré coupable et condamné à quatre années d'emprisonnement.

S'agissant des allégations de tortures, ni M. BETTAR ni son avocat n'ont soulevé cette question devant le parquet ou le juge d'instruction qui n'a décelé aucune trace de torture sur lui. De plus, une enquête administrative effectuée au sujet des allégations formulées a montré que ce détenu n'avait subi aucun acte de torture ni de mauvais traitements et qu'il jouissait de tous les droits garantis à un prisonnier.

Abdelaziz Redaouia

Abdelaziz Redaoula, ressortissant franco-algérien a été arrêté par la police, le 05 décembre 2013 à Tanger pour détention illégale d'arme à feu et trafic de drogue.

Contrairement aux allégations selon lesquelles il aurait été torturé durant l'interrogatoire mené en arabe pour « signer » ses déclarations et qu'il n'aurait pas été en mesure de relire, l'audition du concerné s'est déroulée en présence d'un interprète qui a apposé sa signature sur le PROCÈS-VERBAL. En outre, il a refusé de signer le PROCÈS-VERBAL d'audition.

Par ailleurs, le caractère très détaillé de ses déclarations ne laisse aucun doute sur l'affaire que lui seul pouvait connaître et relater. L'allégation selon laquelle ses déclarations auraient été extorquées sous la torture n'est qu'une tentative de sa part pour se disculper de sa responsabilité.

Ensuite, le concerné n'a pas allégué de torture ou de mauvais traitements ni devant le Procureur ni devant le tribunal, ce que reconnaît l'avocat de l'intéressé.

Contrairement aux allégations, le concerné a bénéficié de tous ses droits garantis par les règles du procès équitable, notamment en période de garde à vue (information de la famille, droit de constituer un avocat entre autres ...).

Mustapha Naim et Oussama Zeria

Mustapha Naim et Oussama Zeria, ressortissants franco-marocains ont été arrêtés le 10 novembre 2010 par la Brigade Nationale de la Police Judiciaire (BNPJ) à Mohammadia à bord d'un véhicule en possession d'une quantité de neuf kilogrammes et quatre cent cinquante grammes de chira. Ils ont été condamnés au Maroc, à 8 ans d'emprisonnement ferme, peine ramenée en appel à 5 ans.

Les allégations selon lesquelles ils auraient été détenus au secret et torturés sont dénuées de tout fondement dans la mesure où l'arrestation s'est effectuée conformément à la loi, et notamment leur placement en garde à vue dans les locaux de la BNPJ.

D'ailleurs, concernant l'allégation selon laquelle il y aurait un centre secret de détention à Temara, celle-ci est infondée. Le siège de la Direction Générale de la Surveillance du Territoire a fait l'objet de plusieurs visites, à savoir celle d'une commission parlementaire, celle du Procureur général de Rabat ainsi que celle du Conseil National des Droits de l'Homme qui ont démenti ces allégations.

Durant leur audition par les officiers de la BNPJ, les intéressés n'ont à aucun moment soulevé le fait qu'ils auraient été détenus au secret ou torturés, ni même devant le juge d'instruction.

Par ailleurs, suite à des plaintes relatives à la torture :

- concernant Mustapha Naim, une enquête a été ordonnée par le Procureur général de Casablanca et qui a conclu que les conditions de détention et les allégations de torture sont infondées ;

- Concernant Oussama Zeria, une enquête a été ouverte et il a été auditionné au sujet de l'allégation de la torture et a déclaré « qu'il a été torturé tout en soulignant qu'il était incapable de reconnaître les agents qui l'auraient torturé et ne portait pas de traces de torture », et qu'il a « préféré de ne pas le soulever devant le Juge d'instruction en pensant qu'il serait acquitté ou bénéficier de circonstances atténuantes » ; en outre « qu'il n'a pas demandé d'expertise parce qu'il pensait qu'il allait être libéré ». Pour ces raisons, la plainte a été classée sans suite le 24 décembre 2014.

Marrakech

Groupe Azouz El Ber, Mohamed El Mouaden, Hicham El Meskini, Abdelhaq Talhaoui, Boujamaa Jamou, Mohamed Ahrik, Hamid Zaddou, Ibrahim Najimi, Hamid El Baghdadli et Mohamed El Ouakkassi

Les Intéressés ont été arrêtés suite aux troubles qu'a connus la cité universitaire Cadi Ayad à Marrakech le 13 février 2013. Ils ont été poursuivis et condamnés le 29 avril 2013.

Lors de leur comparution devant le procureur, ce dernier a ordonné une expertise médicale pour vérifier la véracité de leurs allégations, Réalisée à l'hôpital public Ibn Tofail. Les résultats de cette expertise ont permis de réfuter ces allégations et ont amené le procureur à ne pas engager une procédure à ce sujet.

Durant l'audience du 1^{er} juillet 2013, les avocats des Intéressés ont de nouveau soulevé les allégations de torture que le Tribunal a rejetées.

Agadir

Mohamed Ajedjig

Il s'agit d'une affaire qui remonte au 24 avril 2014 vers 22h00, lorsqu'une patrouille de la Brigade territoriale d'El Koléa qui effectuait une campagne d'assainissement, a été avisée que deux individus à bord d'une moto ont renversé une fillette au centre de cette localité. Après le transport sur les lieux et suite à sa chute d'une moto après le heurt d'une piétonne, feu AJDJIG a été trouvé allongé par terre dans un état d'ébriété avancé, portant des blessures et des contusions au niveau de la tête et des mains, tandis que son compagnon avait pris la fuite. Le blessé a été évacué à l'hôpital provincial d'Inezgane pour recevoir les soins nécessaires. Une procédure a été établie à son encontre en date du 24 avril 2014.

Le 25 avril 2014 à 11h00, suite à la dégradation de son état de santé, l'intéressé a été transporté une deuxième fois au même hôpital, où le médecin traitant a confirmé la stabilité de son état de santé. Conformément aux instructions du parquet, il a été ramené à la brigade.

Le 26 avril 2014 à 08h50, le parquet qui a été informé de nouveau de la dégradation de l'état de santé de l'intéressé, a ordonné de lever la mesure de la garde à vue prise à son encontre, de l'évacuer à l'hôpital et de le tenir informé de l'évolution de son état de santé. Le même jour à 10h00, feu AJDJIG est décédé à l'Hôpital Hassan II d'Agadir.

Il apparaît évident que la mort de l'intéressé est consécutive à sa chute de la moto dont il était passager. La fracture de la boîte crânienne, l'hémorragie cérébro-méningée, les contusions au niveau de la poitrine et des membres révélées lors de l'autopsie médico-légale pratiquée sur son cadavre, conforte cette hypothèse.

Il en est de même pour le témoignage de son compagnon. Ce dernier a reconnu avoir pris AJDJIG à bord de sa moto, après avoir consommé ensemble du vin. Au centre d'El Koléâ, il n'a pu en raison de l'ivresse et de la vitesse excessive avec laquelle il roulait, éviter le heurt d'une fillette qui voulait traverser la route. Sur ce, ils ont chuté brutalement par terre. Etant donné que le défunt a été grièvement atteint après la chute, il n'a pas pu se relever, ce qui l'a obligé à l'abandonner en bordure de la route et prendre la fuite à bord de sa moto.

Cette affaire a été traitée respectivement par la Brigade Judiciaire (BJ) à Inzegane et la Section Judiciaire régionale.

Durant cette enquête, plusieurs personnes ont été auditionnées, lesquelles ont confirmé les faits dont :

- La fille victime d'accident de circulation ;
- Un épicier du quartier où a eu lieu l'accident ;
- Le compagnon du défunt, qui confirme dans sa déclaration, qu'ils ont acheté une bouteille de boissons alcoolisées, qu'ils ont consommée devant l'école primaire du centre El Koléâ ;
- Les sapeurs-pompiers sur les lieux de l'accident ;
- Les éléments des Forces auxiliaires en service d'assainissement ;
- Les permanenciers des hôpitaux ;
- Les médecins traitants.

Ce décès a fait l'objet d'un PROCÈS-VERBAL établi par la Section Judiciaire de la Gendarmerie Royale à Agadir en date du 26 avril 2014.

Les allégations contenues dans le récit avancé par Amnesty restent donc sans fondement.

Mustapha Ouhctoubane

Le concerné a été auparavant surpris par les agents de sécurité de la société « PREMIUM » chargée de la surveillance de la mine d'Imiter, en possession d'une quantité de produits argentifères de 180 grammes, qu'il a dissimulée sous le siège du véhicule à bord duquel il prenait place.

Contrairement aux allégations du concerné, il sied d'apporter les éclaircissements suivants :

- l’empreinte digitale de tout gardé à vue est apposée d’abord sur un carnet de déclaration des enquêteurs, le registre de garde à vue et le PROCÈS-VERBAL d’audition et tous ces documents sont contrôlés par le Parquet ;
- Il n’existe pas de pulvérisateur toxique dans les brigades, comme il est interdit aux gendarmes de faire usage de quelconque matériel non légalement attribué.

Aucune plainte n’a été déposée dans ce sens ni auprès du Parquet ni devant le Tribunal.

L’intéressé a reconnu les faits qui lui sont reprochés et ayant pris connaissance de ses aveux et apposé son empreinte digitale sur le carnet de déclarations des enquêteurs, il a été présenté le 06 octobre 2011 à la justice qui l’a poursuivi pour vol qualifié avec utilisation d’un véhicule à moteur avec la circonstance aggravante de sa qualité de salarié de la victime écopant d’une peine de quatre années de prison.

