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Morocco/Western Sahara

Torture in the “anti-terrorism” campaign - the case of Témara detention centre

1. Introduction

a) Context

The sharp rise in reported cases of torture or ill-treatment in the context of “counter-terrorism” measures in Morocco/Western Sahara since 2002 has been well documented. Reports on the subject have been published in recent months by Amnesty International¹ and other international human rights organizations, as well as by Moroccan human rights groups, including the Moroccan Human Rights Association (Association marocaine des droits humains, AMDH), and the Moroccan Human Rights Organization (Organisation marocaine des droits humains, OMDH). Human rights lawyers and victim support groups such as the Forum for Truth and Justice (Forum pour la vérité et la justice, FVJ), have spoken out about the violations, and the Moroccan and international press have highlighted the problem in numerous articles.

The torture or ill-treatment is generally reported to take place in the custody of the security forces, particularly the Directorate for the Surveillance of the Territory (Direction de la surveillance du territoire, DST), and the police, where it is allegedly perpetrated in order to extract confessions or information, or to force the detainee to sign or thumb-print statements, the content of which they reject, deny or do not know.

The scores of people allegedly tortured or ill-treated have been among hundreds of Islamists or presumed Islamists arrested and detained on suspicion of belonging to “criminal gangs” or of involvement in planning, inciting or carrying out violent acts. The arrests, numbering some 2,000 according to official sources, began in 2002 when the authorities began a clampdown on individuals accused of being part of groupings of Islamist activists who, in the case of one particular group,² were planning bomb attacks or who had reportedly been involved in a number of targeted killings of people whose behaviour they disapproved of. Since May 2003, many of those arrested have been accused in connection with the bomb attacks in Casablanca on 16 May 2003, which killed 45 people, including the 12 assailants. Scores have been sentenced to long prison sentences and over a dozen to the death penalty following trials in which evidence reportedly extracted by torture or ill-treatment has been used to obtain convictions.

¹ *Morocco/Western Sahara: Briefing to the Committee against Torture* (AI Index: MDE 29/011/2003), November 2003.

² For more information on this particular case, see “Case of three Saudi Arabians and seven Moroccans” in *Morocco/Western Sahara: Briefing to the Committee against Torture* (AI Index: MDE 29/011/2003), November 2003.

The detention centre of Témara, operated by the DST, is one of the main places where torture is reported to occur. Dozens of those arrested in the context of “counter-terrorism” measures have allegedly been subjected to torture or ill-treatment while being held there. Their detention at the centre has been both secret and unacknowledged, and consequently in breach of both Moroccan law and international human rights standards.

In November 2003, Morocco was examined by the UN Committee against Torture, which supervises the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) by states parties. The Committee looked at reports presented by both the Moroccan government and non-governmental organizations, including Amnesty International. In its Concluding Observations, issued on 20 November 2003, the Committee noted significant positive developments in the overall human rights situation in Morocco, but expressed concern about a number of issues, including an increase in reported cases of torture and ill-treatment and the absence of information on measures taken by the authorities to investigate complaints of torture and to bring those responsible to justice. The Committee noted in particular “the increase in the number of allegations... implicating the National Surveillance Directorate (DST)”.³

On 18 February 2004 Amnesty International sent a memorandum to the Moroccan authorities in which it set out the results of its research into the alleged practice of torture and secret detention in the centre of Témara and detailed five specific cases of individuals reportedly held in secret and tortured there. The organization requested information regarding steps that might have been taken to address these concerns and any comments they might have had on the individual cases. The authorities replied in a letter dated 2 April 2004, enclosing a document dated 30 March 2004 entitled *Response of the Moroccan Justice Ministry to allegations of torture in Morocco* and a copy of a draft law to combat torture and discrimination. Amnesty International welcomes the response as an indication of the importance which the Moroccan authorities give to engaging in discussion on human rights issues. The draft law, in particular, is an encouraging initiative apparently aimed at addressing a key recommendation of the Committee against Torture. The response did not, however, address the specific allegations of torture or ill-treatment at the Témara centre; nor did it indicate that concrete steps had been taken to investigate them. The response will be discussed further in Chapter 4.

The sharp rise in allegations of torture or ill-treatment over the last two years and the Moroccan authorities’ apparent failure to investigate them contrast markedly with significant positive developments made by them in the field of human rights in recent months. On 3 February 2004 the legal framework for women’s rights was improved when a new Family Code was promulgated, raising the legal age for women to marry from 15 to 18 (to correspond with the existing legal age for men), imposing severe restrictions on polygamy, and giving husband and wife equal and joint responsibility in marriage. On 7 January 2004 a royal pardon was granted to 33 people, including political prisoners and prisoners of

³ UN document CAT/C/CR/31/2, para. 5.

conscience whose cases had been raised by Amnesty International with the Moroccan authorities.⁴ On the same day an Equity and Reconciliation Commission was inaugurated to look into “disappearance” and arbitrary detention cases in previous decades. Amnesty International has welcomed a number of positive elements in the new initiative, but also expressed serious concerns regarding other aspects. The Commission is charged with extending the scope of reparations given to victims and their families and trying to locate the remains of those who died in detention. It is due to publish a report on its findings around April 2005. However, its mandate indicates that thorough investigations are not being planned, the identification of individual responsibilities has been categorically excluded and criminal prosecutions have been rejected.

These developments have built on other important measures taken by the Moroccan authorities in the last five years, such as: reinforcing official institutions mandated to receive complaints against the authorities; substantially reforming penal legislation, in consultation with human rights associations, thereby strengthening the presumption of innocence, the right to a fair trial, the right of appeal and the rights of prisoners; allowing national non-governmental organizations to conduct visits to prisons, report their findings and, on this basis, make public recommendations to the authorities; making considerable efforts to promote a human rights culture, to support human rights education in the country and to engage with human rights organizations and associations of victims in a dialogue on human rights issues.

b) This report

Amnesty International has monitored the issue of torture and ill-treatment in Morocco/Western Sahara for several decades. In recent months, it has examined dozens of cases involving Islamists or presumed Islamists arrested in 2002 and 2003. In October 2003 it sent a research mission to the country, where the delegation met torture victims, families of victims, human rights activists and lawyers, and members of Morocco’s official human rights body, the Human Rights Advisory Board (Conseil consultatif des droits de l’homme, CCDH). Amnesty International publicly presented its concerns in the form of a briefing at the November 2003 session of the UN Committee against Torture.⁵

This report looks in detail at the alleged practice of torture and secret detention in the centre of Témara, perhaps the most disturbing pattern of human rights violations committed in the context of ongoing “counter-terrorism” measures in Morocco/Western Sahara. It concentrates, therefore, on just one of the issues addressed in Amnesty International’s briefing to the Committee against Torture, where it appeared alongside other concerns, such as provisions in Law no. 03-03 on Combating Terrorism of 28 May 2003, the torture or ill-treatment of Sahrawi and Moroccan activists, recent deaths in custody and the lack of

⁴ See *Morocco/Western Sahara: Pardon of dozens of political prisoners is positive step* (AI Index: MDE 29/002/2004), 7 January 2004.

