



MOROCCO

SUBMISSION TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE

118TH SESSION, 17 OCTOBER – 14 NOVEMBER 2016

AMNESTY
INTERNATIONAL



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First published in 2016
by Amnesty International Ltd
Peter Benenson House, 1 Easton Street
London WC1X 0DW, UK

Index: MDE 29/4858/2016
Original language: English
amnesty.org

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CONTENTS

| | |
|---|-----------|
| 1. INTRODUCTION | 5 |
| 2. CONSTITUTIONAL AND LEGAL FRAMEWORK (ARTS. 2, 6 & 7) | 5 |
| 3. NON-DISCRIMINATION, GENDER EQUALITY AND PROTECTION OF CHILDREN (ARTS. 2, 3, 17, 23 & 26) | 6 |
| 4. WOMEN'S RIGHTS AND VIOLENCE AGAINST WOMEN (ARTS. 2, 3, 17) | 8 |
| 5. COUNTER-TERRORISM MEASURES (ARTS. 2, 7, 9, 10 AND 14) | 9 |
| 6. RIGHT TO LIFE (ART. 6) | 10 |
| 7. PROHIBITION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT (ARTS. 2, 6 AND 10) | 11 |
| 7.1 LEGAL SAFEGUARDS | 12 |
| 8. FREEDOM AND SECURITY OF THE PERSON, PROTECTION AGAINST ARBITRARY DETENTION AND ENFORCED DISAPPEARANCE (ARTS. 7 AND 9) | 13 |
| 9. RIGHT TO A FAIR TRIAL AND INDEPENDENCE OF THE JUDICIARY (ARTS. 7, 9, 10, 14) | 15 |
| 9.1 JUDICIAL REFORMS | 15 |
| 9.1.1 RIGHTS IN CUSTODY | 15 |
| 9.1.2 RIGHTS AT TRIAL | 16 |
| 9.1.3 INDEPENDENCE OF THE JUDICIARY | 16 |
| 9.2 CASES | 16 |
| 10. TREATMENT OF FOREIGNERS, PARTICULARLY REFUGEES AND ASYLUM-SEEKERS (ARTS. 12 AND 13) | 18 |
| 11. FREEDOM OF RELIGION AND BELIEF (ART. 18) | 19 |
| 12. FREEDOM OF EXPRESSION, ASSOCIATION, ASSEMBLY AND MOVEMENT (ARTS. 19, 21 AND 22) | 20 |
| 12.1 FREEDOM OF ASSOCIATION | 20 |
| 12.2 FREEDOM OF EXPRESSION | 21 |
| 12.3 FREEDOM OF ASSEMBLY AND RIGHT TO STRIKE | 23 |

| | |
|---|-----------|
| 12.3.1 LEGAL FRAMEWORK | 23 |
| 12.3.2 FREEDOM OF ASSEMBLY IN PRACTICE | 23 |

1. INTRODUCTION

Amnesty International submits this information to the Human Rights Committee (the Committee) in advance of the examination of the sixth periodic report of the Kingdom of Morocco (hereafter Morocco), at the 118th session of the Committee scheduled to be held in October 2016.

The submission features information in relation to the Committee's List of Issues on Morocco¹ and draws on Amnesty International previous pre-sessional briefing to the Committee.

2. CONSTITUTIONAL AND LEGAL FRAMEWORK (ARTS. 2, 6 & 7)

In 2011, Morocco adopted a new Constitution, which includes a range of human rights safeguards and affirms the primacy of ratified international instruments over national law. In November 2014, the authorities unveiled a draft bill to review the Code of Criminal Procedure, which has yet to be validated by the Council of government and submitted to parliament.² In 2016, Morocco's government approved Draft law 10.16 to amend and complete the Penal Code (hereafter Draft law 10.16), in an apparent effort to harmonize national legislation with ratified international instruments by criminalizing a number of crimes under international law, in line with the 2011 Constitution.³

Amnesty International welcomed Draft law 10.16's extension of the prohibition on genocide, crimes against humanity and war crimes provided in Article 23 of the Constitution into national law in line with international law and standards. However, the Organization is concerned about the proposals to introduce the death penalty for these crimes, as well as the fact that Draft law 10.16 retains the death penalty for a number of offences.

While Draft law 10.16 introduces provisions on war crimes which are largely in line with the Rome Statute, it fails to mention the following war crime, defined in the Rome Statute of the International Criminal Court, as well as in Article 85(4)(a) of Protocol I Additional to the Geneva Conventions, to which Morocco is a state party: "the transfer by the Occupying Power of parts of its own civilian population in the territory it occupies, or the deportation or transfer of all or parts of the populations of the occupied territory within or outside this territory, in violation of Article 49 of the Fourth Convention."

¹ Human Rights Committee, List of Issues in relation to the sixth periodic report of Morocco, 9 May 2016 (CCPR/C/MAR/Q/6), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fMAR%2fQ%2f6&Lang=en

² Amnesty International has submitted detailed recommendations to the Moroccan authorities on the draft bill, in relation to arrest, detention and trial procedures, as well as aspects of sentencing, punishment and the right to remedy. Analysis on the changes the draft bill would bring to the concerns outlined in this submission is included where relevant.

³ Amnesty International has analyzed and sent recommendations to the Moroccan authorities on Draft Law 10.16. This analysis is mentioned where relevant in this submission.

Morocco prohibited enforced disappearance under Article 23 of its Constitution, and acceded to the International Convention for the Protection of all Persons from Enforced Disappearance (Convention on Enforced Disappearance) in 2013.⁴ In a welcome development, it is now proposing to incorporate the prohibition of enforced disappearances into the Penal Code by adding new Article 231-9 in Draft law 10.16. However, the proposed definition of enforced disappearance fails to explicitly provide that enforced disappearance is a continuous offence. It also fails to specify that its prohibition is non-derogable and applies in all circumstances, including in a state of war, threat of war, internal political instability or any other public emergency, among other shortcomings.⁵ Draft law 10.16 also proposes to strengthen the definition of torture and other ill-treatment in Article 231-1 of the Penal Code, although it again fails to explicitly provide that it is non-derogable.⁶

Morocco removed prison penalties from its Press Code in 2016. However, provisions punishing the peaceful exercise of the right to freedom of expression with imprisonment remain in force in the Penal Code. No attempt has been made to either repeal or amend these provisions through Draft law 10.16 and bring them in conformity with international standards.

Amnesty International recommends that the Moroccan authorities:

- Bring legislation in conformity with international standards with regard to non-derogable prohibitions, including those on torture and other ill-treatment and on enforced disappearance;
- Review legislation to include a prohibition on the crime of transfer or deportation of civilian populations to, from or within occupied territory, in line with the Rome Statute and Article 85(4)(a) of Protocol I Additional to the Geneva Conventions.

3. NON-DISCRIMINATION, GENDER EQUALITY AND PROTECTION OF CHILDREN (ARTS. 2, 3, 17, 23 & 26)

Consensual same-sex sexual relations are still criminalized, and discrimination against LGBTI people persists in law and in practice. Morocco continues to imprison people under Article 489 of the Penal Code criminalizing consensual same-sex sexual relations. In July 2015, an appeals court in Oujda convicted three

⁴ Morocco, however, has not recognized the competence of the Committee on Enforced Disappearances to receive and consider communications from or on behalf of victims or other states parties.

⁵ Amnesty International has published a guide for state authorities with recommendations on how to best implement their obligations under the Convention, and has invited the Moroccan authorities to take it into account. See Amnesty International, *No Impunity for Enforced Disappearance: Checklist for effective implementation of the International Convention for the Protection of All Persons from Enforced Disappearance*, (Index: IOR 51/2006/2011), November 2011, available at <https://www.amnesty.org/en/documents/IO51/006/2011/en/>.

⁶ See section 7. Prohibition of torture and other cruel, inhuman or degrading treatment.

men on charges that included “indecent” and engaging in same-sex sexual relations, and sentenced them to five months’ imprisonment. The three men had originally been sentenced to three years’ imprisonment.⁷

The Moroccan government did however emphasize the importance of consent in marriage. Legislators are currently reviewing Draft law 103.13 on combating violence against women (hereafter Draft law 103.13),⁸ which proposes to introduce a prohibition on forced marriage (Article 503-2-1), punishable with prison terms and fines. However, it makes the prosecution conditional on a complaint from the victim. This provision is particularly problematic in cases of child marriage as girls are particularly vulnerable to pressure from their spouse or family to drop complaints.

