



Morocco: When the domestic legal order is regularly sidelined

Submission to the list of issue in the context of the review of Morocco's 4th periodic review by the Committee against Torture

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Alkarama recalls that it concentrates its work on four priority areas: arbitrary detention, enforced and involuntary disappearances, torture, and extrajudicial executions. We base our work primarily on the documented individual cases we submit to UN Special Procedures and Treaty Bodies, as well as our contacts with local actors including victims, their families, lawyers and human rights defenders.

[Translation of original report in French]

1. Background

Morocco's fourth periodic report (CAT/C/MAR/4) was submitted to the Committee against Torture three years late in November 2009. The Committee will examine it during its 47th session in November 2011. In the context of this review, Alkarama would like to submit suggestions of questions to the Committee with the objective of providing background information for the dialogue which will take place during the review of the State party.

Following the death of King Hassan II in July 1999, his son, Mohamed VI succeeded him as head of the monarchy. Mohamed VI expressed his will to introduce democratic reforms and increase freedom to associations in the country. However, these hopes were disappointed as the human rights situation and public freedoms degraded soon after Mohamed VI took to the throne. The attacks in the United States of 11 September 2001 led to increased collaboration on counter-terrorism efforts between the two countries. From summer 2001, repression of Islamists increased – and in particular the Casablanca terrorist attacks of 16 May 2003 led to increased repression: thousands of secret detentions, accompanied by the systematic use of torture and finally the promulgation of an anti-terrorist law which facilitates these serious human rights violations.

The political system remains under the complete control of the Makhzen (the state apparatus controlled by the royal family) and opposition political parties have very little room for manoeuvre. Control is maintained over all institutions and calls for constitutional reforms have remained unsuccessful to date.¹ The Parliament serves as an echo chamber, rather than as a place for debate and decision-making. This 'subtle' control extends over the judiciary and many in the opposition demand reform to remove constraints which exist, such as that which the executive branch maintains over prosecution magistrates. The media also suffers from strong restrictions and over recent years, a number of journalists have been subjected to persecutions.

Even though the omnipresent Interior Ministry – which reigns over institutions responsible for internal security, including the police and intelligence services – underwent a 'debasri-isation' following the dismissal of Driss Basri who had controlled the Ministry with an iron fist, a number of former high-level officials continue the authoritarian tradition. General Hamidou Laânigri was named as the head of the *Direction générale de la surveillance du territoire* (DGST – the General Directorate for Intelligence) in September 1999. It is under his command that two waves of arrest affecting thousands of alleged Islamists took place. In 2003, General Laânigri took command of the *Direction générale de la sûreté nationale* (DGSN – General Directorate for National Security) for three years. "His methods are strongly contested. He was placed on the *Association marocaine des droits humains* (AMDH – the Moroccan Association for Human Rights) 's black list of people having violated human rights."² Agents from both these services are responsible for serious human rights violations without ever having been prosecuted.

One of the most sensitive subjects in Morocco concerns Western Sahara where the Polisario Front seeks independence. Morocco is heavily involved, both politically and militarily, in this conflict which has lasted since 1975, during which numerous Sahrawi have been the victims of repression - repression which increased during 2010.

2. The weight of the past

The Moroccan authorities flaunt the fact that they are the only Arab country to have established a process of transitional justice with the Equity and Reconciliation Commission (IER) which was mandated to investigate the most serious violations committed by the State between 1959 (year of Moroccan independence) and 1999 (Mohamed VI's accession). The IER focused mainly on the question of enforced disappearances and arbitrary detention. However, since the official appointment of the IER in April 2004, it has been heavily contested for diverse reasons, the most important being that legal prosecution of those responsible for violations were excluded from its recommendations.

1 King Mohammed VI announced on 9 March 2011 in a televised speech "comprehensive constitutional reform".

2 Pierre Vermeren, *Le Maroc de Mohamed VI* (The Morocco of Mohamed VI), Editions La Découverte 2009, p. 103.

This denial extended to the names of those responsible which remain confidential. The IER accepted all these conditions despite the relevant criticisms made by numerous local NGOs.

It cannot be denied that the IER carried out a colossal amount of work during the 19 months it existed. In November 2005, it presented its final report to the King, and the Consultative Council on Human Rights (CCHR) took over the follow up of its recommendations. Although the IER did bring to light an unimaginable number of crimes (stating that close to 50 000 people were killed during the period under consideration), its focus was on reparations, identifying victims and their families to compensate (17 000 people by end 2009). The IER also suggested initiatives aimed at conserving the memories of victims. However, it must be pointed out that the Sahrawi were virtually excluded as victims from the work of the IER despite also suffering repression.