⁵ See *Morocco/Western Sahara: Briefing to the Committee against Torture* (AI Index: MDE 29/011/2003), November 2003.

investigations into grave and systematic human rights violations carried out in previous decades.

The cases of five individuals arrested in 2002-03 and allegedly tortured or ill-treated in detention in the Témara centre are documented in Annex 1 by way of illustration. These cases were included in the memorandum sent by Amnesty International to the Moroccan authorities on 18 February 2004, but were not the subject of any comment in the latter’s response to the organization dated 2 April 2004. Amnesty International has researched and recorded in detail around a dozen other cases of individuals arrested and detained in the Témara centre in 2002 and 2003, in which similar allegations of torture or ill-treatment have been made, and received reports that several dozen others have been detained there in the same period and subjected to such treatment.

The report responds to government arguments, widely reported in Moroccan and foreign media, that the allegations of torture and secret detention in the context of “counter-terrorism” measures are baseless. In particular, it shows how a series of breaches of Moroccan law and international human rights standards have served to block proper scrutiny by the judicial authorities of the actions of the security forces and to prevent any investigations being carried out. The report also comments on the observations made by the Moroccan authorities in their letter to Amnesty International dated 2 April 2004. In conclusion, the document urges the Moroccan authorities to demonstrate the resolve they have shown in addressing other entrenched human rights problems by taking a series of steps to combat torture and ill-treatment.

2. Torture and secret detention in Témara

a) Torture

Political detainees have been held and allegedly tortured or ill-treated in the Témara centre in previous decades, but it is only since 2002 that the centre appears to have been used to detain and question such large numbers of individuals. Amnesty International has researched and recorded in detail some 20 cases in which allegations of torture or ill-treatment were made – five of them appearing in Annex 1 – and received reports that several dozen others have been detained there in the same period and subjected to torture or ill-treatment.

The centre is located in a forested area outside the seaside town of Témara, which lies some 15km south of the capital Rabat in the direction of the city of Casablanca. The DST, which runs the centre, constitutes Morocco’s internal intelligence service, which is “charged with ensuring the protection and safeguard of the state’s security and institutions”,⁶ but its personnel are neither agents nor officers of the judicial police and are, therefore, not authorized under the law to arrest, detain or question suspects.

⁶ Dahir no. 1-73-652 of 2 January 1974 abrogating and replacing dahir no. 1-73-10 of 12 January 1973 creating a Directorate General for the Surveillance of the Territory.

Those who have been taken to the Témara centre have, in some cases, been taken there directly following arrest and, in others, have been held first in a police station near to the place of arrest. In some cases, according to reports in the Moroccan and international press, they have been taken there after being handed over to the Moroccan security forces by foreign authorities, including those of Pakistan, Syria and the US.

They have been detained there for periods ranging from a week to nearly half a year. It is generally during the first few days, however, that detainees are subjected to interrogation sessions, in which they are questioned about their suspected involvement in planning, inciting or carrying out violent acts ascribed to Islamists or about their connections with others accused of such offences. Many have allegedly been tortured or ill-treated during these sessions, apparently in an attempt to extract confessions or information from them or to force them to sign or thumb-print statements which they reject or deny. In many cases, the statements are signed or thumb-printed after the detainee has been transferred from the Témara centre to a police station, where they are threatened with being returned to Témara and with further torture should they refuse to comply.

The torture or ill-treatment has taken a number of forms during interrogation sessions. Some detainees have allegedly been blindfolded and handcuffed throughout the session; others have been stripped or suspended from the ceiling of the interrogation room in contorted positions. Many have reported being beaten around the body and the head with fists or an implement, such as a wooden stick or a metal ruler. Reports have also indicated that electric-shock batons or live electrodes were applied to the body of some of the detainees. One former detainee, Abdellah Meski, told Amnesty International that he had his head repeatedly plunged into a sink containing water.

Some have reportedly had an object, such as a bottle, forcibly inserted into the anus or been threatened with this treatment and other sexual abuse. Some say that they were also threatened with the arrest and rape or other sexual abuse of their wife or other female relative. Some former detainees have even reported hearing screams which they believed at the time might have been those of a female relative in an adjoining room, but later, after leaving the Témara centre and confirming that no female relative had been detained there, concluded this might have been a tape recording meant to dupe them. One former detainee told Amnesty International that, after being subjected to torture, he was given basic medical attention, though he believes no record was kept of the treatment.

Former detainees have reported that, throughout their time at the Témara centre, whether for a few days or a few months, they were held in solitary confinement in basic cells, containing blankets on the floor rather than a bed, and a toilet and tap in one corner. They say they never saw other detainees and were not allowed outside the cell to enjoy fresh air or exercise. In addition, they were held in secret detention and denied contact with the outside world. Such conditions of detention may themselves amount to cruel, inhuman or degrading treatment, or even torture.

b) Secret detention

The torture or ill-treatment of detainees at the Témara centre represents a clear breach of Morocco’s obligations under international human rights law, which prohibits torture and ill-treatment in all circumstances. Moreover, their secret and unacknowledged detention at the centre violates both Moroccan law and international human rights standards, as do, in many cases, the circumstances of the arrest which led to it. In Amnesty International’s opinion, the two sets of violations are closely connected; a series of systematic breaches of arrest and detention procedures, leading to a period of secret and unacknowledged detention, have facilitated the practice of torture and ill-treatment.

- Arrest procedures

Members of the DST are not considered members of the judicial police and, consequently, are not authorized to arrest suspects. Morocco’s Criminal Procedure Code stipulates which security force personnel have the status of officers or agents of the judicial police and the DST is not mentioned among them,⁷ as has been confirmed by official statements to the media in recent months.

Many of those taken to the Témara centre were reportedly arrested by plain-clothes security force officials using unmarked cars, who are suspected of being DST members. They allegedly neither informed the suspects of the reason for their arrest nor produced an arrest warrant. In all likelihood, if they were DST personnel, they did not have such a warrant, since the judicial authorities would not be authorized to issue them with one.

In the circumstances, the arrests were in violation of the Criminal Procedure Code, which stipulates that an arrest warrant must be presented to a suspect on arrest and a copy of it handed to them.⁸ Article 9(2) of the International Covenant on Civil and Political Rights (ICCPR), to which Morocco is a state party, states similarly: “Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.”

- Place of detention

The DST is neither authorized to arrest suspects, nor permitted to detain or question them. This function is the prerogative of the judicial police. The Témara centre is not therefore an authorized place of detention for *garde à vue* (pre-arraignment detention), which refers to the period of time during which a suspect can be held in the custody of the security forces before being presented before the judicial authorities.

International human rights standards and UN monitoring bodies and mechanisms have stated that detention in such a place should be prohibited. Article 10 of the Declaration

⁷ See Articles 16-33 of the Criminal Procedure Code in force until 1 October 2003 and Articles 16-35 of the Criminal Procedure Code in force from that date.