Draft law 103.13, however, does not prohibit child marriage. Article 19 of Morocco’s Family Code, amended in 2004, sets the age of marriage at 18, but derogations are possible under Articles 20 and 21 that allow judges to authorize child marriage, with or without the consent of the child’s guardian. Articles 20 and 21 of the Family Code make no mention of the child’s full, free and informed consent to marriage. Article 21 requires the consent of a child’s legal guardian, although judges may disregard a guardian’s refusal to consent. The law also lacks appropriate safeguards for derogations, leaving broad discretion to judges. Exceptional circumstances are not defined in law, nor is there a requirement to take into account evidence of the adolescent’s maturity. Draft law 103.13 leaves these provisions unchanged.

Article 19 of Morocco’s 2011 Constitution guarantees equality between men and women. However, the Moroccan authorities have made no progress in recent years to repeal provisions that discriminate against women in the 2004 Family Code, including in relation to marriage, divorce, custody and legal guardianship of children and inheritance, and to lift remaining reservations to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).⁹

Amnesty International recommends that the Moroccan authorities:

- Review the Penal Code, particularly to repeal Article 489 that criminalizes consensual same-sex sexual relations;
- Review Articles 20 and 21 of the Family Code to prohibit child marriage. Any exceptional circumstances allowing marriages below 18 should be defined by law and accompanied with appropriate safeguards such as authorised by a judge on the evidence of adolescent's maturity and their full, free and informed consent, without deference to culture and tradition
- Review the Family Code to repeal or amend provisions that discriminate in the areas of marriage, divorce, custody and legal guardianship of children and inheritance on the basis of gender.

⁷ See for instance, Amnesty International, Annual report 2015/2016 - The State of the World’s Human Rights – Morocco (Index: POL 10/2552/2016), February 2016, available at <https://www.amnesty.org/en/documents/pol10/2552/2016/en/>; Amnesty International, “Drop absurd charges against teenagers arrested for kissing,” 10 October 2013 and Amnesty International, “Morocco/Western Sahara: Drop charges of homosexuality against six men and ensure their safety,” 16 January 2008.

⁸ For detailed analysis and recommendations, see Amnesty International, “Morocco: Violence against women bill needs stronger safeguards” (Index: MDE 29/4007/2016), 20 May 2016, available at <https://www.amnesty.org/en/documents/mde29/4007/2016/en/>

⁹ In April 2011, Morocco withdrew its reservations to article 9 (2), on transfer of nationality to children, and article 16, on equality in marriage and divorce, of CEDAW. It did not, however, lift declarations in relation to article 2 stating that this provision would apply only to the extent that it was compatible with sharia law and to article 15 (4)

4. WOMEN'S RIGHTS AND VIOLENCE AGAINST WOMEN (ARTS. 2, 3, 17)

In 2014, Morocco repealed Article 475 of the Penal Code to prevent suspected rapists from escaping prosecution by marrying their victims aged under 18.¹⁰ Draft law 103.13 on combating violence against women¹¹ introduces new offences,¹² increases existing penalties in cases of spousal or family violence, proposes new measures to protect survivors of violence during and after judicial proceedings and establishes new bodies to coordinate and complement judicial and governmental efforts to combat violence against women.

However, Draft law 103.13 fails to provide definitions of some forms of violence including rape in line with international standards. Crucially, it does not propose to amend the current definition of rape contained in Article 486 of the Penal Code which refers to the act by which “a man has sexual relations with a woman against her will”. The definition of rape should be gender neutral and defined in such a way as to address and criminalize all forms of non-consensual sexual invasion into any part of the victim’s body, including penetration by objects, in line with international human rights law and standards. Draft law 103.13 also fails to explicitly recognize marital rape.

Draft law 103.13 also fails to address the continuing criminalization of consensual sexual relations outside marriage in articles 489, 490 and 491 of the Penal Code. These provisions violate the right to privacy, and deter survivors of rape and sexual assault from reporting sexual violence and seeking medical care and justice out of fear that they may be prosecuted.

Abortion remains criminalized, unless the health of the woman is at risk, and is subject to spousal consent, which restricts women’s autonomous decision-making. In all other cases, women seeking or undergoing abortions and health professionals assisting them alike risk prison terms of up to two years for women and up to 10 years for health professionals, in addition to other penalties, perpetuating the reality of clandestine abortions and associated maternal mortality and morbidity. In May 2015, King Mohammed VI initiated a review of legislation on abortion,¹³ later integrated in Draft law 10.16 to review the Penal Code. Draft law 10.16 proposes to introduce new exceptions to the criminalization of abortion including in cases of incest, rape, severe foetal malformation or untreatable genetic disease. However, it adds a requirement for third party notification and approval procedures that could delay access to legal abortions and generate health risks for pregnant women and girls.¹⁴

Amnesty International recommends that the Moroccan authorities:

¹⁰ Amnesty International, “Morocco: Amendment of rape provision is a step in the right direction”, 23 January 2014 available at <https://www.amnesty.org/en/latest/news/2014/01/morocco-amendment-rape-provision-step-right-direction/>

¹¹ Amnesty International, “Morocco: Violence against women bill needs stronger safeguards” (Index: MDE 29/4007/2016), 20 May 2016, available at <https://www.amnesty.org/en/documents/mde29/4007/2016/en/>

¹² Most newly-introduced offences focus on protecting married or divorced women. These include the prohibition on forced marriage (Article 503-2-1), a ban on the deliberate squandering of funds intended for the spouse, children or divorce-related payments or arrangements (Article 526-1), evicting a spouse from the marital home (Article 480-1).

¹³ Amnesty International, *Morocco: Amnesty International’s submission in the context of the national debate on abortion* (Index: 29/1341/2105), April 2015, available at <https://www.amnesty.org/en/documents/mde29/1341/2015/en/>

¹⁴ Draft law 10.16 introduces the need for authorization by a medical committee from the hospital or clinic where the abortion is due to be performed, although such authorization is not needed if the doctor considers the pregnant girl or woman’s life to be at risk. In both cases, the doctor must notify government authorities who review the medical file to ensure the abortion is not performed in breach of Article 453.

- Review the Penal Code to include a definition of rape in line with international standards, and explicitly criminalize marital rape;
- Repeal provisions in the Penal Code that criminalize consensual sexual relations outside marriage, including adultery;
- Review the Penal Code to end the criminalization of abortion and remove third-party consent for access to legal abortions.

5. COUNTER-TERRORISM MEASURES (ARTS. 2, 7, 9, 10 AND 14)¹⁵

Draft law 10.16 to review the Penal Code fails to bring greater precision to the vaguely-worded definitions of terrorism and terrorism-related offenses, in breach of the principle of legality. Amnesty International is not aware of any legislative efforts to amend problematic provisions in the Penal Code. Under Article 218-1 of the Penal Code, a crime is defined as a “terrorist” act when it is “related intentionally to an individual or collective act aiming to seriously harm public order by intimidation, terror or violence”. This broad definition could be subject to wide interpretation and abuse as the terms “intimidation”, “terror” and “violence” are not defined in law.¹⁶

Article 218-2 of the Penal Code imposes prison terms for the offence of “advocating” terrorism by means including speeches and publications. This provision has been used to prosecute journalists for disseminating news, such as in the case of journalist Ali Anouzla.¹⁷

In addition, a 2015 amendment to the Penal Code has added similarly vague offences of joining or attempting to join, promoting, advocating or failing to denounce “terrorist entities, organizations, gangs or groups, whatever their form, or aim” (Article 218-1-1).

Amnesty International recommends that the Moroccan authorities:

- Review the Penal Code to include precise definitions of terrorism and “advocacy” of terrorism, with a clear scope.

