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STOP TORTURE

Country profile: Morocco / Western Sahara

Torture in Morocco and Western Sahara: In summary

The rule of King Hassan II from 1956 to 1999 known as the “years of lead” was characterized by repression of political dissent, the enforced disappearance of hundreds of individuals, arbitrary detention of thousands of others, and the systemic use of torture and other ill-treatment. Though the human rights situation has improved significantly since the accession to the throne of King Mohamed VI, Amnesty International continues to receive reports of torture and other ill-treatment by police or gendarmerie during interrogation in pre-arraignment detention (*garde à vue*), and, in fewer cases, in prisons and while detained incommunicado in secret detention centres.

Torture and other ill-treatment have now been explicitly prohibited and identified as a crime in Moroccan law for several years, but they continue in practice. On the one hand, perpetrators of torture or other ill-treatment have continued to enjoy virtual total impunity. Judges and prosecutors rarely investigate reports of torture and other ill-treatment, meaning few perpetrators are held accountable. The resulting climate of impunity cancels out the dissuasive power of Morocco’s anti-torture legislation.

Shortcomings of the justice system, such as the absence of lawyers during police interrogation, continue to create conditions conducive to torture and other ill-treatment. Torture-tainted “confessions” included in police interrogation reports are still central to securing convictions, at the expense of material evidence and witnesses testifying in court. Current plans to overhaul Morocco’s justice system present an unprecedented opportunity for change. Amnesty International calls on the Moroccan authorities to:

1. Provide safeguards during detention including swift access to lawyers after arrest, the presence of lawyers during interrogations and the video-recording of interrogations;
2. End secret detention by establishing a centralised register of detainees accessible by their lawyers and families at all times upon request and without delay;
3. End the culture of impunity by ensuring all reports of torture and other ill-treatment are promptly, impartially, and independently investigated and that,

wherever there is sufficient admissible evidence, suspected perpetrators are prosecuted in fair proceedings;

4. Ensure that evidence obtained through torture or other ill-treatment is not used in any proceedings, except against a person accused of torture or other ill-treatment;

5. Provide prompt, full reparation for survivors of torture or other ill-treatment and their dependants.

It is time to Stop Torture in Morocco and Western Sahara.

Country background

The years of lead

Torture has been one of the hallmarks of state repression against political opposition and social unrest since Morocco gained independence in 1956. Amnesty International first documented reports of torture in November 1963. At that time, members of the left-wing National Union of Popular Forces (Union nationale des forces populaires, UNFP) under the leadership of Mehdi Ben Barka were on trial in Marrakech for an alleged conspiracy against King Hassan II.

In subsequent years, Amnesty International observed a number of trials and detected the routine use of torture during the interrogation of political detainees including left-wing political activists and students from the National Union of Moroccan Students (Union nationale des étudiants du Maroc, UNEM). Torture was inflicted mainly to instil fear and to humiliate detainees, but also to extract “confessions” and information about people’s political activities and associates.

Methods of torture included: being bound by the wrists and ankles and suspended for long periods from a metal bar; beatings, especially on the head and soles of the feet [a torture method known as *falaqa*], often using old metal instruments; electric shocks to the eyes and genitals; stuffing rags soaked in excrement into detainees’ mouths, causing choking; threats against family members; using police dogs to bite detainees; and simulated executions.ⁱ

The situation worsened in the 1970s. Following several thwarted attempts to overthrow King Hassan II and Morocco’s annexation of Western Sahara in 1975, a number of detainees were tortured to death. Others were tortured so severely that they developed mental health problems, or were mutilated to such an extent that authorities did not bring them to court, instead trying them in their absence.ⁱⁱ At the same time, hundreds of Moroccans and Sahrawis were subjected to enforced disappearance: a number of them tortured to death or extrajudicially executed while in secret detention and without their families’ knowledge.

