

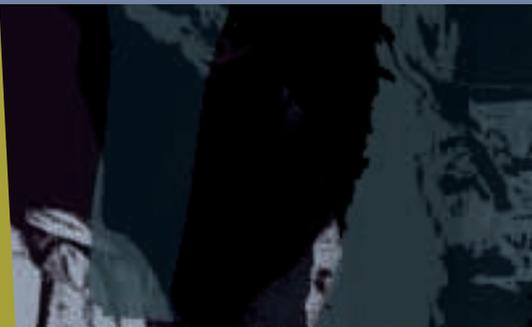


La Violence étatique au Maroc

UN RAPPORT ALTERNATIF

AU TROISIÈME RAPPORT GOUVERNEMENTAL

PRESENTÉ AU COMITÉ CONTRE LA TORTURE



ADFM – ASSOCIATION
DEMOCRATIQUE DES FEMMES
MAROCAINES



L'Observatoire Marocain des Prisons

Un projet coordonné par
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State Violence in Morocco

ALTERNATIVE REPORT
TO THE UNITED NATIONS COMMITTEE
AGAINST TORTURE

ADFM - ASSOCIATION
DEMOCRATIQUE DES FEMMES
MAROCAINES



L'Observatoire Marocain des Prisons

A project coordinated by



Writing alternative reports is one of the main activities of the OMCT and a vital source of information for the members of the Committee Against Torture. With these reports, it is possible to see the situation as objectively as possible and take a critical look at government action to eradicate torture.

Under the aegis of the European Union and the Swiss Confederation, the “Special Procedures” program presented this report on state violence and torture in the Kingdom of Morocco at the 31st session of the Committee against Torture, which took place in Geneva from 10-21 November 2003 and during which the Moroccan Government’s report was examined.

This report was jointly prepared by three Moroccan human rights NGOs:

- *The Democratic Association of Moroccan Women (ADFM),*
- *The Bayti Association,*
- *The Moroccan Prison Observatory (OMP).*

Three delegates from these NGOs presented the report during the information session and shared their observations and concerns with the members of the Committee against Torture.

This study is divided into three parts. Part I provides a general overview of torture and inhuman or degrading treatment (in prisons in particular) committed by state officials. Parts II and III deal with torture and inhuman or degrading treatment of women and children respectively. This rather novel approach sheds light on the situation of particularly vulnerable groups of people. The Committee against Torture’s Concluding Observations and Recommendations adopted following examination of the Moroccan Government’s Report are included in the Appendices.

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Introduction

While noting that the Moroccan government has followed through on its commitment to present its third periodic report on implementation of the Convention Against Torture, the Moroccan Prison Observatory, the Moroccan Association for Women's Rights and the Bayti Association - backed by the World Organization Against Torture (OMCT) - express their regret at having been unable to obtain a copy of the Moroccan government's report from the Moroccan authorities for the purpose of making comments. They would also like to thank the OMCT for having asked them to prepare this alternative report.

With limited time available for preparation of this report, the three associations opted for a sector-based approach that reflects the spirit of the Convention in question. The OMP worked on Part I (general situation), the ADFM on Part II (violence against women) and Bayti on Part III (violence against children).

Founded in 1999, the Moroccan Prison Observatory (OMP) is an NGO that defends and promotes the rights of inmates. It publishes an annual report on prison conditions, including individual cases, statistics, assessments and recommendations. The Moroccan Association for Women's Rights (ADFM) is an NGO that defends and promotes women's human rights, *de jure* and *de facto* equality for Moroccan women and full citizenship. Founded in 1994, the Bayti Association is an NGO that helps children in difficulty. It reunites children with their families, encourages them to attend school and training programs, helps them find work and eases their transition back into society

PART I

STATE VIOLENCE IN MOROCCO

GENERAL SITUATION

Introduction

After the OMP received a copy of the Moroccan government's report from an international NGO, it met with the heads of Morocco's Human Rights Consultative Council (CCDH), the Human Rights Documentation Center, the Ministry of Human Rights, and several human rights groups. It also contacted the Ministry of Justice and Ministry of Human Rights in order to gather as much information as possible and find out where the various stakeholders stood on the issue at hand.

In its report, the Moroccan government states that it has taken into account the conclusions and recommendations adopted by the Committee Against Torture¹. And yet, this very same report - while recognizing the absence of a precise definition of torture - confirms the fact that Committee concerns expressed over the past four years have not been heeded.

Moreover, the principles, rights and obligations emanating from the charters of international organizations - and asserted in the preamble of the Moroccan Constitution - have not yet been transposed into national legislation to bring domestic laws in line with these conventions.

The incompatibility of national legislation with the provisions of international human rights covenants and conventions is demonstrated by Morocco's reservations regarding Articles 21 and 22 of the Convention Against Torture (which give the Committee the power to receive and examine statements made by a State Party or by private persons within that State Party's jurisdiction). This incompatibility, combined with the reservations, seriously weaken Morocco's resolve to put an end to the practice of torture.

As in previous reports, Government of Morocco's report starts with a presentation of the general provisions contained in juridical and legislative texts. Although intended as criteria and mechanisms, these provisions are completely impracticable.

-
- 1 a) Add a definition of torture in the Penal Code that strictly matches the one in Article 1 of the Convention and criminalize all acts that may be considered as torture;
 - b) Lift the reservation regarding Article 20 and make the statements provided for in Articles 21 and 22 of the Convention;
 - c) Bring legislation on immigration, deportation and extradition in line with corresponding provisions of the Convention;

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When preparing its report, the Moroccan government gathered information unilaterally and did not consult human rights groups on such vital and crucial issues as women, children, prisons, due process, torture and ill-treatment.

The report therefore expresses the unilateral view of the Moroccan government in general and the Ministry of Human Rights in particular. The latter has been ineffective in preventing serious human rights violations, has never taken the initiative to incidences of torture and ill-treatment during police custody, and has never worked with governmental authorities to put an end to such practices.

The report fails to present serious human rights violations committed over the past four years, despite reports from human rights groups that such violations have indeed taken place. Their reports show that there has been an alarming deterioration of the human rights situation on the ground and that individual rights to life as well as moral and physical integrity have been threatened by specific cases of torture and inhuman treatment during arrest and imprisonment.

The Moroccan government's report presents the legal and organizational structure of the CCDH, indicating its prerogatives and role as the national institution responsible for promoting and protecting human rights. In doing so, it casts aside human rights group reservations that it is not independent and that its prerogatives do not follow the Paris rules on the status and functioning of national human rights institutions.

Moreover, the report does not indicate exactly what administrative and judicial measures have been taken to crack down on those responsible for abductions, those who used violence against peaceful demonstrators on public thoroughfares and those who used torture during police investigations.

Finally, the report makes no mention of Morocco's plans to:

- Revise and improve the High Court responsible for prosecuting and judging high-ranking government officials involved in cases of torture as part of their duties.
- Ratify the Rome Statute of the International Criminal Court. Government authorities deliberately refrained from mentioning this topic despite the call for ratification of the Rome Statute issued at the 5th International Workshop for National Human Rights Institutions held in Rabat in 2000.

I. Civil Liberties

The Moroccan government's report states that "King Muhammad VI considers enlargement of the area of freedom a priority, as demonstrated by the revision and updating of civil liberties laws on associations, public demonstrations and the press. Law No. 76-00 modifying and supplementing Dahir No. 1-58-377 of 3 Jumada 1378 (15 November 1958) on public gatherings is intended to reinforce people's rights to assemble, meet and express their views, simplify administrative procedures and revise sentencing so that offenders spend no time or less time in prison and pay fines instead. The law also seeks to establish specific rules to guarantee the transparency, honesty and legality of diversified funding both within and outside an association. Such rules will also strengthen the role of the courts when it comes to ensuring that administrative decisions are lawful. In a bid to preserve national identity and ensure that civil liberties laws do not clash with the Kingdom's religion and civilization, this reform seeks to bring these laws in line with the provisions of international human rights instruments prohibiting racism, hatred, violence, religious or ethnic discrimination and threats to individual freedom."

When King Muhammad VI rose to the throne, the Moroccan people expected the country's political, economic and social situation to improve and the rule of law to be established. These hopes are gradually fading despite unquestionable progress:

- Constitutional reform is not even on the agenda;
- Reform of the legal and institutional human rights framework has not yet been completed;
- Reform of the Personal Status Code is bogged down in endless religious debate;
- Repression of social protest movements and arbitrary restrictions imposed on freedom of the press reveal a selective approach that not only does not break away from the past but actually seems to be leading back to original practices of repression (conviction of rockers, lawsuits against journalists, violent repression of social movements, repression of demonstrations against war in Iraq etc.)
- The Amazigh language and cultural rights are not recognized in the Constitution.

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- Designed to protect citizens against government abuses, civil liberties laws are now being eaten away by subsequent revisions, as we shall see below.

A. Freedom of association**1. Dahir of 1958**

With the exception of French law, which was used as a basis for Moroccan law, the concept of freedom of association as described in the Dahir of 1958 does not have any real equivalent in other legal systems.

The Dahir borrowed the principle of freedom of association from the French Law of 1901 on the right to form associations. However, associations are only granted fully legal status upon completion of declaration formalities with the public prosecutor and the local office of the Ministry of Interior.

Various provisions on political parties and associations were added to the Dahir of 1958. These provisions give associations a political connotation that may reinforce the original mistrust of associations as a concept and the subsequent need for associations to obtain legal status.

2. Changes introduced in 1973

The Dahir of 1958 required associations to first carry out administrative formalities before they could exercise the rights that come with a legal personality. However, failure to adhere to the administrative procedure did not have any impact on the validity of their by-laws and did not lead to prosecution.

With the changes introduced in 1973, declaration formalities prior to the formation of any association became mandatory. Failure to carry out the proper formalities meant that association founders at fault could face up to two years in prison and a fine between 10,000 and 50,000 dirhams.

A receipt, issued upon completion of the formalities, therefore becomes absolutely essential if an association is to enjoy legal status and be shielded from criminal prosecution.

In practice, the declaration formalities have been transformed into license formalities. The Dahir of 1973 amended the Freedom of Association Act to place greater restrictions on enjoyment of this right.

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Because of the legislative framework is vague and obsolete, associations are forced to carry out their activities informally. This places them in a precarious position as their continued existence depends on the “tolerance” of the authorities.

3. Law No. 75-00

This law, modifying and supplementing Dahir No. 1-58-376 of 15 November 1958 published in the Official Gazette on 10 October 2002, is the result of a major lobbying effort carried out by associations to pressure the government and Parliament to bring the Law of 1958 in line with:

- The Moroccan Constitution: the preamble affirms the Kingdom’s determination to abide by universally recognized human rights and Article 9 formally establishes these rights.
- Articles 19, 21 and 22 of the International Covenant on Civil and Political Rights, ratified by the Kingdom in May 1979, which describes these rights in detail.

3.1 The main positive aspects of the reform are as follows:

- Suppression of the serious restriction instituted in 1973 authorizing the executive branch to suspend or disband any association whose activities may cause public disturbance. Associations can only be disbanded by court order, in the cases authorized by law. (Article 7)
- Declaration formalities have been simplified somewhat. With the new law, a single declaration is made to the territorial authorities and they in turn send a copy of the documents to the public prosecutor.
- In line with the International Convention on the Elimination of All Forms of Racial Discrimination, which has been ratified by Morocco, the new law stipulates that any association seeking to incite racial discrimination shall be deprived of their public utility status and therefore disbanded. (Article 3).
- All associations, with the exception of political parties, have the right to file for official recognition of their public utility status. Recognition must be granted or denied within six months. This is a step forward since, in the past, requests had often been ignored and left pending indefinitely. (Article 9).

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- All associations, with the exception of political parties, have the right to obtain funding from foreign sources. The new law does not make any distinction between public and private funding from foreign organizations and allows for the possibility of associations being funded by the private sector. (Article 6).

3.2 Erosion of freedom of association safeguards:

- The new law completely changes the rules whereby associations can be created. Although associations are supposed to become official as soon as they file the declaration paperwork, the new law requires the authorities to immediately issue a provisional receipt (which they never do) attesting to the fact that the documents required by law have been filed. The authorities then have two months to issue the definitive receipt. If the recognition request has been turned down, it is up to the association founders to challenge the decision in court (Article 5).
- Basically, the new law sets in stone the longtime practice of making receipts de facto licenses! Receipts are not issued immediately as required by law. Instead, they are issued only if the application has been approved and only after the local police or national police have conducted an investigation. Consequently, many associations have been unable to obtain the receipt to which they are entitled under the freedom of association law.
- Although it may seem paradoxical, the case of Transparency Morocco (a Moroccan association that fights against corruption) is a good illustration: this association takes part in joint NGO/government commissions but has not yet been issued the receipt that would give it legal status. Lawsuits to uphold the right to legal status have been unsuccessful, showing that the courts themselves are unable to curtail government abuses.
- With the new law, declarations must now only be filed with the civil service instead of with both the civil service and the public prosecutor. This means that the executive branch has more control over this fundamental freedom than the judicial branch.
- Moreover, the new law seriously erodes the right to effective remedy by granting the Court of First Instance the power to take preventive action against an association, ordering its offices to be shut down and outlawing its meetings. (Article 7)

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- Refusal to grant recognition of an association's public utility remains a prerogative of the executive branch and does not need to be justified. Moreover, such decisions are not based on objective criteria. Without the possibility of recourse or clearly defined criteria for obtaining public utility status, bias and selectivity may become the norm.
- Article 21 contains a vague definition of what constitutes a foreign association and does not adopt objective identification criteria, which leaves plenty of room for arbitrary decisions to be made.
- In addition, the law does not take into account the practical difficulties that associations encounter:
 - Documents required for the declaration vary from one police station to another and are not even mentioned in the law (ID card, photos of association officers...);
 - Documents are subject to hefty stamp duties;
 - Certain associations are prohibited from holding their constitutive meetings;
 - The officers of certain associations are sometimes threatened

B. Law No. 76.00 on public gatherings, enacted by Dahir No. 1-02-200 of 23 July 2002

Declaration formalities are maintained for public gatherings. However, the new law does not require authorities to issue a receipt as proof that a declaration has been filed. There are no penalties for failure to issue such receipts. If the authorities refuse to issue a receipt, the organizers of the gathering may send in their declaration by registered letter with acknowledgment of receipt. However, this does not remedy the problem of not having obtained a receipt since this document is required before any gatherings can take place on public or private premises.