¹⁵ For concerns on criminal procedure, see section 9. Right to a fair trial and independence of the judiciary

¹⁶ Amnesty International, *Morocco: Briefing to the Human Rights Committee*, September 2004 (Index: MDE 29/009/2004)

¹⁷ See section on Freedom of expression; Amnesty International, “Morocco: Stop using ‘terrorism’ as a pretext to imprison journalists,” 20 May 2014, available at <https://www.amnesty.org/en/latest/news/2014/05/morocco-stop-using-terrorism-pretext-imprison-journalists/>

6. RIGHT TO LIFE (ART. 6)

Morocco observes a de facto moratorium on executions since 1993 but continues to impose death sentences. In 2014, nine death sentences were imposed and the same number was reported in 2015, with no commutations or pardons granted.¹⁸ By the end of 2014, there were 117 people – 114 men and three women - on death row in Moroccan jails.¹⁹

Draft law 10.16 to review the Penal Code upholds the death penalty and expands its scope to three new categories of crimes: genocide, war crimes and crimes against humanity. However, it proposes to punish accomplices to crimes punishable with the death penalty with life imprisonment, as opposed to the death penalty, as currently provided.

Morocco has continued to abstain from voting on UN General Assembly resolutions on a moratorium on the use of the death penalty, most recently in December 2012²⁰ and December 2014.²¹

Amnesty International recommends that the Moroccan authorities:

- Commute all death sentences and immediately establish an official moratorium on executions
- Restrict the use of the death penalty to only crimes that meet the threshold of most serious crimes under international law; with a view to abolishing the death penalty for all crimes.

¹⁸ Amnesty International, *Death sentences and executions in 2015* (Index: ACT 50/3487/2016), April 2016, available at <https://www.amnesty.org/en/documents/act50/3487/2016/en/>

¹⁹ Amnesty International, *Death sentences and executions in 2014* (Index: ACT 50/0001/2015), April 2015, available at <https://www.amnesty.org/en/documents/act50/0001/2015/en/>

²⁰ UN General Assembly, Resolution adopted by the General Assembly on 20 December 2012, UN Doc. A/RES/67/176 (2013)

²¹ UN General Assembly, Resolution adopted by the General Assembly on 18 December 2014, UN Doc. A/RES/69/186 (215); 73rd plenary meeting, UN Doc. A/69/PV.73 (2014), p. 18

7. PROHIBITION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT (ARTS. 2, 6 AND 10)

Amnesty International continued to receive regular allegations of torture and other ill-treatment in Morocco and Western Sahara during the reporting period. Those documented between 2010 and 2014 revealed a clear deficit in adequate investigations, even when detainees brought before prosecutors and judges bore visible injuries or when defendants requested medical examinations. Courts often relied on coerced statements in judicial proceedings without investigating allegations of torture and other ill-treatment, in spite of existing legal safeguards in this regard.

In the rare instances where courts granted medical examinations, these were often delayed, consisting only of cursory physical examinations sometimes conducted in presence of security forces, with examination reports inaccessible to victims or their legal counsel. Such medical examinations generally fell well short of standards defined in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), or of those defined in the UN Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (Minnesota Protocol) in cases of deaths in custody, including where torture is suspected to have occurred. The absence or deficiency of investigations often resulted in unfair trials.²²

Amnesty International welcomed the Minister of Justice and Liberties instructions to prosecutors and judges on 29 May 2014, encouraging them to order medical examinations when faced with reports of torture or other ill-treatment. Similar instructions were also circulated within the General Directorate for National Security and the General Delegation for Penitentiary Administration and Reinsertion. In a public statement on 11 June 2014, the Minister of Justice and Liberties further stated that he would make public the conclusions of investigations on torture.²³ Amnesty International noted reports of investigations being opened following some cases of alleged torture in detention in 2015. In other cases of alleged torture and other ill-treatment, Amnesty International continued to receive reports of judicial authorities refusing to order medical examinations.

Dual Belgian-Moroccan national Ali Aarrass is currently serving a 12 year prison sentence for allegedly participating in and procuring arms for a criminal group, after an unfair trial relying on a “confession” which he claims was extracted under torture.²⁴ In 2014, Moroccan authorities reopened an investigation into his

²² Amnesty International, *Shadow of Impunity: Torture in Morocco and Western Sahara*, (Index: MDE 29/001/2015), May 2015, available at <https://www.amnesty.org/en/documents/mde29/001/2015/en/>; See also Section 9. Right to a fair trial and independence of the judiciary

²³ Ministry of Justice and Liberties, Statement published on 11 June 2014 on the website of the Ministry of Justice and Liberties <http://www.justice.gov.ma/ar/Actualites/Detail?Detail=330>; Maghreb Arabe Presse, Travaux du Conseil du gouvernement du jeudi 12 juin 2014, available at: <http://www.maroc.ma/fr/actualites/travaux-du-conseil-de-gouvernement-du-jeudi-12-juin-2014>

²⁴ Ali Aarrass was detained in Morocco after his forcible return from Spain on 14 December 2010, despite warnings by the Human Rights Committee and Amnesty International that he would be at risk of incommunicado detention, torture and other ill-treatment, and unfair trial

torture allegations, but closed it again in late 2015 after a medical examination pointed at the absence of traces of torture, which the International Rehabilitation Council for Torture Victims concluded had not complied with the Istanbul Protocol. The authorities' decision to reopen the investigation had followed the UN Committee Against Torture's decision that Morocco had violated Articles 2, 11, 12, 13 and 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) in the case, and its call on the Moroccan authorities to report on steps to adequately investigate his allegations.

The Working Group on Arbitrary Detention (WGAD) has also called on the Moroccan authorities to release and adequately compensate Ali Aarrass (Opinion no. 25/2013). Morocco's Court of Cassation has yet to respond to his appeal over four years after he lodged it, although Article 546 of the Code of Criminal Procedure specifies that a decision must be reached within three months.²⁵

Prisoners launched frequent hunger strikes to protest against harsh conditions, including poor hygiene and sanitation, inadequate nutrition and healthcare, severe overcrowding, detention far from their families, as well as limited visiting rights and access to education.²⁶

7.1 LEGAL SAFEGUARDS

The Moroccan authorities took steps to strengthen legal safeguards against torture and other ill-treatment. The existing definition, introduced in 2006, falls short of defining complicity in acts of torture, or explicit or tacit consent on the parts of those acting in an official capacity.²⁷ Draft law 10.16 now proposes to broaden the definition of a "perpetrator" contained in Article 231-1 of the Penal Code from a "public officer" in the current text to "a public officer or any other person acting in an official capacity". However, it does not specify that the prohibition on torture and other ill-treatment is non-derogable and applies in all circumstances, among other shortcomings.

In 2014, Morocco acceded to the Optional Protocol to the Convention against Torture, though a National Preventive Mechanism remains to be established.²⁸

Amnesty International recommends that the Moroccan authorities:

- Ensure that whenever torture and other ill-treatment is alleged or suspected, the authorities have the obligation to carry out a prompt, thorough and impartial investigation, including a forensic medical examination in conformity with the Istanbul Protocol, or autopsies in conformity with the Minnesota Protocol in case of a death in custody;
- Ensure that legal proceedings are postponed pending the outcomes of investigations into alleged torture and other ill-treatment; that the scope, methods and findings of such investigations are made public, and officials suspected of committing torture and other ill-treatment are suspended from active duty during the investigation;
- Grant access to places of detention to national and international human rights groups, in order to support and complement the work of Morocco's future National Preventive Mechanism.

in Morocco. The Committee later found Spain to have breached its obligations under the Optional Protocol to the ICCPR by failing to respond to the provisional measure. See Human Rights Committee, Communication No. 2008-2010, Ali Aarrass v. Spain, UN Doc. CCPR/C/111/D/2008/2010 (2014)

²⁵ Amnesty International, "Morocco: Torture survivor still detained despite UN calls for his immediate release" (Index: MDE 29/4119/2016), 31 May 2016, available at <https://www.amnesty.org/en/documents/mde29/4119/2016/en/>

²⁶ Amnesty International, *Annual report 2014/2015 - The State of the World's Human Rights* (Index: POL 10/0001/2015)

²⁷ Law no. 43-04 of 14 February 2006 amended the Penal Code to include a specific definition of torture under Article 231-1: "*any act, committed intentionally by a public official or someone acting at his behest or with his express or tacit consent, by which acute physical or mental pain is inflicted on a person in order to intimidate him or her, or to pressure that person, or someone else, to obtain information or indications, or confessions; to punish that person for an act that he or she, or a third person has committed or is suspected to have committed, or when such pain or suffering is inflicted for any other reason based on any type of discrimination. This term does not cover the pain or suffering relating only to legal sanctions or caused by such sanctions or that is inherent to such sanctions.*" (translation as featured in the Report of the Special Rapporteur on torture, Mission to Morocco, UN Doc. A/HRC/22/53/Add.2 (2013)).