Into the 1990s: signs of progress

Over the course of the 1990s, the human rights situation began to improve in Morocco, and to a much lesser degree in Western Sahara, where restrictions on

freedom of expression, association and assembly remained severe.ⁱⁱⁱ By 1992, Moroccan authorities had released some 300 disappeared Sahrawi and at least 44 disappeared Moroccans who had been held in secret detention centres for up to 18 years by security forces, including the General Directorate for the Surveillance of the Territory (Direction générale de la surveillance du territoire, DST) and the gendarmerie. The most notorious secret prisons included Tazmamart, Agdz and Qalaat Mgouna in Morocco, as well as the Mobile Intervention Company Point of Command (Point de commandement de la campagne mobile d'intervention, PCCMI) in Laayoune, Western Sahara.^{iv} Amnesty International's year-long campaign on Morocco and Western Sahara in 1991 was widely credited for prompting the releases, and King Hassan II's decision to close the Tazmamart secret prison.

Morocco created its first national human rights institution, the Advisory Council on Human Rights (Conseil consultatif des droits de l'homme, CCDH) in 1990, and ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) in 1993.

And yet reports of torture and deaths in custody continued to emerge, in a climate of impunity fuelled by the continuing failure both to investigate claims of torture and other ill-treatment, and to hold those responsible to account.

A new millennium: falling short of transitional justice

In a symbolic break with the past, the new King Mohamed VI established the Equity and Reconciliation Commission (Instance équité et réconciliation, IER) in 2003, with the aim of investigating human rights violations committed by the Moroccan security services between 1956 and 1999. This was the first attempt in the region to pursue transitional justice, and its achievements included underlining state responsibility for human rights violations – including torture – and awarding financial compensation, health insurance and job reinstatement for many survivors of torture.^{vi} However, the IER fell short of upholding the right to truth and justice for victims of torture and other human rights violations and their families. The institution's mandate did not explicitly include the identification of perpetrators of grave human rights violations or recommendations for their prosecution, leaving victims to pursue justice through individual prosecutions at their own initiative. It also lacked the legal power to compel cooperation of members of the security forces or other authorities.

As a result, Moroccan officials accused of torture and other human rights violations between 1956 and 1999 have not been brought to justice – and there are no indications that the authorities intend to address this in the future. Instead, the government now routinely talks of “reconciliatory justice rather than accusatory justice”, which translates into impunity for human rights violations.^{vii}

Post-2003: Morocco's “War on Terror”

In stark contrast to the establishment of the IER which raised many hopes, the country experienced a worrying setback for human rights in the wake of the March 2003 Casablanca bombings. Law No.03-03 on Combating Terrorism was swiftly passed, further weakening safeguards against torture and fair trial rights by extending pre-arraignment detention to 12 days and delaying detainee's access to lawyers to six days. Reports of torture and other ill-treatment peaked after the law

came into force, with individuals allegedly held incommunicado in a secret detention centre in Témara, operated by the DST. Detainees fell outside the protection of the law as the DST did not have powers of arrest as members of the judicial police.

Torture in Morocco and Western Sahara

Torture not eradicated

Reports of torture in detention in Morocco and Western Sahara have become less frequent compared to 20 years ago. Law no. 43-04 of 14 February 2006 made torture a specific offence under Article 231 of the Penal Code, although the restricted scope of the definition, which excludes complicity and tacit consent by officials and security officers, is not consistent with the Convention Against Torture.^{viii} Morocco's new constitution adopted in 2011 also prohibited torture and ill-treatment under Article 22. The expected ratification in 2014 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment might lead to more effective oversight of places of detention.

However, reports of torture and other ill-treatment continue to surface, particularly during pre-arraignment detention and interrogation following arrest by the police or gendarmerie. Victims come from a variety of backgrounds, including activists from the UNEM student union with left-wing or Islamist affiliations, supporters of self-determination for Western Sahara, protesters challenging poverty and inequality, individuals held on suspicion of terrorism or national security-related offences, as well as members of marginalized groups arrested for ordinary offenses.

After visiting Morocco and Western Sahara in September 2012, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or Punishment, Juan Méndez, found 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."^{ix}

Methods of torture

The following range of torture techniques and other forms of ill-treatment have been most commonly documented by Amnesty International over the years, and continued reports indicate that several of these are still in use in Morocco and Western Sahara, often in combination while detainees have their hands and ankles tied, and are blindfolded:

- Beatings, including blows to the head, genitals, soles of the feet, and other sensitive body parts, sometimes while stripping people naked;
- Suspending detainees by the wrists or other body parts while beating them;

- Forcing detainees' heads down toilet bowls or gagging them with urine-soaked materials;
- Prolonged solitary confinement which in some circumstances may amount to cruel, inhuman and degrading treatment;
- Rape with a bottle, threat of rape, and other sexual violence as documented by Amnesty International in a number of instances.