In other words, the new law allows the authorities to resort to their usual practice of making declaration receipts *de facto* licenses (Article 3).

The new law maintains the status quo for government handling of demonstrations on public thoroughfares. The government retains its discretionary power

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to prohibit any demonstrations that may be construed as “causing public disturbance”. Indeed, the civil service is not required to justify the refusal. The new law does not provide for recourse against refusal (Article 3).

Only political parties, trade unions, guilds and associations may organize demonstrations. This means that two or more individuals acting alone do not have the right to exercise an essential form of freedom of speech (Article 11).

C. Law No. 77.00 on the press, enacted by Dahir No. 1-02-207 of 3 October 2002

1. The main positive aspects of the reform are as follows:

- Freedom of information and the right of access to sources of information have been established (Article 1).
- The executive branch no longer has the right to suspend or prohibit a newspaper.
- Decisions by the Minister of Interior to shut down a newspaper or publication must be justified and are subject to recourse before the administrative tribunal, which must rule on the case within 24 hours after recourse has been filed (Article 77 of the bill).
- The legal provision requiring the director of a publication to pay a fine and damages within fifteen days of a ruling from the Court of First Instance or be forced to shut down the publication has been repealed. This provision had violated the right to an effective remedy provided for in the Covenant.
- The law provides for penalties for inciting hatred and violence against people of a given gender, origin, color, ethnic group or religious faith.
- When charges are filed, summons must now be issued 15 days before the hearing instead of five days, as was previously the case.
- In the case of legal action for libel, the defendant has fifteen days to present an account of the facts that he intends to prove, notify the court of the evidence that he intends to use for his defense and indicate the names, profession and residence of the witnesses he intends to bring in to testify on his behalf. The period, which used to be five days, has now been reduced to forty-eight hours (Article 72) .

STATE VIOLENCE IN MOROCCO**2. Erosion of safeguards of freedom of the press**

- Serious perversion of declaration formalities. Authorities are required to issue a provisional receipt whenever declarations are filed. The definitive receipt is then supposed to be issued within fifteen days. If the authorities fail to issue the definitive receipt, the party presenting the declaration must then take matters to the administrative tribunal, in view of obtaining an injunction (Article 6). In essence, the law makes the practice of considering declaration receipts as *de facto* licenses official. While it is true that cases can be challenged in court, the new law does not indicate what reasons may be used to justify refusal to issue a receipt.
- Freedom of the press cannot be legally guaranteed because no indication is given of the specific actions that insult Islam, undermine the monarchy or endanger territorial integrity. (Article 41). Moreover, no indication is given as to what acts by foreign publications constitute offenses under Article 29 and 30 (i.e. offenses that threaten the country's vital interests, erode its sacred values and subvert constitutional institutions).
- The courts have the power to suspend any publication whose content may be perceived as undermining His Majesty the King, insulting Islam or endangering territorial integrity (Article 41(3)).
- The Minister of Communications can order suspension of a newspaper if the one of the newspaper directors was improperly appointed (Articles 4 - 7).
- The Press Code gives the government wide-reaching powers of seizure.
- The Minister of Interior can order seizure of a newspaper that "may cause public disturbance" (Article 77 -1). Government seizure leaves room for a wide range of politically motivated abuses of power. The same hold true when police are permitted to seize a person's assets without court supervision. Moreover, justifiable cause for seizure is vague enough to allow for just about anything to qualify: Such is the case, for example, of "indecent behavior", "moral offenses", and "public disturbance".
- The Press Code shields several public figures against libel (see Articles 45-46 and 48). This goes against international law, which states that public figures must be willing to accept more, rather than less, criticism.
- The Press Code places the burden of proof on defendants in all cases (see Article 49).

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Although there are a few positive features in the new civil liberties legislation, new provisions are aimed at making license formalities official for freedom of association and freedom of the press. This system goes against both the letter and the spirit of international and regional human rights commitments that Morocco has made.

D. Law No. 03-03 on the fight against terrorism

Well before the tragic events of 16 May 2003, a network of associations, civil society and politicians had been set up to firmly fight the terrorism bill. Nevertheless, the bill was unanimously approved by Chamber of Representatives (with only one abstention) and adopted by the vast majority in the Chamber of Counselors before it was enacted as Law No. 03-03.²

Although the opposition movement did manage to get lawmakers to consider the various objections made to the initial draft, in particular regarding the definition of terrorism, the new law places severe restrictions on individual freedom and safety.

Generally speaking, it provides for harsher criminal sentencing, punishes failure to indicate offenses considered to be acts of terrorism, and raises the number of crimes subject to capital punishment. In addition, when an investigation relates to a terrorist act, the public prosecutor can make house calls and conduct searches (or order the police to do so) at any time of the day or night without the owner's consent.

Before the revision, the maximum duration of police custody was 98 hours for national security cases and custody could be extended once for the same duration. With the new Criminal Procedure Code, the police custody can be prolonged twice if the police investigation relates to acts of terrorism.

Solid evidence is no longer a prerequisite for keeping a suspect in police custody. Instead, the decision depends heavily on whether or not the Criminal Investigation Department feels that detainment is "absolutely necessary for the investigation."

2 Dahir No. 1-03-140 of 28 May 2003, complements the Penal Code and the Criminal Procedure Code by framing legal provisions on terrorism. It bears the title "Fight against Terrorism".

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If it may further the investigation, the public prosecutor can issue a writ to have telephone and other remote communications intercepted, recorded, copied and used in court when the infraction relates to national security or terrorism.

Suspects do not have to be brought before the public prosecutor for the first or the second extension of police custody.

II. Convention provisions on written law and case law in Morocco

A. Convention provisions

The Moroccan government's report claims that efforts are being made to put an end to the practice of torture and other forms of cruel, inhuman or degrading treatment. It contends that Morocco has a legislative arsenal with provisions that are dissuasive enough to prevent such practices from taking place. It further argues that judicial authorities systematically take action to prevent and punish violations whenever cases are brought to their attention. In reality, this is not the case. Moroccan law does not fight against torture in theory nor in practice. This is why torture, particularly against political opponents, is still so widespread in Morocco. This conclusion was reached following review of both written law (legal texts) and case law (jurisprudence).

1. Written law on torture

1.1 International instruments do not take precedence over national legislation

In 1993, Morocco ratified the 10 December 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (henceforth, for the sake of conciseness, we shall refer to this instrument as “the Convention” and when referring to “torture”, we mean torture and all practices relating to it).

Moreover, the preamble to the Constitution of Morocco reads as follows: *“Aware of the need of incorporating its work within the framework of the international organizations of which it has become an active and dynamic member, the*

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Kingdom of Morocco fully adheres to the principles, rights and obligations arising from the charters of such organizations, and it reaffirms its determination to abide by universally recognized human rights.”

This provision leaves one with the impression that the international human rights instruments that Morocco has adopted (treaties, conventions, etc.) have been transposed into national legislation. This is not the case. First of all, the Constitution does not state anywhere that international instruments take precedence over national legislation in the legal hierarchy nor that lawmakers are required to transpose them (immediately after ratification) into national law. If the Constitution is not revised to remedy these two problems, international instruments will remain little more than words on paper.

Admittedly, Morocco has been bound to the definition of torture given in Article 1 of the Convention since ratification in 1993. However, adopting a definition does not necessarily make torture a crime. The only way to do so is to enact a law that establishes it as such and provides for criminal penalties against anyone convicted of torture. Since the Convention does not provide for sentencing (which is makes sense, as punishment is a matter that falls under national sovereignty), torture is considered to be a morally reprehensible (but entirely legal) act in Morocco.

1.2 There is no national law that directly provides for punishment in cases of torture

Paragraph 20 of the Moroccan government’s report states that *“despite the lack of a specific definition of torture, there are various legislative provisions that provide for punishment in cases of torture.”* The only provision of the Penal Code where torture is explicitly mentioned is Article 399, which stipulates that: *“the death penalty shall be given to anyone who resorts to torture or barbarous acts against another accused of a crime.”* However, there are three reasons why this text is ineffective:

- *No definition is given for torture or barbarous acts.* This goes against universally accepted principles of criminal law, namely that all offenses must be clearly defined with mention being made of the various aspects that characterize the offense: the act itself, the intent and the legal text that established the act as an offense.
- *The law draws a distinction between torture and barbarous acts (“...resorting to torture or barbarous acts”).* First of all, these two terms should

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mean the same thing since it is difficult to see how torture would not be considered as a barbarous act. Secondly, this distinction between the two notions in Article 399 means that a victim of a barbarous act (such as human rights activist M. Chrii in Safi, who recently had a bottle head shoved up his anus) would never be able to plead in court that this barbarous act was an act of torture.

- *Article 399 of the Penal Code views torture and barbarous acts only as aggravating circumstances of a crime.* This means that there is nothing legally wrong with torturing someone as long as the intent is not to kill (since intentional homicide is obviously a crime) or maim (also a crime) the person. At the very worst, the act of torture could be considered as a simple misdemeanor if the physical violence prevents the victim from being able to work. If these two conditions are not met (such as in cases where the person has “only” been subjected to cruel, inhuman or degrading treatment but not physical abuse) then there is no penalty.

1.3 Legal texts do not cover all forms of violence and ignore cruel, inhuman or degrading treatment or punishment .

- a) Not all forms of physical violence are covered: Moroccan law (essentially the Penal Code) provides for penalties for acts of violence, leading one to believe that this is enough to punish all cruel acts that may be described as torture by international standards. However, this is not the case.
 - Some acts of physical violence go unpunished: Moroccan legislation focuses mainly on physical aggression that results in death, crippling injury or inability to work. However, there are other forms of violence that do not have such consequences (although they cause inhuman suffering) and do not leave any traces after a certain amount of time has gone by (for instance, dunking a person’s head in a bucket of water; suffocating a person with a wet rag; hanging a person by their feet or wrists after taking certain precautions).
 - Physically cruel, inhuman or degrading treatment: Just to give a few examples: leaving a person handcuffed and shackled over very long periods of time; forcing a person to remain standing or lying down for a very long period of time; long-term confinement in a particularly cold or hot location; preventing a person from using the restroom; depriving a person of food or making sure that the person receives an unbalanced or very low-nutrient diet; depriving a person of sleep; constant exposure

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to intense light or very loud noise; depriving a person of the right type of clothing to keep him/her warm and clean.

- b) Psychologically cruel, inhuman or degrading treatment is not covered: Here again, there are plenty of examples: allowing a person to hear the cries of agony of people being tortured, especially loved ones; all manner of threats, such as telling a person that he/she will be thrown into the sea or fed to wild animals; insults; giving a person misleading information about loved ones.

2. Case law on torture

It is an accepted fact that case law (jurisprudence) is one of the sources of law. We shall limit our comments to how the Moroccan justice system handles claims of torture committed by the police. It should be understood, however, that there are other government agents or individuals claiming to represent the government who can, and do, resort to torture.

There are essentially five extremely serious mistakes that the Moroccan justice system makes when handling torture claims, mistakes that actually encourage the practice of torture and put innocent people behind bars. These mistakes are the consequence of an inadequate understanding of the allegation/counter-allegation rule, refusal to admit evidence presented by defendants, adherence to confessions as if they were an article of faith, believing witness when they plead guilty and discounting their testimony when they plead innocent, and finally the quasi-systematic refusal to investigate torture claims.

2.1 Moroccan courts do not apply the allegation/counter-allegation rule

The allegation/counter-allegation rule is explicitly provided for in the Criminal Procedure Code. In practice, however, the rule is never applied when defendants want the police officer who tortured them to testify in court. This rule - one of the fundamental conditions for due process - requires police officers who investigated the felony or misdemeanor to be called in as witnesses for the prosecution during both review of evidence and trial. However, in Morocco, investigating police officers are never called in as part of standard procedure. Quite the contrary, the court systematically denies requests from defendants to compel police officers responsible for the investigation to appear in court. The judges know perfectly well that the defendants intend to accuse

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the police officers of having tortured them and that they intend to ask them specific questions regarding this allegation. However, Moroccan case law is such that judges always protect police officers. As a result, thousands of Moroccan police officers have been able to torture people at will ever since the country regained its independence in 1956. No one (starting with the judges themselves) has ever held them to account.

2.2 Judges refuse to admit evidence presented by defendants

We shall only mention two quasi-systematic practices in the Moroccan justice system:

- a) Judges refuse to call in witnesses for the defense: People can be tortured in the presence of witnesses on official or secret premises but judges will never allow defendants to call in those witnesses to give testimony.
- b) Judges refuse to order a medical examination: Defendants may have internal or external signs of torture but judges quasi-systematically deny requests from defendants to have a medical exam to record these signs and determine the cause and date.

2.3 Judges view confessions as an article of faith

Whenever defendants “confess” to having committed a crime or an offense, the judges do not even look for corroborative or opposing evidence. This applies even when defendants claim that the confession was made under duress. Since the confession is considered final and infallible proof of guilt, all that remains is for the judges to issue the sentence. Instead of worrying about the possible consequences of judicial mistakes, these judges recklessly commit one miscarriage of justice after another, sending innocent people to prison for crimes that they did not commit and allowing the torturers who extracted the so-called confessions to walk free.

2.4 Judges believe defendants when they plead guilty and discount their testimony when they plead innocent

The notion that defendants are innocent until proven guilty - i.e. that the state bears the burden of proving guilt and that defendants do not have to prove their innocence - does not apply. Quite the contrary, Moroccan judges issue a guilty verdict even when the prosecution has not proven its case and the defendant categorically denies having committed the offense. This is

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because defendants are quasi-systematically considered to be liars. They are only taken seriously when they plead guilty even when it means that they have to lie to do so!

2.5 Refusal to investigate torture claims

When defendants claim that they have been tortured by police officers, describe the torture in detail, indicate where and when it took place, provide the name of the person(s) who tortured them and show the signs of torture in court, judges never order an investigation even when abominable acts are committed.

Conclusions

Despite Morocco's 1993 ratification of the 1984 Convention, Moroccan law still lacks specific criminal penalties for torture and other cruel, inhuman or degrading treatment or punishment. Moroccan penal laws clearly do not suffice when it comes to putting an end to this practice. Although it has been ten years since ratification took place, there is still a legal vacuum in this area.

Moroccan case law systematically ignores torture claims and human rights groups who call for criminal penalties for torturers as a means of putting an end to this practice. By granting impunity, Morocco is actually condoning it.