Questions :

- 1. Were all cases of enforced disappearances clarified?*
- 2. Other violations were also committed during the period examined by the IER, in particular torture and extrajudicial executions. Do the authorities plan to take any measures to investigate these crimes?*
- 3. Does the State party envisage prosecuting, in criminal courts, those responsible for crimes committed during this period?*

One of the recommendations of the IER related to the reform of the justice system which actively supported the repression of the "Years of Lead". Victims and NGOs do not trust the justice system which they do not consider as being independent, but rather ridden with corruption and suffering from manipulation. Justice is handed down 'in the name of the King', whom, as president of the High Council of the Judiciary, names the Minister of Justice and manages the career of judges. The IER recommended that "that the principle of the separation of powers and the constitutional prohibition of interference by the executive branch in the organisation and function of the judiciary be reinforced".³ The implementation of this recommendation requires a modification of the constitution. "Other than the recommendations regarding the Constitution", the IER also proposes "the revision, with a fundamental law, of the status of the High Council of the Judiciary (CSM)". It also advises that "the chairmanship of the HJC should be delegated to the First Chairperson of the Supreme Court; the enlargement of its membership to sectors other than the magistracy (...)".

The Consultative Council on Human Rights⁴, the Moroccan NHRI, in its December 2009 follow up report to the IER recommendations, stated that it had "elaborate[d] a memorandum containing proposals on the reinforcement of constitutional guarantees for the independence of the judiciary, the reorganization of the High Council of the Judiciary (CSM), and the reform of laws pertaining to the statute of judges, the judicial organization of Morocco, the decree governing the prerogatives of the Ministry of Justice and the law governing the High Institute of the Judiciary."⁵

Questions :

- 4. What concrete measures have the Moroccan authorities taken to ensure the independence of the judiciary vis-à-vis the executive?*
- 5. Does the State party envisage taking into account the recommendations issued, particularly those relating to the modification of the status of the High Council of the Judiciary?*

3 Instance Equité et Réconciliation, Rapport final (Final Report), *Les Recommandations* (Recommendations), November 2005, http://www.ier.ma/article.php?id_article=1433 (accessed 9.03.2011).

4 The CCDH has become the National Council for Human Rights, (Dahir N°1-11-19 of 1^{er} March 2011 published in official bulletin N° 5922).

5 CCDH, *Follow-up Report on the Implementation of Equity and Reconciliation Commission Recommendations*, Morocco, December 2009, p. 78, http://www.ccdh.org.ma/IMG/pdf/follow_UP_IER.pdf (accessed 9 March 2011).

The IER was established at a time when repression in Morocco was bearing down on activists or those sympathetic to the Islamist ideology in the name of counter-terrorism. At the very moment when the IER's work gave the image of a state which sought to respect international law, an anti-terrorist law which violated elementary principles was promulgated and applied. As described above, thousands of suspects were arrested following the May 2003 terrorist attacks in Casablanca. They were detained in secret, systematically tortured and sentenced to long prison sentences on the basis of confessions extracted under torture.

3. Legal and constitutional framework

3.1 Hierarchy of norms

The constitution does not provide any information on the hierarchy of norms in place. In principle, there is no reason why international law could not be applied directly in the domestic legal order, as the authorities like to point out to Treaty Bodies.

The State party stated during its initial review before the Committee (during the review of the State report in 1994 – see CAT/C/SR.203, para. 3) that “since the Convention formed part of Morocco's legal order, there had been no need to take any legislative measures to implement it”, and adding that “in the event of a conflict between an international convention and domestic law, the international convention took precedence. Consequently, the Convention had formed an integral part of Moroccan law since its entry into force.”

The preamble of the Moroccan constitution recalls that Morocco ‘subscribes’ to the principles and obligations which derive from the ‘Charters’ of international organisations but does not in itself formally guarantee direct applicability of various instruments to which Morocco is a State party. This means that there is nothing to prevent a judge from putting aside international law in favour of domestic legislation, even in the case when the latter might contradict the former.

Questions :

6. *Is the Convention against Torture directly applicable in Moroccan courts? In cases where there is a contradiction between international and domestic law, which has priority for a criminal judge?*
7. *Are there any precise examples of cases in which the judge has applied provisions of the Convention against Torture?*

3.2 Ratification of the Optional Protocol to the Convention against Torture

Morocco raised its reservation on the Convention against Torture on 19 October 2006, thereby recognising the jurisprudence of the Committee to examine individual complaints. The main national human rights organisations are now leading a campaign to ensure ratification of other international human rights treaties which have not been ratified, including the Convention for the Protection of All Persons from Enforced Disappearances. There have also been numerous calls for the urgent need to ratify the Optional Protocol to the Convention against Torture.