²⁸ Amnesty International, "Accession to OPCAT must be followed by swift implementation" (Index: MDE 29/011/2014), 1 December 2014, <https://www.amnesty.org/en/documents/mde29/011/2014/en/>

8. FREEDOM AND SECURITY OF THE PERSON, PROTECTION AGAINST ARBITRARY DETENTION AND ENFORCED DISAPPEARANCE (ARTS. 7 AND 9)

In 2011, Morocco prohibited enforced disappearance under Article 23 of its Constitution, acceded to the UN Convention on Enforced Disappearance and accepted the competence of the UN Committee on Enforced Disappearance for inquiries in 2013. It is now proposing to ban enforced disappearance in the Penal Code through Draft Law 10.16.

However, Morocco has yet to adequately investigate the existence of a secret detention centre in Temara, near the capital Rabat, where dozens of persons accused of “terrorism” and other serious offences said they were detained incommunicado and tortured between 2002 and 2011,²⁹ including after extraordinary rendition to Morocco by the United States government.³⁰

Morocco’s courts have yet to hold accountable officials suspected to be responsible for gross human rights violations including torture and enforced disappearance in Morocco and Western Sahara during the “years of lead” between 1956 and 1999. Furthermore, some suspected perpetrators continued to remain in position as members and, in some cases, high-ranking officials, of the security forces.³¹

In spite of a transitional justice process launched in 2004, the fate of many victims of enforced disappearance during this period remains unknown. The Equity and Reconciliation Commission fell short of

²⁹ Amnesty International, *Morocco/Western Sahara: Torture in the “anti-terrorism” campaign - the case of Temara detention centre* (Index: MDE 29/004/2004); Amnesty International, *Shadow of Impunity: Torture in Morocco and Western Sahara* (Index: MDE 29/001/2015), May 2015, available at <https://www.amnesty.org/en/documents/mde29/001/2015/en/>, p. 78-80.

³⁰ Amnesty International, *USA: Crimes and impunity: Full Senate Committee report on CIA secret detentions must be released, and accountability for crimes under International law ensured*, (Index AMR 51/1432/2015), April 2015, available at <https://www.amnesty.org/en/documents/amr51/1432/2015/en/>, p. 66

³¹ Amnesty International, *Time for truth 50 years after enforced disappearance of opposition leader Mehdi Ben Barka* (Index: MDE 29/2747/2015); Amnesty International, *Annual report 2015/2016 - The State of the World’s Human Rights* (Index: POL 10/2552/2016)

identifying individuals suspected of criminal responsibility for grave human rights violations between 1956 and 1999, and the transitional justice body disappointingly did not call for individuals suspected of responsibility to be held accountable. However, it recommended a national strategy to combat impunity, which has yet to be introduced.

In the case of Mehdi Ben Barka, abducted and forcibly disappeared in Paris on 29 October 1965, investigations opened in France on his case have stalled because of lack of access to classified information held by the French authorities, as well as to witnesses and suspects in Morocco, and to the “PF3” (Point Fixe 3), a former secret detention centre located in the capital Rabat suspected to contain some of his bodily remains. The Moroccan authorities have yet to make an official enquiry into his fate.

The Moroccan authorities also have yet to open investigations following the discovery of several sites with human remains in Western Sahara. In 2013, a team of forensic experts exhumed bodies of eight Sahrawis, including children, who disappeared in 1976, and discovered evidence that they were extrajudicially executed by Moroccan armed forces and executed by firearms on the spot, before being buried in two shallow graves.³²

Amnesty International recommends that the Moroccan authorities:

- Conduct full, impartial and independent investigations into all allegations of crimes under international law and, where sufficient admissible evidence exists, prosecute those responsible in fair trials without recourse to the death penalty;
- Investigate allegations of torture and secret detention at a secret detention centre in Temara between 2002 and 2011 and hold those responsible accountable;
- Accept the competence of the UN Committee on Enforced Disappearances for individual and inter-state complaints.

³² Amnesty International, “Morocco/Western Sahara: New revelations on Sahrawi disappearance cases highlight truth and justice deficit” (Index MDE 29/011/2013), 12 September 2013, available at <https://www.amnesty.org/en/documents/MDE29/011/2013/en/>

9. RIGHT TO A FAIR TRIAL AND INDEPENDENCE OF THE JUDICIARY (ARTS. 7, 9, 10, 14)

9.1 JUDICIAL REFORMS

Amnesty International welcomed Morocco's amendment of military justice laws in 2015 to end the prosecution of civilians before military courts. The government's draft bill to review the Code of Criminal Procedure has yet to be approved and submitted to the legislature.³³

9.1.1 RIGHTS IN CUSTODY

The draft bill to review the Code of Criminal Procedure proposes to enhance suspects' access to lawyers by allowing contact from the first hour of custody, without the need for an authorization by the prosecutor. However, it upholds the current 30-minute limit on communication with the lawyer and the possibility for prosecutors to delay such communication for up to six days for national security and "terrorism" offences.

If adopted in its current form, the draft bill to review the Code of Criminal Procedure would allow lawyers to be present during their clients' police interrogation in specific cases including juveniles, deaf or mute persons or those otherwise disabled in a way that compromises their defence, and those suspected of misdemeanours or felonies and released on bail. However, it falls short of doing so for all suspects, although this would be an effective safeguard against torture and other ill-treatment and coerced "confessions" leading to unfair trials. The Moroccan authorities told Amnesty International they were adopting a gradual approach with the ultimate aim of ensuring this right for all defendants in the future. The draft law also provides for the audio-visual recording of police interrogations for misdemeanours and felonies in a welcome step.

The draft bill to review the Code of Criminal Procedure restricts the recourse to pre-arraignment detention to specific misdemeanours and felonies punishable by imprisonment and proposes to make pre-arraignment detention an "exceptional measure". It also imposes the need for a reasoned judicial decision to extend pre-arraignment detention beyond the initial period (48 hours with an optional 24 hour extension for ordinary offences, 96 hours renewable once for national security and 96 hours renewable twice for "terrorism" offences). However, the draft bill to review the Code of Criminal Procedure does not reduce the length of pre-arraignment detention, in spite of the Committee's recommendation in this regard, particularly in relation to "terrorism" offences where pre-arraignment detention may last up to 12 days.³⁴

Unfortunately, it also leaves prosecutors in charge of reviewing arrest and detention, contrary to the Committee's recommendation in this regard.³⁵ In particular, this makes the recourse to pre-trial detention more likely in spite of the presumptions of innocence and release pending trial, including cases involving critics of the authorities. The Moroccan authorities insist that prosecutors are impartial judicial officers.

³³ Amnesty International has sent recommendations on the draft bill to the Moroccan authorities.

³⁴ Human Rights Committee, Concluding Observations on Morocco, UN Doc. CCPR/CO/82/MAR (2004) para. 15.

³⁵ Human Rights Committee, General Comment 35, Article 9, UN Doc. CCPR/C/G/35 (2014) para. 32.