⁸ Article 147 of the Criminal Procedure Code in force until 1 October 2003 and Article 154 of the Criminal Procedure Code in force from that date.

on the Protection of All Persons from Enforced Disappearances, adopted by the UN General Assembly in 1992, states: “Any person deprived of liberty shall be held in an officially recognized place of detention”.

- Failure to notify families

The families of those arrested generally appear not to have been notified of the detention and whereabouts of their relatives. This would constitute a breach of the Criminal Procedure Code, which states that the family of the suspect must be notified as soon as it is decided to place the latter in the custody of the security forces.⁹ Furthermore, Principle 16(1) of the Body of Principles for the Protection of all Persons Under Any Form of Detention or Imprisonment, adopted by the UN General Assembly in 1988, states:

“Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody.”

UN monitoring bodies and mechanisms have also stated that relatives should be notified immediately or very quickly. The UN Human Rights Committee, which supervises the implementation by states parties of the ICCPR, has stated that people arrested or detained on a criminal charge must be permitted to contact their families “from the moment of apprehension”¹⁰ and has called for the “mandatory notification of relatives of detainees without delay”¹¹.

In cases where family members have sought information from the authorities, such as the local prosecutor, the police or government ministries, about the fate and whereabouts of their relatives, they have reportedly either received no response or been told that no information was available.

- Gross breaches of *garde à vue*

Detainees at the Témara centre have allegedly been held for prolonged periods of time – between several days and several months, and, in one case, almost half a year – without access to the outside world, in particular to their family and legal counsel, and, in most cases, beyond the legal limits of *garde à vue*. These are set out in the Criminal Procedure Code and were fixed at a maximum of eight days before the promulgation on 28 May 2003 of Law no. 03-03 on Combating Terrorism, which amended the Code and extended the time limits to a maximum of 12 days. These time limits have been in force since then.¹² The UN Committee

⁹ Article 69 of the Criminal Procedure Code in force until 1 October 2003 and Article 67 of the Criminal Procedure Code in force from that date.

¹⁰ UN document A/56/40, para. 86(18), referring to the Democratic People’s Republic of Korea.

¹¹ UN document A/52/40, para. 438, referring to India.

¹² Article 68 of the Criminal Procedure Code in force until 1 October 2003 and Article 66 of the Criminal Procedure Code in force from that date.

against Torture expressed its concern in November 2003 about this “considerable extension of the time limit for police custody, the period during which the risk of torture is greatest”.¹³

The DST is not authorized to hold detainees in *garde à vue*, but, even if it were, in many cases the alleged period of detention would constitute a gross breach of the legal time limits of *garde à vue*, both as they stood before 28 May 2003 and as they stand now.

Access of detainees to the outside world and access from the outside to them is recognized by international monitoring bodies and mechanisms as a key safeguard against torture and ill-treatment. The UN Human Rights Committee, in its General Comment 20 on Article 7 of the ICCPR, has stated: “The protection of the detainee... requires that prompt and regular access be given to doctors and lawyers and, under appropriate supervision when the investigation so requires, to family members.”

- Arrest date falsified

In some cases, it is also alleged that the arrest date recorded on the report submitted by the security forces to the judicial authorities was falsified, apparently in an attempt to cover up the illegally prolonged nature of the period of *garde à vue*.

3. The judicial process

International human rights standards and Moroccan law include provisions aimed at ensuring that investigations are launched if allegations are made about torture or ill-treatment, and at preventing evidence obtained by means of such treatment being used in any legal proceedings. Additional safeguards under international human rights standards should apply to people charged with crimes punishable by death. It is Amnesty International’s concern that, in the case of detainees allegedly held in secret detention and tortured or ill-treated at the Témara centre, these safeguards have effectively been bypassed.

a) Lack of torture complaints at initial hearings

Government officials such as the Justice Minister have, in press interviews, focused particular attention on the lack of complaints of torture or ill-treatment or secret detention made when the detainee is first brought before the judicial authorities following the period of *garde à vue*. They have in addition pointed to the safeguards which exist in Moroccan law. In its response to Amnesty International dated 2 April 2004, the authorities made similar statements.

According to Morocco’s Criminal Procedure Code, when an accused person is presented to the crown prosecutor after the period of *garde à vue* to hear the charges against them, they have certain key rights and the prosecutor certain key duties. The prosecutor must inform the accused of their right to appoint a lawyer immediately and the accused has the right to have their lawyer attend the hearing. The prosecutor must submit the accused to a

¹³ UN document CAT/C/CR/31/2, para. 5.

medical examination if this request is made or must do it of their own initiative if they notice traces of torture or ill-treatment.¹⁴

When the accused is sent by the prosecutor to have an initial hearing with the examining magistrate, often later on the same day, a similar set of rights and duties apply. The examining magistrate must inform the accused of their right to appoint a lawyer immediately and the accused has the right to have their lawyer attend the hearing. The examining magistrate must submit the accused to a medical examination if this request is made or must do it of their own initiative if they notice traces of torture or ill-treatment. In addition, the examining magistrate must inform the accused of their right not to make any declaration and must invite the accused to read the written record of the hearing before signing it or to have it read to them before thumb-printing it, if they are illiterate.¹⁵

These rights and duties have, moreover, been underlined by international human rights standards such as the Body of Principles for the Protection of all Persons Under Any Form of Detention or Imprisonment.

According to many of the accused and their lawyers, however, these rights and duties have been ignored by the judicial authorities and the accused has not been informed of the key rights outlined above during their initial hearings with the prosecutor and examining magistrate. Not knowing their rights, many of the accused have not requested legal counsel during the hearings. Without expert advice, they have been unaware that they had the right to make a complaint about the torture or ill-treatment or secret detention to which they had allegedly been subjected. Some have said that they were taken to the judicial authorities with a blindfold over their eyes and that it was only removed immediately before they entered the room in which they would be questioned. They maintain that during the hearing they believed they were still being questioned by the security forces. Others have said that they were threatened with further torture if they challenged the charges against them. Defence lawyers have told Amnesty International that, in addition, in many cases any traces of torture or ill-treatment that might have been visible to a prosecutor or examining magistrate would have disappeared by the time the accused was presented to them, due to the often illegally prolonged period of *garde à vue*, lasting up to half a year.

b) Torture complaints later in the judicial process

Government officials such as the Justice Minister have, in press interviews, dismissed complaints made about torture or ill-treatment or secret detention after the initial hearings as being merely a means for the accused to defend themselves.

¹⁴ Articles 75 and 76 of the Criminal Procedure Code in force until 1 October 2003 and Articles 73 and 74 of the Criminal Procedure Code in force from that date.

¹⁵ Articles 127, 128, 129 and 132 of the Criminal Procedure Code in force until 1 October 2003 and Articles 134, 135, 136 and 139 of the Criminal Procedure Code in force from that date.