This ratification is not only necessary following the lifting of reservations in 2006, but would also be an indication of the will of the Moroccan authorities to eradicate torture. In fact, in light of the number of violation of the fundamental rights of criminal suspects or even defendants (particularly in counter-terrorism cases), one is forced to find that these rights are far from guaranteed during arrest and police custody.

Questions:

8. *Given the fact that certain NGOs already have permission to visit prisons, do the authorities envisage ratifying OPCAT so as to establish an effective inspection mechanism for place of detention?*

3.3 Legal framework of anti-terrorism measures

Law No. 03-03 of 28 May 2003 relates to counter-terrorism. It was adopted in a rush following the Casablanca attacks of 16 May 2003 and provided the basis for a new policy of mass repression. This law completed the Criminal Code by giving a wide and vague definition of terrorism (article 218.1 of the Criminal Code) and further extends the jurisdiction of the security services.

The law also completed several articles of the Code of Criminal Procedure, particularly articles relating to the modalities of police custody. By extending the length of police custody in terrorism cases, the law increases the risk of secret detention and by consequences of torture and mistreatment of suspects.

As it is, according to paragraph 4 of article 66 of the Code of Criminal Procedure, police custody can last up to 96 hours (4 days), renewable twice upon authorisation, each time, from the public prosecutor, which extends it to 12 days. Paragraph 5 of the same article allows those detained in extended police custody to request of the police to communicate with a lawyer. However, paragraph 9 of the same article allows the police to delay the communication between the lawyer and his or her client.

While this 'delay' cannot extend beyond 48 hours after the first extension, it remains a fact that a person in police custody can remain deprived of all communication with a lawyer for 6 days, which is excessively long. Even in cases when the legal limits are not passed, other fundamental rights of terrorist suspects are not respected.

Mr Otman BABI, aged 27 was arrested and abducted from the family home in Casablanca by six security service agents in civilian clothing, in the early evening of Wednesday 10 March 2010. Following the search of the house – outside of the hours provided for in law and without a search warrant – he was taken to an unknown location. His parents remained without news of their son for several days despite various requests made to the authorities for information. He was only presented to the Prosecution of the Rabat Court of Appeal twelve days later.

Questions:

9. *In what way is the anti-terrorism legislation compatible with article 2 of the Convention (taking into account the CAT's concluding observations in 2004)?*
10. *In what way are the restrictions to a direct and immediate access to a lawyer compatible with the State party's obligations to take into account all measures to prevent torture (articles 2 and 11 of the Convention)?*

3.4 Status of 'confessions' obtained under torture and other forms of constraint

The long periods of secret detention and the maximum extensions of police custody are often aimed at extracting declarations from suspects through torture or other forms of constraint. These 'confessions' are noted in the minutes of the police which often contain dates of arrests which do not correspond to real date the victim was abducted. These minutes are used as the basis of the criminal prosecution.

Article 74, paragraph 8 of the Code of Criminal Procedure imposes the King's Prosecutor to order a medical exam when requested to investigate acts of violence or when he or she is informed of such

act. Article 134, paragraph 5 also obliges the investigating judge to immediately order a medical exam of all person who show signs of torture.

However, follow up to allegations of torture and/or mistreatment within the justice system remains all too rare, particularly during the investigation phase. Often, requests for medical exams made to the investigating judge by victims are not taken into account, or taken into account, only treated with delay, to ensure the signs of torture have time to disappear.

It must also be said that victims often fear aggravating their situation by making a request during the interrogation phase as they do not trust judges to react appropriately.

But above all, the minutes of the preliminary enquiry prepared by the police which are based on 'confessions' made under torture are never rejected by the judge. Criminal condemnations are in majority based solely on this single element which is a clear violation of article 293 of the Code of Criminal Procedure which explicitly states that all declarations made under torture are null and void.

Mr Mohamed BOTACHBAQUT, a Belgium and Moroccan citizen aged 37 was arrested on 21 September 2010 at Nador airport by agents in civilian clothing as he was boarding with his family on their way to Brussels. He was taken to an unknown location and his family had no news of him until 11 October 2010 when he was brought before the prosecutor of the Court of Appeal of Rabat. Alkarama had addressed an urgent appeal to the Special Rapporteur on Torture in this case.⁶ His lawyer had previously laid a formal complaint following his disappearance. When his lawyer was able to see him briefly on 11 October, the fact that his client had suffered torture was confirmed and he requested the investigating judge investigate this. To date, this request has not received any follow up, on the pretext that the investigation is still ongoing.