Le concerné s’est pourvu en cassation.

S’agissant de faits du ressort de la Chambre criminelle, le PROCÈS-VERBAL de Gendarmerie n’est considéré qu’à titre informatif et n’est pas une preuve des faits qui eux sont établis et reconnus par le Juge lors des débats en séance publique, d’autant que dans les cas d’espèce le flagrant délit de vol qualifié a été conforté par la saisie de l’objet volé.

Lahcen Oumni

Le concerné était recherché dans le cadre d’une affaire de tentative d’intrusion à la mine Imiter, association de malfaiteurs, vol de produits argentifères et refus d’obtempérer.

Il a été interpellé par les éléments de la Brigade de Gendarmerie de Tinghir le 05 février 2013.

Sur instruction du Procureur général du Roi qui a ordonné son arrestation, l’intéressé a été auditionné suivant le PROCÈS-VERBAL établi par la brigade judiciaire de Tinghir le 05 février 2013, après ses aveux par rapports aux faits qui lui sont reprochés ; -Il a pris connaissance de ses déclarations, et a apposé son empreinte digitale sur le carnet de déclarations des enquêteurs et sur le registre de la garde à vue.

Concernant ces allégations de menaces de torture, le Parquet général de Ouazazate et après ouverture d’enquête a conclu au non fondement de l’allégation.

Concernant le PROCÈS-VERBAL de Gendarmerie n’est considéré qu’à titre informatif et n’est pas une preuve des faits qui eux sont établis et reconnus par le Juge lors des débats en séance publique.

Le concerné a pratiqué toutes les voies de recours prévues par la loi contre et le premier Jugement et l’arrêt de la Cour d’appel qui a révisé le quantum de la peine en l’aggravant à trois années.

Le concerné s’est pourvu en cassation.

Hamid Oubarka et HamdaneYchou

Contrairement aux allégations de Hamid Oubarka, ce dernier était recherché pour association de malfaiteurs, entrave à la liberté de la circulation, coups et blessures avec arme blanche, dégâts causés aux biens d'autrui, réunion sur la voie publique sans autorisation, violences envers un auxiliaire d'autorité et vol.

Il a été interpellé le 28 décembre 2013 par les éléments de la Brigade d'Imlil suite aux instructions du procureur général du Roi.

Auditionné, il a reconnu les faits qui lui sont incriminés et ayant pris connaissance du contenu de sa déposition, il a apposé son empreinte digitale au carnet de déclarations.

Aucune personne étrangère à la brigade ne peut accéder aux chambres de sûreté, car celles-ci sont soumises à une surveillance permanente des caméras.

En date du 09 juin 2014, le concerné a été condamné à quatre ans de prison ferme par la Cour d'appel de Ouarzazate.

Contrairement aux allégations de Hamdane Ychou, ce dernier était recherché pour les mêmes motifs et comptait parmi les meneurs du sit-in ouvert observé à Jbel Albane par les habitants de la commune rurale d'Imlil.

Il a été arrêté le 29 décembre 2013 au centre de Boumalen Dades et confié à la Brigade Judiciaire de Tinghir.

Après attache prise avec le Procureur général du Roi près la Cour d'appel de Ouarzazate, ce dernier a ordonné l'arrestation du mis en cause. Celui-ci a fait l'objet d'un procès-verbal le 28 décembre 2013 et après avoir avoué les actes qu'il a commis, il a pris connaissance de sa déclaration et a apposé son empreinte digitale au carnet des déclarations.

En date du 09 juin 2014, le concerné a été condamné à quatre ans de prison ferme par la Cour d'appel de Ouarzazate.

Omar Moujan, Ibrahim El Hamdaouy et Abdessamad Madri

L'interpellation des concernés a été effectuée légalement sous la supervision du Procureur Général du Roi près la Cour d'appel de Ouarzazate qui a ordonné leur présentation en état d'arrestation.

En effet, le 01^{er} mars 2014, les éléments de la brigade territoriale de la Gendarmerie Royale d'Imlil ont interpellé les concernés, qui étaient recherchés pour association de malfaiteurs, violation de propriété en temps de nuit, dégâts causés aux biens d'autrui, vol de produits argentifères, organisation de mouvements de protestation sur voie publique sans autorisation, entrave à la circulation et à la liberté de travail, violences et refus d'obtempérer, et qui ont fait l'objet d'un PROCÈS-VERBAL en date du 01^{er} mars 2014.

L'identité de la femme citée dans le mémorandum comme étant violentée par les gendarmes n'est pas précisée. De même, aucune plainte ou certificat médical n'a été déposé auprès des services compétents dans ce sens.

Par rapport à l'allégation de l'arme pointée contre le front : Selon la réglementation en vigueur, les gendarmes désignés de service ne peuvent récupérer leurs armes de la brigade, qu'en présence de leurs chefs hiérarchiques (Chefs de Brigades) qui les contrôlent suivant une procédure rigoureuse. Ils doivent quitter l'unité en uniforme, porteurs d'un ordre de mission dit « bulletin de service ».

L'usage de voitures banalisées lors de l'exécution des services est formellement interdit dans la Gendarmerie Royale.

Concernant l'allégation selon laquelle des produits toxiques ont été vaporisés au visage des concernés, elle est dénuée de tout fondement car ils ne se sont pas plaints au Procureur général de ces faits et dans tous les cas il n'existe pas de pulvérisateur toxique dans les brigades de la Gendarmerie Royale, comme il est interdit aux gendarmes de faire usage d'un quelconque matériel non légalement attribué.

Les concernés ont été condamnés, en appel le 07 juillet 2014, à trois années de prison ferme.

Sidi Ifni

Zine El Abidine Erradi

Dans le cadre de sa participation à un rassemblement non autorisé datant du 09 avril 2011, il a fait l'objet de recherches ayant abouti à son arrestation le 02 octobre 2012.

Lors de son audition par la police judiciaire, il a reconnu avoir participé au rassemblement non autorisé le 09 avril, et à des troubles ayant causé l'occupation de la voie publique par l'installation de barricades, et avoir participé à l'occupation de l'annexe administrative territoriale à Sidi Ifni, mais il a contesté avoir usé de violence contre les forces de l'ordre.

Il a été informé de toutes les garanties légales, et notamment l'assistance judiciaire qu'il a refusée, de son droit de contacter sa famille ce qu'il également refusé. A ce titre, l'officier de police judiciaire a tout de même informé son frère Omar Radi de sa situation. Il a signé le procès-verbal de son audition après avoir pris connaissance du contenu.

Il a été poursuivi et condamné à 10 mois de prison ferme, ramenée en appel à 6 mois.

Karim Lembidae et son frère Youssef

Le 29 avril 2013, un groupe de personnes a assiégré l'entrée du siège de la Préfecture obstruant le cours normal des services publics et l'occupation de la voie publique par des barricades. Lors de l'intervention des forces de l'ordre pour rétablir l'ordre public, les personnes en question ont procédé aux jets de pierre ayant causé des dégâts matériels importants et la destruction de biens publics et privés, ainsi que les blessures de trois éléments des forces de l'ordre dont l'un a fait l'objet d'une intervention chirurgicale suite à une fracture de l'épaule.

Une enquête a été menée suite à ces troubles et a permis d'établir l'implication de Karim Lembidae et son frère Youssef qui ont été poursuivis et condamnés à 8 mois de prison

ferme pour association de malfaiteurs, entrave à la circulation publique par le moyen de dépôt d'objets métalliques, incendie volontaire, rébellion, violences à l'encontre de fonctionnaires publics dans l'exercice de leurs fonctions.

Concernant l'allégation selon laquelle les concernés ont été violentés par la police, il est à rappeler que le jour de leur présentation au parquet, ce dernier n'a pas ordonné une expertise pour le motif qu'il n'a pas remarqué de traces apparentes sur eux.

Concernant l'allégation selon laquelle les concernés ont été contraints d'apposer leurs empreintes digitales, la signature du PROCÈS-VERBAL comme le prévoit l'article 67 du CCP dans la mesure où la loi marocaine donne la liberté à la personne gardée à vue de signer le PROCÈS-VERBAL ou de refuser d'apposer sa signature ou son empreinte.

Il est à rappeler que Youssef Lembidae est un récidiviste puisque son casier judiciaire comporte quatre procédures depuis 2006 et la dernière remonte au 12 février 2015.

Yasser Noujaji et son frère Mohamed

Suite aux troubles qui se sont produits à l'issue d'un match de football, des éléments des forces de l'ordre ont été agressés. Arrêtés le 16 mars 2014, l'enquête menée à ce sujet a permis d'établir l'implication de Yasser Noujaji et son frère Mohamed qui portaient au moment des faits une arme blanche.

Lors de l'audition ils ont été informés de leurs droits, notamment celui de garder le silence, de bénéficier d'une assistance judiciaire, de contacter leur famille. Or, ils ont refusé l'assistance judiciaire et également de contacter leur famille ; à ce titre, l'officier de police judiciaire a tout de même informé leurs parents, Slimane Nejahi et Keltoum El Faqir. En outre, il convient de souligner qu'ils n'ont pas signé les procès-verbaux.

Ensuite, ils ont été déférés devant le procureur qui a décidé de les poursuivre pour outrage envers un fonctionnaire public durant l'exercice de ses fonctions avec usage de violence. Ils ont été condamnés le 08 décembre 2014 à trois mois de prison avec sursis.