- Lack of investigations

Following the initial hearings with the judicial authorities referred to above, the accused have generally been placed in pre-trial detention and given access – for the first time since their arrest – to their families and lawyers. When, during the pre-trial investigation, they have appeared again before the examining magistrate for detailed questioning, they have in many cases complained about the alleged torture or ill-treatment or secret detention. When their cases have come to court, many of the accused have complained again, this time in front of the trial judges, about the treatment they were subjected to and the illegally prolonged nature of the period of *garde à vue*. Defence lawyers have requested that family members who witnessed the arrests and police officers who drew up the police statements be called to testify before the court to help establish the facts surrounding the contested arrest dates and the circumstances in which declarations were made to the police. The requests have been systematically rejected, however, on the basis that the proposed testimonies did not relate directly to the alleged crimes.

Despite the persistent nature of allegations of torture or ill-treatment and secret detention, the judicial authorities appear to have repeatedly dismissed these allegations, without ordering investigations or medical examinations. Amnesty International is not aware of a single case in which an investigation or medical examination has been carried out.

However, in accordance with Articles 12, 13 and 16 of the Convention against Torture, a prompt and impartial investigation should be initiated if there are reasonable grounds to believe that torture or ill-treatment was inflicted during interrogation or when individuals make such allegations.

Under the Convention against Torture, both *complaints* and *reports* of torture and ill-treatment must be investigated. The Committee against Torture has stated that “in principle, article 13 of the Convention does not require the formal submission of a complaint of torture. It is sufficient for torture only to have been alleged by the victim for the state to be under an obligation promptly and impartially to examine the allegation.”¹⁶ In addition, the Committee has specified that investigations must be conducted “whatever the origin of the suspicion”¹⁷ and held that one of the sources which may trigger such an investigation is information supplied by non-governmental organizations.

- Statements used as evidence

As mentioned above, it appears that torture or ill-treatment has often been perpetrated to force detainees to sign or thumb-print statements that they rejected or denied. In many cases, these statements were then used in court as evidence to obtain their convictions, even though the accused have generally retracted these statements in the courtroom.

The use in court of statements obtained under torture or ill-treatment is a breach of the Convention against Torture. Article 15 of the Convention states:

¹⁶ *Irène Ursoa Parot v. Spain* (6/1990), 2 May 1995, para. 10.4; UN document A/50/44, Annex V.

¹⁷ *Encarnación Blanco Abad v. Spain* (59/1996), 14 May 1998, para. 8.2; UN document A/53/44, Annex X.A.3.

“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.”

As recommended by the UN Special Rapporteur on torture, “Prosecutors and judges should not require conclusive proof of physical torture or ill-treatment (much less final conviction of an accused perpetrator) before deciding not to rely as against the detainee on confessions or information alleged to have been obtained by such treatment; indeed the burden of proof shall be on the State to demonstrate the absence of coercion.”¹⁸

Although Moroccan law does not state as specifically as the Convention against Torture that no statement made as a result of torture shall be invoked as evidence in any proceedings, Article 293 of the Criminal Procedure Code in force from 1 October 2003 stipulates that no confession can be relied upon in court if it is obtained “through violence or duress”. This is an improvement on the previous Criminal Procedure Code, which contained no such provision.

In addition, many accused have challenged evidence against them which had been taken from statements made by others who had been arrested and detained by the security forces on similar charges. Given the persistent allegations of statements being made to the security forces under duress, defence lawyers have requested that those who made the statements be summoned to the court as witnesses to test the veracity of the evidence. These requests have been refused by the courts on a systematic basis.

c) The death penalty

Amnesty International is particularly concerned that in 2003 over a dozen people were sentenced to death following trials in which evidence reportedly extracted by means of torture or ill-treatment was used to obtain convictions and that in some cases, such as that of Lekbir Koutoubi summarized in Annex 1 to this report, allegations of grossly unfair trial procedures have been made.

Under international human rights standards, people suspected of or charged with crimes punishable by death are entitled to the strictest observance of all fair trial guarantees at all stages of the legal proceedings, including during the investigation stage, and to certain additional safeguards. Paragraph 5 of the Safeguards guaranteeing protection of the rights of those facing the death penalty, adopted by the UN Economic and Social Council in 1984, states:

“Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which

¹⁸ Report on visit to Turkey, UN document E/CN.4/1999/61/Add.1, para. 113(e).

capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.”

In a number of cases, safeguards have not been applied at various stages of the process, including investigation, trial and appeal. Lekbir Koutoubi and others sentenced to death in connection with “terrorist” acts in 2003 have been able to have their convictions reviewed by the Supreme Court, but such reviews are limited only to questions of law. Because they were sentenced before the new Criminal Procedure Code came into force on 1 October 2003, they were not entitled to have their convictions and sentences examined with regard to both the law and the facts.

However, Paragraph 6 of the Safeguards guaranteeing protection of the rights of those facing the death penalty states: “Anyone sentenced to death has the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals become mandatory.” The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that in capital cases “proceedings must guarantee the right of review of both factual and legal aspects of the case by a higher tribunal, composed of judges other than those who dealt with the case at the first instance.”¹⁹

4. Reaction of the authorities

a) Public statements

Amnesty International has welcomed measures the Moroccan authorities have taken in recent years to recognize the state’s responsibility, in general terms, for torture and other human rights violations which took place in previous decades. The organization has also been pleased to note statements made at the highest levels that both torture and impunity for those responsible are unacceptable and must be tackled effectively. This message was reinforced by Morocco’s delegation to the November 2003 session of the UN Committee against Torture, when, for instance, its head, Omar Hilale, Moroccan Ambassador to the UN in Geneva, stated that “the Moroccan authorities would do their utmost to combat all forms of torture, inhuman or degrading treatment. Torture was a problem found in most countries which was fostered by an ignorance of human rights; it must therefore be dealt with courageously and systematically.”²⁰

However, in response to public enquiries about the persistent allegations of torture or ill-treatment of Islamists or presumed Islamists arrested and detained in the last two years or, more specifically, in response to the allegations of secret detention and torture at the Témara centre described in this report, the Moroccan authorities have generally refused to acknowledge that secret detention has been practised and dismissed the allegations of torture or ill-treatment.

¹⁹ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Document E/CN.4/1997/60, para. 82.

²⁰ UN document CAT/C/SR.577, para. 11.

Justice Minister Mohamed Bouzoubâa has been questioned on numerous occasions by Moroccan and foreign media about allegations of torture or ill-treatment of Islamists or presumed Islamists. His response in the Spanish newspaper *El País* on 31 January 2004 was similar to answers he had given in other interviews in the Moroccan press during 2003; he argued that the allegations were essentially baseless while outlining the safeguards which exist in the law. He was quoted as saying:

“There has been much exaggeration. The prosecution service is on the alert, during the period of detention preceding presentation to the examining magistrate, and every detainee can moreover ask the prosecutor to send him for a check-up to ascertain whether he has suffered ill-treatment. The prosecutor cannot refuse him this. Not even one [of the Islamists] has requested this, although afterwards they have declared before the court that their confessions had been extracted using torture. It’s a way of defending oneself.”