9.1.2 RIGHTS AT TRIAL

Following a visit to Morocco in December 2013, the WGAD found that proceedings and convictions often relied on statements extracted under torture and other ill-treatment. It noted that this was made possible because courts often failed to adequately investigate allegations of torture and other ill-treatment.³⁶ Amnesty International's research, in particular research carried out in 2013 and 2014, has led to similar findings.³⁷

Draft bill 10.16 does not address the courts' disproportionate reliance on statements in police custody to secure convictions, sometimes in the absence of material evidence, a trend documented by the WGAD and Amnesty International.³⁸ The draft bill includes no changes to Article 290 of the Code of Criminal Procedure, which provides that police statements and reports, including interrogation reports, are considered to be true, *prima facie* evidence until the contrary is proven. Nor does it propose any changes to Article 292, which applies the same principle to other statements and reports. These articles directly contradict the presumption of innocence by reversing the burden to prove guilt through evidence, to a burden to prove innocence, according to the WGAD.³⁹

Article 293 of the Code of Criminal Procedure prohibits the use of coerced confessions in proceedings, however as Amnesty International's research has shown,⁴⁰ it is not being adequately applied because of an apparent assumption that the burden to prove coercion rests with the victim. The draft proposes no change to clarify the burden of proof in this article, in spite of recommendations by the Special Rapporteur on Torture and Amnesty International in this regard.⁴¹ However, the draft law introduces a new provision that would void police interrogation reports if the prosecution refuses a request for a medical examination following pre-arraignment detention. If introduced and adequately implemented, this welcome proposal would help prevent the use of coerced confessions in proceedings.

Meanwhile, the draft bill stops short of providing an explicit right for the defence counsel or the accused to cross-examine prosecution witnesses or compel their appearance in proceedings.

9.1.3 INDEPENDENCE OF THE JUDICIARY

In February 2016 legislators passed Organic law 100.13 on the Higher Judicial Council, and Organic law 106.13 on the Statute of Judges, although these fell short of ensuring judicial independence.⁴² They were promulgated in April 2016 following revisions to the Organic Law on the Statute of Judges by Morocco's Constitutional Council in March 2016.

The draft bill to review the Code of Criminal Procedure places the oversight of penal affairs under the supervision of the General Prosecutor at the Court of Cassation, rather than the Minister of Justice and Liberties, which is an improvement with regard to impartiality. However, the General Prosecutor at the Court of Cassation remains under the risk of executive influence.

Article 17 of the Organic law 106.13 on the Statute of Judges provides for the General Prosecutor at the Court of Cassation's appointment by the King, without specification of criteria for appointment or grounds and procedures for termination of office, making him or her very susceptible to any perceived pressure from the head of state. The risk of executive influence that stems from this appointment process is enhanced by the fact that the General Prosecutor at the Court of Cassation in turn appoints all prosecutors.

9.2 CASES

Amnesty International documented numerous unfair trials in recent years, which often rely on statements reportedly extracted under torture and other ill-treatment without adequate investigation of these allegations,

³⁶ Report of the WGAD, Mission to Morocco, UN Doc. A/HRC/27/48/Add.5 (2014) paras. 30-32.

³⁷ Amnesty International, Shadow of impunity: Torture in Morocco and Western Sahara, (Index MDE/001/2015)

³⁸ Report of the WGAD, Mission to Morocco, UN Doc. A/HRC/27/48/Add.5 (2014), paras. 30-32; Amnesty International, Shadow of impunity: Torture in Morocco and Western Sahara (Index MDE/001/2015).

³⁹ Report of the Working Group on Arbitrary Detention, Mission to Morocco, UN Doc. A/HRC/27/48/Add.5 (2014) para. 33.

⁴⁰ Amnesty International, Shadow of impunity: Torture in Morocco and Western Sahara, (Index MDE/001/2015) p. 48.

⁴¹ Report of the Special Rapporteur on Torture, UN Doc. E/CN.4/2003/68 (2002) para. 26(k)

⁴² International Commission of Jurists, "Morocco: flawed draft laws on High Judicial Council and Statute for Judges must be revised", 19 June 2015, available at: <http://www.icj.org/morocco-flawed-draft-laws-on-high-judicial-council-and-statute-for-judges-must-be-revised/>

both in Morocco and Western Sahara.⁴³ Other violations of the right to a fair trial notably included denying the defence the possibility to cross-examine prosecution witnesses. Morocco failed to implement most calls by the WGAD to release and adequately compensate individuals arbitrarily detained as a result of an unfair trial, or to adequately investigate alleged violations in such cases. These include Mohamed Hajib (Opinion no. 40/2012), Ali Aarrass (Opinion no. 25/2013), Abdessamad Bettar (Opinion no. 3/2013) and Rachid Ghribi Laroussi (No. 34/2015) who remain imprisoned, and Mohamed Hasnaoui (Opinion no. 54/2013) who was released after serving his sentence. Only cleric Hassan Kettani (Opinion no. 35/2011), imprisoned in 2003, was released following a royal pardon in February 2012, a year after the WGAD emitted its opinion on his case.

In July 2016, Amnesty International welcomed the Court of Cassation's decision to allow a retrial before a civilian court for 23 Sahrawi protesters unfairly convicted by a military court in 2013 in the Gdeim Izik case. The protesters, 21 of whom remain imprisoned, had been convicted largely on the basis of "confessions" which they alleged had been extracted under torture. Their allegations of torture and other ill-treatment in custody were not investigated.⁴⁴

In February 2016, judge Mohamed El-Haini was dismissed by a disciplinary panel of the Higher Judicial Council, following allegations referred by the Minister of Justice that he had "violated the duty of discretion" and "expressed opinions of a political nature". The allegations stemmed from his criticisms of the draft laws on the Higher Judicial Council and on the Statute for Judges made on social media and in the media. In the first hearing, his defence team withdrew in protest at the refusal of the Higher Judicial Council to exclude the Minister of Justice from the disciplinary panel; the second hearing occurred in the absence of the defence team. The Higher Judicial Council's decision is not subject to appeal. Another judge, Amal Homani, was suspended for six months on similar grounds before resuming work.⁴⁵

Amnesty International recommends that the Moroccan authorities:

- Amend the Code of Criminal Procedure to ensure that all detainees have a legally enforceable right to legal counsel of their choice promptly after arrest and with no time limit, and to have a lawyer present at all times during interrogation;
- Ensure that statements or "confessions" made by a person deprived of liberty, other than those made in the presence of a judge and with the assistance of a lawyer, have no probative value in proceedings;
- Amend the Code of Criminal Procedure to include a specific right for the defence to compel, through the courts, the presence of prosecution witnesses and to cross-examine them;
- Implement decisions by the UN Working Group on Arbitrary Detention regarding individual cases;
- End arbitrary proceedings against members of the judiciary and revise Organic law 100.13 on the Higher Judicial Council and Organic law 106.13 on the Statute of Judges to ensure there is no executive control and interference in judicial matters.

⁴³ Amnesty International, "Morocco: Release or fairly retry Marrakech protesters over soaring prices" (Index: MDE 29/007/2013); Amnesty International, *Shadow of Impunity: Torture in Morocco and Western Sahara* (Index: MDE 29/001/2015), Chapter 4

⁴⁴ Amnesty International and Human Rights Watch, "Free or retry 21 Sahrawis jailed 5 years ago" (Index: MDE 29/2800/2015), 5 November 2015, available at <https://www.amnesty.org/en/documents/mde29/2800/2015/en/>

⁴⁵ See International Commission of Jurists, "Morocco: Arbitrary dismissal of Judge Al-Haini must be reversed", 13 February 2016, available at <http://www.icj.org/morocco-arbitrary-dismissal-of-judge-al-haini-must-be-reversed/>; Fédération internationale des ligues des droits de l'homme, "Les mesures disciplinaires abusives à l'encontre du magistrat El Haini confirment le besoin de plus d'indépendance du système judiciaire", 3 March 2016, available at <https://www.fidh.org/fr/regions/maghreb-moyen-orient/maroc/les-mesures-disciplinaires-abusives-a-l-encontre-du-magistrat-el>

10. TREATMENT OF FOREIGNERS, PARTICULARLY REFUGEES AND ASYLUM-SEEKERS (ARTS. 12 AND 13)

In 2013, Morocco began to overhaul its policy towards migrants and asylum-seekers. A draft bill on asylum was presented to the Council of government in December 2015 but has yet to be approved. In 2014, Morocco introduced an exceptional regularization process for irregular migrants, which lasted a year.⁴⁶ Some Syrians, whom UNHCR recognizes as prima facie refugees, also obtained residency permits under this procedure.