Guelmim – Assa- Zag

Taha, Aomar et Hassan EDDAOUDI, ainsi que Aomar LAAOUISSID, Hamza BAZI et Mustapha OUHSAIN

Il s'agit des frères Taha EDDAOUDI, Aomar eddaoudi et el Hassan EDDAOUDI, ainsi que leurs acolytes Aomar laaouissid, hamza bazi et mustapha ouhsain, impliqués dans des attaques contre les forces de l'ordre, perpétrées le 07.08.2013 à GUELMIM.

En effet, en date du 07 août 2013, les intéressés se sont attaqués par des jets de pierres, à des éléments de la Police Judiciaire, qui se sont présentés au domicile de

la famille EDDAOUDI, pour l'arrestation du nommé Ibrahim EDDAOUDI (faisant alors l'objet d'un avis de recherche pour vol), causant ainsi, des blessures au niveau de la main d'un fonctionnaire de Police.

De ce fait, les intéressés ont été interpellés, les 07 et 08.08.2013, par les services de police et placés en garde à vue sur instructions du parquet de cette ville.

Le 10.08.2013, ils ont été présentés devant le parquet de Guelmim, qui a décidé de les poursuivre pour "outrage et violence à fonctionnaires publics durant l'exercice de leur fonction, insubordination et dégâts matériels à la propriété d'autrui".

le 12.09.2013, le tribunal de première instance de Guelmim a décidé de confier el Hassan EDDAOUDI (alors mineur d'âge) à sa mère, alors que les autres ont été condamnés, le 19.08.2013 à des peines allant de 04 à 10 mois d'emprisonnement, peines aggravées, en appel, le 26.09.2013, par la Cour d'Appel d'Agadir, de deux mois, qu'ils ont purgé à la prison de Tiznit, avant d'être libérés entre les 07.02 et 07.08.2014.

Concernant les allégations soulevées dans le memorandum :

- Les allégations ayant trait à la torture et mauvais traitement pendant le transfèrement et en garde à vue : aucune plainte ou demande d'expertise n'a été déposée par les intéressés ou leurs défenses auprès des autorités compétentes. Il s'agit encore une fois, d'allégations mensongères dépourvues de preuves à l'appui pour semer le doute sur leur culpabilité.
- L'allégation selon laquelle, « Taha Eddaoudi (...) a deux côtes cassées et qu'il est resté six heures durant. Il a été transféré à l'hôpital de Guelmim où le personnel ont refusé de lui fournir un certificat médical » : cette allégation reste absurde du moment que l'intéressé n'a en aucun moment été transféré à l'hôpital, d'ailleurs, aucune plainte n'a été déposée pour fracture ou blessures.
- Allégation forcés à signer les PROCÈS-VERBAL : que la signature du PROCÈS-VERBAL est facultative comme prévu à l'article 67 du CCP dans la mesure où la loi marocaine donne la liberté à la personne gardée à vue de signer le PROCÈS-VERBAL ou de refuser d'apposer sa signature ou son empreinte.

Brahim EDDAOUDI

Il a été arrêté, le 28 septembre 2013 et non le 27 septembre comme cité dans le memorandum, à son domicile parental à Guelmim, à la base de deux avis de recherche, pour "vol qualifié" et son implication dans les « troubles à l'ordre public

survenus au mois de septembre 2013 à Guelmim ».

Lors de sa présentation devant le Procureur général du Roi, ce dernier n'a remarqué aucune trace apparente de violences sur le concerné.

Concernant l'allégation selon laquelle il a été forcé de signer le PROCÈS-VERBAL, il est à rappeler que la signature du PROCÈS-VERBAL est facultative comme prévu à l'article 67 du CCP dans la mesure où la loi marocaine donne la liberté à la personne gardée à vue de signer le PROCÈS-VERBAL ou de refuser d'apposer sa signature ou son empreinte.

Le vol qualifié en étant un crime, selon les dispositions de l'article 291 du CPP, le PROCÈS-VERBAL de la Police Judiciaire n'est considéré qu'à titre informatif et n'est pas une preuve des faits qui eux sont établis et reconnus par le juge lors des débats en séance publique.

Le 14 novembre 2013, le concerné a été condamné à deux ans de prison ferme pour vol qualifié.

M'barek EDDAOUDI

M'barek EDDAOUDI a été arrêté le 28 septembre 2013, lors de la perquisition effectuée le jour même par les services de police de Guelmim aux deux domiciles de l'intéressé, au moment de l'arrestation de son fils Brahim EDDAOUDI, suite à la découverte et la saisie, d'entre autres, de cartouches, d'une arme artisanale et d'un tube d'un canon entrant dans la confection de ce type d'arme.

Il a été présenté, le 01 octobre 2013, devant le parquet de Guelmim, pour "confection et détention d'armes et de matériaux létales, détention illégale d'uniformes militaires et usurpation d'identité", juridiction, qui a décidé de déférer son dossier devant le Tribunal Militaire Permanent des Forces Armées Royales (TMPFAR).

Aucune plainte n'a été soulevée par l'intéressé pour torture ou mauvais traitement.

Acheminé, le 02 octobre 2013, sur Rabat, il a été présenté, devant le TMPFAR, qui a décidé sa mise sous mandat de dépôt à la prison locale de "sale", sous les chefs d'inculpation "détention de cartouches de chasse et tentative de fabrication d'une arme à feu".

Cette juridiction qui s'est déclarée, le 03 mars 2015, non compétente pour statuer dans cette affaire, a déféré, le 05 mars 2015, l'intéressé devant le tribunal de Première Instance de Guelmim, qui l'a condamné le 09 mars 2015, à 03 mois d'emprisonnement pour "usurpation de fonction, port d'uniformes officiels et

détention d'armes dans des circonstances susceptibles de mettre en danger la vie de tierces personnes", avant que cette peine ne soit majorée en appel à 6 mois, d'emprisonnement qu'il purge actuellement à la prison locale d'Ait Melloul.

Concernant l'allégation selon laquelle il a été forcé de signer le PROCÈS-VERBAL, il est à rappeler que la signature du PROCÈS-VERBAL est facultative comme prévu à l'article 67 du CCP dans la mesure où la loi marocaine donne la liberté à la personne gardée à vue de signer le PROCÈS-VERBAL ou de refuser d'apposer sa signature ou son empreinte.

Abdellah Boukloud

L'intéressé été arrêté, le 28 octobre 2013, par les services de police de Laâyoune, pour son implication dans les troubles à l'ordre public survenus au mois de septembre 2013, à Guelmim, ayant été marqués par des attaques aux forces de l'ordre, à l'aide de pierres et de cocktails Molotov, blessant 16 éléments de la force publique (09 forces auxillaires, 06 policiers et 01 élément de la protection civile).

Acheminé à Agadir, il a été présenté, le 31 octobre 2013, devant le Procureur Général du Roi près la Cour d'Appel de cette ville, qui a décidé sa mise sous mandat de dépôt à la prison locale d'Alt Melloul.

Après des reports de son procès devant cette juridiction, il a été condamné, le 22.05.2014, par la cour d'appel d'Agadir, à 04 ans de prison ferme, pour "attroupement armé, rébellion, outrage aux fonctionnaires publics lors de l'exercice de leur fonction et dégâts aux biens de l'Etat", avant que cette peine ne soit confirmée, le 03.11.2014, en appel. Actuellement, il est en détention à la prison de Tiznit.

Concernant l'allégation selon laquelle il a été forcé de signer le PROCÈS-VERBAL, il est à rappeler que la signature du PROCÈS-VERBAL est facultative comme prévu à l'article 67 du CCP dans la mesure où la loi marocaine donne la liberté à la personne gardée à vue de signer le PROCÈS-VERBAL ou de refuser d'apposer sa signature ou son empreinte.

Concernant l'allégation selon laquelle, le mis en cause n'a pas fait l'objet d'une expertise médicale pour violence et blessures commises Lors de son placement en garde à vue, il est à rappeler qu'en aucun cas l'intéresse ou sa défense n'ont jamais formulé de requêtes dans ce sens.

Rachid Chine

FEU Rachid Chain a été blessé lors des troubles à l'ordre public survenus à Assa le 23 septembre 2013, le défunt a succombé à ses blessures, au cours de son évacuation, à bord d'une ambulance de la protection civile, vers l'hôpital provincial de ladite ville.

Concernant l'allégation selon laquelle un gendarme ou plusieurs auraient utilisé des armes à feu pour faire face aux manifestants, il est à signaler que les éléments de la Gendarmerie Royale n'utilisent pas d'armes à feu dans les interventions antiémeutes.

Une enquête a été menée à ce sujet par la Brigade Nationale des Recherches Judiciaires de la Gendarmerie Royale, sous la supervision du Procureur Général du

Roi d'Agadir.

Suite à laquelle, une expertise a été ordonnée par le parquet général compétent, laquelle a conclu que la victime a été atteinte accidentellement au niveau de son dos au ricochet au sol et la désolidarisation de la capsule de gaz lacrymogène, ce qui a provoqué par la suite une hémorragie intra-thoracique du défunt.

Aussi, l'autopsie pratiquée ne signale pas la présence d'une balle tirée d'armes à feu.

A ce titre, un rapport du Ministère de la Justice et des Libertés sur les circonstances du décès et le résultat de l'expertise a été transmis au Président du Conseil National des Droits de l'Homme (CNDH), saisi de ce cas.

Il est à préciser que lors de ces troubles à l'ordre public, 49 éléments des forces publiques ont été blessés, 20 logements de fonction du personnel de la Gendarmerie Royale ont été saccagés et certains ameublements et effets militaires ont été brûlés sur la voie publique (archivé par des photos).

