

Morocco

Submission to the UN Universal Periodic Review

First session of the UPR Working Group, 7-11 April 2008

In this submission Amnesty International provides information under sections B and C:

- Under section B, Amnesty International raises concern over the death penalty, anti-torture legislation, and shortcomings of legislation on counter-terrorism.
- In section C, we describe concerns related to impunity for past violations, restrictions on freedom of expression, refugees and asylum seekers, and evidence of torture and other ill-treatment.
- In each section Amnesty International makes a number of recommendations in the areas of concerns listed.

B. Normative and institutional framework of the State

The death penalty

On 28 May 2003 Law no. 03-03 on Combating Terrorism (*Loi no. 03-03 relative à la lutte contre le terrorisme*) came into force, modifying both the Penal Code and Criminal Procedure Code by adding new provisions and amending others. Amnesty International is concerned that the new law has widened the scope of applicability of the death penalty. Since the law's promulgation, at least 18 people suspected of involvement in terrorism have been sentenced to death. Some of those sentenced to death were allegedly subject to grossly unfair trial procedures.¹ No executions have taken place in Morocco/Western Sahara since 1993.

The Ministry of Justice took steps towards abolishing the death penalty, including by setting up a commission of jurists to review Moroccan laws with the aim of restricting the number of offences punishable by death in the Penal Code, and a bill was drafted for that purpose. The Equity and Reconciliation Commission (*Instance Équité et Réconciliation*, IER), set up by the King of Morocco to inquire about past human rights violations, recommended the abolition of the death penalty in a report published in November 2006.

Amnesty International opposes the death penalty unconditionally, and shares the view of the Human Rights Committee that "[T]he State party should bring its laws into line with its current policy by abolishing the death penalty altogether".²

- *The government should repeal all provisions allowing for the death penalty and immediately declare a moratorium on all executions.*

Anti-torture Legislation

Legal safeguards against torture were strengthened. Law n°43-04 defining torture as a criminal offence, punishable by long prison terms, was promulgated in February 2006. At the international level, Morocco recognized the competence of the UN Committee against Torture to investigate complaints submitted by individuals.

Amnesty International warmly welcomes the fact that the new law defines torture in a manner broadly consistent with Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. We are also pleased to note that all acts of torture are made offences under criminal law. One remaining concern, however, is that neither the "attempt to commit torture" nor "complicity or participation in torture" is explicitly defined as an offence, as they should be according to Article 4 of the Convention.

- *Amnesty International welcomes the revisions made to anti-torture legislation and recommends the Moroccan authorities to ensure that it is further amended so as to take into account the provisions contained in Article 4 of the UN Convention against Torture.*

¹ See the attached report *Morocco/Western Sahara: Torture in the "anti-terrorism" campaign - the case of Témara detention centre* (AI Index: MDE 29/004/2004), published in June 2004, for more details.

² Human Rights Committee, Concluding Observations on Morocco, UN Doc. A/55/40 vol. I (2000), para. 105.

Counter-Terrorism legislation

Law no. 03-03 on Combating Terrorism, promulgated on 28 May 2003, amended the Criminal Procedure Code by adding new provisions and amending others. Amnesty International is concerned that the law has extended what was already a long detention period without charge or judicial review. Amendments to Article 66 of the Criminal Procedure Code allow, in “terrorism” cases, for the extension of *garde à vue* (pre-arraignment detention) for up to 12 days (an initial 96-hour period which is renewable twice). This is based on written permission from the crown prosecutor. Amnesty International is concerned about the length of this period, especially in light of the scores of cases of torture or ill-treatment during *garde à vue* reported during the past two years.

Amnesty International is also concerned that, in “terrorism” cases, separate provisions in Law no. 03-03 restrict access to legal counsel. Article 66 of the Criminal Procedure Code stipulates that a detainee whose period of *garde à vue* is extended has the right to “request from the officer of the judicial police contact with a lawyer”. Subject to permission being granted by the prosecutor, the detainee is allowed to contact a lawyer only “for a period not exceeding thirty minutes”. The law on “combating terrorism” has limited this right, by amending Article 66 to allow judicial authorities in “terrorism” cases to further delay contact between a detainee and their lawyer for a period of 48 hours after the first extension of the initial 96-hour *garde à vue*. This means that a detained person can be denied contact with their lawyer for up to six days.³ Amnesty International is concerned that this long period without access to legal counsel will make detainees even more vulnerable to torture or other ill-treatment, as well as affecting their right to an adequate defence.