In an interview which appeared in the 6-12 December 2003 edition of the Moroccan French-language newspaper *Le Journal Hebdomadaire*, Minister Mohamed Bouzoubâa was asked to respond to allegations of torture made by international human rights organizations, such as Amnesty International, and the UN Committee against Torture. He was quoted as saying:

“The law allows those sentenced to request an examination either before the prosecutor or before the examining magistrate immediately after their presentation by the judicial police. And the law obliges the prosecution service to respond to this request. Yet none of the accused or their lawyers has exercised this right, which shows that these claims after the sentences are merely an unfounded means of defence.”

However, according to information available to Amnesty International, many of the detainees were not informed of these rights when they appeared before judicial authorities and many did not have a lawyer at this stage (see Chapter 3 for more details).

When faced with allegations of the illegal participation of the DST in arrests and detention and of its involvement in torture or ill-treatment, the authorities have generally denied the possibility that the service could have been implicated. In an interview given to two Moroccan French-language newspapers, *Libération* and *Le Matin du Sahara et du Maghreb* on 10 September 2003, Minister Mohamed Bouzoubâa was questioned about statements in court by Islamists or presumed Islamists accused in connection with acts of violence who said that they had been tortured by the DST. He replied:

“I don’t know why they speak of the DST, when it doesn’t have the status of judicial police. It’s the judicial police which investigate cases submitted to it by the DST.”

The sensitivity of the issue of DST involvement was evident during the UN Committee against Torture’s review of Morocco’s report in its November 2003 session. A number of specific questions were asked by the Committee about the DST. What was the status of the DST and what special functions were assigned to it? Was the Témara centre subject to the control of the judicial authorities? Was there a register of detainees at the Témara centre and could it be consulted? Had there been any deaths in custody in DST

centres? How many DST agents had been convicted following investigations into torture?²¹ The Moroccan government delegation confirmed that the DST was not a part of the judicial police, but said they were not able to answer the other questions and would later send a written reply to provide the necessary clarification. To Amnesty International’s knowledge, Morocco has not yet given the Committee the requested information.

b) Response to Amnesty International

Amnesty International sent a memorandum to the Moroccan authorities on 18 February 2004 in which it set out the results of its research into the alleged practice of torture and secret detention in the centre of Témara and detailed five specific cases of individuals reportedly held in secret and tortured there. The organization requested information regarding steps that might have been taken to address these concerns and any comments they might have on the individual cases.

The authorities replied in a letter dated 2 April 2004, enclosing a document entitled *Response of the Moroccan Justice Ministry to allegations of torture in Morocco* and a copy of a draft law to combat torture and discrimination. Both are discussed briefly here.

The document entitled *Response of the Moroccan Justice Ministry to allegations of torture in Morocco* is dated 30 March 2004. While it is not addressed specifically to Amnesty International, some of the issues and cases it comments on were raised by the organization with the Moroccan authorities in recent years. In it the Justice Ministry sets out the safeguards existing in Moroccan legislation which are aimed at preventing torture and ensuring investigations are launched into allegations of such abuses. It underlines the importance of the role of the prosecutor in ensuring judicial control over police investigations. Prosecutors, the Ministry says, are authorized to visit and “inspect the detention facilities of the judicial police, where [they] are able to gain access to those held, examine their state and check on the legality and conditions of their detention.” It later says:

“Should the prosecution service merely be informed of an incident in which suspects have been subjected to violence or arbitrary detention, it immediately orders the necessary investigations into the matter, submits the victims for a medical examination to establish the nature, causes and gravity of the injuries and has not the slightest hesitation in presenting those responsible to the judicial authority in accordance with the law.”

Amnesty International acknowledges that such provisions are contained in Moroccan legislation. However, the research it has undertaken into the alleged practice of torture and secret detention in the centre of Témara shows that, on the one hand, suspects have been held outside the boundaries of protection of the law, exposing them to torture or ill-treatment, and, on the other, the judicial authorities appear not to have ordered the “necessary investigations” into the matter when informed of violations by the accused, their lawyers and human rights organizations.

²¹ See Summary Records of the Committee against Torture sessions; UN documents CAT/C/SR.577 and CAT/C/SR.580.

The Ministry also details the legal procedures which are followed in death in custody cases, highlighting the fact that if the autopsy and preliminary investigation establishes that anyone is implicated in torture or violence leading to death, they will be prosecuted. It notes that several circulars have been sent to prosecutors’ offices “with the intention of encouraging them to deal as resolutely and effectively as possible with such cases and to take every measure to punish the aggressors”. The document deals, in addition, with various issues concerning detainees in prison, including prison overcrowding, violence and sexual attacks among prisoners, and the segregation of, on the one hand, convicted prisoners and those in preventive detention, and, on the other, prisoners aged under 18, prisoners aged between 18 and 20, and prisoners more than 20 years old.

At the end of the document, the Ministry reacts to the allegation that there is impunity for most violations in Morocco. It recalls that legal provisions exist to punish acts of violence by security force personnel and says that “a number of guilty verdicts have been issued against public officials found to have committed acts of violence or infringements”. The Ministry goes on to say:

“It is worth pointing out that, in some cases where allegations have been made that the judicial police committed violence during the period of garde à vue, the individuals did not raise the problem until after verdicts were issued against them. They neither raised the problem when presented to the prosecutor, nor when appearing in court before the panel of judges, nor when appearing before the examining magistrate. Had they done so, the judicial authority would have been able to order a medical examination. This failure to raise the problem occurred even though the accused had access to defence counsel during all stages of the judicial process.”

The findings of Amnesty International’s research in the case of those held at the Témara centre, as set out in this report, contradict this statement by the Justice Ministry in two ways. Firstly, in violation of the law, many detainees who had been held at the Témara centre have not been given access to legal counsel during their initial hearings with the judicial authorities. Secondly, when, after later gaining access to a lawyer, suspects told the judicial authorities – whether over the course of the pre-trial investigation or in front of the court during the trial – that they had been subjected to torture or ill-treatment, no investigations appear to have been launched.

The Ministry document also comments on a selection of nine cases of individuals alleged to have been subjected to torture between 1999 and 2003. All of the cases had been raised by Amnesty International with the Moroccan authorities in previous years, either in the organization’s briefing to the UN Committee against Torture²² in November 2003 or in previous documents. In almost all cases, details are given of the individuals’ arrest, the charges against them and the sentence handed down at the end of their trial. However, the allegations of torture are either dismissed with little explanation or not addressed at all. In no

²² Morocco/Western Sahara: Briefing to the Committee against Torture (AI Index: MDE 29/011/2003), November 2003.

case does the Ministry mention that an investigation was launched into the torture reports, despite them being raised by the alleged victims or their lawyers and by Amnesty International and other national and international human rights organizations.

The document does not comment on any of the specific concerns raised by Amnesty International in its memorandum of 18 February 2004, namely the pattern of secret detention and torture in the centre of Témara and the five cases of individuals reportedly held in secret and tortured there which appear in Annex 1 of this report. The Justice Ministry gives no indication that concrete steps have been taken to investigate them. Amnesty International has written again to the authorities to renew its request for information on steps taken to address allegations of secret detention and torture in the Témara centre, as well as to reiterate its concerns about the cases of alleged torture which are mentioned in the Justice Ministry document but do not appear to have been the subject of investigation.