Torture has been behind the many miscarriages of justice that have prevailed in Morocco since it regained its independence in 1956. Since then, a countless number of innocent people have suffered.

The Moroccan government's report is nothing more than a confused and jumbling mass of references to laws that have nothing to do with the subject at hand. More alarmingly, the Moroccan government claims that these laws are strictly applied, which is an embroidering of the truth to say the least. Government denials of torture taking place on Moroccan soil can only be interpreted as a refusal to believe that those reporting torture cases are telling the truth.

The practice of torture has never stopped since 1956. Although there was a lull in the mid 1990s, the practice has made a strong comeback in the past year and a half, ever since Morocco decided to eradicate everything and anything that even remotely resembles terrorist activity.

STATE VIOLENCE IN MOROCCO**B - Protection and appeals**

On the issue of police custody, Article 9 (3) of the International Covenant on Civil and Political Rights stipulates that: *“Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power...”* The UN Human Rights Committee stated that *“detainment should be no longer than a few days.”*

The maximum duration of police custody is 48 hours, with a possible extension of 24 hours at the public prosecutor’s discretion. For matters relating to national security, the duration of police custody is 96 hours and can be extended at the public prosecutor’s discretion. During the initial period of police custody, the suspect is questioned without the benefit of a lawyer. While Article 66 of the new Criminal Procedure Code authorizes the suspect to contact a lawyer when police custody is extended, it also authorizes the public prosecutor to delay the arrival of a lawyer upon request by the Criminal Investigation Department (if it will further the investigation of certain crimes).

Defendants must be prosecuted within two months of their arrest, with a maximum of five 2-month extensions that may be granted at the discretion of the investigating judge. In other words, defendants can be kept temporarily behind bars for up to a year.

1. No supervision

The public prosecutor has an obligation to supervise the police force.

The public prosecutor is responsible for seeing to it that police questioning of detained suspects and review of evidence take place in strict compliance with the rules of criminal procedure.

Given the fact that the best time to torture a suspect (at a local or national police station) is during the review of evidence, we can draw the following conclusions:

Cases would never make it past review of evidence if public prosecutors actually supervised police activities to make sure that legal procedures were being strictly adhered to. This nonfeasance on the part of Moroccan public prosecutors serves to encourage police officers to continue torturing suspects and/or forcing them to confess.

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As a rule, the public prosecutor tends to cover up acts of torture inflicted upon suspects during questioning at police stations or DST facilities.

2. Legal recourse

Here we see immunity at work. The Criminal Procedure Code establishes a series of complex procedures that provide all sorts of conditions to help high-ranking officials escape justice. There are obstacles that hinder both investigation and possibilities for remand.

Articles 267, 268, 269 and 270 of the Criminal Procedure Code:

- Stipulate that only the criminal chamber of the Supreme Court (the highest court within the Moroccan justice system) can order an investigation of cases involving a minister or governor.
- After examining the evidence, if the investigating judge feels that the case can be brought to trial, then all of the chambers of the Supreme Court must meet to decide whether or not to proceed. Their decision is irrevocable.
- The victim does not have the right to act as a plaintiff in the Supreme Court.
- Only the Chief Justice of the Appeals Court can order an investigation of cases involving a Pacha, a Caid, a police officer or a high-ranking official.

These restrictions reveal the shortcomings of the laws and procedures intended to punish acts of torture. These shortcomings are even more blatant when the person responsible for such acts is a high-ranking official within the police department or security service:

- Difficulties getting authorities to gather evidence or investigate complaints;
- Difficulties filing complaints or pressing charges;
- Difficulties calling in witnesses;
- Chief Justice rulings to deny requests for investigation and review of evidence are not subject to appeal.

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3. Extrajudicial measures

There are governmental and non-governmental measures. The fact that the Ministry of Human Rights failed to respond to the OMP's requests for information confirms the assumption that the Ministry has not yet developed any extrajudicial measures. There is also a lack of dialogue between the Ministry and human rights groups, despite continuous reports of violence and press coverage of alleged acts of torture and ill-treatment.

The new CCDH has not even left the starting block. Moreover, the "Working Group on Protection of Human Rights and Review of Violations" recently recommended a series of meetings with human rights groups, which were supposed to take place at the end of 2003.

On their end, several NGOs have already launched campaigns to raise public awareness of human rights issues and spread a human rights culture. Some of these activities have been carried out with the help of government structures. Moreover, the Moroccan League for the Defense of Human Rights (LMDDH), the Moroccan Human Rights Association (AMDH), the Moroccan Human Rights Organization (OMDH) and the Moroccan Prison Observatory set up a coordinating committee that drafted a list of priority issues that, if addressed, would improve the prison situation. This list has been sent to the Minister of Justice for review.

4. Compensation

There are absolutely no procedures for compensation and no national fund to pay compensation to torture victims.

In August 1999, an independent arbitration commission was set up at the CCDH to set compensation for pain and suffering and material loss for victims of abduction and arbitrary detention or for their beneficiaries.

In addition to the doubts that have been raised regarding the commission's working methods, there is still the crucial issue of how the abductions took place and who was responsible. Indeed, the victims and NGOs want to know the truth about all of the disappearances.

Nearly 6,000 victims or beneficiaries had filed for compensation by the 31 December 1999 deadline.

According to official records, by the end of January 2003, the commission had

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paid the equivalent of over 80 million USD in compensation to 3,700 recipients.

C. Description and Assessment of current practices in Morocco

Despite efforts by human rights activists and groups to propose solutions and protect citizens against abuse of power, major human rights abuses continue. Human rights groups have received reports of several cases of arbitrary, illegal arrests and detention of suspects by the DST (Moroccan Secret Service) beyond the maximum duration (96 hours) established by the Moroccan Criminal Procedure Code.

These serious allegations shed doubt on the Moroccan authorities' resolve to discontinue the practices of secret detention and torture. Official denials do little in the way of reassuring human rights activists.³

International law is clear on this matter: torture and ill-treatment are prohibited, regardless of the circumstances. And yet, in too many cases the very people who are supposed to enforce the law are the ones who transgress it.

The number of cases of torture and ill-treatment by authorities and law enforcement officers and lack of investigation of complaints by victims of inhuman and degrading treatment show that torture (in the broadest sense of the term) is a systematic practice in Morocco.

Civil liberties, freedom of association, right of peaceful assembly and freedom of the press are the hallmarks of a nation truly governed by rule of law. They are designed to protect citizens against abuses of power. However, the following cases show how these rights and freedoms are steadily being eroded:

- **December 2000:** 36 human rights activists were arrested and later sentenced to three months in prison and a fine of 3,000 dirhams each. *"This ruling is a very clear reminder that freedom of speech is seriously threatened in Morocco,"* stated Amnesty International on Thursday, 17 May 2001. The demonstration that took place on 9 December 2000 had been organized by the Moroccan Human Rights Association (AMDH) to demand justice for victims of human

3 In answer to a question regarding the abductions, the Minister stated: In some of the cases, the main problem was the fact that family members had not been contacted.

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rights violations (in particular abductions, acts of torture, and arbitrary imprisonment) that had occurred in previous decades. Demonstrators also called for an end to the impunity enjoyed by those responsible for these crimes.

In addition, over 100 members and sympathizers of the banned Islamist movement *Al Adl wal Ihsan* (Justice and charity) - including seven close relatives of its spiritual leader Abdessalam Yassine - were given prison sentences by the courts of several Moroccan towns, following demonstrations that took place on 10 December 2000 to commemorate the 50th anniversary of the Universal Declaration of Human Rights.

- **December 2000:** *As Sahifa*, Journal and Demain banned. The Yussufi Administration justified its decision by pointing to the publication of special report on Western Sahara, which included an interview with representatives of the Polisario Front. It is more likely that the ban was in response to pressure from generals. In November 2000, these newspapers published a statement by the Moroccan Human Rights Association (AMDH) demanding an investigation of the role of 14 high-ranking officials within the police department suspected of having been involved in the disappearance of political opponents.

- **November 2001:** Police arrested Nourredine Darif, a news correspondent for the Arabic weekly *Amal Addimocrati*, who was on his way to the Smara Hospital to find out what had happened to several demonstrators after a riot had broken out earlier that day. Taken to the local police station, Nourredine Darif was roughed up by police officers. The journalist was acquitted on 23 April 2002

- **November 2001:** Police violently broke up a demonstration in Smara. According to reports, billy clubs and whips were used to force detainees to “confess.”

- **07 January 2002:** Anas Mezzour, a journalist working for the Arabic weekly *Al Ayyam*, paid a visit to Islamist inmates held at the Kenitra Correctional Facility. A lawyer and a member of a local relief agency accompanied him on this visit. As they were leaving the correctional facility, plain-clothes officers arrested all three. Forced to face a wall, Anas Mezzour was separated from his two companions and taken to the warden’s office where a man (identified by the journalist as a member of the DST) pinned him down and confiscated his recording device. Anas Mezzour was then kept in the warden’s office for three hours to face accusations of illegal entry into the building. Anas Mezzour was only released after the warden contacted the Kenitra public prosecutor.

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- **February 2002:** 60 people were injured following savage repression of a sit-in of unemployed university graduates in Rabat. Journalists and bystanders were not spared: on their way to MAP headquarters to discuss the new Press Code, four Moroccan journalists were beaten by police as they were crossing the peaceful demonstration of unemployed university graduates.
- **14 February 2002:** The Casablanca Appeals Court gave Aboubakr Jamaï, Chief Editor of the *Journal Hebdomadaire*, and Ali Amar, Managing Director of the same publication, a three-month and two-month suspended prison sentence.
- **14 March 2002:** Police prevented Zoulikha Assabdoune, a journalist/photographer working for the Arabic daily *Al Ittihad Al Ichiraki*, from covering a demonstration taking place in Rabat. Police destroyed the journalist's camera and tore up his press card.
- **6 May 2002:** The new Press Code was adopted amid great controversy. Despite a certain number of improvements (easing of criminal penalties and fines, simplification of procedures for creation of a newspaper or magazine, requirement to justify government seizure of assets), the new Press Code maintains prison sentences for libel against the King and his children. Moreover, Article 29 reiterates the government's right to ban Moroccan or foreign newspapers "if the publications in question insult Islam, undermine the Monarchy, endanger territorial integrity or disturb public order."

It is useful to note that it was the Foreign Affairs and National Defense Committee of the Chamber of Representatives that unanimously adopted the new law regarding the Press Code.

- **6 May 2002:** Plain clothed police officers confiscated 8,000 copies of Issue 15 of the quarterly magazine *Wijbat Nadhar* from the Najah printshop in Casablanca. According to Abdellatif Hosni, the publication's Chief Editor, this seizure was "unjustified". Issue 15 contained a translation of a speech given by King Muhammad VI's brother, Prince Moulay Hicham, at the French Institute for International Relations in Paris in May 2001. Residing in the U.S. at the time, the Prince had stated in his speech that the monarchy was in need of "reform."
- **12 July 2002:** Karim Sellmaoui, photographer working for the *Journal Hebdomadaire*, was prevented from entering Mechouar Square (in front of the Royal Palace in Rabat) where the public ceremony of a royal wedding was

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taking place. A security guard ordered Karim Sellmaoui to get out of the official vehicle that was supposed to take him to the ceremony together with a special correspondent from *Paris Match* and an Al-Jazeera camera crew. No explanation was given.

- **16 August 2002:** While in Agadir, Nourddine Miftah, Chief Editor of the weekly *Al Ayyam*, was phoned by a police chief who told him to come “immediately” to Casablanca. Upon arrival, he was interrogated for several hours regarding an interview with an Islamic leader, Abdallah el Chadli, which had been published on 11 July 2002. Two days later, the author of the interview, Anas Mezzour, was called in for the same reasons.

- **23 October 2002:** Moroccan police detained Ali Amar and Mouaad Rhandy, Chief Editor and journalist respectively for the *Journal Hebdomadaire*, for three hours at the border post in Ceuta (a Spanish enclave in northern Morocco). The two journalists were taken to the office of the Criminal Investigation Department where they were given a summons for the Zahidi case. DST officers then questioned them regarding the same case. On 19 October, Ali Amar and Mouaad Rhandy had published an interview with Moulay Zine Zahidi, former Director of *Crédit immobilier et hôtelier* (CIH) while he was a fugitive of justice. The interview included revelations regarding CIH mismanagement under parliamentary investigation and made mention of several political figures. “*Our vehicle was searched with a fine-toothed comb. They tore out the seats and confiscated our cell phones, documents and cameras*” declared Ali Amar.

- **11 December 2002:** The trial of Ali Lmrabet, Managing Director of *Demain Magazine*, was postponed. On 21 November 2001, the Rabat Court of First Instance had sentenced him to four months in prison and a fine of 30,000 dirhams. The journalist was charged with “spreading false information that might disturb public order.” In the Court of First Instance, the public prosecutor had described the article appearing in *Demain Magazine* “*Skhirat Palace for Sale*”, published on 20 October 2001, “*a web of lies and entirely unfounded allegations.*”

- **In 2002,** The Islamist weekly *Rissalat Al Foutouwa* was prevented from being sold at newsstands. On 6 April 2001, authorities confiscated all copies of issue 34 of *Rissalat Al Foutouwa* with no explanation. Muhammad Aghnaj, Publication Manager for the weekly, had a receipt in due form dated February 1999 authorizing him to publish his newspaper. According to him, “*the authorities are putting strong pressure on print shops and distributors not to produce and sell our publication*”.