Additionally, Law no. 03-03 fails to provide a sufficiently precise definition of terrorism, in violation of the principle of legality. Article 218–1 defines as crimes of “terrorism” those acts “related intentionally to an individual or collective act aiming to seriously harm public order by intimidation, terror or violence.” Amnesty International is concerned that this broad definition could be subject to widely differing and arbitrary interpretations, creating the potential for abuse. The terms “intimidation,” “terror” and “violence” are not defined in the law, opening the possibility that the provision could be used to put pressure on political opposition groups or human rights defenders. Such vagueness makes it difficult for judges, legal practitioners and the public to determine precisely which acts constitute acts of “terrorism,” although such acts are subject to more severe penalties than other crimes. In 2006, on the basis of this broad definition, two individuals were tried and sentenced to death, while at least 50 persons received prison terms of up to 30 years.⁴

- *Amnesty International is calling for the 2003 law on Combating Terrorism to be reformed to comply with Morocco’s international human rights obligations, including the principle of legality, given its expansive definition of terrorism and terrorism-related offences; the organisation is also calling on the Moroccan authorities to ensure that the fair trial rights set out under international standards of all those accused under the anti-terrorism law or on other charges are guaranteed in practice.*

C. Promotion and protection of human rights on the ground

Impunity for past violations

Thousands of Moroccans and Sahrawis were subjected to arbitrary detention and torture or other ill-treatment in the context of political repression between the 1960s and 1990s. Some of the gravest cases of human rights violations in previous decades are those of the hundreds of Moroccans and Sahrawis who were forcibly disappeared.

In January 2004 the Equity and Reconciliation Commission was inaugurated with a remit to inquire into grave human rights violations committed between 1956 and 1999, particularly cases of enforced disappearances and arbitrary detention. However, the Commission did not have a mandate to identify

³ The attached document *Morocco/Western Sahara: Briefing to the Committee against Torture* (AI Index: MDE 29/011/2003), published in November 2003, also makes this point, but contains an error, stating that a person can be denied contact with their lawyer for a maximum of 10 days, rather than six.

⁴ See Amnesty International annual report entries 2005-2007; report *Morocco/Western Sahara: Torture in the “anti-terrorism” campaign - the case of Témara detention centre* (AI Index: MDE 29/004/2004)

perpetrators of human rights violations or recommend prosecutions. In November 2005 the Commission finished its investigations.

King Mohamed VI instructed the Human Rights Advisory Board (*Conseil Consultatif des Droits de l'Homme*, CCDH), to follow up the work of the Commission, and in June 2006, Prime Minister Driss Jettou set up joint working committees comprising government officials and former members of the Commission to examine the Commission's recommendations, particularly on reparations and institutional and legal reforms. The CCDH began by informing victims and their families of the results of research into 742 cases of enforced disappearance that it said the Commission had resolved, and stated that it would continue the Commission's research into 66 unresolved cases. The CCDH further stated that a detailed list of the enforced disappearance cases examined by the Commission would be published in mid-2006; however, the list is not yet available. No progress has been made on providing victims with effective access to justice and holding accountable individual perpetrators.⁵

Amnesty International is concerned that impunity is still not being addressed appropriately in Morocco and Western Sahara, in particular since some alleged perpetrators continued to remain in position as members and, in some cases, high-ranking officials, of the security forces.

- *Amnesty International calls for full investigations to be conducted into all cases of enforced disappearances brought to the attention of the authorities, and for the perpetrators to be identified and brought to justice. State agents suspected of being responsible for grave human rights violations should be suspended, pending prosecutions.*

Freedom of Expression, Association and Assembly

Amnesty International is concerned about continuing reports of restrictions on the rights to freedom of expression, association and assembly, particularly on issues related to the monarchy and the Western Sahara dispute.

Sahrawi human rights defenders have been the subject of a concerted campaign of repression by the Moroccan authorities over the past few years. Human rights defenders are targeted because of their work to document past and present abuses and their advocacy of the right to self-determination for the people of Western Sahara. The Moroccan authorities continue to claim that those imprisoned were involved in criminal acts and are not being held for their views. Amnesty International has serious concerns about the fairness of their trials, including that some of the evidence was tainted on account of unexamined claims of torture and ill-treatment and that defendants were not permitted to call defence witnesses. Brahim Sabbar, Ahmed Sbai and Sadik Boullahi, all members of the Sahrawi Association of Victims of Grave Human Rights Violations Committed by the Moroccan State (*Association Sahraouie des Victimes des Violations Graves commises par l'Etat Marocain*, ASVDH), were sentenced to prison terms in 2007 on charges which included belonging to an unauthorised organization. The ASVDH has been unable to obtain legal registration due to politically-motivated administrative obstacles. Another human rights network, the CODESA, was unable to hold its founding congress on 7 October 2007 because the local authorities refused to acknowledge their request for authorisation of a public meeting. Brahim Sabbar and Sadik Boullahi are former victims of enforced disappearance.