The Moroccan authorities’ letter to Amnesty International dated 2 April 2004 also contained a copy of a draft law to combat torture and discrimination. The draft law would criminalize torture according to a definition which contains some elements of the provisions of Articles 1 and 4 of the Convention against Torture but is not fully consistent with them. According to the draft law, torture would be punishable by a custodial sentence of between two to five years and life imprisonment, depending on the circumstances of the act.

Amnesty International considers the drafting of this law a positive step on the part of the Moroccan authorities. The drafting of the law could be a first step towards implementing one of the Committee against Torture’s key recommendations in November 2003, namely “to include a definition of torture which is fully consistent with the provisions of articles 1 and 4 of the Convention [against Torture]”.²³ Amnesty International has written again to the authorities to comment on the draft law, in the hope that amendments may be made which would make the definition of torture fully consistent with these provisions.

5. Conclusion and recommendations

a) Conclusion

This report has focused on alleged torture or ill-treatment at the DST centre in Témara during 2002 and 2003 and discussed the breaches of Moroccan law and international human rights standards, which, together with the practice of secret and unacknowledged detention, serve to facilitate torture.

The practice of secret and unacknowledged detention against people held on grounds of security is of particular concern given the devastating legacy that similar violations in previous decades, albeit committed on a much vaster scale, have left behind. Hundreds of people perceived to pose a danger to the state “disappeared” at the hands of Moroccan security services between the mid-1960s and early 1990s. Their families await clarification of

²³ UN document CAT/C/CR/31/2, para. 6.

their fate to this day and, while the state has now begun a process with the declared aim of establishing the truth about what happened to them, the prospect of those responsible being brought to justice is not currently on the horizon. The Moroccan authorities’ dismissals of allegations of secret detention and torture or ill-treatment in the last two years are also of concern, since the allegations can only be addressed effectively if they are taken seriously.

While this report has looked at violations in one particular detention centre and by one particular branch of the security forces, dozens of other detainees arrested in the context of “counter-terrorism” measures in Morocco/Western Sahara since 2002 have reportedly been subjected to torture or ill-treatment during questioning in the custody of the police in various parts of the country. In these cases, too, the judicial authorities have similarly failed to order investigations into the persistent allegations which have arisen.

The attacks in Casablanca on 16 May 2003 which killed 45 people, including the 12 assailants, were a gross abuse of the right to life and Amnesty International condemns the acts unreservedly. The Moroccan authorities have the right and also the duty to take measures to bring those reasonably suspected of involvement in violence to justice and to protect the security of its citizens. Amnesty International believes, however, that neither justice nor security is being served effectively by depriving detainees of their rights and turning a blind eye to allegations of torture and ill-treatment. As the UN Commission on Human Rights affirmed in 2003, “States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law.”²⁴

The Moroccan authorities have taken significant positive steps in the field of human rights in recent years. Most recently, they have boldly enacted new legislation intended to tackle one of the country’s most intractable problems, discrimination against women. It is time now for the authorities to demonstrate similar courage in addressing another entrenched relic of a recent past that they have stated they wish to put behind them.

b) Recommendations

Amnesty International calls on the Moroccan authorities to implement the following recommendations.

- Make public declarations

The Moroccan authorities should:

- ▶ **acknowledge the disturbing number of allegations** of torture or ill-treatment, as a first step to tackling the problem;
- ▶ give clear and public **instructions to the DST** that its officers and agents must obey the law and stop carrying out arrests and detaining people in its centre in Témara or elsewhere;

²⁴ Commission on Human Rights resolution 2003/68; UN document E/CN.4/2003/L.11/Add.7, para. 3.

- ▶ declare their **intention to investigate** all allegations of torture or ill-treatment and bring to justice those responsible, whatever the security force to which they belong;
- ▶ announce that torture and ill-treatment **will not be tolerated** in any circumstances.

- Implement UN recommendations

The Moroccan authorities should implement all the recommendations made by the UN Committee against Torture in its Concluding Observations of 20 November 2003. The full set of recommendations is reprinted in Annex 2 to this report. In particular, the Moroccan authorities should:

- ▶ ensure that all allegations of torture or ill-treatment are subject to **prompt, impartial and full investigations**, including those implicating the DST;
- ▶ take **action against impunity** for state agents suspected of involvement in torture or ill-treatment;
- ▶ ensure that planned new legislation to **make torture a crime** in Moroccan law is fully consistent with the provisions of articles 1 and 4 of the Convention against Torture;
- ▶ **reduce** to the strict minimum the legal time limit of *garde à vue*.

Amnesty International urges the Moroccan authorities, when implementing these recommendations, to:

- ▶ order investigations into both **complaints** of torture and ill-treatment made by the alleged victim, their legal representatives and others, **and reports** of torture and ill-treatment made by non-governmental organizations and others, as previously specified by the Committee against Torture;
- ▶ ensure that **those in charge of a place of detention** where torture has taken place are held responsible as well as the actual perpetrators;

- Address unfair trials and the death penalty

The Moroccan authorities should:

- ▶ **order retrials**, in proceedings meeting international fair trial standards, for all those convicted on the basis of evidence established or suspected to have been obtained by means of torture or ill-treatment;
- ▶ **commute the death penalty** of all those sentenced to death;
- ▶ announce a **moratorium on the death penalty** with a view to abolishing it.

ANNEX 1: Illustrative cases

Lekbir KOUTOUBI

Lekbir Koutoubi was reportedly arrested at his home in the district of Hay Mohammadi in the *wilaya* (region) of Casablanca at around 11pm on 20 September 2002 by a group of plain-clothes security force officials. Born in 1966, Lekbir Koutoubi is a joiner by trade who had recently entered into business selling clothes. The officials allegedly did not display identity cards, even when asked to do so by family members who were present at the time. According to the family, they neither produced an arrest warrant, nor informed Lekbir Koutoubi of the reason for his arrest, as required by the Criminal Procedure Code.

On arrest, Lekbir Koutoubi was apparently forced into an unmarked car and driven to another part of the district, where he was asked questions regarding names of individuals while still inside the car. He was then allegedly made to change cars, before being blindfolded, driven some distance, then made to change cars a second time. When the car in which he was travelling stopped at what he believes to have been a petrol station, he was reportedly made to lie down with a hat placed on his head, apparently in an attempt to ensure the petrol station employees did not notice anything unusual in the car. Lekbir Koutoubi was then taken to a location which he believes to have been the DST centre in Témara. **He says he was detained there for some 94 days, which would be in gross violation of the legal limits of *garde à vue* and despite the centre not being an authorized place for *garde à vue*.**

On arrival, on 20 September 2002, he was apparently led down steps to a room in which he was asked questions about people he says he did not know. He said that when he denied knowledge of the people mentioned, his interrogators forcibly removed his clothes and ordered him to kneel on the floor, whereupon he was repeatedly slapped on the face until dawn. After being taken to his cell to eat some breakfast, he says he was led back to the interrogation room several minutes later and questioned again until sunset on 21 September 2002. He was allegedly questioned regularly during a period of two to three months and, in some of the sessions, hit or kicked when he denied knowing individuals his interrogators named.