Lâayoune

Mohamed Ajedjig

Il s'agit d'une affaire qui remonte au 24 avril 2014, lorsqu'une patrouille de la gendarmerie royale, a été avisée, vers 22h00, que deux individus à bord d'une moto ont renversé une fillette au centre d'El Koléa. Après le transport sur les lieux de ladite patrouille, feu AJDJIG a été trouvé allongé par terre dans un état d'ébriété avancé, portant des blessures et des contusions au niveau de la tête et des mains, avant d'être évacué sur l'hôpital provincial d'Inezgane pour recevoir les soins nécessaires, tandis que son compagnon avait pris la fuite et une procédure a été établie à son encontre en date du 24 avril 2014.

Le 25 avril 2014 à 11h00, suite à la dégradation de son état de santé, l'intéressé a été transporté une deuxième fois au même hôpital, où le médecin traitant a confirmé la stabilité de son état de santé. Conformément aux instructions du parquet, il a été ramené à la brigade.

Le 26 avril 2014 à 08h50, le parquet qui a été informé de nouveau de la dégradation de l'état de santé de l'intéressé, a ordonné de lever la mesure de la garde à vue prise à son encontre, de l'évacuer à l'hôpital et de le tenir informé de l'évolution de son état de santé. Le même jour à 10h00, feu AJDJIG est décédé à l'Hôpital Hassan II d'Agadir.

Il apparaît évident que la mort de l'intéressé est consécutive à sa chute de la moto dont il était passager. La fracture de la boîte crânienne, l'hémorragie cérébro-méningée, les contusions au niveau de la poitrine et des membres révélées lors de l'autopsie médico-légale pratiquée sur son cadavre, conforte cette hypothèse.

Il en est de même pour le témoignage de son compagnon. Ce dernier a reconnu avoir pris AJDJIG à bord de sa moto, après avoir consommé ensemble du vin. Au centre d'El Koléa, il n'a pu en raison de l'ivresse et de la vitesse excessive avec laquelle il roulait, éviter le heurt d'une fillette qui voulait traverser la route. Sur ce, ils ont chuté brutalement par terre. Etant donné que le défunt a été grièvement atteint après la chute, il n'a pas pu se relever, ce qui l'a obligé à l'abandonner en bordure de la route et prendre la fuite à bord de sa moto.

Cette affaire a été traitée respectivement par la Brigade Judiciaire (BJ) à Inezgane et la Section Judiciaire régionale.

Durant cette enquête, plusieurs personnes ont été auditionnées, lesquelles ont confirmé les faits dont :

- La fille victime d'accident de circulation ;
- Un épicier du quartier où a eu lieu l'accident ;
- Le compagnon du défunt, qui confirme dans sa déclaration, qu'ils ont acheté une bouteille de boissons alcoolisées, qu'ils ont consommée devant l'école primaire du centre El Koléa ;
- Les sapeurs-pompiers sur les lieux de l'accident ;
- Les éléments des Forces auxiliaires en service d'assainissement ;

- Les permanenciers des hôpitaux ;
- Les médecins traitants.

Ce décès a fait l'objet d'un PROCÈS-VERBAL établi par la Section Judiciaire de la Gendarmerie Royale à Agadir en date du 26 avril 2014.

Les allégations contenues dans le récit avancé par Amnesty restent donc sans fondement.

Lahcen Oumni

LAHCEN OUMNI était recherché dans le cadre d'une affaire de tentative d'intrusion à la mine Imiter, association de malfaiteurs, vol de produits argentifères et refus d'obtempérer.

Il a été interpellé par les éléments de la brigade de gendarmerie de Tinghir le 05 février 2013.

Sur instruction du Procureur général du Roi qui a ordonné son arrestation, l'intéressé a été auditionné suivant le PROCÈS-VERBAL établi par la brigade judiciaire de Tinghir le 05 février 2013, après ses aveux par rapports aux faits qui lui sont reprochés ; -il a pris connaissance de ses déclarations, et a apposé son empreinte digitale sur le carnet de déclarations des enquêteurs et sur le registre de la garde à vue.

Concernant ces allégations de menaces de torture, le Parquet général de Ouarzazate et après ouverture d'enquête a conclu au non fondement de l'allégation.

Concernant le PROCÈS-VERBAL de Gendarmerie n'est considéré qu'à titre informatif et n'est pas une preuve des faits qui eux sont établis et reconnus par le Juge lors des débats en séance publique.

Le concerné a pratiqué toutes les voies de recours prévues par la loi contre et le premier Jugement et l'arrêt de la Cour d'appel qui a révisé le quantum de la peine en l'aggravant à trois années.

Hamid Oubarka et HamdaneYchou

Contrairement aux allégations de Hamid Oubarka, ce dernier était recherché pour «association de malfaiteurs, entrave à la liberté de la circulation, coups et blessures avec arme blanche, dégâts causés aux biens d'autrui, réunion sur la voie publique sans autorisation, violences envers un auxiliaire d'autorité et vol».

Il a été interpellé le 28 décembre 2013 par les éléments de la Brigade d'Imiter suite aux instructions du procureur général du Roi.

Auditionné, il a reconnu les faits qui lui sont incriminés et ayant pris connaissance du contenu de sa déposition, il a apposé son empreinte digitale au carnet de déclarations.

Aucune personne étrangère à la brigade ne peut accéder aux chambres de sûreté, car celles-ci sont soumises à une surveillance permanente des caméras.

En date du 09 juin 2014, le concerné a été condamné à quatre ans de prison ferme par la Cour d'appel de Ouarzazate.

Contrairement aux allégations de Hamdane Ychou, ce dernier était recherché pour les mêmes motifs et comptait parmi les meneurs du sit-in ouvert observé à Jbel Albane par les habitants de la commune rurale d'Imlil.

Il a été arrêté le 29 décembre 2013 au centre de Boumalen Dades et confié à la Brigade Judiciaire de Tinghir.

Après attache prise avec le Procureur général du Roi près la Cour d'appel de Ouarzazate, ce dernier a ordonné l'arrestation du mis en cause. Celui-ci a fait l'objet d'un procès-verbal le 28 décembre 2013 et après avoir avoué les actes qu'il a commis, il a pris connaissance de sa déclaration et a apposé son empreinte digitale au carnet des déclarations.

En date du 09 juin 2014, le concerné a été condamné à quatre ans de prison ferme par la Cour d'appel de Ouarzazate.

Omar Moujan, Ibrahim El Hamdaoui et Abdessamad Madri

L'interpellation des concernés a été effectuée légalement sous la supervision du Procureur Général du Roi près la Cour d'appel de Ouarzazate qui a ordonné leur présentation en état d'arrestation.

En effet, le 01er mars 2014, les éléments de la brigade territoriale de la Gendarmerie Royale d'Imlil ont interpellé les concernés, qui étaient recherchés pour association de malfaiteurs, violation de propriété en temps de nuit, dégâts causés aux biens d'autrui, vol de produits argentifères, organisation de mouvements de protestation sur voie publique sans autorisation, entrave à la circulation et à la liberté de travail, violences et refus d'obtempérer, et qui ont fait l'objet d'un PROCÈS-VERBAL en date du 01er mars 2014.

L'identité de la dame citée dans le memorandum comme étant violentée par les gendarmes n'est pas précisée. De même, aucune plainte ou certificat médical n'a été déposé auprès des services compétents dans ce sens.

Par rapport à l'allégation de l'arme pointée contre le front : Selon la réglementation en vigueur, les gendarmes désignés de service ne peuvent récupérer leurs armes de la brigade, qu'en présence de leurs chefs hiérarchiques (Chefs de Brigades) qui les contrôlent suivant une procédure rigoureuse. Ils doivent quitter l'unité en uniforme, porteurs d'un ordre de mission dit « bulletin de service ».

L'usage de voitures banalisées lors de l'exécution des services est formellement interdit dans la Gendarmerie Royale.

L'allégation selon laquelle des produits toxiques ont été vaporisés au visage des concernés, est dénuée de tout fondement et n'a jamais eu lieu. Or si c'était réellement le cas, les soi-disant victimes auraient indiscutablement porté plainte auprès M. le Procureur général du Roi. Par ailleurs, il n'existe pas de produits toxiques dans les brigades de la Gendarmerie Royale, comme il est interdit aux gendarmes de faire usage d'un quelconque matériel non légalement attribué.

Les concernés ont été condamnés, en appel le 07 juillet 2014, à trois années de prison ferme.

Les nommés Abdeslam Lemmadi, Abdel-Mottalib Sarir et Mohamed Baber :

Les nommés Abdeslam Lemmadi, Abdel-Mottalib Sarir et Mohamed Baber, ont été arrêtés, respectivement, les 21/01, 19/02 et 11/05/2014, par les services de police de Laàyoune, suite à des avis de recherche émis à leur encontre, après avoir attaqué, le 13.01.2014, avec une soixantaine de fauteurs de troubles, dont certains munis de coutelas, un véhicule de police, ayant à bord des éléments de ce corps, au moment de son passage au niveau du chantier de construction de la gare routière de cette ville, avant de le cibler par 9 cocktails Molotov et des jets de pierres, causant des brûlures au niveau de la main à un agent de police et l'incendie dudit véhicule.

Les intéressés ont été présentés, respectivement, les 24/01, 21/02 et 13.05.2014, devant le procureur général du roi près la cour d'appel de Laàyoune, qui les a confié au juge d'instruction, lequel a décidé leur mise sous mandat de dépôt à la prison civile de cette ville.