A failing legal system, part one: judicial inaction

In recent cases documented by Amnesty International, judicial authorities have failed to act when faced with reports of torture and other ill-treatment by security forces and prison personnel. Investigations and medical examinations have rarely been ordered. As a result, a culture of impunity persists, and perpetrators continue to evade justice.

This failure to act on reports of torture and other ill-treatment breaches Moroccan authorities' obligation to ensure prompt and impartial investigations into torture allegations under Articles 12, 13 and 16 of the Convention against Torture. It also violates Moroccan legal provisions stipulating that Crown prosecutors and investigative judges must order medical examinations when detainees request them or when there are visible signs of injury or illness. This is specified in Articles 73, 88 and 134 of the Code of Criminal Procedure.

UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment Juan Méndez also noted: "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."^x These conclusions closely mirror Amnesty International's own findings on the country.

A failing legal system, part two: use of forced "confessions"

According to testimonies gathered by Amnesty International, individuals in Morocco and Western Sahara continue to be charged, tried and convicted on the basis of forced "confessions" extracted under torture and other ill-treatment. Detainees also report being coerced into signing police interrogation reports.

The use of coerced "confessions" as evidence in criminal proceedings is a direct violation of the prohibition on torture and of fair trial guarantees. The Convention against Torture explicitly addresses the issue of forced "confessions" in Article 15:

'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 safeguards that exist in Moroccan law are not being upheld. Trials in the country frequently rely solely on police interrogation reports, at the expense of both material evidence and witness statements given in court. The value given to these reports itself encourages the ongoing use of torture and other forms of ill-treatment.

In its authoritative General Comment on Article 7 of the International Covenant on Civil and Political Rights (ICCPR), which prohibits torture and other ill-treatment, the Human Rights Committee has stated that: "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."^{xi}

Article 290 of the Moroccan Code of Criminal Procedure compounds the problem. It states that for misdemeanours and minor offences courts should consider police interrogation reports to be trustworthy unless defendants can prove they are inaccurate. In practice, however, police reports are given similar weight in trials involving more serious offences, including offences punishable by life imprisonment and the death penalty. As noted by Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (Special Rapporteur on torture) Juan E. Méndez, "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 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."^{xii}

Judges also often refuse to summon witnesses in court and reject witness statements that exonerate suspects, even when the prosecution offers little material evidence of guilt. In addition, cases against demonstrators and political or human rights activists are frequently kept open for years, meaning individuals released on bail face the constant threat of unfair conviction and potential imprisonment.

Case study: Ali Aarrass

Extradited despite warnings and tortured

Ali Aarrass has been in detention in Morocco since his forcible return from Spain on 14 December 2010. The Spanish authorities had extradited him to Morocco despite requests not to do so by the Human Rights Committee and by Amnesty International as he risked incommunicado detention, torture and other ill-treatment, and an unfair trial in Morocco. The extradition went ahead, however, and the consequences were severe for Ali Aarrass.

Upon his return he was held incommunicado for 12 days in a secret detention centre in Témara, near the Moroccan capital, Rabat, where he says he was repeatedly tortured. He told Special Rapporteur on torture Juan E. Méndez that he was beaten on the soles of his feet, given electric shocks to his testicles, suspended by his wrists for long periods and burned with cigarettes. He also told an investigative judge, in a hearing in February 2011, that his "confession" to terrorism-related charges was obtained under torture. The facility Ali Aarrass was held in was reportedly run by the DST.

The UN Special Rapporteur on Torture visited him in detention with an independent forensic doctor in September 2012. The pair confirmed detecting signs of torture compatible with his testimony.

The Moroccan authorities have repeatedly failed to investigate Ali Aarrass' allegations, in contravention of Morocco's anti-torture legislation and the country's international obligations under the Convention Against Torture and the International Covenant on Civil and Political Rights (ICCPR). His lawyers have also lodged several complaints with the Moroccan authorities. These too have failed to prompt an investigation.