Dozens of Sahrawis have been charged with violent conduct and detained after being arrested during or after demonstrations against Moroccan rule in Western Sahara since 2005. These arrests have continued in 2007; many of those arrested allege that they were tortured or ill-treated to force them to sign confessions, to intimidate them from protesting further or to punish them for demanding the right to self-determination for the people of Western Sahara.

The Moroccan authorities have also adopted a very restrictive approach on issues relating to the monarchy. Several people, including civil society activists, journalists and political activists, have been prosecuted and in some cases sentenced to prison terms in recent years, after peacefully expressing views on the monarchy. Following demonstrations on 1 May 2007, seven members of the Moroccan Association for Human Rights (*Association Marocaine des Droits Humains*, AMDH) were tried and found guilty of

⁵ Amnesty International annual report 2007.

“undermining the monarchy” and sentenced to two to three years’ imprisonment and heavy fines.⁶ Sit-ins were organised by civil society activists in several cities of Morocco in solidarity with those convicted. Following these, 10 other AMDH members were arrested by police and charged with the same criminal offence. One was sentenced to prison while the others remain free pending an appeal to the Supreme Court. Amnesty International considers the eight imprisoned AMDH members to be prisoners of conscience.

- *Amnesty International calls on the Moroccan authorities to take concrete measures to ensure respect for the rights of all Sahrawis to freedom of expression, association and assembly and to allow Sahrawi human rights defenders to collect and disseminate information and views on human rights issues without fear of prosecution, harassment or intimidation.*
- *Amnesty International calls on the Moroccan authorities to release immediately and unconditionally all prisoners of conscience, and to bring articles in the Penal Code and the Press Code which criminalise the peaceful exercise of the fundamental rights to freedom of expression, association and assembly, into line with their international human rights obligations.*

Refugees, asylum-seekers and migrants

Amnesty International has serious concerns about the Spanish and Moroccan authorities’ treatment of people attempting to cross the Spanish/Moroccan border clandestinely at Ceuta and Melilla. In the past two years, the organization has investigated human rights violations committed against migrants and asylum-seekers in Ceuta and Melilla as well as in Andalucía and the Canary Islands. These investigations have revealed abuses including unlawful expulsions, lack of due process, breach of the principle of non-refoulement and excessive use of force by both Moroccan and Spanish security forces against asylum-seekers and migrants.

In recent years thousands of people suspected of being irregular migrants, including minors, were arrested by the Moroccan authorities and expelled to Algeria and, to a lesser extent, Mauritania. They reportedly included dozens of refugees or asylum-seekers. Those arrested were generally expelled shortly after their arrest, without the chance to appeal against the decision to remove them or to challenge the grounds on which the decision was taken, despite these rights being guaranteed by Moroccan and international law. They were often left without adequate food and water.

Amnesty International expressed serious concern over the fate of around 100 people unaccounted for following raids carried out in December 2006. Moroccan authorities deny that persons with UNHCR documentation were arbitrarily expelled, but Amnesty International has credible information that at least 10 refugees and 60 asylum seekers were sent to the border. While some of these were allowed to return to Rabat, several complained of theft and sexual abuse by security force personnel in both Algeria and Morocco.

This incident is similar to the common practice that has occurred during the last two years according to which foreigners are rounded up by force by Moroccan police, coerced to board buses and are then driven to close to the Algerian border where, after being separated into small groups, they are abandoned in different areas of the desert putting them at risk of further abuse, including beatings and rape.⁷ Arrests, detentions and expulsions of migrants apparently attempting to reach the seashore through the Western Sahara territory have been reported in 2007.