Ils ont été condamnés par la cour d'appel de Laàyoune, respectivement, le 07.05.2014, pour le premier cite et le 10.09.2014, pour les deux derniers, à 10 mois d'emprisonnement, sentences confirmées en appel, avant d'être libères, entre le 21.11.2014 et le 11.03.2015, à l'issue de leurs peines.

- **L'allégation par laquelle Mohamed Baber** prétend que les services de police lui ont injecté lors de sa première arrestation en 2012, une substance Inconnue et l'ont menacé lors de sa deuxième arrestation en 2014, de lui réinjecté la même substance à moins qu'il n'appose ses empreintes digitales sur un PROCÈS-VERBAL d'audition l'incriminant, est une assertion manifestement mensongère dans la mesure où l'intéressé a délibérément signé son PROCÈS-VERBAL et n'a jamais appose son empreinte digitale, d'une part et que les services de Police ne sont pas qualifiés pour effectuer des soins médicaux, d'autre part. Abstraction faite du caractère facultatif de la signature du PROCÈS-VERBAL (Article 67 du CPP).
- **L'allégation par laquelle Abdel-Mottalib Sarir** aurait été violé à l'aide d'une bouteille en verre est dénuée de tout fondement, du fait que le mis en cause qui a bénéficié des garanties légales pendant la garde à vue, n'a pas depuis la date des faits allégués déposé de plaintes ni devant le Procureur, devant le tribunal, sachant bien que les séquelles de viol par bouteille ne cicatrise pas facilement, d'autant plus que le concerné n'a pas prouvé à ce jour, alors qu'il est en liberté, ses allégations de violence sur son corps par moyen de certificat médical, sachant que les dispositions de l'article 73 et 74 du CPP permettant au mis en cause, ou sa défense, ou le ministère public de demander ou ordonner d'office une expertise médicale, en cas de sévices corporels présumés dus à la torture.

Contrairement aux allégations avancées par ces trois criminels, leur interpellation, qui s'est déroulée sous la supervision du parquet général de Laàyoune, a été opérée conformément à la loi, en terme de respect de la durée de la garde à vue, l'information de leurs familles quant à leur arrestation et leur audition loin de toute forme de contraintes physique ou morale.

Abdelaziz Meftah

Le nomme Abdelaziz Meftah a été interpellé, le 14.02.2014, par des éléments de police de

Laàyoune, avant d'être élargi, deux jours plus tard, au bénéfice de la liberté provisoire.

Ayant comparu, le 24.02.2014, devant le tribunal de 1ere instance de Laàyoune, il a été condamné à 2 mois de prison avec sursis, pour "outrage à fonctionnaires".

Les allégations de mauvais traitements aux locaux de police à Laàyoune sont dénuées de tout fondement dès lors que le parquet compétent n'a pas ordonné lors de sa présentation devant lui une expertise médicale, du fait qu'il n'a pas constaté de sévices corporels apparents.

Mohamed ali saadi, Mohamed garnit, Aziz hramch, Youssef Bouzid, Yassine Sidati et El Houcine Abbah

Il s'agit de mohamed ali saadi, mohamed garnit, aziz hramch, youssef bouzid, yassine sidati et el houcine abbah, poursuivis en état de liberté provisoire dans le cadre des troubles à l'ordre public et des actes de vandalisme survenus au mois d'avril et mai 2013 à Laàyoune.

Les Intéressés ont été interpellés dans la matinée du 09.05.2013, dans le cadre de l'enquête judiciaire menée sous l'égide du parquet général de Laàyoune, à propos de ces actes criminels, ayant été marqués par des attaques d'une extrême violence contre les éléments de la force publique, à partir des terrasses et des ruelles de Laàyoune, à l'aide d'armes blanches, de cocktails Molotov, de pierres et de gourdins, occasionnant 114 blessés parmi les éléments de la police et des forces auxiliaires, dont certains ont été évacués sur des centres hospitaliers en raison de la gravité de leurs cas, ainsi que des dégâts considérables aux véhicules de police.

Après avoir été mis en garde à vue, dans le strict respect des lois en vigueur, ces criminels ont été présentés, devant le parquet, lequel les a confiés, le 12.05.2013, au juge d'instruction, qui a décidé leur mise sous mandat de dépôt à la prison civile de Laàyoune et la poursuite en liberté provisoire de el houcine abbah (alors mineur d'âge), décision, contre laquelle le parquet général a introduit un recours devant la chambre correctionnelle auprès de la cour d'appel de cette ville, laquelle juridiction a ordonné la poursuite de l'ensemble des inculpes, en état de détention préventive, à la prison civile de Laàyoune.

Ces prévenus ont comparu, le 23.10.2013, devant la cour d'appel de Laàyoune, en présence de leur collectif d'avocats, ayant formulé une demande pour les poursuivre, en état de liberté provisoire, requête à laquelle la cour a accédé en ordonnant leur remise en liberté.

Les allégations de mauvais traitements aux locaux de police à Laàyoune sont dénuées de tout fondement dès lors que le parquet compétent n'a pas ordonné lors de leur présentation devant lui une expertise médicale, du fait qu'il n'a pas constaté de sévices corporels apparents.

Es-smara

Millas Slouh et Hamza Ejjoumaai

Les intéressés, ont été interpellés par les services de police les 28.05 et 04.06.2013, dans le cadre des troubles à l'ordre public survenus au mois de mai 2013 a Smara.

Ils se sont livrés à des attaques violentes contre les éléments de la sécurité publique a Smara, à l'aide d'armes blanches, de cocktails Molotov, de pierres et de gourdins, engendrant 99 blesses dans les rangs des forces de l'ordre.

Ils ont été présentés devant le parquet général de Laâyoune, qui les a confiés au juge d'instruction, lequel a décidé leur placement sous mandat de dépôt à la prison locale de cette dernière ville, sous les chefs d'inculpation "attroupement arme nocturne, incitation à la violence et à la rébellion, entrave à la circulation, incendie volontaire, coups et blessures volontaire à l'encontre des fonctionnaires durant l'exercice de leurs fonctions avec préméditation, usage d'armes blanches et endommagement des biens de l'état et des particuliers", avant de bénéficier de la liberté provisoire, respectivement, les 25 et 30.10.2013.

Les allégations de mauvais traitements et d'extorsion d'aveux sous la torture avancées par ces agitateurs relèvent de la pure propagande visant à détourner l'attention sur la gravité de leurs actes criminels, des lors que les mis en cause, qui ont été accablés aussi bien par des enregistrements vidéo où ils apparaissent clairement en flagrant délit d'agression des forces de l'ordre (216 blesses en total), que par leur reconnaissance formelle par leurs victimes lors des confrontations, ont reconnu les faits qui leur sont reprochés.

Boujdour

Mohamed Lamine El Bakari

Mohamed Lamine El Bakari a été arrêté, le 01.12.2013, par les services de police de Boujdour, pour agression d'une jeune fille, à l'aide d'une arme blanche lui causant des blessures graves au niveau du bassin, ayant nécessité une opération chirurgicale à l'hôpital de Laâyoune.

Il a été condamné, le 09.12.2013, à un mois d'emprisonnement, pour "ivresse manifeste, coups et blessures à l'aide d'une arme blanche", avant d'être libéré, le 31.12.2013, après avoir purgé sa peine.

Contrairement aux allégations du concerné, il est impensable que les enquêteurs aient violenté le concerné de la manière citée dans sa déclaration à Amnesty au vu de l'état de flagrance et des faits somme toute confirmés par le témoignage de la victime.

Concernant l'allégation selon laquelle il a été forcé de signer le PROCÈS-VERBAL, il est à rappeler que la signature du PROCÈS-VERBAL est facultative comme prévu à l'article 67

du CCP dans la mesure où la loi marocaine donne la liberté à la personne gardée à vue de signer le PROCÈS-VERBAL ou de refuser d'apposer sa signature ou son empreinte.

Concernant l'allégation selon laquelle le concerné aurait été enfermé dans une cellule d'isolement pendant le passage du GTDA est dénué de tout fondement.

Les experts, conformément aux termes de référence, ont visité la prison sans aucune restriction et se sont entretenus avec des détenus de leur choix comme le Groupe de travail l'a déclaré à la conférence de presse de débriefing de fin de mission au Maroc.

4. Observations relatives aux poursuites pour fausses déclarations, insultes ou diffamation à l'encontre de la Police

Wafae Charaf, Aboubakr El khamlichi, Oussama Hassan (Housne)

En date du 29 avril 2014, le site électronique marocain « Goude.ma » a publié un article dans lequel il est rapporté que l'adjointe du secrétaire général du bureau local de l'Association Marocaine des droits de l'homme (AMDH) de Tanger, Wafae Charaf a été « enlevée et torturée par deux agents de police, en civil, et ce après qu'elle ait participé à une protestation ouvrière sous forme de sit-in.

Le Ministère de la Justice et des Libertés et le Procureur Général près la Cour d'Appel de Tanger ont également reçu de ladite association une plainte portant sur le même sujet.

Après avoir diligencé une enquête judiciaire qu'il a confié aux éléments de la Brigade Nationale de Police Judiciaire (BNPJ), ces derniers ont auditionné la concernée, qui a déclaré, « qu'elle avait participé, le 27 avril 2014 à un sit - in au quartier Beni Makada, place Tarek , et qu' à la fin de la manifestation vers 19h15, et en se dirigeant vers la place Tafilalet pour se rendre au quartier Mechnana, elle s'est subitement sentie prise par le dos par deux individus, et engouffrée à l'arrière d'une voiture blanche ».