The only response to Ali Aarrass's complaints of torture was a forensic medical examination, ordered by the Rabat Crown Prosecutor and carried out in December 2011, a year after his alleged torture and other ill-treatment. The examining doctor, who was chosen by judicial authorities, concluded that Ali Aarrass showed no signs of torture. However, independent experts commissioned by Ali Aarrass's defence team allege that the examination fell well short of international standards, as outlined in the Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).

On 24 November 2011, Ali Aarrass was convicted for allegedly aiding and belonging to a criminal gang and a group intending to commit acts of terrorism. The "confession" he gave under torture and which he recanted in court was reportedly the only evidence presented in his trial.

Amnesty International calls on the Moroccan authorities to comply with the UN Working Group on Arbitrary Detention's 28 August 2013 deliberation recognizing Ali Aarrass' detention as arbitrary and calling for his immediate release and access to adequate reparation.

Case study: Sidi Youssef Ben Ali protests

Detainees beaten, blindfolded and deprived of sleep

On 28 and 29 December 2012, 18 people, including two children, were arrested in Marrakech's Sidi Youssef Ben Ali neighbourhood following a protest against the rising cost of water and electricity. Many of their relatives have since told Amnesty International that detainees were tortured or otherwise ill-treated in police custody.

According to these testimonies, some were made to kneel and beaten on the head while blindfolded during interrogation. Others were prevented from sleeping until they signed "confessions" without reading them. Several were misled into signing police interrogation reports, after officers claimed the documents were release papers but refused to let detainees read them.

The employers of at least two of the people convicted – Omar Ouakhanni and Miloud Siyati – were willing to testify that the defendants were at work at the time of the demonstration. The judge refused to allow these employers to testify in court, however, in breach of the defendants' right to call and cross-examine witnesses, as guaranteed by Article 14 of the ICCPR.

No investigations have been opened into these allegations of torture and other ill-treatment. Yet forced “confessions” contested by the defendants were decisive in securing convictions as the prosecution reportedly presented no other incriminating evidence. Such convictions breach the invalidity of forced confessions and the need for convictions to rest on valid evidence, under Articles 293 and 287 of the Code of Criminal Procedure.

On 21 January and 27 February 2013, the 16 adults were sentenced to prison terms ranging from 18 to 30 months, convicted on charges of “taking part in an armed gathering”, “assaulting public officials” and “damaging public property”. Their convictions were upheld on appeal, though four had their sentences reduced. The two children arrested were convicted and given sentences of two months’ imprisonment.

Six of the people arrested after the Sidi Youssef Bin Ali protest have been released after serving their sentences. Twelve remain in Marrakech Local Prison.

Case study: Western Sahara protests Calls to investigate torture ignored

In May 2013, demonstrations calling for self-determination took place across Western Sahara, a territory annexed by Morocco in 1975. Seventeen-year-old El Houcine Bah was one of six Sahrawis arrested following a demonstration on 4 May 2013 in Laayoune, the main city of Western Sahara, for allegedly throwing stones and assaulting police. He insisted the protest was peaceful, while others arrested said they were not even at the protest or in the city at the time.

El Houcine Bah told Amnesty International that he was tortured in police custody. He reported being threatened with rape and forced to sign a “confession” that he was prevented from reading. He says police officers forced a urine-soaked sponge into his face, removed his trousers, beat him, and interrogated him while he was suspended from his knees with his wrists tied over his legs.

Amnesty International received reports of torture or other ill-treatment in detention, as well as “confessions” extracted under torture in relation to five Sahrawis arrested in the city of Smara on 22 and 23 May 2013 following a demonstration calling for self-determination for Western Sahara.

The families of the six detainees also lodged complaints for arrest without warrant and torture during interrogation with the Crown prosecutor. No investigation has so far been launched.

All six people arrested following the Laayoune protest were charged with “violence against public officials”, “participating in an armed gathering”, “placing objects on a road obstructing traffic” and “damaging public property”. They could be sentenced to up to ten years’ imprisonment for these offences under Morocco’s Penal Code.