Questions:

11. *Do investigating judges take into account statements made by defendants who allege torture during police custody? Do they take into account statements alleging that arrests took place earlier than the date on the police case file?*
12. *If this is the case, what follow up is given to such statements? Are there any precise examples?*

3.5 Status and function of the DGST and the BNPJ (DGSN)

The Committee had expressed strong concerns regarding the numerous allegations implicating the Direction générale de la surveillance du territoire (DGST – the Directorate General for Territorial Surveillance). The Moroccan authorities had therefore provided more information about its role and duties (CAT/C/CR/31/ 2/Add.1). It remains that in many situations, agents of the DGST do not act in accordance with the law.

Alkarama has documented numerous situations (in the context of anti-terrorism measures) where the legal limit to police custody is largely surpassed. It is often agents in civilian clothing who abduct or arrest suspects. In the majority of cases, they do not present any identification or arrest warrants, and do not explain the reasons for these interpellations. They take suspects, very often blindfolded, to an unknown location. Certain people have spoken of being taken to the Temara detention centre (where the DGST have their headquarters) and being severely tortured during interrogation sessions before being handed to the police who undertake the preliminary investigation before finally being presented to the Prosecution. The State party admitted in 2004 that DGST agents can bring (together with officers from the national Gendarmerie) suspects before the judicial authorities. It must be insisted that while DGST agents are responsible for the prosecution of suspects, they do not hold the function of police and are not empowered to arrest, detain and interrogate people.

⁶ Alkarama press release, *Maroc: M. Mohamed Botachbaqut, victime de disparition forcée depuis plus de trois semaines* (M. Mohamed Botachbaqut, victim of enforced disappearance for over three weeks), 12 October 2010, http://fr.alkarama.org/index.php?option=com_content&view=article&id=827 (accessed 9 March 2011).

The BNPJ (the *Brigade Nationale de la Police Judiciaire* or National Brigade of the Judiciary Police) is a special unit of the national police attached to the DGSN. As a service for investigation and carrying out investigations, its activities are defined by the Code of Criminal Procedure. Intended to work on 'sensitive' cases, this brigade has numerous prerogatives due to the fact, amongst others, that it is competent to work on the entirety of the territory. While its duties are framed by the law – it is clear, from the cases brought to Alkarama's attention – that it largely exceeds its functions by illegally detaining people. Its methods resemble that of the intelligence services, whose own methods are already of concern due to human rights violations they commit against citizens of the State party.

The BNPJ is notably at the origin of numerous arrests carried out without arrest warrants. Arrests were placed in police custody for a period extending beyond the legal limits. For terrorist suspects, they were presented to the prosecution by the BNPJ without any of the irregularities relating to their custody being raised by the judicial authority.

Mr Younes ZARLI is aged 30, with one child and living in Casablanca. He was abducted on 11 April 2010 on the doorstep of his home by agents of the Direction générale de la surveillance du territoire (DGST – the Directorate General for Territorial Surveillance) and directly taken to the Temara detention centre where he remained detained for 16 days. He described that upon arrival at Temara, all his clothing was removed and he was severely beaten. He was drugged during several of the numerous interrogations that followed. He was also threatened that his family would also be brought to Temera if he did not admit to the facts that were presented to him. He was then transferred to the Maarif police station in Casablanca where BNPJ agents continued to detain him in secret for several days before a lawyer appointed by the family found out where he was being detained and the date he would be presented to the prosecution. In total Mr Younes Zarli was detained for more than a month in secret without contact with his family or lawyer.⁷

The combined action of all these security services, placed under the authority of the Ministry of Interior, is concerning. Often in competition with each other, there does not seem to be any clear indication of what their powers and prerogatives are. Their methods and practises seem evidently in contradiction with the objective stated by the State party to respect, to the largest extent possible, article 2 and 11 of the Convention.

Questions:

13. *Given that suspects can be arrested by the both the DGST and the BNPJ, what are these services' exact powers and what is their relation to the police?*
14. *In what way does the State party consider the modalities of detention and treatment of people in custody by agents of the DGST and the BNPJ to be in conformity with article 11 of the Convention?*
15. *How is oversight of these different services ensured?*

4. Secret and arbitrary detention

Following the terrorist attacks of 16 May 2003, thousands of suspects were arrested; charged with belonging to a terrorist group, preparing terrorist attacks and/or threatening the security of the state. They were often arrested by agents of the DGST, even though these agents did not always have the status of the police and are not legally empowered to arrest suspects. They carry out their activities in plain clothes in unmarked cars. They do not inform people they are arresting of the reasons for their arrest and do not present them with an arrest warrant (which they cannot provide as they do not have to power to do so).