On around 23 December 2002, Lekbir Koutoubi says he was handcuffed, blindfolded and taken from the Témara centre to another location, where he was detained for three days. During this time, he was allegedly forced to sign a police statement without being allowed to read its content, as required by the Criminal Procedure Code. On 26 December 2002 he was presented to the crown public prosecutor at the Appeal Court of Casablanca and then to the examining magistrate, before being placed in pre-trial detention in Oukacha Prison. A delay of 97 days between the date of arrest of Lekbir Koutoubi and the date of his presentation before the judicial authorities would surpass, by 89 days, the then maximum legal limit of *garde à vue*.

Lekbir Koutoubi’s family say that it was only after he had been transferred to Oukacha Prison – over three months after his arrest – that they learnt of his whereabouts via a

lawyer. They say that until then they were not once informed by the authorities of Lekbir Koutoubi’s detention. Moreover, when the family sought information from the authorities – including the local prosecutor, the police and the Human Rights and Justice Ministries – about his fate and whereabouts, they either received no response or were told that no information was available.

While held in pre-trial detention, Lekbir Koutoubi was questioned in more detail by the examining magistrate. At this stage of the investigation, he denied the charges against him. He said that he had not uttered the declarations ascribed to him in the police statement and that the confessions he was recorded as making in his initial hearing with the examining magistrate resulted from his fear of being returned to the custody of the security forces.

When the case came to trial in July 2003, the alleged torture and breaches of the Criminal Procedure Code were raised by the defence, but dismissed by the court on the basis that there was no evidence in the case file to support these allegations. On 12 July 2003, Lekbir Koutoubi was sentenced to death by the Appeal Court of Casablanca for “formation of a criminal gang”, “attempted premeditated murder” and “attempted destruction of installations with explosives”. The verdict was confirmed by the Supreme Court on 22 October 2003. The statement allegedly signed under duress was used in court as evidence to obtain his conviction. Lekbir Koutoubi remains in prison.

Abdellah MESKI

Abdellah Meski, a computer software dealer born in 1969, was reportedly arrested at around 10am on 15 July 2002 by a group of some six plain-clothes security force officials. He says he was stopped by the officials as he was walking from his then place of residence, the family home of his wife, Leila Rouki, in the district of Sidi Bernoussi in the *wilaya* (region) of Casablanca, to a nearby Internet café. The officials allegedly asked him for his identity papers, ordered him to step into an unmarked car and then took him to a police station in Casablanca, where he was questioned until around 5pm.

At around sunset, around four plain-clothes security force officials apparently led Abdellah Meski to an unmarked car and ordered him to climb into the back seat. Once the car was on a main road, he was blindfolded and taken to a location he believes to have been the DST centre in Témara. **He says he was detained there in solitary confinement for some 164 days, which would be in gross violation of the legal limits of *garde à vue* and despite the centre not being an authorized place for *garde à vue*.**

During his first few weeks in detention, Abdellah Meski was reportedly subjected to regular interrogation sessions, in which he was questioned about his relationship with named individuals and his activities in Saudi Arabia, where he had been living, and other countries. He asked what charges had been made against him and was told he would find out later. During some of the interrogation sessions, he was reportedly tortured, including by being stripped and beaten around the head and shoulders with a wooden stick and metal ruler. On at least one occasion, he allegedly had his head repeatedly plunged into a sink containing water. He was reportedly

threatened with rape more than once and told that, if he did not cooperate, his wife would also be raped in detention.

On around 18 July 2002, around six plain-clothes security force officials travelling in two unmarked cars allegedly turned up at the home of Leila Rouki's family. The family says the men introduced themselves as police officers and proceeded to search the house. They reportedly confiscated Abdellah Meski's passport, portable phone and laptop computer, Leila Rouki's passport, and some computer disks and clothes. Leila Rouki was then taken to the police station of Maarif in Casablanca, where she was questioned about Abdellah Meski's activities before being released.

On 26 December 2002, Abdellah Meski was allegedly made to sign a document confirming his willingness to cooperate with the security forces by providing information of suspicious activities to them and then released. He says he was blindfolded, driven to the train station of Rabat-Agdal, then asked to board the first Casablanca-bound train.

During the months that Abdellah Meski spent in detention, his family was allegedly at no point informed of his whereabouts, despite their efforts to obtain information from the authorities. The family say that when they sought information at the main police station in Casablanca in the days following his arrest, they were told that the name of Abdellah Meski did not appear in the list of detainees. The family reportedly wrote to authorities such as the Ministers of Justice and the Interior, but received no response. They say that they also tried to lodge a complaint regarding the case with the crown public prosecutor at the Appeal Court of Casablanca, but that the prosecutor refused to accept it. Abdellah Meski is currently at liberty and living with his family in Casablanca.

Mohamed CHADLI and Nouredine GHARBAOUI

Mohamed Chadli, a builder born in 1972, and Nouredine Gharbaoui, a travelling salesman born in 1973, were reportedly arrested at their respective homes in the city of Salé at around 4:30am on 17 July 2002 by plain-clothes security force officials. The officials allegedly revealed police identity cards, but neither informed Mohamed Chadli or Nouredine Gharbaoui of the reason for their arrests nor produced an arrest warrant. Family members of both men were present at the time. On several occasions following their arrests, on 17, 18 and 19 July 2002, security force officials reportedly searched their homes and confiscated some of their belongings, including religious books, audio cassettes and items of clothing.

On arrest, Mohamed Chadli and Nouredine Gharbaoui were allegedly handcuffed, forced into unmarked cars and taken to a location which they believe to have been the DST centre in Témara. **They were reportedly detained there for 10 days, despite the centre not being an authorized place for *garde à vue*. They told their lawyers and families that during this time they were tortured. They said they were blindfolded and beaten with fists and sticks around the head and other parts of the body. They also said they were undressed and had cold water poured on them and that they were hit with electric-shock batons. Nouredine Gharbaoui also said he was threatened that his wife would be sexually assaulted.**

On 27 July 2002 they were allegedly transferred from Témara to a police station in Casablanca and held there for four days, during which time their hands they were handcuffed almost continuously. They were reportedly forced, under the threat of further torture, to sign police statements without being allowed to read their contents. The police statements, dated 30 July 2002, stated that they had confessed to the charges against them. The statements also state that both Mohamed Chadli and Nouredine Gharbaoui were arrested on 29 July 2002 and that their respective families were informed of their detention. According to the families, the arrests of both men actually occurred 12 days previous to that, on 17 July 2002, and they were not informed of the men's detention and whereabouts. Mohamed Chadli and Nouredine Gharbaoui were presented to the crown public prosecutor at the Appeal Court of Casablanca on the evening of 31 July 2002 and, later the same day, to the examining magistrate. A delay of 14 days between the date of arrest of the two men and the date of their presentation before the judicial authorities would surpass, by six days, the then maximum legal limit of *garde à vue*.