In September 2013, the government created an inter-ministerial Ad Hoc Committee to review cases of concern to the UNHCR. Non-Syrian refugees recognized by UNHCR have obtained national refugee cards but the government has not granted refugee status to Syrian refugees recognized by UNHCR, although it committed to “regularize” them in March 2016.⁴⁷

The summary expulsion of migrants and asylum-seekers from Morocco appears to have stopped in September 2013 after the announcement of Morocco’s new migration and asylum policy. However, in 2014 and 2015 Amnesty International documented the involvement of Moroccan security forces in the summary expulsion of migrants, asylum-seekers and refugees by Spain, in particular near the Spanish enclaves of Ceuta and Melilla but also in Spanish territory. Throughout the reporting period, Amnesty International also documented cases where the Moroccan security forces used excessive or unnecessary force against migrants and asylum-seekers attempting to enter Spain irregularly, causing them serious injuries. Allegations of use of excessive or unnecessary use of force during law-enforcement operations targeting migrants, and

⁴⁶ Among 27,332 migrants from 116 countries, who applied to the Ministry of Interior for regularization, 17,916 were accepted, the majority being Senegalese (6,600) followed by Syrians (5,250). However, there were concerns raised about the strict criteria and evidentiary requirements for regularization, the insufficient training of the staff taking the applications, and the lack of consistent information on the appeals procedure. Amnesty International, *Fear and fences: Europe’s approach to keeping refugees at bay*, 17 November 2015 (Index: EUR 03/2544/2015), available at <https://www.amnesty.org/en/documents/eur03/2544/2015/en/>

⁴⁷ Regularization would allow Syrian refugees to work in Morocco. As of July 2016, there were 4,269 refugees recognized by UNHCR in Morocco. For more information, see UNHCR, Morocco: UNHCR operational update, 1 April-June 2016, available at <http://ma.one.un.org/content/dam/unct/morocco/docs/UNHCR/UNHCR%20Morocco%20Operational%20Update%20June%202016.pdf>; UNHCR, Morocco Factsheet, July 2016, available at http://ma.one.un.org/content/dam/unct/morocco/docs/UNHCR/UNHCR%20Morocco_Factsheet_July%202016%20ENG.pdf and UNHCR, Morocco update, Regularisation of refugees by national authorities, December 2015, available at http://ma.one.un.org/content/dam/unct/morocco/docs/UNHCR/UNHCR%20Morocco_Regularisation%20of%20Refugees_Dec%202015.pdf

occasionally resulting in serious injury and death of sub-Saharan migrants, have not been adequately or promptly investigated.⁴⁸

The Moroccan authorities also displaced migrants and asylum-seekers internally, away from the northern borders with Spain. In February 2015, the authorities arrested over 1,000 migrants and asylum-seekers in raids in and around the north-eastern port city of Nador. They transported them to cities in southern Morocco and detained them for several days before releasing them.⁴⁹ In November 2015, two migrants allegedly died of asphyxiation after the authorities lit a fire outside a cave they had taken refuge in during a raid near the northern city of Fnideq.⁵⁰

Amnesty International recommends that the Moroccan authorities to:

- Adopt a law on asylum in line with international law and standards;
- Ensure that Syrian refugees are allowed to stay in the country regularly and have access to education, health care and work opportunities;
- End collusion in Spain's summary expulsion of migrants, asylum-seekers and refugees;
- End the use of disproportionate or unnecessary force against migrants, asylum-seekers and refugees.

11. FREEDOM OF RELIGION AND BELIEF (ART. 18)

Draft law 10.16 to amend the Penal Code does not repeal provisions violating the right to freedom of religion and belief, including provisions that criminalise proselytizing (Article 220); provide prison terms for Muslims breaking Ramadan fast in the public sphere (Article 222), as well as for those deliberately causing disorder during a religious ceremony (Article 221).⁵¹

Morocco also continues to have an interpretive declaration to Article 14, paragraph 1 of the Convention on the Rights of the Child that restricts children's freedom of thought, conscience and religion, which the UN Committee on the Rights of the Child has recommended removing.

Amnesty International recommends that Morocco:

- Review the Penal Code, particularly to repeal Articles 220, 221 and 222 violating the right to freedom of religion and belief;
- Withdraw its declaration to Article 14 of the Convention on the Rights of the Child.

⁴⁸ Amnesty International, *Fear and fences: Europe's approach to keeping refugees at bay*, 17 November 2015 (Index: EUR 03/2544/2015), p. 44, available at <https://www.amnesty.org/en/documents/eur03/2544/2015/en/>; Amnesty International, *Annual report 2014/2015 – The State of the World's Human Rights* (Index: POL 10/001/2015), p. 259; Amnesty International, *Spain and Morocco: Failure to protect the rights of migrants: Ceuta and Melilla one year on*, October 2006 (Index: EUR 41/009/2006)

⁴⁹ Amnesty International, *Annual report 2015/2016 – The State of the World's Human Rights* (Index: POL 10/2552/2016)

⁵⁰ Amnesty International, *Annual report 2015/2016 – The State of the World's Human Rights* (Index: POL 10/2552/2016)

⁵¹ A preliminary version of the draft law proposed by the Ministry of Justice and Liberties had proposed to introduce prison terms for the offence of deliberately causing disorder during a religious ceremony, and a new offence punishing insulting or mocking religious with imprisonment.

12. FREEDOM OF EXPRESSION, ASSOCIATION, ASSEMBLY AND MOVEMENT (ARTS. 19, 21 AND 22)

12.1 FREEDOM OF ASSOCIATION

Moroccan officials obstructed the registration of a number of associations perceived to be critical of the authorities, in breach of national legislation, which follows a declarative model, and not prior authorization, by refusing to accept registration applications or to deliver receipts confirming the lodging of applications.⁵² Restrictions on human rights groups increased sharply from mid-2014. The Moroccan authorities obstructed the registration of nearly half of the local branches of Morocco's largest human rights group, the Moroccan Association for Human Rights (Association Marocaine des Droits Humains, AMDH). They also cancelled or otherwise blocked not only public events but also assemblies and ordinary meetings by AMDH and other associations including the Moroccan League for the Defence of Human Rights (LMDH), Freedom Now, and the Moroccan Association for Investigative Journalism, among others.⁵³

In 2015, Morocco finally delivered the Sahrawi Association of Victims of Grave Human Rights Violations Committed by the State (Association sahraouie des victimes des violations graves des droits de l'Homme commises par l'Etat marocain, ASVDH) a receipt officially recognizing its lawful registration, nine years after it first submitted its application, and eight years after a positive ruling by an administrative court confirming it should have received a receipt. However, other Sahrawi human rights groups, such as the Collective of Sahrawi Human Rights Defenders (Collectif des défenseurs sahraouis des droits de l'homme, CODESA) continue to be denied official registration. Also in 2015, a Moroccan court ordered the closure of the Ifni Memory and Rights association, a Sahrawi association based in the southern Moroccan city of Sidi Ifni, on the basis that it undermined Morocco's "territorial integrity" by advocating for the rights of Sahrawis. Sahrawi activists were also harassed and imprisoned in reprisals for visits to the Tindouf refugee camps in southern Algeria.⁵⁴

⁵² Such receipts are necessary in order to enable associations to operate legally.

⁵³ See Amnesty International, "Morocco/Western Sahara: Lift restrictions on associations" (Index: MDE 29/010/2014), 26 November 2014, <https://www.amnesty.org/en/documents/MDE29/010/2014/en/>

⁵⁴ Sahrawi activists Brahim Dahane, Ali Salem Tamek and Ahmed Nasiri were arrested on 8 October 2009, upon returning from a visit to refugee camps in Tindouf, Algeria. Initially charged with "undermining (Morocco's) external security", and its "territorial integrity", the case was under prolonged investigation by Morocco's Military Court for nearly 12 months before being passed to civilian courts. All three were detained at Salé Prison, near Rabat, since 16 October 2009. On 14 April 2011, they were released on bail. Amnesty International considered that they were prisoners of conscience, held solely for peacefully exercising their right to freedom of expression and association. See Amnesty International, "Morocco/Western Sahara: Sahrawi activists targeted for Tindouf visit" (Index: MDE 29/010/2009), 13 October

International NGOs also faced restrictions. In September 2014, Morocco banned an Amnesty International Youth Camp, which had been taking place annually for 15 years without obstruction.⁵⁵ Morocco also denied entry to Amnesty International research staff on a fact-finding visit to investigate the situation of migrants and refugees at Morocco's northern borders with Spain in October 2014. Amnesty International cancelled a second fact-finding visit scheduled for November 2014 after the Moroccan authorities imposed conditions amounting to restrictions on it taking place. In June 2015, Morocco detained and expelled Amnesty International research staff on a similar visit.⁵⁶ Amnesty International engaged in a dialogue with the authorities to resolve obstacles to access; however, some restrictions remained on research as of the end of August 2016.