Rather than carrying out arrests as per the usual methods and taking the arrested person to the closest police station, suspects are abducted and detained in secret, often in offices belonging to the

⁷ Alkarama press release, *Morocco: Forced Confessions Threaten Heavy Sentences*, 28 June 2010, http://en.alkarama.org/index.php?option=com_content&view=article&id=547 (accessed 9 March 2011).

DGST, particularly the Temara centre, where they are interrogated over several weeks, or even months, before being handed over to the police.

Families are not informed where their loved one is being detained and the treatment they receive. Most often, the authorities deny their detention. In order to hide these abusive detentions, the dates of arrests are modified in the case files established by the police. This practise of secret detentions resembling an enforced disappearance continues to this date.

Mr Rachid ALMAKKI, aged 33 was abducted in Casablanca on 23 April 2010 by agents belonging to the intelligence services who arrested him without an arrest warrant, before taking him to an unknown location. The authorities declared that Mr Almakki had been arrested on 7 August 2010 and was presented to the prosecution on 17 August, denying all of the period during which he was detained in secret, that is to say, for more than three months.

Alkarama informed the Special Procedures of a dozen similar cases during 2009 and 2010. During the months of March and April 2010, a wave of arrests took place in Casablanca. A number of individuals were detained in secret, in some cases for several weeks. They only reappeared when they were presented to the investigating judge of the Salé annex of the Rabat Court of Appeal in on 6 May 2010.

Mr Adnan ZAKHBAT is aged 27 and is married with two children. He lives with his family in Berrechid, a small town 70km to the south of Casablanca. He was abducted from in front of the Zahra Mosque (on the main road to the entrance of the town) by four agents of the security services in plain clothes on 29 March 2010 at 1pm. He was detained at the Maarif police station in Casablanca. He remained detained for more than a month, during which he was not able to have any contact with the outside world.⁸

Mr Saïd EZZIOUANI is aged 30 and lives in Casablanca. He was abducted on the street on 12 April 2010 by DGST agents and immediately taken to the Temara detention centre, where he remained detained for 14 days before being transferred to the Maarif police station in Casablanca. He was stripped of his clothing upon arrival at Temara and violently beaten. Interrogation followed interrogation over several nights, depriving him of sleep. His hands were tied and he was violently beaten, particularly around his face. He was also given water containing drugs. When he was then transferred to Casablanca, he was again violently beaten twice by police officers. He was detained in secret for 24 hours – prevented from having any contact with the outside world.⁹

Alkarama was informed of another wave of arrests in various cities in Morocco during October 2010 and informed the Working Group on Enforced and Involuntary Disappearances of this.

Mr Hicham CHAHIDE, aged 32 and a student and father of two children lives in Casablanca. He was arrested on 16 October 2010 in the late evening in the outskirts of the city of Mohammedia by five security agents in plain clothes, without an arrest warrant. His hands were tied and he was taken to an unknown location. His family immediately sought to know the reasons for his arrest and what would happen to by him by approaching various police stations in Casablanca. His wife also approached the DGSN and the Ministry of Justice. They did not get any answers to their questions, until his wife learned that he had been presented to the prosecutor of Salé on 10 November 2011. In the end, he remained detained in secret for 26 days, during which he was prevented from having any contact with the outside world.

Mr Azzedine BRAIK, aged 22, married and father of two children working as a shopkeeper living in Fez was abducted from Aïn Smen Street by four agents in plain clothes on 30 October 2010. They forced him to climb into their vehicle and took him to an unknown location. His wife, who witnessed the event immediately went to the neighbourhood police station, then to the central Commissariat of

8 Alkarama press release, *Morocco: Resurgence of disappearances - Adnan Kakhbat is the latest victim*, 16 April 2010, http://en.alkarama.org/index.php?option=com_content&view=article&id=494 (accessed 9 March 2011).

9 Alkarama press release, *Morocco: Forced Confessions Threaten Heavy Sentences*, 28 June 2010, http://en.alkarama.org/index.php?option=com_content&view=article&id=547 (accessed 9 March 2011).