STATE VIOLENCE IN MOROCCO**Torture and ill-treatment, disappearances**

According to some sources, torture and other forms of abuse were inflicted upon a very large number of people held in detention as a means of forcing them to “confess” or sign depositions that they did not agree to. Most of the information gathered by Amnesty International relates to the very large number of Islamists held in secret detention and accused of having committed or prepared acts of violence. There are also reports of dozens of demonstrators charged with public order offenses in the Sahara. Human rights activists have not been spared:

- The trial of three Saudi Arabians and seven Moroccans (among whom the wives of two of the Saudis) who had been arrested in May and June 2002 started on 28 October 2002. Several of the defendants were kept in secret detention for up to a month. The lawyers for the three Saudis claimed that the authorities had tried to mask this serious irregularity in procedure by backdating the official record to indicate that the arrest had taken place on 12 June 2002 rather than on 12 and 13 May 2002.
- The AMDH received a complaint from Adnane Abdellah Karchi’s lawyer regarding abusive abduction. British authorities handed him over to Moroccan authorities who then flew him by private jet back to Morocco on 19 December 2002. Neither Mr Karchi’s family nor his lawyer have received any notification of his incarceration or whereabouts.
- The AMDH received a complaint from the family of Mimoun Nabet, aged 61, who was abducted on Saturday, 28 December 2002 in downtown Berkane. This abduction took place without proper ID or arrest warrant.
- Dkhil Moussaoui and Bazid Salek were charged with disturbing public order and inciting violence in Laayoune between 2000 and 2002. On 12 March 2003, Bazid Salek was given a ten-year prison sentence on the basis of confessions that he later retracted in court, arguing that these confessions had been made under duress. On 25 June 2003, Dkhil Moussaoui was sentenced to one year in prison.
- On 25 March 2003, the court in Errachidia sentenced ten inhabitants of Imilchil to forty-five days in prison for “illegal gathering”. In the first week of the month, a crowd had gathered every day at the municipal stadium or staged sit-ins in the fields to call for “basic infrastructures”: water, electricity, roads and the reopening of the hospital that had been shut down two years

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earlier. On the seventh day, national police and “auxiliary forces” put an end to the protests by breaking down the doors of a dozen or so houses and beating up the presumed organizers, including the town madman, Himmou Outighrt.

- Arrested and held in custody by well-identified officers from the Criminal Investigation Department on 27 April 2003, Muhammad Charii was subjected to cruel and inhuman treatment and raped by police officers. Instead of criminal charges being filed against these agents of repression, it is the victim who now faces the wrath of judges in an expedited trial.
- **10 April 2003** AMDH activist Hassan EL MADANI was arrested and tortured by DST agents at police headquarters.
- Schoolchildren in Chichawa were arrested, prosecuted and found guilty on 27 May 2003 for having stolen chalk in June 2000. Following a complaint by the school principal, the children were taken to the gendarmerie, interrogated, manhandled and insulted, according to reports made by inhabitants of Sidi Bouzid to a journalist from newspaper “*Al bidaoui*” (see Al Bidaoui No. 52 from Thursday 8 May).
- A group of young musicians accused of “*indecent behavior and attempts to undermine the Muslim faith*” were found guilty on 6 March 2003 of having insulted Islam: “*Police spared the son of the Speaker of the Chamber of Counselors, Mostafa Oukacha, who had initially been summoned by the public prosecutor*”, stated one of the lawyers. He was among the young people held in custody but failed to appear in response to the summons. Could his father’s position have had something to do with the leniency shown towards him? At any rate, the matter sheds light on inequities of our justice system.
- **February-March 2003:** On several occasions and in several towns in the Kingdom, the Moroccan government cracked down on movements and demonstrations of solidarity for the Iraqi people that took place in February and March. After having been beaten and clubbed, some of the activists were arrested (Rabat, Safi, Agadir), tortured (Rabat, Safi), and prosecuted (Safi, Agadir).
- Mbarek Taouss, a member of the Amazigh Association Tillelil, also a former political prisoner and coordinator of ANAPEC’s Victim Support Committee, stated that he had been arrested and tortured on 28 February 2003 in the Tinghir province of Ouarzazat) by DST agents in the presence of uniformed police officers.

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Freedom of association

The government does not recognize many associations and has never given them the declaration receipts that they are legally entitled to receive.

- **16 May 2003:** A series of suicide bomb attacks left 43 dead in Casablanca. Several hundred suspects in Islamist circles were arrested. In a speech given twelve days later, the King announced “The end of the era of permissiveness.”
- **21 May 2003:** The Chamber of Representatives adopted the new anti-terrorism bill. Human rights groups claim that the new legislation destroys freedoms because it provides for harsher sentencing and grants more extensive powers to the police, in particular when it comes to preventive detention.
- **21 May 2003:** Ali Lmrabet was sentenced to four years in prison for having “insulted the monarchy” and ordered to pay a fine of 20,000 dirhams. He was immediately put in prison.
- **11 July 2003:** Chief Editor of the Arabic weekly *Al Ousboue*, was given a one-year suspended prison sentence and his publication was suspended for three months. He had been arrested on 5 June, in application of the provisions of the anti-terrorism law, shortly after an issue of his weekly appeared in the newsstands. This issue included a textual statement made by a hitherto unknown organization calling itself Assaiqa that claimed responsibility for three out of the five bombings in Casablanca. The journalist was charged with “withholding a document that would have facilitated a police investigation of the crimes committed and spreading false information that might disturb public order.” He was released on 12 July.
- **4 August 2003:** Muhammad el Hourd, Managing Director of the weekly *Asharq*, (publication from Oujda, a town in the northeastern part of Morocco), his Chief Editor, Abdelmajid Ben Tahar, and Mustapha Kechnini, Chief Editor of the weekly *Al Hayat al Maghribia* (Oujda publication), were given 1-3 year prison sentences for “inciting violence.”
- **7 August 2003:** Moroccan authorities prevented a mission from the France Libertés Foundation from entering the country upon arrival at the Rabat-Sale airport. This mission had been tasked with complementing its investigation of Moroccan prisoners held by the Polisario by interviewing those who had been released from the Tindouf camps and had since returned to Morocco. The press reported the disappearance of Muhammad Damir on 17 May (see Mr Damir’s mother’s account of the events in the 1 August 2003

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issue of Maroc-Hebdo) and the disappearance of Nabil Abdellah on 24 May in Sidi Allal Tazi.

The FIDH had this to say regarding recent arrests:

“Over the course of the year, it seems not only that, in a number of cases, the legal time limits for holding an individual in police custody were greatly exceeded, at times with falsified records as to the date that custody began, but also that individuals were arbitrarily kept in custody for several weeks.

It should be added that, since 16 May 2003, massive amounts of people, between 2,000 and 5,000, have been called in for questioning in poorly defined conditions.

It was brought to the knowledge of the FIDH delegation that harsh treatment and torture (beatings, electrocution, sexual abuse...) have been practiced over the course of police investigations and particularly widespread in DST (Direction de la Surveillance du Territoire) localities in Temara through which most of the Islamists interrogated were brought.

What is more, two individuals, Abdelhak Bentasser of Fès and Mohamed Bounnit of Taroudant, suffered suspicious deaths following their interrogation and despite the investigations and autopsies that were officially carried out, the numerous contradictions that remain show that the exact circumstances in which these deaths took place have yet to be determined. In this respect, when police brutalities and blunders occur, the fact that impunity still seems to be the rule must be deplored.

Several individuals arrested during the investigation of the bombings have not yet been brought before the public prosecutor. This is the case for Slimane Kharraz, for instance, who was arrested on 13 June 2003 in Marrakech.”

On 26 July 2003, the Errachidia section of AMDH reported that local Islamists had been arrested. Following this report, police raided several houses in the La Pieta and Tarka districts as well as in surrounding villages, beating and arresting twenty-three citizens. One person suffered a concussion and had to remain in the hospital for three days.

The FIDH delegation is alarmed by the speed with which verdicts for terrorist cases are rendered and which thereby do not meet the criteria set for the effective right to a fair trial. As a case in point: summary case file preparation; absence of witness testimony during proceedings; guilty verdicts based almost exclusively on depositions signed during the police investigation even when many defendants were prevented from rereading their own depositions; basic

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right to a true defense in court obstructed (pressure on chosen lawyers, lack of motivation on the part of court-appointed lawyers, etc.); extremely heavy sentences, including the death penalty, rendered on the basis of insufficient police investigations and evidence.

The FIDH mission is also concerned about the worsening of detention conditions for incarcerated Islamists since 16 May 2003, particularly in the Kenitra and Sale correctional facilities (cramped cells, no access to newspapers and other information, restricted family visits, etc.).

At several demonstrations, whether it be unemployed university graduates or people simply making legitimate appeals, the police attack the crowd without warning and resort to physical violence.

D. Prison Situation

In the absence of prison legislation placing sentence execution under the supervision of trial judges and establishing alternative measures to imprisonment, Law No. 23/98 on the organization and functioning of correctional facilities was enacted and published in the Official Gazette in September 1999. At the time, it was considered to be a major legislative reform because it instituted minimum standards. Although there are insufficient provisions regarding disciplinary measures and recourse for inmates, the law does recognize certain essential rights: detention conditions must ensure the health and safety of inmates both in terms of building layout and living conditions on the premises. Economic services and workload must be properly managed. Inmates must have access to basic hygiene and permitted to exercise and eat proper meals.

Morocco currently has over 55,000 inmates but prisons can only reasonably accommodate 25,000 if we consider 3 m² per inmate. There are 5,000 new prisoners each year but prison capacity increases can only accommodate 1,200 new inmates/year. The consequences of such overcrowding are easy to imagine: complete idleness, inmates stuck in their cells for hours on end, only one hour/day for short walks.

Overcrowding was also blamed for several incidents that occurred in Moroccan prisons, in particular a fire that broke out at the Sidi Moussa Correctional Facility in El Jadida on 1 November 2002, which claimed the lives of fifty people.

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Following his nomination, the Minister of Justice stated in April 2001 that the prison situation would be among his priorities. In his speech he admitted that: *“25% of those held in preventive custody are either acquitted or end up having to pay a simple fine. That brings the current total to between 14,000 to 15,000 people.”*⁴

The Minister also conceded that: *“the insufficient number of prison guards and the poor state of health of so many inmates are indications of the quantitative and qualitative shortcomings in the area of sanitation, hygiene, food and medical care.”*

In terms of medical care, even the Minister of Justice’s official figure shows how awful the prison situation is: *“270 DH (27 dollars) per person per year for medical care, not much for a prison population living in extremely precarious health conditions.”*⁵

Reliable information sheds light on the persistence of abuse and poor conditions of detention, often attributed to chronic overcrowding of prisons. The OMP has received corroborative statements and frequent complaints of excessively authoritarian behavior on the part of prison guards and especially their supervisors.

The cases described below are quite revealing. In some facilities, inhuman practices are still in effect, such as the “falaqa” (flagellation of the soles of the feet), which is used to discipline and “soften up” troublemakers (See OMP Reports 2001 and 2002). The OMP is pleased with the training program launched in 1999/2000 involving cooperation between prison wardens and the College of Educational Science. It recommends that the Ifrane training center be opened.

The family of an inmate who died at the El Ayoun Correctional Facility has filed a complaint against the prison for murder. “Witness say that he was tortured to death”, writes the family in the complaint, a copy of which was sent to the OMP. The inmate was serving an 8-month prison sentence issued by the Court of First Instance of Laâyoune on 12 November 2002. During a visit on 29 November, the inmate informed his family that he was being tortured

4 Statement made in an interview granted to the Moroccan newspaper *La Gazette du Maroc*.

5 Idem. See Appendix 3 entitled “Quality of medical care in Moroccan prisons”.

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by some of the prison guards. The following day, a visitor to the prison notified his family that the inmate had been tortured to death. The OMP notified the prison warden and the Ministry of Justice. An order was issued for arrest of suspects following the investigation (a prison guard supervisor and three inmates), who have been prosecuted.

There are currently over one hundred inmates awaiting execution in Morocco. The Criminal Chamber of the Casablanca Appeals Court issued the last capital punishment sentence on 15 March 1993 in the case of a police chief found guilty of pandering.

During a press conference held on 6 August in Rabat, M. Bouzoubaâ, Minister of Justice spoke in favor of repealing the death penalty: *"I will be among those celebrating when the death penalty is repealed in Morocco."* On 12 July 2003, ten Moroccan Islamists were given the death penalty following the trial of thirty-one religious fundamentalists presumed to be members of the Salafia Jihadia. On Tuesday, 19 August 2003, four of the persons responsible for the terrorist attacks in Casablanca were sentenced to death.

PART II

STATE VIOLENCE AGAINST WOMEN

Opening remarks

Women's rights NGOs have made a major contribution towards breaking down the wall of silence regarding violence and other degrading treatment inflicted upon Moroccan women. Since 1995, the number of counseling centers has grown to 16 centers spread out in major Moroccan cities. Reliable sources of information, these centers provide a whole range of services, including psychological counseling, legal advice and legal representation in cases of discrimination and violence against women.

Gathering information on the subject should be easier now that the Moroccan Prison Observatory (OMP) and the Moroccan Human Rights Consultative Council (CCDH) have been created. So far, current data on violence and degrading treatment inflicted upon women is fragmented, incomplete and limited to interpersonal cases (domestic and family violence) due to the social and political situation as well as women's inferior status in society. However, larger groups, such as state institutions, are also responsible for acts of torture, violence and other degrading treatment inflicted upon women.

In the absence of detailed and complete information on the involvement of state institutions in cases of torture and violence inflicted upon women, our analysis is based on information gathered from the Democratic Association of Moroccan Women (ADFM)'s Nejma Center, the OMP and citizen complaints sent to the CCDH.

A- General situation

Over the past few years, more information has been made available thanks to willingness on the part of government authorities (Justice, Health, Criminal Investigation Department, etc.) to become aware of the extent of the problem and the types of violence. The Ministry of Women's Affairs (MWA, 2000-2002), backed by human rights NGOs, has developed a national strategy to fight violence against women (March, 2002). This strategy calls for cooperation between several institutions such as the Ministry of Justice, the Ministry of Health, the Criminal Investigation Department (CID), etc.

At the same time, thanks to women's rights advocates and shifts in political power in the early 1990s, various provisions that were discriminatory against

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women have been repealed. In particular, these include provisions regarding marital consent for:

- Obtaining a passport (circular from the Ministry of Interior, 1994);
- Starting one's own business (Commercial Code, 1995);
- Drawing up a work contract (Code of Obligations and Contracts, 1996).

In addition, women are now "authorized" to hold jobs in professions previously denied to them in the Civil Service Code, such as postal employee, traffic officer, customs official, etc.

Very recently (June-July 2003), the Labor Code, the Penal Code (CP) and the Criminal Procedure Code (CPP) were revised to take into account a certain number of demands made by the Women's Movement.

Since 1998, women's rights groups, backed by various political parties and trade unions, staged a series of major protests. The King responded by setting up a special consultative commission to reform the Mudawwana in April 2001.

King Muhammad VI presented the proposed revision of the Mudawwana on 10 October 2003. The revision improves the status for women and grants them new rights, especially in the area of marriage and divorce. The minimum age at which women can marry has been increased from fifteen to eighteen, as is already the case for men. In addition, women can assert the right to own land. They can also file for a divorce and only judges can make divorces official. As far as polygamy is concerned, men of Muslim faith are still allowed to marry up to four women. However, the right to polygamy must first be granted by a judge at the first marriage, provided the wife freely agrees to it. The Parliament still needs to approve the proposal but is expected to do so in the near future.