- *Amnesty International calls on the Moroccan government to immediately halt the refoulement of refugees and asylum-seekers; and the arbitrary and collective or mass expulsion of migrants to neighbouring countries;*
- *Prompt, thorough, independent investigations must be carried out into any allegation of death, injury or sexual assault of migrants and asylum-seekers caused by the use of force or firearms by law enforcement officials and that the results are made public.*

⁶ For further information, see *Morocco/Western Sahara: release demonstrators accused of criticising the monarchy*, MDE 29/008/2007 and *Morocco/Western Sahara: Amnesty International calls for release prisoners of conscience sentenced for “undermining the monarchy”*, MDE 29/009/2007

⁷ See *Spain and Morocco: failure to protect the rights of migrants – Ceuta and Melilla one year on*, EUR 41/009/2006

- *Amnesty International urges the Moroccan government to reaffirm and fully respect the principle of non-refoulement and to ensure that all asylum-seekers have access to fair and satisfactory procedures for determining whether they are in need of international protection, including but not limited to the right to appeal, with suspensive effect, to an independent specialised body, legal assistance and interpretation, in accordance with international law.*

Torture and other ill-treatment

Amnesty International is concerned at the high number of allegations of torture or ill-treatment of people arrested in Western Sahara in the context of demonstrations against Moroccan rule since 2005. According to the information received, torture has included beatings, the use of electric shocks and rape through the method of the “bottle,” in which a bottle is inserted into the anus of the detainee. Torture appears to be inflicted during the period of *garde à vue*, before the detainee is brought to the judicial authorities, and intended to intimidate those arrested, punish them for their stance on self-determination or force them to sign “confessions.”

Amnesty International is also seriously concerned over the sharp rise in reported cases of torture or ill-treatment in the context of “counter-terrorism” measures in Morocco/Western Sahara since 2002. Among the hundreds of Islamists or presumed Islamists arrested and detained on suspicion of belonging to “criminal gangs” or of involvement in planning or carrying out violent acts, scores of people are alleged to have been tortured or otherwise ill-treated. Scores have been sentenced to long prison sentences and over a dozen to the death penalty on the basis of evidence reportedly extracted by torture or ill-treatment.

Torture or ill-treatment is generally reported to have taken place in the custody of the security forces, particularly the Directorate for the Surveillance of the Territory (*Direction de la surveillance du territoire*, DST) and the police, allegedly in order to extract confessions or information, or to force the detainee to sign or thumb-print statements, the content of which they reject, deny or do not know. The detention centre of Témara, operated by the DST, is one of the main places where torture is reported to occur. Dozens have been held there, in the context of “counter-terrorism” measures, in secret and unacknowledged detention, in breach of both Moroccan law and international human rights standards.⁸

While allegations of torture or ill-treatment of presumed Islamists during interrogation have decreased since 2005, Amnesty International remains concerned at continued impunity for such violations. In the majority of cases where complaints were made involving allegations of torture or other ill-treatment, investigations have either not been opened, have been dismissed without adequate investigation, or have not resulted in perpetrators being prosecuted.⁹

Furthermore, hundreds of Islamists detainees continue to demand a judicial review of their trials, which were tainted by unexamined claims of torture or ill-treatment during questioning by the security forces. Hundreds of them have staged hunger strikes in 2007 to protest at prison conditions, lack of access to adequate medical care, and ill-treatment by prison guards and other security forces. Eight Moroccan human rights organizations visited the Salé prison where many presumed Islamists are detained and their findings, issued in November 2007, confirmed the prisoners’ allegations of ill-treatment. They have called for investigations to be opened into all allegations of torture or ill-treatment.

- *Amnesty International urges the Moroccan Government to give clear and public instructions to the DST that its officers and agents must obey the law and stop carrying out arrests and detaining people.*
- *The government must ensure effective investigations into all allegations of torture or ill-treatment and bring those responsible to justice in accordance with international standards for fair trial.*
- *The Moroccan authorities should order retrials, in proceedings meeting international fair trial standards, for all those convicted on the basis of evidence suspected to have been obtained through torture or ill-treatment.*

⁸ See Amnesty International annual report entries 2005-2007; report *Morocco/Western Sahara: Torture in the “anti-terrorism” campaign - the case of Témara detention centre* (AI Index: MDE 29/004/2004)

⁹ See Morocco/Western Sahara: Briefing to the Committee against Torture, MDE 29/011/2003

Appendix: Amnesty International document for further reference

- *Morocco/Western Sahara: Briefing to the Committee against Torture*, (AI Index: MDE 29/011/2003)
- *Morocco/Western Sahara: Torture in the “anti-terrorism” campaign - the case of Témara detention centre*, (AI Index: MDE 29/004/2004)
- *Spain and Morocco: failure to protect the rights of migrants – Ceuta and Melilla one year on*, (AI Index: EUR 41/009/2006)
- *Morocco/Western Sahara: release demonstrators accused of criticising the monarchy*, (AI Index: MDE 29/008/2007)
- *Morocco/Western Sahara: Amnesty International calls for release prisoners of conscience sentenced for “undermining the monarchy”*, (AI Index: MDE 29/009/2007)
- Amnesty International annual report entries 2005-2007