La concernée a déclaré également, « qu'une fois à l'intérieur de la voiture elle fut tabassée , humiliée et menacée de mort si elle continue à participer à des sit-in de ce genre, et qu'à la fin, les individus en question lui subtilisèrent la somme de 2700 DH et cassèrent son téléphone portable. Par la suite et après une heure d'enlèvement ils l'ont abandonnée dans la région de Gueznaya du côté du pont situé sur la route nationale menant à Rabat », en concluant « qu'elle n'a pu retenir le numéro de la plaque minéralogique de la voiture comme elle n'a pu identifier les deux individus ».

Dans le but d'approfondir les investigations, les éléments de la BNPJ se sont déplacés sur le lieu allégué d'enlèvement, à la place Tafilalet, pour recueillir d'éventuels témoignages de personnes pouvant informer sur les faits allégués par la victime présumée. Certains témoins ont nié catégoriquement avoir assisté à une quelconque scène telle que décrite par la concernée, ce qui semble étonnant surtout que le lieu allégué connaît, chaque jour, à la même heure de l'enlèvement prétendu, un engouement de la circulation en particulier au niveau du boulevard Moulay Slimane où se trouve une école primaire.

Les éléments de la BNPJ ont également auditionné le médecin qui a délivré à la concernée le certificat médical joint en appui de sa plainte et qui a déclaré ne pas se souvenir avoir

ausculté une personne de sexe féminin, dont les signalements sont identiques à ceux de la plaignante, durant la semaine des événements prétendus.

La confrontation de l'intéressée à des enregistrements téléphoniques d'appels entrants et sortants de son propre téléphone portable et de téléphones portables appartenant à certains membres de sa famille, a permis à la police d'établir la réalité des faits, ce qui a conduit celle-ci à présenter la fausse plaignante devant le Parquet général de Tanger.

Ce dernier, après examen des faits exposés dans la plainte a décidé de son classement par rapport au crime allégué d'enlèvement, pour manque de preuves et après requalification des faits, le Parquet a renvoyé la procédure au Procureur du tribunal de première instance de la ville qui a finalement poursuivi Wafae Charaf et Boubker Khamlichi, le secrétaire général local de l'AMDH, pour « dénonciation calomnieuse, dénonciation aux autorités publiques d'une infraction qu'elle sait ne pas avoir existé et production de fausses preuves relatives à une infraction imaginaire » (articles 264 et 445 du code pénal).

Pour l'« allégation mensongère de torture », le tribunal de première instance a condamné Wafae Charaf à une année de prison ferme et à une amende pécuniaire, avec publication du jugement à ses dépens pendant trois jours dans deux quotidiens nationaux (Assabah et Al Massae).

Boubker Khamlichi a été acquitté et toutes les parties au procès ont interjeté appel contre ce jugement. Wafae Charaf a été condamné par la cour d'appel de Tanger à deux ans de prison ferme.

Concernant Oussama Hassan (Housne), il a diffusé le 06 mai 2014 une vidéo sur Youtube, où il allègue avoir été enlevé le 02 mai 2014 avant d'être emmené, en voiture par trois personnes, vers une destination inconnue où, il aurait été frappé et brûlé au fer rouge au niveau intérieur de la cuisse près des testicules pour se voir introduire les doigts de ses ravisseurs dans l'anus, lesquels n'arrêtaient pas de le menacer de viol.

Selon les allégations de Oussama Hassan (Housne), une fois relâché, ce dernier qui, entre temps, s'en est allé acheter une recharge téléphonique pour contacter son ami Mamoun El Khalki, a pu rejoindre celui-ci, lequel était en compagnie d'une deuxième personne, en l'occurrence Ayoub Tbat, pour leur raconter ce qui lui est arrivé.

Toujours selon Oussama Hassan, MM. Elkhalki et Tbat l'ont conduit par la suite chez ses parents puis l'ont emmené à l'hôpital provincial Ben Msik où il s'est vu délivrer un certificat médical de 13 jours d'invalidité.

Une enquête a été menée par les services de police au sujet des allégations de Oussama Hassan, dont les agents qui se sont déplacés pour la reconstitution des faits et ce, en présence du concerné. Cela dit, une fois sur les lieux présumés des faits, celui-ci a affirmé, d'un côté, ne pas se rappeler de la maison où il a été emmené bien qu'il ait affirmé, et d'un autre côté, ne pas avoir eu les yeux bandés tout au long du trajet et pendant toute la durée des supplices subis et allégués.

En outre, lors de l'enquête, l'ensemble des vidéos, que ce soit les enregistrements effectués par les caméras de surveillance fixées sur le mur extérieur d'une quincaillerie ou celles installées au niveau d'un guichet automatique bancaire de la banque populaire, sachant que ces caméras couvrent toute la zone où est située la présumée maison où ont eu lieu les allégués faits, a démontré qu'aucune voiture conforme à la description de M. Hassan, qu'aucune des personnes citées par le concerné, et l'intéressé, n'ont jamais été sur les lieux allégués à l'heure indiquée.

De plus, la même enquête a permis de constater que la prétendue recharge téléphonique effectuée par Oussama Hassan, n'a jamais eu lieu et ce d'après des données reçues de l'opérateur de téléphonie mobile Ittisalat Al Maghrib.

De surcroît, après audition du Médecin ayant délivré le certificat médical de Oussama Hassan, ce dernier a déclaré qu'effectivement ledit certificat mentionne des douleurs au niveau du ventre, décrites par le concerné, lui-même, cependant ce dernier ne souffrait, nullement, d'une quelconque brûlure au niveau de la cuisse et a nié catégoriquement avoir fait l'objet d'un quelconque abus de nature sexuelle.

Le 26 mai 2014, Oussama Hassan s'est présenté, de son plein gré et spontanément, devant le Procureur du Roi près le tribunal de première instance de Casablanca, lequel n'a observé aucune trace de violence sur le corps du concerné en ordonnant une expertise médicale sur Oussama Hassan, demande qui a été rejetée par l'intéressé sous prétexte qu'il n'est pas en état de subir un tel examen en raison des séquelles d'un trouble psychologique dont il souffre et à cause duquel il est toujours sous thérapie.

Il sied de rappeler que la législation marocaine, selon le CPP (articles 73 et 74), oblige le Procureur du Roi à soumettre l'inculpé à un examen médical lorsque la demande lui en est faite et l'oblige à l'ordonner lorsqu'il constate personnellement des traces corporelles. Aussi l'article 88 du CPP permet au Juge d'Instruction d'ordonner, à sa propre initiative, à tout moment un examen médical et d'y procéder si la requête en est faite par l'inculpé ou son Conseil. Il n'en est pas moins s'agissant des articles 134 et 135 du même code, qui accordent, en phase d'instruction, les mêmes droits à un examen médical, à la personne détenue.

Le 1^{er} juin 2014, Oussama Hassan qui a été interpellé, a feint l'évanouissement, chose qui a nécessité son transfert à l'hôpital Mohammed V de Casablanca.

A l'hôpital, Oussama Hassan a fait preuve d'un état d'agitation hystérique extrême, avant de revenir à son état normal et avant d'être questionné, par le Procureur du Roi, sur une blessure apparente au-dessus de son sourcil droit, blessure qui a été justifiée, par l'intéressé lui-même, comme étant le résultat d'une chute antérieure n'ayant aucun rapport avec l'interpellation.

L'intéressé a accepté par la suite de se déplacer vers le tribunal, volontairement, où il a reconnu l'ensemble de ses déclarations faites auprès de la police judiciaire, tout en refusant de signer le PROCÈS-VERBAL d'audition et ce sans raison valable.

Le Procureur du Roi et ce après étude de la Procédure, a décidé de classer l'affaire par rapport aux allégations de violence et d'enlèvement faute de preuves.

Par contre Oussama Hassan a été poursuivi pour dénonciation calomnieuse et pour dénonciation aux autorités publiques d'une infraction qu'il sait ne pas avoir existé et production de fausses preuves relatives à une infraction imaginaire (articles 264 et 445 du code pénal).

M. Hassan a également été placé en détention vu qu'il ne présente pas de garanties de représentation et vu le danger qu'il représente pour l'ordre public.

Le 23 juillet 2014, une décision de Justice a été rendue, condamnant Oussama Hassan à trois ans de prison ferme et à une amende de 1000 Dirhams, décision qui a fait l'objet d'un appel de la part du Ministère public.

Concernant les procès et droits de Wafae Charaf et de Oussama Hassan, les autorités marocaines tiennent à souligner que l'arrestation et la détention, respectives, de Wafae Charaf et de Oussama Hassan, n'ont aucun trait à leurs opinions, convictions ou activités politiques, lesquels sont exercés librement, dans un cadre légal, par tous les citoyens marocains sans exception, étant donné que les intéressés ont été arrêtés dans le cadre du droit commun et suite à des infractions d'ordre criminel, et ce dans le respect total des dispositions du code pénal marocain.

Comme tous les marocains, les intéressés jouissent pleinement de leurs droits de citoyens, y compris les droits inaliénables à la liberté de penser et d'exprimer leurs opinions.

Leurs procès se sont déroulés dans des conditions de respect des droits de la défense, et l'examen et le prononcé des décisions de justice ont respecté le principe du délai raisonnable et les règles du procès équitable, telles reconnues par les référentiels normatifs et déclaratifs des droits de l'Homme, dont notamment l'article 14 du Pacte International relatif aux droits civils et politiques.