In May 2015, Morocco expelled a representative of the Spanish NGO NOVACT International Institute for Nonviolent Action, which had been operating in the country since 2012. NOVACT decided to close its office in Morocco in June 2016 after Morocco denied entry to two further members of the NGO's staff.⁵⁷ On 23 September 2015, Morocco requested that Human Rights Watch suspend their activities in the country.⁵⁸

Amnesty international has also documented the Moroccan authorities' repeated denials of entry and expulsions of foreign journalists, activists and human rights defenders. These include volunteers who aided migrants, asylum-seekers and refugees near the Spanish enclave of Melilla, as well as lawyers of Sahrawi prisoners in the Gdim Izik case and legal experts who sought to observe trials of activists in Western Sahara.

Amnesty International recommends that Morocco:

- Ends the withholding of registration receipts and other such unlawful obstacles to associations seeking registration with the Moroccan authorities and arbitrary restrictions on associations' peaceful activities allowed by law;
- Ends restrictions on journalists', peaceful activists' and human rights defenders' access to Morocco and Western Sahara in line with international standards.

12.2 FREEDOM OF EXPRESSION

In August 2016, legislators approved a new Press Code devoid of prison penalties, in a welcome development. However, in June, legislators approved Law 73.15 introducing into the Penal Code new provisions punishing acts perceived to offend Islam and the monarchy or "incitement against the Kingdom's territorial integrity" with up to five years imprisonment, fines, and exclusion from public office or employment for up to ten years. The amendments also introduced provisions punishing defamation, insult, or interfering with the private lives of the King or Crown Prince with up to two years' imprisonment and fines, and up to one year in prison and fines for other members of the royal family. Similar provisions existed in the previous version of the Press Code.

In addition, journalists continue to be prosecuted and convicted under articles of the Penal Code that criminalize the right to freedom of expression and contain imprisonment as a sanction.⁵⁹ Draft law 10.16 to amend the Penal Code leaves such provisions largely untouched, except for some modifications on the length of prison terms and the amount of fines.⁶⁰

2009, <https://www.amnesty.org/en/documents/MDE29/010/2009/en/>; "Sahrawi activists on trial for visiting refugee camps", 14 October 2010, <https://www.amnesty.org/en/latest/news/2010/10/juicio-activistas-saharauis-visitacion-campos-refugiados/>

⁵⁵ Amnesty International, "Amnesty International deplores the Moroccan authorities' decision to ban youth camp" (Index: MDE 29/006/2014), 2 September 2014, <https://www.amnesty.org/en/documents/MDE29/006/2014/en/>

⁵⁶ Amnesty International, "Amnesty International staff members expelled from Morocco", 11 June 2015,

⁵⁷ NOVACT, "NOVACT ferme son bureau au Maroc mais nous partons en Tunisie", 27 June 2016

⁵⁸ Human Rights Watch, "Statement Regarding Human Rights Watch Activities in Morocco", 2 October 2015

⁵⁹ Amnesty International, "Morocco, court orders suspension of news website, editors fined for 'false news' and 'defamation'" (Index: MDE 29/2260/2015), www.amnesty.org/en/documents/mde29/2260/2015/en/; Amnesty International, *Annual report 2015/2016 - The State of the World's Human Rights - Morocco* (Index: POL 10/2552/2016), February 2016, available at

<https://www.amnesty.org/en/documents/pol10/2552/2016/en/>, Amnesty International: Morocco: Stop using 'terrorism' as a pretext to imprison journalists, 20 May 2014, www.amnesty.org/en/latest/news/2014/05/morocco-stop-using-terrorism-pretext-imprison-journalists/

⁶⁰ Problematic provisions in Draft law 10.16 include: "offending" the royalty (Article 179) and public officials (Article 263), including by "falsely reporting" an offence to an official (Article 264), offending "bodies established by law" (Article 265), "defamation" (Articles 442 and 443, and proposed new Article 448-3), "public insult" (Articles 443 and 444), "slandering denunciation" (Article 445) and "disrespecting national emblems and symbols" (Article 267-1 to 267-4).

Over the reporting period, courts regularly prosecuted journalists and activists for their criticism of the authorities. Journalists were most often sentenced to suspended prison sentences, while activists were periodically imprisoned. In a worrying development, journalists, academics and activists are currently being prosecuted for “undermining internal state security” after running a citizen journalism training programme using smartphones.⁶¹ One of the defendants in the case, journalist Hicham Mansouri, was also sentenced to ten months in prison alongside a female friend after both were convicted of adultery and complicity in adultery in March 2015.⁶² Amnesty International fears that Hicham Mansouri may have been punished for working with outspoken journalists and intellectuals in the Moroccan Association for Investigative Journalism, an NGO that helps journalists investigate and expose corruption and other crimes by politicians, government officials and corporations.

Another journalist, Ali Anouzla, was arrested and detained for over a month in 2014 for allegedly “supporting” and “advocating terrorism” after an article was published on his news website *Lakome.com* mentioning a video by the armed group Al Qaeda in the Islamic Maghreb. In 2016, judicial authorities announced their decision to prosecute the journalist on these charges, although they have yet to set a date for a trial hearing. If found guilty, he faces up to 20 years in prison.⁶³ The Moroccan authorities have also placed bureaucratic obstacles on outspoken journalists.⁶⁴

In 2014, courts imposed two and three year prison terms on two individuals who publicly alleged that they were abducted and tortured, after convicting them of “falsely reporting” an offense and “slandering denunciation” against the police, although neither had explicitly accused police officers of the alleged violations.⁶⁵ The same year, a journalist and a witness in a death in custody case were similarly prosecuted respectively for news articles reporting on the death and subsequent declarations by various concerned parties including the judicial authorities, and for a video interview with witness which featured on the news website *Badil.info*. The journalist was handed a two-month suspended prison term, and the court also ordered the suspension of the website, although the order was not enforced.⁶⁶

Authorities also initiated prosecutions against international human rights groups who documented human rights violations in the country. In 2015, Morocco initiated a prosecution against French anti-torture NGO Action by Christians for the Abolition of Torture (Action des Chrétiens pour l'abolition de la torture - ACAT) and individuals who filed torture complaints against Moroccan officials in French courts on charges including defamation and insulting state institutions.⁶⁷

Amnesty International recommends that the Moroccan authorities:

- Remove provisions criminalizing the right to freedom of expression from the Penal Code, including provisions on defamation (Articles 442 and 443), offending officials (Article 263) including the King and Crown Prince (Article 179), public bodies (Article 265), falsely reporting an offence to an official (Article 264), “slandering denunciation” (Article 445), disrespecting state symbols and emblems (Articles 267-1 to 267-4), or “undermining” Islam, the monarchy and “territorial integrity” understood by the Moroccan authorities to include Western Sahara (Article 267-5);

⁶¹ Amnesty International, “Journalists risk imprisonment for running smartphone app training”, 28 June 2016, available at <https://www.amnesty.org/en/latest/news/2016/06/morocco-journalists-risk-imprisonment-for-running-smartphone-app-training/>

⁶² Amnesty International, “Jail term for press advocate upheld: Hicham Mansouri”, 28 May 2015 (Index: MDE 29/1754/2015), available at <https://www.amnesty.org/en/documents/mde29/1754/2015/en/>