It has been reported to Amnesty International that a number of breaches of the Criminal Procedure Code occurred during both Mohamed Chadli's and Nouredine Gharbaoui's initial questioning sessions with the examining magistrate. Firstly, contrary to what is mentioned in the records of the initial questioning sessions, Mohamed Chadli and Nouredine Gharbaoui were apparently not informed that they were in the presence of the examining magistrate or that they had the right to have a lawyer assist them at the session and the right not to make any declaration. Secondly, the examining magistrate proceeded to substantive questioning without the reasons for this exceptional measure being mentioned on the records of the sessions. Thirdly, the examining magistrate allegedly ordered both men to sign the records of their respective sessions without knowing their contents; Mohamed Chadli reportedly signed without being allowed to read the record and Nouredine Gharbaoui, who is illiterate, reportedly signed without having the record read out to him.

Mohamed Chadli and Nouredine Gharbaoui were then transferred to Oukacha Prison pending trial. In subsequent detailed questioning sessions with the examining magistrate, they denied the charges against them. They complained about being detained in *garde à vue* for an illegally prolonged period, being tortured during *garde à vue* and being forced to sign police statements containing declarations that they had not made. Nouredine Gharbaoui said that the confessions he was recorded as making in his initial hearing with the examining magistrate resulted from his fear of being returned to the custody of the security forces.

When the case came to trial on 25 June 2003, the alleged torture and breaches of the Criminal Procedure Code were raised by the defence in court, but dismissed by the judge on the basis that there was no evidence in the case file to support these allegations. The defence also requested that family members who witnessed the arrests of the two men and the police officers who drew up the police statements be called to testify before the court to help establish the facts surrounding the contested arrest date and the circumstances in which declarations were made to the police. The request was rejected on the basis that the proposed testimonies did not relate directly to the alleged crimes.

On 12 July 2003, the Appeal Court of Casablanca found Mohamed Chadli and Noureddine Gharbaoui guilty of “formation of a criminal gang” and “concealing objects obtained through crime”. Mohamed Chadli was, in addition, found guilty of “destruction of official documents”. Mohamed Chadli and Noureddine Gharbaoui were sentenced to 20 years’ and 10 years’ imprisonment respectively, verdicts which were confirmed by the Supreme Court on 22 October 2003. The statements allegedly signed under duress were used in court as evidence to obtain their convictions. Mohamed Chadli and Noureddine Gharbaoui remain in prison.

Abdelilah FIZAZI

Abdelilah Fizazi, born on 10 April 1976, was reportedly arrested at the restaurant where he worked in Tangiers at around 1pm on 6 June 2003 by security force officials. He was allegedly taken first to a police station in Tangiers and then, later the same day, transferred in an unmarked car to a location which he believes to have been the DST centre in Témara. He was reportedly detained there for five days, despite the centre not being an authorized place for *garde à vue*.

He told his lawyer and family that during this time he was subjected to torture on three consecutive days. He said he was beaten with fists and sticks and hit with electric-shock batons. He also said he was threatened with rape.

On 11 June 2003 he was allegedly transferred from Témara to a police station in Casablanca and held there for two days. There he was reportedly forced, under the threat of further torture, to sign a police statement without being allowed to read its content. The police statement, dated 12 June 2003, stated that he confessed to the charges against him. It also records the date on which Abdelilah Fizazi was arrested as 11 June 2003, five days after the alleged arrest date. Abdelilah Fizazi was presented to the crown public prosecutor at the Appeal Court of Casablanca on the evening of 13 June 2003 and, later the same day, to the examining magistrate. He was apparently not informed that he had the right to have a lawyer assist him at the session and the right not to make any declaration, as required by the Criminal Procedure Code.

Abdelilah Fizazi was then transferred to Salé Local Prison pending trial. When the case came to trial in September 2003, the alleged torture was raised by the defence in court, but dismissed by the judge. On 18 September 2003, Abdelilah Fizazi was sentenced to five years’ imprisonment by the Appeal Court of Rabat for “formation of a criminal gang” and “manufacture of explosives”, among other charges. The statement allegedly signed under duress was used in court as evidence to obtain his conviction. Abdelilah Fizazi remains in prison.

ANNEX 2: Recommendations made by the UN Committee against Torture in its Concluding Observations of 20 November 2003

Recommendations²⁵

6. The Committee recommends that the State party:

(a) In the context of the ongoing reform of the Criminal Code, include a definition of torture which is fully consistent with the provisions of articles 1 and 4 of the Convention;

(b) In the context of the ongoing reform of the Criminal Code, clearly prohibit any act of torture, even if perpetrated in exceptional circumstances or in response to an order received from a superior officer or public authority;

(c) Limit the period of police custody to a strict minimum and guarantee the right of persons in police custody to rapid access to a lawyer, a doctor and a relative;

(d) Include in the Code of Criminal Procedure provisions organizing the imprescriptible right of any victim of an act of torture to initiate proceedings against any torturer;

(e) Take all necessary measures to eliminate impunity for public officials responsible for torture and cruel, inhuman or degrading treatment;

(f) Ensure that all allegations of torture or cruel, inhuman or degrading treatment are immediately investigated impartially and thoroughly, especially allegations relating to cases and situations verified by the aforementioned Independent Arbitration Commission and allegations implicating the National Surveillance Directorate in acts of torture, and ensure that appropriate penalties are imposed on those responsible and that equitable compensation is granted to the victims;

(g) Inform the Committee of the outcome of impartial inquiries into all deaths in police custody, detention or prison, in particular deaths alleged to be the result of torture;

(h) In the context of the ongoing reform of the Criminal Code, incorporate a provision prohibiting any statement obtained under torture from being invoked as evidence in any proceedings, in conformity with article 15 of the Convention;

(i) Withdraw the reservation made concerning article 20 and make the declarations provided for in articles 21 and 22 of the Convention;

²⁵ UN document CAT/C/CR/31/2, paras. 6-8.

(j) Devote a part of its next periodic report to measures taken to comply with the conclusions and recommendations addressed to it by the Committee;

(k) Provide in its next periodic report detailed statistics on complaints of acts of torture or other cruel, inhuman or degrading treatment or punishment perpetrated by public officials, and on inquiries, proceedings and criminal and disciplinary sanctions relating to those complaints, disaggregated by offence, age and sex of victim, and position of the perpetrator of the offence. The State party should also provide information on the results of any inspection of any place of detention, the measures taken by the authorities to find solutions to the problems of prison overcrowding, and action taken on allegations of violence between prisoners.

7. The Committee recommends that the present conclusions and recommendations, and the summary records of the meetings at which the State party's third periodic report was considered, should be widely disseminated in the country in the appropriate languages.

8. The Committee requests the State party to provide within one year information on the action it has taken on its recommendations contained in paragraph 6, subparagraphs (c), (f) and (g) above.