Enfin, il est à signaler que leurs conditions de détention sont, strictement, conformes à l'ensemble des Principes pour la protection de toutes les personnes soumises à une forme quelconque de détention ou d'emprisonnement, à l'ensemble des règles minima pour le traitement des détenus et enfin, à la loi 23/98 relative à l'organisation et au fonctionnement des établissements pénitentiaires au Maroc.

Rabie Lablak et Hamid El Mahdaoui

Concernant Rabie Lablak, et comme cité précédemment il a été auditionné en tant que témoin oculaire dans l'affaire de Karim Lachkar, et contrairement à l'allégation selon laquelle l'intéressé aurait fait l'objet d'une mesure de représailles par le dépôt d'une plainte à son encontre, **il est à signaler qu'aucune plainte n'est déposée à ce jour contre le concerné.**

Concernant Hamid El Mahdaoui, ancien administrateur du site électronique «lakome» et actuellement directeur du site «badil», il fait l'objet d'une poursuite judiciaire suite à une plainte déposée à son encontre par la Direction Générale de la Sûreté Nationale pour outrage à travers la déclaration d'un crime dont il ignore l'existence, outrage à corps organisé et dénonciation calomnieuse et publication de faits mensongers. Une audience est prévue le 04 mai 2015.

5. Conclusions

Le mémorandum se conclut par une série de recommandations pour lesquelles elles remarquent en premier lieu que la plupart de ces recommandations formulées par AI renvoient à celles que le Rapporteur spécial sur la torture a eu l'occasion de formuler à la suite de sa visite au Maroc en 2012.

Ensuite, elles souhaitent porter à la connaissance d'Al que le Maroc s'est engagé dans une démarche globale de suivi des recommandations issues du système onusien de promotion et de protection des droits de l'homme.

Ce processus basé sur une volonté ferme de mettre en œuvre les engagements internationaux du Royaume a connu un nouvel élan suite à l'examen devant le Comité contre la torture dès 2010, puis dans le cadre du deuxième cycle du mécanisme de l'Examen Périodique Universel en mai 2012, et également avec la visite du Rapporteur spécial sur la torture en septembre 2012.

Un Plan d'action national de mise en œuvre des recommandations issues des mécanismes onusiens des droits de l'homme a ainsi été élaboré et adopté en mai 2013. Les recommandations du RST ont été intégrées dans ce Plan d'action national, lequel permet de dresser un état des lieux régulier en matière de suivi.

Aussi, la très grande majorité des recommandations sont déjà en cours de mise en œuvre et/ou d'ores et déjà prises en considération par les autorités, en ce sens qu'elles s'inscrivent dans les différentes réformes structurantes entreprises sur le plan juridique et/ou institutionnel (Voir Annexe 1) .

Enfin, le Maroc est et demeure ouvert au dialogue constructif et à l'interaction positive lorsqu'il s'agit bien de la promotion des valeurs universelles et la noble cause des droits de l'homme.

Force est de constater que le Royaume est l'un des pays de la région qui s'est distingué par ses actions de promotion de la participation des ONG aux travaux du Conseil des droits de l'homme des Nations Unies et défendu leur rôle au sein de ses mécanismes.

Annexe 1

Synthèse des avancées et réalisations du Maroc en matière de droits de l'homme et lutte contre la torture

Le Maroc est aujourd'hui partie à la quasi-totalité des principaux instruments relatifs aux droits de l'homme (les 9 instruments qui constituent le noyau dur du système international de protection). Cette large adhésion est complétée et renforcée par la pleine interaction et l'ouverture du Royaume aux mécanismes onusiens de protection des droits de l'homme.

Le Maroc reconnaît la compétence de plusieurs comités onusiens en matière de communications individuelles, depuis 2006 dans le cadre de la Convention contre la torture et la Convention internationale sur l'élimination de toutes les formes de discrimination raciale, qui élargit pour les individus les possibilités de recours, en complément d'une large palette de mécanismes nationaux à la disposition des citoyens dans leur ensemble.

Concernant les protocoles facultatifs instituant des procédures de visites ou de communications individuelles, le Royaume a adhéré à l'OP-CAT le **24 novembre 2014**. Le processus d'adhésion ou de ratification d'autres Protocoles instituant ces mécanismes se poursuit. Il s'agit en particulier du Protocole facultatif à la Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes, du Protocole facultatif se rapportant au Pacte international relatif aux droits civils et politiques, ainsi que du 3^{ème} Protocole facultatif à la Convention internationale relative aux droits de l'enfant.

En déposant les instruments de ratification de l'OP-CAT, le Maroc devient le 76^{ème} pays au niveau international et le 4^{ème} dans la région MENA à faire partie de ce protocole. Le Royaume a cherché à réunir toutes les conditions pour une mise en œuvre effective de ce protocole à la faveur d'un débat amorcé depuis plus de 10 ans sur les questions portant sur la lutte contre la torture et l'éradication de ce fléau.

Au niveau international, le Maroc a pris des initiatives importantes, saluées par la communauté internationale, comme en témoigne la dernière initiative lancée en coordination avec quatre Etats dont le Danemark et l'Indonésie, intitulée "**Initiative pour une adhésion universelle à la convention contre la torture**" (CTI).

Sur le plan national, le Royaume a également pris des initiatives visant à sensibiliser toutes les parties prenantes nationales sur la **prévention de la torture**. Les efforts de formation et de formation continue entrepris notamment par la Direction Générale de la Sûreté Nationale qui organise des séminaires dans ce sens au profit du personnel de la police, de la Gendarmerie Royale ainsi que les agents d'autorité, également par la Délégation Générale à l'Administration Pénitentiaire, etc

S'agissant de la désignation du **mécanisme national de la prévention contre la torture (MNP)** prévu par le Protocole, il convient de souligner qu'un consensus national existe actuellement que ce soit le Conseil National des Droits de l'Homme (CNDH) lequel joue de facto depuis plusieurs années le rôle de MNP. Sa composante pluraliste, son expérience

et expertise développée dans le cadre de ses attributions de visites des lieux de privation de liberté sont des atouts clefs. Les conditions de la mise en œuvre de ce protocole sont actuellement étudiées et discutées.

D'importants efforts sont consentis parallèlement en matière de bonne gouvernance sécuritaire et ce, sous l'angle de l'appropriation progressive par toutes les parties prenantes des standards des droits de l'homme universellement reconnus (cf. notamment la formation initiale et continue des agents responsables de l'application de la loi). La création récente du **Bureau Central des Investigations Judiciaires** s'inscrit d'ailleurs dans la consolidation de cette bonne gouvernance sécuritaire.

Le Maroc ancre ses efforts dans la continuité en vue de consolider ses acquis en matière de promotion et de protection des droits de l'homme à travers le **renforcement du cadre normatif et institutionnel national**, notamment à travers **l'harmonisation de ce cadre par rapport aux instruments internationaux** comme en témoigne entre autre **l'actuelle révision des code pénal et de procédure pénale**.

Au titre également des avancées et mesures concrètes prises récemment par le Royaume, il est à souligner la publication au Journal Officiel le 1^{er} janvier 2015 de la Loi 108.13 relative à la **réforme du Code de justice militaire** (qui datait de 1956). L'une des principales dispositions consiste à ne plus juger des civils devant la juridiction militaire. Son entrée en vigueur est prévue le 1^{er} juin 2015 (Article 224 de ladite Loi prévoit que cette entrée en vigueur 6 mois après la publication).

L'importance du rôle de l'Institution Nationale des Droits de l'Homme dans les différents processus précités est à relever. Le CNDH, fort entre autres de son expérience en matière de visites de lieux de privation de libertés, ne manque pas d'attirer l'attention du Gouvernement sur les différents défis ou lacunes. Les autorités se sont d'ailleurs engagées en avril 2014 à donner une suite à toutes les plaintes ou demandes de clarifications formulées par le Conseil dans un délai de 3 mois.

Le Royaume s'est engagé par ailleurs à une ouverture sans entraves vis-à-vis des Procédures Spéciales assumées par le Conseil des Droits de l'Homme. Le Maroc a reçu la visite de 9 procédures spéciales depuis 2000 et a adressé des invitations à plusieurs titulaires de mandat et des discussions sont en cours pour effectuer des visites au cours de l'année 2015.

Dans le cadre de la lutte contre la torture en particulier, le Maroc est fortement engagé dans le suivi des recommandations du Rapporteur spécial sur la torture suite à sa visite au Maroc en septembre 2012. Les autorités marocaines l'ont rencontré en novembre 2013 et lui ont récemment adressé une invitation pour se rendre au Maroc afin d'évaluer les avancements réalisés dans ce domaine.

Une approche globale concernant le suivi de la mise en œuvre des recommandations émanant de l'ensemble des mécanismes onusiens des droits de l'homme a été mise en place à travers l'adoption en 2013 d'un Plan d'action. Cette initiative a d'ailleurs été saluée par la Haut-Commissaire aux Droits de l'Homme lors de sa visite au Maroc en mai 2014. Cette approche est intimement liée à celle découlant de façon plus globale de mise en œuvre des recommandations de l'Instance Equité et Réconciliation.

L'ouverture du Royaume s'illustre également à travers le nombre de visites effectuées par les ONG internationales ou divers représentants de la société civile à travers tout le pays, y compris les Provinces du sud.

Aussi, les autorités marocaines ont l'occasion de réitérer régulièrement auprès des instances internationales cet engagement et tiennent à rappeler que le choix du Royaume du Maroc de s'investir dans les grands chantiers que le respect des droits de l'homme et la consolidation démocratique supposent de mettre en œuvre, est un choix stratégique fondé sur une démarche progressive, pérenne. L'approche participative impliquant toutes les parties concernées, notamment les organisations non gouvernementales nationales et internationales est ici privilégiée.