⁶³ Amnesty International, “Morocco ramps up crackdown on press freedom with trial over citizen journalism”, 26 January 2016, www.amnesty.org/en/latest/news/2016/01/morocco-ramps-up-crackdown-on-press-freedom-with-trial-over-citizen-journalism/; Amnesty International, “Morocco: Stop using “terrorism” as a pretext to imprison journalists”, 20 May 2014, available at <https://www.amnesty.org/en/latest/news/2014/05/morocco-stop-using-terrorism-pretext-imprison-journalists/> ; Amnesty International and Human Rights Watch, “Morocco: Harassment of outspoken journalist”, 4 August 2015 (Index: MDE/2211/2015), available at <https://www.amnesty.org/en/documents/mde29/2211/2015/en/> ; Amnesty International, “Morocco: Journalist jailed for press freedom work”, 22 April 2015 (Index 29/1489/2015), available at <https://www.amnesty.org/en/documents/mde29/1489/2015/en/>

⁶⁴ Amnesty International and Human Rights Watch, “Morocco: Harassment of Outspoken Journalist”, 4 August 2015 (Index MDE 29/2211/2015), available at <https://www.amnesty.org/en/documents/mde29/2211/2015/en/>

⁶⁵ Amnesty International, “Morocco: More than 200,000 people worldwide demand the immediate and unconditional release of torture complainants Wafae Charaf and Oussama Housne” 21 October 2015 (Index: MDE 29/2672/2015), available at <https://www.amnesty.org/en/documents/mde29/2672/2015/en/>

⁶⁶ Amnesty International, “Morocco, court orders suspension of news website, editors fined for “false news” and “defamation””, 17 August 2015 (Index: MDE 29/2260/2015), available at <https://www.amnesty.org/en/documents/mde29/2260/2015/en/>

⁶⁷ Amnesty International, FIACAT (Fédération internationale de l'ACAT), FIDH (Fédération internationale des ligues des droits de l'homme), Fondation Alkarama, Human Rights Watch, Ligue des droits de l'homme, OMCT (Organisation mondiale contre la torture), REDRESS, REMDH (Réseau euroméditerranéen des droits de l'homme), TRIAL (Track Impunity Always), Maroc : 9 ONG inquiètes des mesures d'intimidation exercées contre les victimes de tortures et une ONG qui les représente, 9 February 2015 (Index : MDE 29/0002/2015), available at <https://www.amnesty.org/fr/documents/mde29/0002/2015/fr/>

- End the prosecution of journalists under the Penal Code;
- Release immediately and unconditionally anyone detained solely for expressing their views.

12.3 FREEDOM OF ASSEMBLY AND RIGHT TO STRIKE

12.3.1 LEGAL FRAMEWORK

Morocco's legislation continues to restrict the right to peaceful assembly and the right to strike. Article 29 of the Constitution protects freedom of peaceful assembly and the right to strike, but the government has yet to propose new legislation in this regard.

Public meetings and demonstrations are regulated by a royal decree from 1958 on public gatherings, amended in 2002 by Law 76-00.⁶⁸ Law 76-00 subjects public meetings to prior notification of the authorities and includes prison terms as a penalty for infringing legal requirements (Article 9). It also restricts demonstrations to legally registered political parties, trade-unions, professional associations and other civil society associations, and subjects them to prior authorization requirements (Article 11). It punishes the infringement of authorization requirements with imprisonment, as well as participation in unauthorized demonstrations (Article 14 paragraph 2). Law 76-00 also forbids “unarmed gatherings” on public roads and participants are similarly exposed to imprisonment (Article 21).

Law 76-00 regulates public meetings and demonstrations or gatherings on public roads but does not mention static protests that do not interfere with public circulation. In October 2015, the Minister of Justice and Liberties issued instructions to prosecutors emphasising this point, and stressing that such static protests require no prior authorization.

Meanwhile, Article 288 of the Penal Code prohibits the right to strike by criminalizing the “concerted cessation of work”, punished with prison terms. Draft law 10.16 to amend the Penal Code leaves this article unchanged.

12.3.2 FREEDOM OF ASSEMBLY IN PRACTICE

Security forces continued to use excessive force to disperse peaceful assemblies, whether static protests or demonstrations, both in Morocco and Western Sahara. Security forces were prompt to disperse peaceful gatherings, often using excessive and unnecessary force by beating protesters with batons, when protesters were critical of official conduct.

They similarly promptly and forcibly dispersed peaceful gatherings without an openly political character, such as by unemployed graduates demanding employment in the public sector and other protests on social and economic issues.

Repression was more marked when protesters called for Sahrawi self-determination, or when protests took place in Western Sahara and areas of southern Morocco with a significant Sahrawi population.

On 1 April 2016, security forces arrested activist Brahim Saika of the Coordination of Unemployed Sahrawis in Guelmim as he left his family home to join a peaceful protest for employment. On 4 April the Crown Prosecutor in Guelmim charged him with insulting and assaulting public officers, as well as insulting a public institution. Brahim Saika reported to the prosecutor and to his family during subsequent prison visits that police officers ill-treated him in custody, and entered a hunger-strike in protest. His health deteriorated on 5 April, and he died on 15 April 2016. An official autopsy concluded that he died of a life-threatening virus, according to the media. In spite of repeated demands and complaints lodged by his family with the authorities, they have not carried out an independent autopsy into the circumstances surrounding his death. The authorities buried his corpse outside Guelmim on 4 August against his family's wishes.

On 7 January 2016, police attacked teacher trainees demonstrating peacefully in Inezgane and other cities in Morocco against new decrees to reduce their stipends and access to employment. According to

⁶⁸ Royal decree 1-58-377 of 15 November 1958 on public gatherings; Law 76-00 amending and completing royal decree 1-58-377 on public gatherings

witnesses, police used rubber batons and shields to beat protesters without prior warning to protesters to disperse, in violation of the UN Basic Principles on the Use of Force and Firearms. Over 150 protesters were injured, including 100 in Inezgane, some with fractures and injuries to the face and head, according to AMDH.

In September 2013, security forces forcibly dismantled a peaceful protest camp by Moroccans of Sahrawi origin in Tizimi near the city of Assa in southern Morocco. The protest camp emerged after a land dispute between a Sahrawi and Amazigh tribe. The forcible dispersal triggered protests in the surrounding area for several days. On 23 September 2013, 20 year-old Rachid Chine, died soon after being hit by one or more projectiles on in front of a mosque in the town of Assa, during a confrontation between protesters and gendarmes. The authorities announced that an investigation was opened into his death but its findings have not been made public. Dozens of protesters were arrested during that time, and reported being tortured or ill-treated, including children.⁶⁹

Excessive or unnecessary force deployed by security forces to disperse protests sometimes extended into torture or other ill-treatment of protesters upon arrest, particularly on Moroccan university campuses and in Western Sahara, including in cases documented by Amnesty International between 2010 and 2014.⁷⁰ Often, protesters reported they were coerced to sign incriminating statements during police interrogation, and were later unfairly tried and sentenced to prison terms on trumped-up criminal charges,⁷¹ including protesters from Morocco's longest standing peaceful occupation (since August 2011) near the Imider silver mine in the southern Atlas Mountains.⁷²

Authorities also failed to hold security forces who used excessive or unnecessary force accountable, in spite of numerous complaints filed by individual protesters and human rights groups in Morocco and Western Sahara.

Amnesty International recommends that the Moroccan authorities:

- Repeal Article 288 of the Penal Code criminalizing the right to strike;
- Review and amend Law 76-00 on public gatherings so as to end impermissible restrictions on the right to peaceful assembly, including the requirement to obtain prior permission for demonstrations, and the criminalization of peaceful protests.
- Conduct prompt and impartial investigations into reports of excessive or unnecessary use of force against protesters by security forces and hold those responsible accountable.

⁶⁹ Amnesty International, *Shadow of Impunity*, pp. 29-31.

⁷⁰ Amnesty International, *Shadow of Impunity*, pp. 13-21, 28-29.

⁷¹ Amnesty International, *Shadow of Impunity*, pp. 13-21.

⁷² Amnesty International, *Shadow of Impunity*, pp. 34-37.

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SUMBISSION TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE

118TH SESSION, 17 OCTOBER – 14 NOVEMBER 2016

Amnesty International submits this information to the Human Rights Committee (the Committee) in advance of the examination of the sixth periodic report of the Kingdom of Morocco (hereafter Morocco), at the 118th session of the Committee scheduled to be held in October 2016.

The submission features information in relation to the Committee's List of Issues on Morocco and draws on Amnesty International previous pre-sessional briefing to the Committee.