All of these concrete developments will certainly improve the status of Moroccan women. However, there are several laws that still discriminate against women. Every day, women are deprived of their rights under the weight of traditions and customs that go against non-discriminatory legislation in effect and lead to violence against them.

The State and its agents are responsible for violence and degrading treatment

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inflicted upon women both directly (acts committed) and indirectly (omission)⁶.

B- Violence against women committed by agents of the State

1. Legal protection afforded to women in police custody

With only a few exceptions, Moroccan legislation does not contain detailed and specific rules regarding how women are to be treated while in police custody. Police custody rules are as follows:

- Duration: No more than 48 hours, but the detention period may be extended; no more than 96 hours for crimes that carry a possible prison sentence of over 10 years, but the detention period may be extended; 18 days by virtue of the new law against terrorism;
- A medical examination by a court-certified doctor is required after individual is released from police custody (list of court-certified physicians);
- Family members must be notified;
- Police custody is postponed if a woman is in the later stage of pregnancy or has just given birth (up to 1 month afterwards).

The new Criminal Procedure Code, which goes into effect on October 2003, contains additional clarifications:

- In the event of a 24-hour extension, suspects have the right to contact a lawyer;
- Specific measures for women: Women must only be frisked by female police officers. If there are no female police officers, then the court must designate a woman to conduct the frisk.

6 In the past decade, “the trend has been to recognize that States are responsible for private acts of violence when such acts are covered by international treaties or when States fail to exercise ‘due diligence’ in preventing, investigating, punishing and compensating for human rights violations.” The standard of ‘due diligence’ has become a widely accepted measure of the degree of responsibility that may be attributed to a State for private acts that violate women’s human rights.”

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2. General remarks

Without exhaustive and reliable data, it cannot be said with certainty that women are more likely to be raped and mistreated during detention than men. However, it is reasonable to assume that this is the case if we consider women's inferior status in society and the fact that women are less likely to report sex crimes (especially when committed by police officers) for fear of reprisal. There have been many male inmates claiming to have been raped by prison guards or torturers (considerable media attention was given to the rape claims made by Chrii of the Moroccan Human Rights Association in Safi as well as rape claims from a large number of inmates convicted for terrorist acts in Casablanca).

However, only women run the risk of pregnancy as a consequence of rape. There are also specific forms of ill-treatment reserved for women: sexual insults by police officers, blows to the lower abdomen leading to possible complications such as miscarriage and loss of fetuses. This was the case for the woman who took part in a sit-in in front of the Moroccan water-electricity utility Redal (see Redal case below).

In addition, the high rate of illiteracy among women (80% in rural areas) prevents them from being able to read police reports or gain access to information. As a case in point, a 60-year-old illiterate amazigh woman was imprisoned for debt in Imilchil in March 2003: she had absolutely no idea what was happening to her. In her case, the problem of illiteracy was compounded by the fact that she did not understand Arabic. So, it was also a linguistic and cultural rights issue.

3. Cases

Information gathered from the ADFM's Nejma Center

- On 20 June 2002, the **police chief at the 4th Precinct** in Yacoub El Mansour and fellow officers beat five women for having staged a sit-in in front of REDAL headquarters (Moroccan water-electricity utility) to protest the increase in electricity prices. The five women were taken to the police station and spent the night there. One of the women had a **miscarriage**, and another a chipped tooth.
- On 2 June 2003, a group of female unemployed university graduates were **beaten and injured** by **members of the rapid response force** for having

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taken part in a sit-in in front of the Willaya in Rabat. One of the victims received blows to her **lower abdomen**, which caused **bleeding**. A second victim taken to a police station in the 2nd district was detained for two hours (from 5:00 p.m. to 7:00 p.m.) and was only released after she agreed to sign a deposition in which she admitted to having called the police officer an “ass”. She now faces criminal charges by the *Caid* of the 2nd district and faces a possible prison sentence.

- On 26 April 2002, Marrakech, H, a 16-year-old was abducted as she was leaving school and raped by three men. Abandoned in the street by her assailants, H managed to reach the 4th precinct to press charges. Arriving at the police station, bleeding and in a state of severe shock, the girl was then **beaten and insulted by the police chief** and a police officer from the same precinct. They then **pressured** her not to press charges against her assailants. She was then **forced** to sign a deposition stating that she accompanied the three assailants of her own volition (because she was attracted to one of them), took off her clothes and had a great time. H now has to stand trial on charges of prostitution, false testimony and obstruction of justice. She no longer attends school.

Accounts gathered from the CCDH

- At 6.30 a.m. on 2 August 2003, a police car stopped Aicha in Sale (near Bab El Khmiss) in the company of a male friend. Both were taken to the police station on suspicion of prostitution. According to Aicha, her male companion was able to obtain release by bribing the police officers. During questioning, Aicha was then **beaten** by a police officer because he thought she was trying to ridicule him or had been dishonest when she said that she did not know who her parents were (Aicha grew up in an orphanage). After handcuffing her hands behind her back, the police officer then **savagely beat her with a billyclub**. The police officer continued to strike blows to her lower limbs until she **passed out**. She was then taken to the El Ghazi Hospital at 8.30 where the police officer attacked her again, this time in the presence of a doctor, and tried to **gouge her right eye out**. The El Razi doctor's certificate confirmed the presence of **multiple bruises and hematomas on her lower limbs**.

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C. Prisons and conditions of detention for women

There are no prisons for women. Thirty of the forty-eight prisons in Morocco have buildings next to male prisons where female inmates are kept. These sections are administered by female prison monitors/teachers hired by means of a recruitment exam but given no preparatory training. According to official statistics, the total number of female inmates barely exceeds 4% of the total prison population.

Sentences range from capital punishment to one-month prison terms. The table below shows the situation as of 31 December 2002:

Capital punishment	Life	10-30 years	5-10 years	2-5 years	6 months to 21 year	1 -6 months	Less than 1 month
8	26	111	85	108	311	260	68

Crimes mainly have to do with abortion, death of a child and prostitution.

As a rule, women live in the same prison conditions as men and suffer the same problems in terms of quantitative and qualitative medical care, under-nourishment, infectious disease and mental illness (all prisoners should have the right to psychiatric care). This is especially true at the prisons outside of Casa and Sale. The Oukacha Correctional Facility is the only prison that has a clinic in the women's section. This clinic is run by an NGO.

There is also discrimination in terms of training and school attendance. There is no primary or secondary teaching for women nor literacy courses.

The last paragraph of Article 138 of the recently enacted Law 23.98 on management of prisons stipulates that "*special authorization may be given to a female prisoner who goes into labor.*" In reality, women give birth in their cells in inhuman conditions: cramped cells, no bed and difficulty breathing because of excessive number of cellmates. Poor sanitation conditions and the risk of giving birth in a cell are compounded by the complex prison procedures for handling women and their newborns. Pregnant women have reported that a doctor never examined them even though Article 129 requires all new inmates to undergo a medical exam.

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Generally speaking, newborns live in the same conditions as their mothers, and suffer from both anemia and undernourishment. Very few prisons are able to provide individual cells for mothers and their children. No assistance is provided and women must rely on fellow inmates, benefactors or associations to provide them with milk and clothing for their babies. Undernourishment, anemia, poor ventilation and very dark prison cells are the norm. Some prisons have set up crèches but have to keep them closed most of the time because there are not enough employees to run them.

The recently enacted Law 23.98 on management of prisons fills the legal vacuum for children between the ages of 3 and 5. Female prisoners are authorized to keep their children until the age of 5 if they file a request with the Ministry of Justice to do so. In addition, the Social Affairs Office for Prisons is currently examining the possibility of having the children raised in a crèche with the mother's consent. However, the Law fails to indicate whether mothers will have the right to retain custody after their children leave the crèche.

Although Paragraph 2 of Article 35 of Law 23.98 stipulates that detention conditions for female inmates under the age of 20 must be the same as those for male minors, this rule is not applied. Female inmates of all ages can be found. The same holds true with respect to keeping female minors away from older female prisoners. This separation of prisoners is not possible in Morocco where the vast majority of prisons have only one section for women: at the Kenitra Correctional Facility, there are two barrack rooms and three cells for pregnant women and mothers; at the Meknes Correctional Facility, there is one barrack room for female inmates, another for women sentenced to death and a third for pregnant women. There is also one cell for punishment and a carpet workshop. In other words, female minors receive no special treatment in Moroccan prisons.

On 18 September 2003, the OMP reported the case of a twelve-year-old from the town of Ouezzane, who has been in the Kenitra Correctional Facility for several months now awaiting trial.

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D. Legal and institutional matters

The Moroccan government has delegated control and authority over women to men. The basis of civil rights discrimination is the fact that women have been placed under the authority of their husbands, fathers and sometimes even brothers. This legal incapacity pervades all areas of civil, political and economic life and establishes a gender-based hierarchy of rights, status and roles.

1.1 Discrimination against women in legislation

Gender equality is not a founding principle in the revised Constitution (1996). It makes no mention of equity and civil rights. Moreover, the principle of all citizens being equal in the eyes of the law (but not in the law) is intended for judges and is no guarantee of equal rights.

Prison	No. of pregnant women
Ain Sbaa Correctional Facility	5
Sale Correctional Facility	4
Bourkeis Correctional Facility in Fez	3
Marrakech Correctional Facility	1
Inezgane Correctional Facility	2
Tetouan Correctional Facility	2
El Jadida Correctional Facility	2
Souk Larbaa Correctional Facility	1
Khenifra Correctional Facility	1
Nador Correctional Facility	1
Kenitra Correctional Facility	1
Khemisset Correctional Facility	2
Total	25

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Prison	No. of children
Oukacha Correctional Facility	18
Sale Correctional Facility	8
Bourkeis Correctional Facility in Fez	1
Marrakech Correctional Facility	3
Tanger Correctional Facility	2
Safi Correctional Facility	2
Innezegane Correctional Facility	4
Meknes Correctional Facility	8
Tetouan Correctional Facility	1
Kenitra Correctional Facility	4
Oujda Correctional Facility	3
Taza Correctional Facility	2
El Jadida Correctional Facility	6
Beni Mellal Correctional Facility	5
Souk Elarbaa Correctional Facility	4
Berrechid Correctional Facility	2
Khouribga Correctional Facility	3
Kelaat Seraghna Correctional Facility	1
Nador Correctional Facility	2
Housseima Correctional Facility	1
Ouazzane Correctional Facility	1
Laayoune Correctional Facility	1
Taroudannt Correctional Facility	4
Khemisset Correctional Facility	1
Total	87

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1.2 Discriminatory Personal Status Code (Mudawwana)

For over two decades, women's rights NGOs have campaigned and fought for revision of the Personal Status Code (Mudawwana), which forms the basis for women's inferior legal status. As this reform draws near,⁷ it is important to remember that the discriminatory provisions, the stereotypes and the political ideas that spring forth from this Code violate women's Constitutional freedoms and rights. They also prevent women from fully taking part in economic, public and political life. A quick overview of the main provisions of this law is all that is needed to grasp the extent of gender-based discrimination:

- Premature marriages are authorized as long as the minimum age requirement is met. Women must be at least fifteen to marry and men must be eighteen (Art. 8 of the Mudawwana). This provision has been maintained despite Morocco's ratification of the Convention on the Rights of the Child. Judges may even decide to authorize the marriage of an underaged person if it is feared that "the morals or reputation of the young girl" are at stake. Premature marriages are actually a hidden form of forced marriage, a violation of the human rights of young girls, a major obstacle to their education and a danger to their mental and physical health.⁸
- Authority of legal guardian to grant women permission to marry (*Wilaya*) is based on the principle that a woman of age who is not fatherless (Art. 12, pgh. 4) cannot marry of her own accord⁹ nor give consent to marriage on behalf of another woman (i.e. her ward if she is the legal guardian appointed in a will). Marriage arrangements must be made on her behalf or on behalf of her ward by the closest possible male relative who is of age and sane.¹⁰
- By virtue of Article 29, pgh. 5 of the Mudawwana, Moroccan women do

7 Following major protests in 2000, the King set up a consultative commission in April 2001 to revise the Mudawwana. The work of this commission was completed in September 2003 but the results of the commission discussions have not yet been made public.

8 The average age at which women marry is on the rise. The current national average is about 27.

9 Thanks to the Women's Movement and the 1993 reform, authority of legal guardian to grant fatherless women permission to marry was repealed. These women now have the right to marry of their own accord.

10 In particular, the son, the legal guardian appointed in the father's will, the brother, the brother's son, or any other male member of the Muslim community

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not have the right to marry non Muslims though the same does not apply to Moroccan men.

- Polygamy is authorized by virtue of Articles 29 and 30 of the Mudawwana, but the practice has become rare in Moroccan society. Authorizing polygamy (being married to up to 4 wives at the same time) places women in a precarious position and undermines their dignity.
- The duty to maintain and the duty to obey are the cornerstone of discrimination between men and women (Art. 115). Women must obey their husbands and respect the family. By virtue of this provision, and to the extent authorized by law, husbands can prevent their wives from visiting relatives, from seeking gainful employment and even from leaving the house.
- Husbands have the right to repudiate their wives (unilateral right to divorce) without having to justify their decision (Art. 44). Wives must go to court to obtain a divorce and even then may only do so in very limited cases (Articles 53 to 58). In other words, men can divorce at will but women may only do so in very limited cases and with a judge's permission.
- Khol'a divorce (divorce for compensation) is a legal form of divorce that humiliates women by forcing them to buy their freedom, paying their husbands money to obtain his agreement to a divorce (Art. 61). Although bearing a close resemblance to slavery, this procedure is a way for women to obtain a quick divorce without having to go to court. It is more liberating for women and relieves an already overburdened court system of its current backlog of cases of women filing for divorce.¹¹

"After eight years of marriage, Habiba decided to put an end to her marriage to a violent alcoholic. She left her husband in January 1997. The police ordered Habiba to return to her husband, who in the meantime no longer lived in Casablanca but rather in Tanger where he worked. However, Habiba already had a job in Casablanca. So, she decided to buy her freedom, which meant selling her car and giving up her jewelry."¹²

11 According to the survey conducted by the Ministry of Justice entitled "marriage and divorce in Morocco" (1997), 610 of the 2,489 divorces filed in the five prefectures of greater Casablanca were khol divorces

12 Source: Collectif 95 Maghreb Egalité, "Violations flagrantes des droits et violences à l'égard des femmes au Maghreb" (Flagrant Violations of Women's Rights and Violence Committed Against Women in Maghreb), Annual Report 1996-1997, pg. 39.