Fez to know why he had been arrested and what would happen to him. The police replied that they had no information about her husband. His family then laid a complaint about his abduction to the prosecution of Fez and also informed the Minister of Justice by post, without result.¹⁰

Mr Abdellatif KOUIBAAT, aged 26 and father of a young girl and living in Casablanca was abducted on 27 October 2010 between 5.30pm and 6pm in front of the cemetery of Sidi Moumen, close to his home. He was taken to an unknown location by three agents in plain clothes, according to witness who were present. **Mr Badr KOUNINE**, aged 21 and living in Casablanca was also abducted on 27 October 2010 in the same circumstances. The families of both men immediately went to the neighbourhood police station to know the reasons for the arrest of their sons, and were told that no information about them was available.¹¹ It was only on 4 January 2011 that the families learned what had happened to them and were able to visit them: the Ministry of the Interior announced the arrest of 27 people, including Mr Adellatif Kouibaat, Badr Kounine and Azzedine Braik. They remained detained in secret for more than 2 months, deprived of contact with the outside world and without any legal protection. They remain detained to date at the prison of Salé.

Persons suspected of terrorist activities are often transferred to Temara, the most important DGST detention centre, located around 15 km outside of Rabat. The official mission of this service is to "ensure the protection and safeguard of the state and its institutions".¹² Legally, it should not carry out arrests or interrogations. Temara detention centre is therefore not an adequate place of custody and consequently, is administered outside of the law. Victims are transferred there after having been interrogated at a police station and the date of this transfer often corresponds to that figuring on the case file as the official date of arrest, to ensure that the period of custody does not go beyond the 12-day limit set out in law.

Questions:

16. *The Working Group on Arbitrary Detention addressed a request for a visit to the Moroccan authorities in 2009. Do the authorities envisage inviting this Special Procedure?*
17. *What measures have been taken by the authorities to avoid secret detentions? Why are situations of unlawfully long custody never brought up and do they not constitute procedural errors?*

In the context of extraordinary renditions, and diplomatic assurances, suspects have been sent back to Morocco despite risking being detained arbitrarily for months and torture. A certain number of cases of people who were kidnapped and secretly transferred by the CIA to Morocco during the 2000s have been highly mediated.

Over the last few years, European states have sent back Moroccan nationals who also have a European nationality. The case of **Mr Ali Aarrass**, a national of both Belgium and Morocco living in Spain, is illustrative of this practise. Suspected of belonging to the 'Abdelkader Belliraj group', a terrorist group, he was detained in Spain until April 2008 following an extradition request by Morocco at a time when Spanish courts had completely exonerated him for the same facts. On 19 November 2010, the Spanish Cabinet approved his extradition. The United Nations Human Rights Committee was seized in his regard and emitted interim measures on 26 November 2010 and requested Spain not extradite him. As for the Belgian authorities, they did not intervene for their national. The Spanish authorities finally sent him back in mid-December and 50 days later, his family had no information on what had happened to him.

10 Alkarama press release, *Morocco: Three young men abducted by government agents in Casablanca*, 17 November 2010, http://en.alkarama.org/index.php?option=com_content&view=article&id=622 (accessed 9 March 2011).

11 Alkarama press release, *Morocco: Three young men abducted by government agents in Casablanca*, 17 November 2010, http://en.alkarama.org/index.php?option=com_content&view=article&id=622 (accessed 9 March 2011).

12 Majdoulain El Atouabi, Karim Boukhari, Lahcen Aouad, *DST. le service de tous les secrets* (DST, the service of all secrets), Tel Quel online n° 317, 24 March-4 April 2008, http://www.telquel-online.com/317/couverture_317.shtml (accessed 9 March 2011).

On 8 February 2011, his Belgian lawyers published a press release in which they stated that Mr Ali Aarrass had been tortured during his custody: "it is during this illegal period of his custody that Mr AARRASS was tortured. He was deprived of sleep for a number of days and submitted to unending interrogations. During these interrogations, he was injected with chemicals, received electric shocks to his genitals, raped with a bottle as well as a number of other types of abuse. It seems that when he was presented to the investigating judge for the first time, Mr AARRASS was in such a state that it was impossible to question him. During the second appearance, Mr AARRASS's lawyer was able to accompany him, but the investigating judge refused to take note of the torture allegations made by Mr AARRASS".¹³ The family fears that his trial will not be fair and be based on 'confessions' made under torture.

Questions:

18. *How many suspects have been transferred to Morocco in collaboration with intelligence services of other countries, including the CIA in the context of 'extraordinary renditions'? Have they been judged? How long and where have they been detained?*
19. *Where was Mr Aarrass detained? Will the minutes of the preliminary enquiry containing confessions which he has declared as being made under torture be retained against him during his trial? Why did the investigating judge refuse to take note of the statement by Mr Aarrass' lawyer during Mr Aarrass' appearance that his declarations had been made under torture?*

5. Torture

Concerning the violence and mistreatment which can be inflicted against people in custody, the Code of Criminal Procedure demands that the prosecution orders a medical exam of victims every time someone complains of mistreatment, or automatically if the prosecution find evidence that leads it to suspect that the person may have suffered such mistreatment.