Elles soulignent enfin que les avancées en matière des droits de l'homme sont reconnues par différents mécanismes onusiens, internationaux ou régionaux de protection et de promotion des droits de l'homme, par de nombreuses organisations non gouvernementales internationales et nationales, et leurs réseaux.

Annexe 2

Anomalies relevées par les autorités marocaines dans le Mémoire d'Amnesty International

	Eléments de réponses des autorités marocaines
1. Partie introductive	Les autorités marocaines : • <u>Contestent les modalités dans lesquelles auraient été recueillis les éléments fondant les allégations retenues à son encontre, ainsi que leurs bien-fondés.</u> Il s'agit d'allégations dépourvues de tout fondement et ne présentant aucune preuve à l'appui ; • <u>Réfutent formellement la dénonciation « nominative » de ses fonctionnaires :</u> le fait de dénoncer nominativement ses fonctionnaires est une atteinte au respect de la présomption d'innocence. En aucun cas les éléments avancés dans le rapport ne constituent des preuves à charge. En effet l'allégation par laquelle « <i>les services de police l'ont (Yassine Lmsiah) menacé d'arrêter sa sœur</i> » est non-sens, en raison, que l'intéressée a fait l'objet d'une mesure de placement en garde à vue, conformément aux dispositions légales pour son implication présumée dans une affaire d'assistance à une

	personne en fuite demandée par la justice ; • <u>Partant de la violation du principe sacré de la présomption de l'innocence, les autorités marocaines contestent la citation nominative de ses fonctionnaires et exige que le nom soit retiré du rapport ;</u> • <u>Rejette le style du rapport</u>, volontairement dramatisé, de manière à avoir l'adhésion des lecteurs, sur la base de simples interprétations subjectives des faits avancées par l'ONG, l'objectif paraissant est de semer le doute et la suspicion sur l'efficacité du système judiciaire marocain. • <u>Emettent des réserves sur la nature des affaires sélectionnées par l'ONG</u>, qui concernent, essentiellement, une catégorie d'individus qui pour se soustraire à leurs responsabilité pénale prétendent la violation de leurs droits. Il s'agit d'une ligne de défense systématique qu'adoptent un bon nombre de personnes, pour semer le doute sur leur culpabilité.
2. Observations relatives à l'appréciation générale d'Amnesty International concernant la pratique de la torture et	➤ Concernant les « méthodes de torture » et de « mauvais traitement » soulevées dans le rapport • Les autorités marocaines rejettent en bloc toutes les allégations fantasmagoriques soulevées par le rapport (<i>falaga, chiffon, poulet rôti</i>,

autres mauvais traitements au Maroc	<u><i>l'avion ou encore le viol par des bouteilles en verre, etc</i></u> ; il s'agit en réalité d'une approche biaisée tendant, vainement, de jeter les discrédits sur l'ensemble des mesures et dispositifs préventifs et dissuasifs mis en place par l'Etat marocain, pour lutter contre la torture et de prévenir tout acte de nature à porter atteinte à la dignité et à l'intégrité physique de la personne humaine. • Les autorités marocaines agissent, de façon systématique et continue, pour remédier aux manquements à la loi. En cas de violation des droits des citoyens, des poursuites judiciaires assorties de sanctions disciplinaires, sont prises à l'encontre des fonctionnaires défaillants. Et ne ménagent aucun effort afin de lutter contre la torture et les mauvais traitements, et ce, par la modernisation et l'intégration de la dimension des droits humains dans ses méthodes de travail, et par la mise à niveau ses infrastructures (voir annexe 1).
3. Les allégations de torture et autres mauvais traitement.	➤ <u>Sur la question des Procès-verbaux signés sous la contrainte :</u> Il doit être présent à l'esprit des rédacteurs de ce rapport, que plusieurs faits juridiques et pratiques démentent ces allégations, à savoir :

	• L'article 293 du Code de procédure pénale interdit l'admission de tout aveu ou déclaration faite sous la contrainte. En cas de crime (fait grave puni de plus de 5 ans de réclusion), l'aveu même consigné dans le procès-verbal du mis en cause n'est admis qu'en tant que renseignement judiciaire à l'adresse de la cour (article 291 du CPP). • En matière de délit (fait passible d'une peine privative de liberté de moins de cinq ans), l'aveu consigné dans le procès-verbal du mis en cause est en revanche considéré comme ayant une force probante, à moins d'être entaché de faux (article 290 du CPP). Dans ce cas, l'OPJ ayant confectionné le procès-verbal est passible de poursuites pénales, assortis de sanctions disciplinaires administratives. • Le caractère facultatif de la signature : il paraît absurde dans la pratique policière, de contraindre quiconque à signer son procès-verbal, du moment qu'il lui est loisible de refuser de le signer, sans pour autant que sa force probante en tant que tel ne soit mise en doute (article 67 du CPP) ; • Le contrôle du processus de déroulement de l'enquête : les actes de procédure diligentés par les OPJs, y compris donc pour la garde-à-vue, s'effectuent sous la supervision et le
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	contrôle du ministère public ou des juges d'instruction, ce qui constitue en soi une garantie supplémentaire pour la conformité à la loi et la préservation des droits des citoyens. En effet, le parquet compétent est Informé séance tenante de toute arrestation. • La preuve matérielle : Dans la pratique policière, les Officiers de la Police Judiciaire sont conscients que l'aveu ne suffit pas à lui seul, mais qu'il doit être étayé par d'autres moyens de preuves et concordé avec les données factuelles de l'enquête. L'évolution de la police technique et scientifique, permet d'accorder à l'aveu une force probante relative, voire le contourner. De manière Générale, l'aveu spontané reçu du mis en cause est confronté à la réalité des faits, notamment des éléments du constat de la scène de crime. Des vérifications sont également entreprises pour vérifier si l'aveu reçu spontanément est compatible avec les données objectives recueillis. ➤ Les contre-vérités soulevées dans le rapport (à titre d'exemple) : A l'analyse de l'ensemble des procès-verbaux des cas soulevés dans le rapport, il a été constaté ce qui suit : • S'agissant du cas de Walid El OUAZZANI (FES), celui-ci prétend que
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	les « <i>services de Police ont tenté de le violer au moyen d'une bouteille, l'on battu à la tête jusqu'à saignement de son oreille droite, et l'ont contraint à signer sur des aveux forcés</i> ». • La réalité est que l'intéressé n'a non seulement était placé en garde-à-vue, mais plus encore, n'a fait aucune déclaration risquant de l'impliquer lui ou autrui. Pour cette raison le contraindre à signer un PROCÈS-VERBAL consignant ses déclarations est un non-sens. • Lors de son arrestation, le nommé Mohamed El Harrass (FES) porté des traces de blessures, chose qui a été consignée dans son PROCÈS-VERBAL d'arrestation. Sur l'origine de ses blessures, il a affirmé lors de son audition dans un PROCÈS-VERBAL régulier, que se sont des inconnus qui l'on violenté, alors qu'il se cachait sur du toit de l'immeuble pour guetter les forces de l'ordre et lancer des pierres à leurs rencontre. Dans son Procès-verbal, il affirme se réserver le droit de poursuivre les individus l'ayant violenté.
	• Les autorités marocaines, ne ménagent aucun effort afin de lutter contre la torture et les mauvais traitements, et ce, par la modernisation et l'intégration de la dimension des droits humains dans leurs méthodes de travail, et par la mise à niveau de leurs infrastructures.

	• S'agissant des moyens logistiques, plusieurs projets qui s'inscrivent dans le cadre de la lutte contre la torture, ont été réalisés. Il en est ainsi à titre d'exemple de la modernisation de la Police Technique et scientifique qui a grandement contribué à la production de la preuve scientifique. • Les plans quinquennaux 2008-2012 et 2013-2017 ont modernisé les infrastructures, notamment les bâtiments, favorisant ainsi un accueil décent et de proximité aux citoyens, et également l'humanisation des conditions de détention. C'est ainsi que les chambres de sûreté ont été réaménagées et bâties selon des normes assurant de meilleurs conditions de garde-à-vue. ▪ Une politique de formation, sensibilisation et communication soutenue a été poursuivie, pour prévenir la torture et autres traitements inhumains ou dégradants, assortie de mesures coercitives, judiciaires et/ou disciplinaires, à l'égard des fonctionnaires qui, à titre individuel et délibéré, se sont rendus coupables de tels faits.
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TORTURE IN MOROCCO AND WESTERN SAHARA

Abuse can begin from the moment of arrest, in broad daylight or behind the tinted windows of police vehicles. In the absence of sufficient safeguards, police interrogations can turn violent, often to force suspects to “confess”. Anyone can be tortured – protesters, political or student activists, as well as people suspected of terrorism offences or ordinary crimes.

Moroccan legislation outlaws torture and the authorities have repeatedly promised to eradicate it, yet existing safeguards in police custody and courts are routinely flouted and accountability remains elusive. Courts often fail to act when first confronted with signs of torture, reinforcing the climate of impunity. In the cases where courts grant medical examinations, these are often sub-standard. Torturers are given further incentives for their crimes when coerced “confessions” are used to secure convictions. Meanwhile, the authorities have started to prosecute some people who dared to report torture or lodged complaints about torture in foreign courts.

This report contains numerous disturbing testimonies from survivors of torture and other ill-treatment. Amnesty International is calling on Morocco’s authorities to use the current judicial reform process to strengthen anti-torture safeguards and ensure that torturers are held to account. Only then will torture be stopped.

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