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Moreover, there are no provisions concerning the possibility of separation during divorce. Until the divorce becomes final, husbands continue to own and retain all rights over their wives. Slow processing of divorce cases force women to endure this situation for years whereas men are free to take a second wife whenever they like by virtue of the polygamy authorization.

A husband can even seek a mandatory injunction to **force his wife to return to the family home** against her will, regardless of the reasons that prompted her to leave him. Of the 5,400 cases handled by the Courts of First Instance of Casablanca in 1993, 167 cases involved a husband's attempt to force his wife back to the family home.¹³

The Mudawwana remains silent on the issue of **divorcees who only have the right to receive alimony during the short period of Idda** (*Idda*: legal period that women must wait after divorce or widowhood before remarrying). This means that a housewife married for decades can find herself penniless from one day to the next.

Women suffer discrimination even in motherhood. Mothers are there to take care of their children but can never be their legal guardian unless the father dies or some other very restricted case applies.¹⁴ Women do not have the right to decide what is best for their children. The legal guardian is always the father.

Moreover, divorced mothers with custody of underage children do not have the right to keep the family home (Art. 127). Poverty and the small proportion of working women compound the drastic social consequences of this law. To make matters worse, **divorcees with custody of underage children do not have the right to remarry**¹⁵ (Art. 105) or will lose custody of their children if they do. In contrast, men who remarry do not lose custody.

Pervasively discriminatory inheritance laws reinforce this situation. Men inherit twice as much as women upon the death of an equally close relative.¹⁶ The principle of *Taasib* is another discriminatory provision whereby if there is

13 Data from the survey conducted by the Moroccan Association for Women's Rights (AMDF, 1995).

14 Father is legally incapable, stateless, unknown etc.

15 Except for relatives of the child to the prohibited degree of relationship or legal guardians appointed in a will.

16 Except for grandparents who receive equal shares.

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no son, the daughters have to split the inheritance with the deceased's siblings.¹⁷ Families therefore prefer to have male children in order to keep the estate intact. In addition, **non-Muslim women do not have the right to inherit from their Muslim spouse.**

Male heirs can even use Habous or Wakf laws (mortmain property) to get around already discriminatory inheritance laws to prevent female heirs from receiving their share of the inheritance. There are other legal subterfuges such as the mandatory legacy (*Wassiya Wajiba*), which gives a male heir's children the right to their share of the inheritance if the male heir dies prematurely. At the same time, the children of a female heir are denied that right if she dies prematurely.

1.3 The Penal Code (adopted in July 2003)

The Moroccan Penal Code was partially revised in July 2003. The main amendments are certainly a major step forward:

1. No more discrimination between men/women in sentencing when one person kills his/her spouse upon witnessing that person's infidelity. Before the reform, there were mitigating circumstances granted to the husband who had beaten, injured or killed his wife or her lover;
2. Harsher penalties for voluntary physical abuse and injury of one's spouse;
3. Harsher penalties for repeat offenses committed against one's spouse;
4. Health personnel are no longer bound by doctor-patient privilege in cases of marital abuse or violence inflicted upon a woman;
5. Pregnancy added as aggravating circumstance for rape;
6. Harsher penalties for pandering if the crime involves a pregnant woman or spouse;
7. Criminal penalties for sexual harassment, which is now viewed as an abuse of power.

17 If the deceased has only one daughter, her share of the inheritance is half of the total estate; if there is more than one daughter, then the share is 2/3.

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However, the new Code retains several restrictions that threaten women's moral and physical integrity:

a) Rape

Article 486 of the Moroccan Penal Code defines rape as *"an act whereby a man has sexual intercourse with a woman without her consent."* However, the Penal Code views rape as a moral offense rather than a personal crime. This classification reflects the patriarchal notion whereby a woman's body and sexuality are considered as public order or family matters. The notion of spousal rape therefore does not exist for the simple reason that a married woman's body is viewed as belonging to her husband.

Even if punishment and aggravating circumstances for sodomy are the same as those for rape, sodomy is not considered as rape but rather as "a moral offense". Moroccan lawmakers only recognize an act of rape as such if it involves "normal" sexual penetration.

Art. 486, pgh 2. (new text adopted in July 2003) stipulates that "a 10-20 year prison sentence shall be given to anyone found guilty of raping an underaged, legally incapable, handicapped, mentally disabled or pregnant woman." In other words, Moroccan law does not consider rape of women over the age of eighteen - be they single, married, widowed or divorced - as a serious matter. In light of the foregoing, one can only imagine how rape claims from prostitutes are handled.

The Article making loss of virginity an aggravating circumstance of rape has been maintained. In practice, virginity is considered by society to be a condition that validates a marriage, making women mere merchandise. Social and economic changes, however, have considerably increased the age of marriage and sexual intercourse outside of marriage is becoming more frequent even if the subject is still taboo.

b) Abduction of minors

Art 475, pgh 1 of the Penal Code stipulates that: *"Anyone who, without violence, threats or deception, kidnaps or debauches, or attempts to kidnap or debauch a person under the age of eighteen shall be sentenced to 1 to 5 years in prison and a fine of 120 to 500 dirhams."*

Paragraph 2 states: *"If an underaged girl who has been kidnapped or debauched in this manner marries the kidnapper, then charges may only be filed by those*

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having the right to annul the marriage and, in such case, the kidnapper may only be convicted after annulment becomes official.”

This Article encourages sexual exploitation of minors because it allows charges against the rapist to be immediately dropped if he accepts to marry his underage victim. How can one reasonably assume that an underage girl will consent to both sexual intercourse and marriage? Proponents of this humiliating and degrading provision often argue that this solution is the best way to preserve the girl's and the family's honor. In practice, this article is often invoked to drop charges against rapists

c) Abduction of married women

Art. 494: *“Anyone who uses deception, violence or threats to kidnap a married woman, debauch her and take her to another location or has someone else debauch her and confine her in a location other than where the authority to which she is legally bound has placed her or instructed her to remain shall be sentenced to 2 to 5 years in prison and a fine of...”*

Art. 495, which follows, provides for the same penalties for anyone who *“intentionally hides or confines a married woman who has been kidnapped or debauched.”*

Art. 496 goes further, providing for the same penalties for anyone who *“intentionally hides or confines a married woman seeking to evade the authority to which she is legally bound.”*

These articles are blatantly discriminatory. First of all, they consider women as an object. Secondly, they are superfluous since Article 436 of the Penal Code already provides for criminal penalties for anyone who *“kidnaps, arrests, detains or confines another person.”*

It is Article 436 that should apply to all of these cases since the Penal Code provides for a very clear rule whereby when a single act coincides with two different offenses, prosecution shall take place in accordance with the more serious of the two.

Moreover, the offense only exists when the woman who has been *“kidnapped, debauched or taken to another location”* is married. This means that there is no offense committed when it involves a single, widowed or divorced women. The provisions therefore do not seek to protect women or their freedom, but rather their marital status...or their husband. A distinction is drawn between

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women who are married and women who are not: between those who have masters and those who do not.

d) Discrimination against women who become pregnant following sexual intercourse outside of marriage

Article 490 of the Penal Code provides for a prison sentence of one month to a year for “*anyone of the opposite sex who has sexual intercourse outside of marriage.*” This Article is blatantly discriminatory against women who become pregnant. As long as the male partner has not been caught red-handed, he has nothing to fear from the law and he can always deny any allegations made against him. Since it is much more difficult for a pregnant woman to deny having had sexual intercourse, she alone bears the brunt of prosecution.

Single mothers and their children are the main victims of a discriminatory law and social hypocrisy exacerbated by the Islamic revival in the region. Generally speaking, girls from the poorest social classes are hardest hit (costly clandestine abortions, limited access to information on birth control methods etc.)¹⁸

Although the law is gender-blind when it comes to punishing adultery, in practice, the male partner avoids punishment in most cases. No one will ever require a man to prove that he is not the father of a child. It is up to the mother to provide proof. According to a survey of single mothers conducted in Casablanca,¹⁹ more often than not the person “responsible” for the pregnancy is a family member:

- In 78% of the cases, it is a family member;
- In 2% of the cases, it is the woman’s boss or supervisor;
- In 3% of the cases, it is someone charged with maintaining law and order (police officer, soldier etc.).

“My daughter has a father...he even comes to visit her. She looks just like him but he doesn’t want to recognize her. I have no proof yet that he is the father, but people have talked to me about paternity testing...in the meantime, if I don’t register her birth, I’ll lose her. I don’t even have an ID card...”²⁰

18 According to a study carried out by the NGO “Terre des Hommes” in Casablanca (Morocco, 1996), the vast majority of single mothers are domestic servants.

19 Report on the survey of single mothers conducted in Casablanca by the Ministry of Social Development, UNFPA, UNIFEM, UNICEF (publication pending) 2003.

20 Source, Survey of Single Mothers in Casablanca, 2003

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The Women's Movement and NGOs have contributed to lifting the taboo that hangs over discussion of pregnancies outside of wedlock. However legal barriers preventing fathers from recognizing their children born out of wedlock encourage irresponsible behavior. Faced with few prospects, many single mothers prefer to abandon their newborns in the maternity ward or, more likely, in the street. By doing so, they risk going to prison. On the other hand, however, if they try to prove paternity, they may end up going to prison all the same.

Excluded socially and economically, many women become prostitutes. The following excerpt was taken from a survey of single mothers in Casablanca:

"I had to walk the streets from time to time.²¹ Milk is very expensive and since I don't earn enough money, I had no other choice."²²

e) No definition of prostitution

The Moroccan Penal Code does not define prostitution as such. The confusion between prostitution and non-marital sex is deliberately maintained. Indeed, Moroccan lawmakers view all "*illegal sexual intercourse as an act of prostitution.*"

H. had a boyfriend who promised to marry her one day. When she became pregnant, however, he refused to marry her. H. tried to obtain a court ruling to force him to recognize their daughter but instead the court convicted her on prostitution charges. Housed at the Solidarity Shelter for Single Mothers, she was able to find a reasonably well-paying job. Now that her ex-boyfriend has found out that she is earning a living, he has asked her to marry him. H. most fervent wish is to sue the judge who convicted her on prostitution charges."²³

Although there are no figures on prostitution and trafficking of women, it is clear that the trend is gaining momentum due to consolidation of trafficking routes that take the poorest women from Asia (Sri Lanka, Philippines etc.) and the southern Mediterranean shore to Europe as well as the oil-rich Gulf States and the Middle East.

21 Walking the streets" = Engaging in sexual acts for hire.

22 Source: Survey of Single Mothers in Casablanca, 2003.

23 Information provided by Women's Solidarity Association in Casablanca.

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Indeed, regular reports have appeared in the press regarding the dismantling of several prostitution networks that were responsible for smuggling young girls into European countries, especially Spain and Italy. According to a report written by the US State Department (2001), Morocco ranks somewhere in the middle of the worst offenders presented in the report²⁴ on trafficking in human beings. These networks take advantage of the fact that movement of people between the two shores of the Mediterranean is restricted, which makes lucrative work contracts in the North even more enticing to young girls.

The abuse suffered by women who fall victim to trafficking is inhuman: forced prostitution, forced marriage, slave trade, kidnapping, seclusion, slavery and unpaid forced labor. According to statistics gathered from the Committee Against Modern Slavery (CEM, 2001) shelters in France, 76% of victims of trafficking and slavery are women, coming from Maghreb countries (8.5%) and in particular from Morocco (7.7%). In addition, 26.7% of the victims were recruited by agencies and 6.5% by intermediaries. 73.3% of the victims received no pay whatsoever and in 95% of the cases, their ID (passport, traveling papers, birth certificate...) was taken away from them. Finally, 80% of the victims were illegal immigrants when the incidents took place²⁵.

f) Ban on non-therapeutic abortions

Although it is illegal to have an abortion in Morocco, clandestine abortions still take place. They are a source of extra income for both physicians and unscrupulous charlatans claiming to be physicians. Given the high cost of abortions, only those women with adequate means can afford to have them done safely and properly. All other women put their lives at risk and will end up in prison if they get caught.

24 The U.S. Secretary of State report (2001) ranked other non-Mediterranean Arab states as the worst offenders when it comes to trafficking in human beings: Bahrain, Qatar, Saudi Arabia and the United Arab Emirates.

25 According to the figures from the Committee Against Modern Slavery (CEM, 2001), 88.5% of the victims taken into CCEM shelters in France and 100% of the underage victims had been subjected to psychological abuse; 44.3% of the victims and 58% of the underage victims had been subjected to physical abuse; 17.6% of the victims and 24.7% of the underage victims had been subjected to sexual abuse; 6.4% of the victims had been tortured.

STATE VIOLENCE IN MOROCCO**1.4 Nationality Code (1958)**

Unlike men married to foreigners, women married to foreigners do not automatically pass their nationality on to their children. This is the case even when the children are born and raised in the country. The Nationality Code stands in blatant violation of international law and in particular the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the International Covenant on Civil and Political Rights (ICCPR).

1.5 Labor Code (adopted in June 2003)

Although the Moroccan Constitution guarantees women's right to work, this right is undermined by the requirement that wives live with their husbands. And it is the husband who decides where the family home will be. Given the provisions of the Personal Status Code and the constraints arising from an unequal distribution of household chores, there is a constant tug-o-war between spouses when the wife wishes to work outside the home.²⁶

The main amendments that have been made to the new code are as follows:

1. Principle of non-discrimination, including gender discrimination (in terms of employment, wages, etc.) has been established;
2. Sexual harassment at the workplace is now considered as a serious offense;
3. Duration of maternity leave has been increased to 14 weeks;
4. Laws governing work by domestic servants are planned.

Nevertheless, specific provisions to ensure non-discrimination and discourage sexual harassment are inadequate and poorly defined.

26 For more information, see report entitled *Degré d'adhésion aux valeurs égalitaires au Maroc (Degree of adherence to gender equality in Morocco)*, ADFM, 1999) and report entitled *Algeria* (by Collectif 95 Maghreb Egalité, 2000) with the support of UNI-FEM.