In addition, Law No. 43-04 of 14 February 2006 concerning the abuse of power committed by public agents modifies and completes the Criminal Code. Torture was already sanctioned by the Criminal Code, but since 2006, it has been the object of a separate repressive regime. The legislator had the intention of repressing it severely with sentences of imprisonment going from 5 to 15 years.

However, it is easy to see that application of articles relating to medical exams for victims of torture is not guaranteed and that prosecution of those responsible for torture remains an illusion. Security forces continue to torture suspects, particularly the Islamist opposition who are often accused of terrorist activities without proof.

The following examples illustrate not only the violence committed during arrests, but also the methods of torture which are used and the efforts made to camouflage traces of torture (certain methods of torture have already been discussed above). Alkarama had submitted the cases of the following individual to the United Nations Special Rapporteur on Torture.

Mssrs Mohamed Slimani TLEMCANI, Abdallah BELLA, Hicham Didi HOUARI, Hicham SABBAH, Azeddine SLIMANI, Bouali MNAOUER and Tarik MAHLA, seven leading members of Al Adl Wal Ihsan (Justice and Spirituality) movement were arrested without an arrest warrant on 28 June 2010 at around 4.30am at their respective homes in Fez. The arrests were carried out by agents of the Casablanca police who then searched their houses outside of the hours provided for in law. The agents were extremely brutal, not only with those whom they arrested, but also with their families – including women and children – whom they woke, insulted, threatened with their weapons and with rape. The victims were then handcuffed and blindfolded while being beaten, insulted and threatened with death before being placed in vehicles and taken to an unknown location which turned out to be the headquarters of the police of Casablanca, more than 300 kilometres away.

13 Me Christophe Marchand, *Ali Aarrass a été torture* (Ali Aarrass has been tortured), Jus Cogens Law Firm, 8 February 2011, <http://www.freeali.eu/?p=535> (accessed 9 March 2011).

Prevented from all contact with the outside world, they suffered terrible physical and mental torture for three days without interruption. They were, in particular, beaten on all parts of their bodies with sticks and clubs, suspended, some were raped with various objects, and others were threatened with rape. Entirely stripped, they underwent the rag abuse and were electrocuted on all the sensitive parts of their bodies. They were then forced, while being blindfolded, beaten and receiving death threats, to sign the minutes of their interrogations, the contents of which they ignored and which they were not allowed to read. Despite the precautions taken by the torturers to avoid leaving traces, the victims had visible and evident traces of torture when they appeared before the judge in Fez on 1 July 2010. The victims requested the investigating judge name a medical expert to determine the torture, which he only accepted 12 days later, so that the traces of torture could disappear or fade.¹⁴ On 21 December 2010, the seven men were judged. Charged with "belonging to a banned organisation", "participation in a criminal organisation", "torture", and "abduction and detention of a person", the court of Fez acquitted them and they were released.¹⁵

Questions:

20. Why did the judge wait 12 days before requesting a medical exam? The victims, who showed visible signs of torture, informed the investigating judge of the treatment they were experiencing as of the first audience they had. Did the prosecutor or the investigating judge follow up on these declarations, and if so, which one of them? Were the agents responsible for the arrest and torture heard and are they been prosecuted? Have the victims and their families received compensation for what happened?

Alkarama informed the Special Rapporteur of the torture and mistreatment suffered by more than one hundred detainees from various prisons in Morocco during their transfer to the prison of Kenitra at dawn on 9 October 2010. This transfer took place in a simultaneous way, and was carried out according to the same *modus operandi*: the detainees were woken in the middle of the night by guards and forced to climb into a prisoner transfer vehicle while handcuffed and blindfolded. They were subjected to serious violence by the guardians who stole all of their belongings, including their clothing. Upon arrival at the prison of Kenitra, they were greeted by over-excited guards who insulted them, threatened to kill them, stripped and beat them. The detainees who expressed the smallest protest were treated even worse – they were suspended for long hours by the wrists while being beaten by guards. This 'welcome' was directed by the head of the prison, Mustapha Hadjili, in person, who encouraged the guards to torture the transferred prisoners.