They were released on bail on 23 October 2013 during their first trial hearing, having spent five months in pre-trial detention. The men had also gone on hunger strike in protest against repeated postponements of their court hearings.

Stop torture in Morocco/Western Sahara: Recommendations.

Current plans to reform the country's judiciary^{xiii} provide an unprecedented opportunity to eradicate torture and other ill-treatment in Morocco and Western Sahara.

In this context, Amnesty International calls on Moroccan authorities to:

- 1. Provide safeguards in detention**
Authorities must provide safeguards during detention and interrogation, when detainees are most at risk of torture and other ill-treatment. These include access to lawyers without delay after arrest, the presence of lawyers during interrogation as well as the video-recording of interrogations
- 2. End secret detention**
Detainees are often most at risk of torture and other ill-treatment when detained in a secret location. To end secret and unacknowledged detention, authorities must establish a centralised register of detainees accessible by their lawyers and families at all times upon request and without delay.
- 3. Investigate**
Authorities must ensure that all reports of torture and other ill-treatment are promptly, impartially and independently investigated. Such investigations should include forensic medical examinations performed by independent doctors in line with international standards as defined in the Istanbul Protocol. The scope, methods and findings of such investigations should be made public, while officials suspected of committing torture or other ill-treatment should be suspended from active duty during the investigation. Complainants, witnesses and others at risk from intimidation and reprisals should also be protected by the authorities.
- 4. Exclude torture-tainted statements from proceedings**
The admission of “confessions” obtained through torture or other ill-treatment as evidence in court can be a direct incentive to torture. Authorities should ensure such evidence is not used in any proceedings, apart from evidence against a person accused of torture or other ill-treatment, as required by Moroccan and international law.
- 5. Prosecute**
Authorities must ensure that all those against whom there is sufficient admissible evidence of responsibility for torture or other ill-treatment are prosecuted, to end the climate of impunity and send a clear message that an order from a superior officer is never a justification for torture or ill-treatment.
- 6. Reparations**
Torture and other ill-treatment can leave long-lasting physical and psychological trauma that affects survivors and their families and loved

ones throughout their life. Authorities should provide full, prompt reparation for survivors of torture or other ill-treatment and their dependants, including restitution, fair and adequate financial compensation and appropriate medical care and rehabilitation.

ⁱ Amnesty International, *Amnesty International Briefing: Morocco* (Index: PUB 78/00/77).

ⁱⁱ Amnesty International, *Amnesty International Briefing: Morocco* (Index: PUB 78/00/77).

ⁱⁱⁱ Amnesty International, *Morocco/Western Sahara: "Turning the page": Achievements and Obstacles* (Index: MDE 29/001/1999).

^{iv} Amnesty International, *Morocco: Tazmamert: Official Silence and Impunity*, (Index: MDE 29/007/92).

^{vi} Amnesty International acknowledged the achievements of what was a groundbreaking transitional justice process. The IER underlined the responsibility of the state in human rights violations and financial compensation was awarded. A smaller number of victims benefited from other forms of reparation such as health insurance and their reinstatement in the jobs they held before their imprisonment or alternative employment.. Amnesty International, *Broken Promises: the Equity and Reconciliation Commission and its follow-up*, (Index: MDE/29/001/2010)

^{vii} In 2000, the Moroccan Association for Human Rights (Association marocaine des droits humains, AMDH) pressed parliament and judicial authorities to investigate a number of current and former government officials accused of involvement in torture, disappearances and other serious human rights violations during the years of lead, with victims willing to testify before a parliamentary commission. Despite the AMDH's requests to the authorities, and its subsequent submissions to the IER in 2005, no officials were investigated or prosecuted. Human Rights Watch, *Morocco's Truth Commission: Honoring Past Victims during an Uncertain Present*, 28 November 2005.

^{viii} Committee against Torture, CAT/C/MAR/CO/4, paragraph 5.

^{ix} 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, 28 February 2013.

^x 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, 28 February 2013.

^{xi} UN Human Rights Committee General Comment 20, paragraph 12.

^{xii} Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/25/60, paragraph 64.

^{xiii} The charter for the reform of the Moroccan judiciary was published by the Ministry of Justice in September 2013 and is accessible here

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