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1.6 Civil Service Code (1958)

Women are still barred from certain jobs at the Ministry of Interior (territorial administration at regional, provincial and local levels: Wali, Governor, Caid, etc.), Criminal Investigation Department (Police chief), National Defense (army officers) and Disaster management (Fire department). Along the same line, when both spouses work for the government, child benefits are paid only to the husband as “head of the household”.

2. Recourse

Poverty and the lack of a social safety net affect certain categories of women more than others. Particularly vulnerable groups include women from the poorest social classes, single mothers, divorcees and domestic servants.

Violence against women is essentially viewed as a domestic or family issue. This perception has contributed to the lack of public awareness and understanding of the problem. It has also scuttled attempts to establish policies, programs and recourse for women.

In the absence of quantitative and qualitative data on the prevalence, forms and manifestations of violence against women, government authorities can continue to deny that such violence even exists and neglect to:

- Take the legal measures called for,
- Promote gender equality through education and awareness programs,
- Create crisis centers to assist victims,
- Train and assign an adequate number of qualified health personnel, police and judges.

However, the past decade has seen several human rights conventions and international instruments requiring States and their agents to exercise “due diligence” when it comes to preventing violence against women.”²⁷ This trend

26 Voir dans ce sens, les deux études sondages sur le *Degré d'adhésion aux valeurs égalitaires au Maroc*. (ADFM, 1999) et en Algérie (Collectif 95 Maghreb Egalité, 2000) avec l'appui de l'UNIFEM.

27 World Organization Against Torture (OMCT), *Violence Against Women, 10 Reports*, Year 2001.P12/13

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is particularly visible in gender-specific instruments such as CEDAW Article (2) (e) and the Declaration on the Elimination of Violence against Women (DEVEE, 1993).

In its General Recommendation 19 (1992), the CEDAW Committee stated that: *“Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.”* Moreover, the DEVW requires States to: *“exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.”*

From this standpoint, establishing laws to criminalize and punish family violence is not enough. Governments must take the extra step of making their structures more efficient so that incidences of family violence are investigated and punished.

In practice, Moroccan law enforcement and security forces do little to protect women’s moral and physical integrity when acts of violence are committed against them by private citizens and police officers:

- Several legal provisions are blatantly discriminatory and highly disadvantageous for women. For example, there are no penalties in family law for deadbeat fathers when they fail to live up to the rare obligations that fall upon them (i.e. alimony and child support).
- Article 336 of the Criminal Procedure Code enables women to file a lawsuit and claim damages. However, the most vulnerable groups of women simply cannot afford to go to court;
- As a result of women’s inferior status in Morocco, police officers are insensitive to their plight when they become victims of violence. In fact, it is not rare for these officials to attach little importance to domestic violence inflicted upon women. As they see it, women are generally the instigators, rather than the victims, of violence.

In addition to discriminatory legislation, women who have been subjected to violence and other degrading treatment face other types of constraints:

- There is no recourse in the case of family violence. As a rule, women are required to produce witnesses (a valid doctor’s certificate issued by a hospi-

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tal is not considered as adequate proof) in order to substantiate their claim.

- The inferior status of women leads to social and economic vulnerability. Young single women are required to undergo a virginity exam upon simple request by parents or by the future husband and his family. Loss of virginity, unwed pregnancies, divorce and social pressure push many young women to commit suicide, abandon their children or become prostitutes.
- Judges and other civil servants (local police, national police, etc.) are insensitive when it comes to violence and other degrading treatment inflicted upon women. In the case of sex crimes, women are always suspected of having consented to or initiated the act. This basically puts them, rather than their assailants, on trial. Judges are either unaware of international conventions that Morocco has ratified and published or are reluctant to uphold them. Finally, until very recently, female magistrates were not permitted to rule on matters relating to the Personal Status Code. There had been no legal justification for this ban.
- Generally speaking, women are unaware of the rare legal provisions that actually are in their favor. Contradictory and complex legal procedures, coupled with a hostile social climate and justice system, reinforce the social consequences of discriminatory laws in effect. More often than not, women choose to remain silent and do not go to court or to the police for help.

The hostile environment is illustrated by various cases reported by the ADFM's Nejma Center:

- The ADFM received several complaints regarding civil servants who insisted that the women obtain marital consent before a passport could be issued. This was despite the fact that this provision had been abolished in 1994, following protests by the Women's Movement.
- Other complaints related to unmarried women who are often required to obtain a *certificate of good conduct* or parental consent - even when they have reached the age of legal adulthood - as part of the passport application.
- B, a 54 year-old fiqh and father of five children received only a 5-year prison sentence and a fine of 20 000 dirhams for having sexually abused Hafida (8 year-old) for three years. According to medical certificates from

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the CHU in Casablanca, the damage is irreversible; the law provides for a 5-10 year prison sentence for rape and a 10-20 year prison sentence if the victim is underage. If there is loss of virginity, a 20-30 year prison sentence is given (Article 488 of the Penal Code).

The table below shows a random sampling of ten rape cases brought to the attention of the ADFM's Nejma legal counseling center. The table is a perfect illustration of how the Moroccan justice system handles such cases:

In three of the ten rape cases reported above, the victims were charged with prostitution. For the remaining cases, greater compensation was given for loss of virginity and sodomy than for simple rape cases as such.

Additional details could be gleaned thanks to the Nejma Center's close contact with victims: as a rule, families try to solve the problem by securing promises from rapists that they will marry the victim. They do not report the crime to the police in time, hoping that the matter of family honor can be settled through marriage. Waiting to file complaints only hurts the victim's case because judges often interpret delays as proof that the victim was consenting, which explains why so many victims are convicted of prostitution.

According to Nejma Center records of rape cases, families of rape victims move to other neighborhoods or even towns. Worse still, in the case of a young schoolgirl from Marrakech, the school principal decided that she could no longer attend school because she was no longer a virgin. This behavior shows how socially traumatic rape cases are for both victims and their families. And there are very few families that actually come forward to press charges: in a case of gang rape in Sale, only three of the seven rape victims pressed charges. It was only after the rapist had been arrested and the police had managed to reconstruct the events that the other victims were found.

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SAMPLING OF 10 RAPE CASES REPORTED TO NEJMA CENTER

Dates	Number of rapists	Victims	Sentence
25/01/99	1 rapist repeat offender	14-year-old girl: loss of virginity 26-year-old woman: rape and sodomy (2 counts) 20-year-old woman, divorced: rape (3 counts)	Rapist given 12-year prison sentence for three counts of rape. Compensation paid to victims: case 1: 30 000 dirhams case 2: 30 000 dirhams case 3: 10 000 dirhams
Juin 2001	1 rapist	18-year-old high school student: loss of virginity	Victim given 3-month suspended prison sentence for prostitution
25/02/02	2 rapists	2 sisters • 24-year-old woman: sodomy, no loss of virginity • 27-year-old woman: sodomy, no loss of virginity:	- Pressure from rapists: - Promise to marry if charges are dropped. - Extremely slow handling of court case
08/05/02	1 rapist	22-year-old woman: sodomy, no loss of virginity 6. 27-year-old divorcee: Rape	Rapist given 6-year prison sentence for two counts of rape Compensation paid to victims: case 1: 10 000 dirhams case 2: 4 000 dirhams
Août 2002	1 rapist	17-year-old girl: loss of virginity	- Victim given 1-month suspended prison sentence for prostitution - Rapist acquitted
	3 rapists	16-year-old high school student: loss of virginity	- Victim given 3-month suspended prison sentence for prostitution - 2 rapists acquitted - 1 rapist given 2-month suspended prison sentence

PART III

STATE VIOLENCE AGAINST CHILDREN

Opening remarks

Statistics from the year 2000 show that 37% of the Moroccan population is under the age of eighteen, which makes about 10,600,000 minors. The proportion of minors to the total population has dropped in recent years (from 48.9% in 1982 to the current 37%) as a result of the strong demographic slowdown. Most minors are from rural areas but even this proportion has sharply decreased (from 61% to 51.8% of the total minor population). Girl-to-boy ratios have remained stable (49% versus 51%).²⁸

In 1993, Morocco ratified the Convention on the Rights of the Child and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

In June 2003, the UN Committee on the Rights of the Child examined the Moroccan government's second periodic report. The Bayti Association and the OMCT are pleased with the Committee's recommendations²⁹ and have based the present analysis in part on information received during that examination..

A. Definition of minor

In keeping with international law, the Moroccan Civil Code considers anyone under the age of eighteen to be a minor.

It should be noted that the birth registration rates remain low in Morocco (85.5%), especially in rural areas and among the poorest segments of the population. As a consequence of this, many minors may be unable to prove their age in situations where they would otherwise be afforded protection (see juvenile justice below).

28 Taken from "Written replies by the government of Morocco concerning the List of Issues received by the Committee on the Rights of the Child relating to the consideration of the second periodic report of Morocco." CRC/C/RESP/34, 5 May 2003, pgs.1-2.

29 Committee on the Rights of the Child – Concluding Observations: Morocco – CRC/15/Add.211, 10 July 2003.

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Article 54 of the Family Code presented to the parliament by King Muhammad VI on 10 October 2003 stipulates that parents must ensure that their children have an identity. This means that they must be given a name and nationality and be inscribed in the Civil Register.

Children born out of wedlock are also entitled to an identity under the provisions of the Family Code. Article 156 guarantees children the right to be recognized by a father in cases where marriage has not been formalized due to uncontrollable circumstances. DNA test results are now admitted as court evidence in paternity suits. In order to put an end to child suffering, pending paternity cases must be settled within five years.

B- Non-discrimination

The Family Code presented to the parliament by King Muhammad VI on 10 October 2003 does away with legal age discrimination in marriage. Previously, the minimum age of marital consent had been set at fifteen for girls and eighteen for boys. Now, the minimum age has been set at eighteen for both sexes (Article 19). For the first time, provisions reflecting international agreements on the rights of the child have been formally included in national legislation. This provision enables girls to finish high school like their male counterparts and avoid premature marriages at the same time.

The following measures will accompany the Family Code:

- Family courts will be set up;
- Family judges will be selected and trained;
- Judges will be provided with the expertise they require;
- Social workers will be assigned to family judges.

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C- Protection against torture and other forms of cruel, inhuman or degrading treatment or punishment

1. Legal framework

Part I of the present report highlights the shortcomings of Moroccan written law and case law when it comes to torture. Moreover, Moroccan legislation affords no specific protection to minors facing the prospect of torture and other cruel, inhuman or degrading treatment or punishment. The Bayti Association and the OMCT consider failure to implement the Convention Against Torture even more serious when the victims are children. As a reminder: *“Violence against children demands immediate and effective action because of their inherent vulnerability. (...) the state has ultimate responsibility for deterring violence and providing effective protection and remedies, including early assistance and support to children after trauma.”*³⁰

2. Practice

Street children³¹ and children in conflict with the law are the main underage victims of torture other forms of cruel, inhuman or degrading treatment or punishment in Morocco. These children are more likely to be tortured and mistreated because they belong to poor social classes. They are also less likely to be protected and supported by the authorities.

Street children are often the targets of “social cleansing” operations whenever international conferences, seminars or other cultural and sports events take

30 Tampere Declaration, Report from the International Conference on Children, Torture and Other Forms of Violence, OMCT, Finland, 2001.

31 The number of street children in Morocco is very high and continues to increase. This is especially true in Casablanca, the economic capital, where an estimated 5,000 children live and work in the streets. These young boys and girls make a living working odd jobs in garages, factories, various trades, street markets, or as household help. Some become prostitutes and others beg. Some still have family that they visit from time to time but most have been abandoned or rejected. There are also orphans and kids that ran away from abusive foster parents. These children sleep in public parks, on front doorsteps or inside run-down buildings. Many street children inhale substances like glue, which are cheap and easy to find. Extensive use of such substances causes irreversible brain damage. Children who are forced to live in the streets are particularly vulnerable to arrest for misdemeanors such as vagrancy and begging.

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place. Some children are exposed to police brutality. A common thread runs through all cases of violence against children: the perpetrators enjoy almost complete immunity because of their status.

Conditions of detention at police stations are appalling. Children are often placed in jail cells that lack toilet facilities and decent beds. They are not given enough to eat and drink. Once convicted, they are sent to already overcrowded prisons where violence is the norm. Minors are often kept in the same cells as adult inmates. (see juvenile justice below).

The Bayti Association has received several reports of abuse and torture inflicted upon both boys and girls while in police custody. A young boy, for instance, claimed that he had been locked inside a room at the police station with an officer who beat him and kicked him until he lost consciousness. To revive him, the police officer burned him with a cigarette. From November 2001 to September 2003, the Bayti Association's programs in Casablanca and Essaouira reported two hundred cases of youths between the ages of 7-18 (both boys and girls) who had been subjected to police brutality.

Most of the young people interviewed reported that they had been beaten or clubbed either during arrest or during police questioning at the police station. Some girls have made allegations of sexual abuse by police officers. Verbal and psychological violence is also common: insults, spitting, harassment, moral pressure and terror. Some conditions of detention may also be considered as inhuman or degrading treatment:

- Poor sanitary conditions leading to scabies and tuberculosis;
- Insufficient and poor quality food;
- Overcrowded, run-down and dirty detention centers;
- Lack of space;
- No toilet facilities;
- No beds;
- Inadequate medical care;
- Children placed in cells with adults.