The detainees were in the majority Islamists, sentenced to long prison sentences following unfair trials which have taken place over the last few years. They were imprisoned in 6 different prisons: Tangier, Fez, Meknes, Souk Larbaa, Ben Slimane and Okacha (Casablanca). The family who were allowed to visit their loved one from 11 October 2010 found that all had traces of blows and torture. In addition, the relatives themselves were subjected to particularly humiliating body searches.¹⁶

Mr Youssef AL-KHAMMAL was amongst the detainees transferred. His wife learned of the transfer on 11 October 2010 and was allowed to visit him briefly on 15 October 2010. She found her husband in a state of shock, his body covered in visible injuries and bruises, particularly on the hands and feet. The victim described that he was first shut in a hole with his hands and feet bound, then suspended by the feet for almost the whole day of Saturday 9 October 2010 in the court.¹⁷

14 Alkarama press release, *Maroc: La situation des droits de l'homme connaît une grave dérive* (Morocco: the human rights situation is facing a grave drift), 26 August 2010, http://fr.alkarama.org/index.php?option=com_content&view=article&id=812 (accessed 9 March 2011).

15 Alkarama press release, *Maroc : Acquittement et libération de sept membres dirigeants du mouvement Al Adl Wal Ihsan* (Morocco: Acquittal and release of seven senior members of Al Adl Wal Ihsan movement), 22 December 2010, http://fr.alkarama.org/index.php?option=com_content&view=article&id=870 (accessed 9 March 2011).

16 Alkarama press release, *Morocco: Prisoners Transferred en masse to Kenitra Central Prison*, 12 October 2010, http://en.alkarama.org/index.php?option=com_content&view=article&id=577 (accessed 9 March 2011).

17 Alkarama press release, *Morocco: Scores of detainees tortured in mass prison transfer*, 27 November 2010, http://en.alkarama.org/index.php?option=com_content&view=article&id=619 (accessed 9 March 2011).

Questions:

21. Did the authorities order an investigation to establish exact circumstances of what happened during this transfer? Has the Director of the prison of Kenitra provided a formal statement on this case? Have those responsible been prosecuted and sanctioned?

On 8 November 2010, the Moroccan security forces forcibly evacuated the Gdim Izik camp set up by the Sahrawi in the outskirts of the city of Laayoune in Western Sahara. The Sahrawi had settled there a few weeks earlier to protest against the marginalisation they are experiencing and the difficulties they have in finding jobs and housing. The confrontations between the camp's inhabitants and law enforcement officials when the latter sought to dismantle the camp led to 13 deaths (11 police officers and 2 civilians). After attacking Moroccan installations in Laayoune, in retaliation the Sahrawi of the city were themselves attacked by security forces the next day. In the weeks that followed, close to 200 Sahrawi were arrested and suffered torture and mistreatment. More than 130 were to be judged, including 19 by a military court. A parliamentary commission of inquiry was dispatched there at the end of November, and it published its report in January 2011. It is striking to note that the commission did not examine the police intervention following the evacuation of the camp and barely raises the mass arrests and the way those detained were treated (it notes 'some spill over in the way the interpellation was carried out').¹⁸

Questions:

22. What charges are being held against the 130 people arrested? Have the allegations of torture been taken into account? What measures have the authorities taken following this inquiry?

6. Conclusion

The hope of a definitive break with the past brought about by the succession of King Mohamed VI in July 1999 have been challenged by the particularly severe repression which followed the terrorist attacks of 11 September 2001, repression which targeted Islamist circles in particular.

The work of the Equity and Reconciliation Commission only covered the period of Hassan II's reign. This is despite the fact that the human rights violations since September 2001 have gradually reached a critical level in Morocco, which only the authorities, by taking refuge behind the pretext of counter-terrorism measures, have been able to ignore.

Secret detentions, torture, and mass unfair trials have all been denounced by national and international human rights organisations and today constitute a real problem for society.

This problem will not be overcome unless there a courage decision is made to end these violations in a definite manner, to release those sentenced following unfair trials and that the practises of the State party be in accordance with the official human rights discourse.

We hope that a constructive dialogue will be established between the Committee and the Moroccan authorities, allowing subjects of concern to be discussed in order to effectively combat torture and the other violations of fundamental human rights which provide a conducive environment for torture.

18 *Rapports de la Commission d'enquête sur les événements de « Gdim Izik » et la ville de Laayoune* (Report of the Commission of Inquiry on the events of "Gdim Izik" and the town of Laayoune), not dated, p. 22, <http://www.parlement.ma/fe/images/commission-d%27enquete/commission%20d%27enquete%20version%20Fr> (accessed 9 March 2011).