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ACCOUNTS RECEIVED BY THE BAYTI ASSOCIATION FROM CHILDREN IN CASABLANCA:

First name	Sex	Age	Date	Reason for arrest	Type of violence	Place	Observations
Firdaous	F	15 ans	02/02	Accused of theft by family that hired him	Child was not listened to and age was not taken into account. Given the large number of female prisoners, only those with special privileges have a cot. All others must sleep on the floor. Discrimination and adult exploitation in distribution of chores. Physical and psychological abuse.	Juvenile crimes unit Adult prison	Female prisoners given special treatment on basis of economic situation
Reda	M	14 ans	08/01	Accused of violent behavior against foster family	Police report written by police officers without taking into account the young boy's statements. Insulted by public prosecutor.	Juvenile crimes unit. Public prosecutor	Foster family given priority at child's expense
Sana	F	11 ans	08/03	Underage household help	Kept in police custody with prostitutes and drunks. Two nights spent without food.	Juvenile crimes unit.	
Amine	M	12 ans	2002	Vagrancy	Verbal abuse by police officers and benefactors.	Juvenile crimes unit Child protection center	
Yassine	M	7 ans	08/03	Vagrancy	Two nights spent in detention with adults	Juvenile crimes unit	
Khadja	F	18 ans	1999	Girl raped and abused by employer for 8 years	During police questioning, child was considered as guilty party rather than the victim. Verbal abuse. Case dismissed in court.	Police station C.I.D. Court	Corruption
Nejwa	F	11 ans	2001	Accused of theft by foster family	Verbal abuse	Police station in Settat	
Hamza	M	12 ans	2001	Vagrancy	Verbal and physical abuse	Police station and child protection center	
Hamza	M	11 ans	2002	Vagrancy	Verbal abuse	Police station	
Azeddine	M	11 ans	2000	Vagrancy	Nettoyage du poste de police = prix à payer pour être libéré Nourriture: pain de plusieurs jours	Police	

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ACCOUNTS RECEIVED BY THE BAYTI ASSOCIATION FROM CHILDREN IN ESSAOUIRA

First name	Sex	Age	Date	Reason for arrest	Type of violence	Place	Observations
Rachid E.	M	18	11/01	Gang member	Physical and psychological abuse. Sexual exploitation by adults. Poor living conditions (food, lack of space), filth, contamination	Prison	Court case too long and complex. No special protection for young people.
Rachid B.	M	18	11/01	Gang member	Physical and psychological abuse. Poor living conditions (food, lack of space), filth, illness (scabies, hemorrhoids)	Prison	Idem
Khalid	M	17	11/01	Gang member	Physical and psychological abuse. Sexual exploitation by adults. Poor living conditions (food, lack of space), filth, contamination	Prison	Idem
Youssef AM	M	17	11/01	Gang member	Physical and psychological abuse. Sexual exploitation by adults. Poor living conditions (food, lack of space), filth, contamination	Prison	Idem
Ismaël	G	18	11/01	Gang member	Physical and psychological abuse. Sexual exploitation by adults. Poor living conditions (food, lack of space), filth, contamination	Prison	Idem
Saïd E.	G	17	03/02	Agression	Physical and psychological abuse. Sexual exploitation.	Prison	Idem

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In addition to the cases of torture and ill-treatment described above, the civil and political rights of children from low economic and social classes are systematically transgressed in the following ways: police raids; children automatically taken to police station; children not listened to / not believed; police custody often exceeds 24 hours; poor conditions of detention (overcrowding, poor sanitation, children kept in same cells as adults); unjustified pre-trial detention (lasting on average 1 year between time of arrest and trial); parents or legal guardians not notified; no lawyer provided; children treated like culprits rather than victims. Moreover, socioeconomic problems such as exclusion, poverty and parental negligence are handled as if they were security issues (in violation of human rights) rather than recognizing that these children need protection more than anything else.

While there have been remarkable improvements in police behavior in some cases (e.g. police officers working with children's rights NGOs, showing a more benevolent attitude and less aggressive behavior, fewer police raids), a lot more still needs to be done:

- Viable alternatives are needed, namely suitable children's centers;
- At police stations and detention centers, children should be kept away from adults and boys/girls should also be kept apart;
- Juvenile crimes unit structures should be improved;
- Police officers and judges should receive specific training on how to deal with children and be aware of children's rights;
- Alternatives to imprisonment are needed;
- Minors should receive legal advice and psychological counseling;
- Measures to fight exclusion are needed: true outreach programs (in original neighborhoods), efficient and good quality welfare offices.

In its concluding observations on Morocco in June 2003, the Committee on the Rights of the Child stated the following:

« The Committee notes the efforts undertaken by the State Party's report to raise awareness among the law enforcement personnel, but remains deeply concerned about allegations of ill-treatment of children by law enforcement officers.

35. The Committee recommends that the State Party:

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- a) *Take all necessary measures to prevent all forms of ill-treatment by law enforcement officers or any other officials;*
- b) *Set up child-sensitive mechanisms to receive, investigate and prosecute complaints against law enforcement officials regarding ill-treatment during arrest, questioning and police custody and in detention centres;*
- c) *Strengthen its efforts to train the law enforcement personnel on the human rights of children;*
- d) *In light of Article 39, take all appropriate measures to ensure the physical and psychological recovery and social integration of child victims of torture and/or ill-treatment.*³²

D- Juvenile justice

1. Reform of the Criminal Procedure Code

With the aim of bringing national legislation in line with the various international conventions and protocols that Morocco has ratified, a new Criminal Procedure Code was adopted in August 2002 and implemented in October 2003. This revision includes specific measures to revise and restructure the juvenile crimes unit.

As part of the reform process, special emphasis is placed on protecting:

- Juvenile offenders (Art. 512 à 517);
- Underage victims of crime (Art. 510-511);
- Minors in difficulty exposed to petty crime (Art. 512-517).

The most noteworthy changes are as follows:

- The legal age for trying youths as adults has been raised to eighteen;
- Juvenile cases are assigned to trial judges who are specialized in matters relating to juvenile offenders;

32 Committee on the Rights of the Child - Children in conflict with the law – Concluding Observations: Morocco – CRC/15/Add.211, 10 July 2003.

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- Juvenile officer positions have been created at the Criminal Investigation Department;
- Police custody of minors has been replaced by “retention”;
- For children under 12, measures include protection, rehabilitation (Art. 458) or reprimands;
- Criminal liability is only partial for children between the ages of 12-18, measures include protection, rehabilitation, reduced sentences (Art. 458), reprimands or fines;
- Parents or legal guardians must be notified immediately after a minor has been arrested (Art. 460);
- Minors are provided with legal advice (Art. 510);
- Minors are considered innocent until proven guilty;
- Juvenile detention may be deferred if juvenile offenders pay the victim (Art. 41);
- Probation (in public/private school or training center, residence...) is supervised by probation officer (Art. 496-500);
- While awaiting trial, child may be kept in secure custody at a public or private facility or with a recognized NGO (Art. 471);
- Public interest measures include alternatives to secure custody or imprisonment;
- Minimum and maximum prison sentences have been reduced in cases involving juvenile offenders.

2. Reform of juvenile detention centers

When minors are adjudicated for misdemeanors, judges order that they be placed in secure custody in juvenile detention centers, which are run by the Ministry of National Education and Youth. The average duration of secure custody is anywhere from three months to two years.

Most of the children sent to these juvenile detention centers have committed misdemeanors such as vagrancy, begging, theft and petty crime. The most

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frequently encountered misdemeanor is vagrancy (70% of the cases). Moroccan law provides for incarceration of children for both criminal and non-criminal offenses. Judges order secure custody when children have been abandoned, are at risk economically or morally, have behavioral problems or have nobody else to turn to for help. Such measures may even be applied when children have not even been accused of a crime. Judges put minors in preventive custody whenever defendants or victims are on their own physically or emotionally or at risk morally. This category includes such activities as “vagrancy” or “loitering” and “illegal immigration”.

There are 16 juvenile detention centers (run by Ministry of National Education and Youth) housing 1,555 children (both boys and girls) between the ages of 7-18:

- There are 14 centers for boys in Casablanca, Temara, Fez, Benslimane, Tanger, Agadir, Marrakech, Larache, Berrechid, Fkih Ben Salah & Nador;
- There are 2 centers for girls in Casablanca & Fez.

Between 1990-2000, these centers housed 36,086 minors. 18,038 minors were kept in secure custody in open detention centers.

Many children cannot read or write despite the two or three years spent in primary school. Juvenile detention centers work in two main areas: protection and rehabilitation of children. The idea is to help these children reunite with their families, get them back in school, help them find work and ease their transition back into society. Faced with insufficient human resources and funding, however, these centers fall far short of fulfilling their rehabilitation and reintegration missions:

- There is insufficient and inadequate training, focused more on supervision than on rehabilitation and social reintegration;
- Conditions vary from one center to the next; run-down buildings, poor sanitation and security, unhealthy living conditions;
- Proposed activities include informal education or school attendance. Vocational programs are often unsuitable;
- Little is done to try and strengthen family ties or pave the way for children to return home after they are released from secure custody;
- There is little contact with the outside world;

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- There is no follow-up and assessment.

The foregoing observations have prompted some juvenile detention centers to gradually open up to NGOs and form partnerships to:

- Improve living standards (housing, food, hygiene, facilities);
- Improve training given to instructors and teachers;
- Provide medical care;
- Offer more activities: computer labs, library, sports, artistic activities, innovative vocational programs, outings, leisurely activities;
- Getting social workers involved with restoring contact with families.

However, there are still major differences between centers. There is an urgent need for better quality institutions and programs for young people in difficulty.

In January 2002, King Muhammad VI created the Muhammad VI Foundation to rehabilitate inmates and help ease their transition back into society. The Foundation pursues the following objectives:

- Provide centers with the facilities they need to help minors in a humane and efficient manner;
- Master the prevention, protection, rehabilitation and reintegration cycle;
- Establish procedures to monitor progress in order to prevent relapse and improve the reintegration process;
- Make sure that young people are treated humanely in detention centers: logistics, housing, security and comfort;
- Provide good services and quality activities;
- Improve human resources: training, refresher courses, new methods, tools for follow-up;
- Improve existing facilities: better equipment, improved layout and building extensions;
- Develop partnerships with public, private, national and international players;

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- Open the centers to the outside world and surroundings;
- Take part in the implementation of alternatives to secure custody: seminars, pilot programs.

Thus far, five pilot centers have been chosen for implementation of these activities (Abdeslam Bennani, Casablanca: 220 girls; Temara: 80 boys; Oujda: 35 boys; Tanger: 32 boys; Benslimane: 96 boys). In addition, all of these centers are currently being evaluated to determine training needs, produce working tools and tools for follow-up, and establish partnerships between the government (Ministry of National Education and Youth, Ministry of Health, Ministry of Justice, Ministry of Culture, Ministry of Habous and Islamic Affairs), local and international NGOs (*Terre des Hommes*, PRI, etc.) and businesses.

3. Juvenile justice and detention

Although commendable efforts have been made, there is still a great deal that remains to be done at various levels. Indeed, additional measures are planned to support the new Criminal Procedure Code:

- Rigorous selection criteria used to recruit juvenile officers at the Criminal Investigation Department and juvenile court judges;
- Training program for judges, local police and national police;
- Information campaigns to raise public awareness of new legal provisions;
- Coordination between the police and the courts.

While awaiting general and effective implementation of all of these measures, the Bayti Association and the OMCT are concerned with the way in which vagrancy, begging or illegal immigration cases involving minors are being handled: preference for repressive measures rather than measures aimed at protecting minors living in precarious socioeconomic conditions and helping them get back into society. Given their wide-reaching scope, such categorization facilitates the arrest and detention of minors when such measures should only be applied in exceptional circumstances. The Bayti Association and the OMCT would like to draw attention to the fact that Art. 37 (b) of the Convention on the Rights of the Child (CRC) states that “No child shall be deprived of his or her liberty unlawfully or arbitrarily” and that “The arrest, detention or imprisonment of a child shall be in conformity with the law and

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shall be used only as a measure of last resort.” The juvenile justice system blurs the distinction between punishing and protecting children, between trying them for an offense and bringing them out of social marginalization. It tends to facilitate guilty verdicts and disregards the notion that defendants are presumed innocent until proven guilty. It therefore violates the principles of due process enshrined in Art. 40 of the CRC.

Moreover, official statistics show that the number of incarcerations has quadrupled despite the fact that the number of convictions of juvenile offenders remained steady in 200-2001. Current official statistics are needed in order to ascertain whether or not this alarming trend has continued:

NUMBER OF CONVICTIONS OF JUVENILE OFFENDERS AND SENTENCE GIVEN³³

Sentence given	2000	2001
Sent home	2,089	2,346
Probation	661	802
Placed in medical facility	37	82
Placed in educational facility	1,056	1,158
Placed in detention center	24	103
Released on bail	20	69
Released	1,458	1,158
Reprimand	2,966	2,544
Total	8311	8262

33 Written replies by the government of Morocco concerning the List of Issues received by the Committee on the Rights of the Child relating to the consideration of the second periodic report of Morocco” CRC/C/RESP/34, 5 May 2003, pg.19

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In its concluding observations on Morocco in June 2003, the Committee on the Rights of the Child stated the following:

« 66. *The Committee welcomes the adoption of a new Penal Procedure Code (August 2002) and the fact that under this law all children from 12 to 18 years who are in conflict with the law are accorded the full protection and special provisions of the Convention, but it remains concerned that the full implementation of the Convention and related relevant standards may be hampered, inter alia by lack of sufficient resources.*

67. The Committee recommends that the State Party take all appropriate measures to implement in an effective manner the new Penal Procedure Code, ensuring that the new system is in conformity with the Convention, in particular Articles 37, 39 and 40, and with other United Nations standards in this field, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the Vienna Guidelines for Action on Children in the Criminal Justice System.

68. In addition, the Committee recommends that the State Party:

- a) Undertake all necessary measures for the establishment of a sufficient number of juvenile courts and continue the training of juvenile judges;*
- (b) Use deprivation of liberty (institutionalization) only as a measure of last resort and for the shortest possible period of time;*
- (c) Protect the rights of children deprived of their liberty and monitor their conditions of detention, and ensure that children remain in regular contact with their families while in the juvenile justice system;*
- (d) Improve rehabilitation and reintegration programs;*
- (e) Consider seeking technical assistance from, among others, OHCHR, the Centre for International Crime Prevention and UNICEF.»³⁴*

34 Committee on the Rights of the Child - *Children in conflict with the law* – Concluding Observations: Morocco – CRC/15/Add.211, 10 July 2003

STATE VIOLENCE IN MOROCCO**4. Violence against unaccompanied minors abroad**

Because of their geographical location, the towns of Ceuta and Melilla are entry points for Moroccans seeking to enter Europe through Spain. On several occasions the OMCT has criticized illegal arrests and deportation of Moroccan children, in particular whenever important events take place in these two towns.³⁵ According to reports, police vehicles comb the streets in downtown Ceuta looking for children to arrest. These children are frequently harassed during detention and some have been mistreated. Deportations often take place without children being given the chance to be heard because interpreters and lawyers are not provided for them.

Law 4/2000 on the rights and freedoms of foreigners in Spain³⁶ states that children without papers found on Spanish territory must be taken care of by the autonomous community where they were picked up. If the children's families cannot be located, the autonomous community must place them in a shelter. These children may only be deported if their families can be found or if the authorities of the country of origin are willing to take care of them. Despite this, the OMCT has received reports of children being sent back to Morocco without any guarantee whatsoever that they will meet by family members or Moroccan social workers upon arrival.

In Melilla, for example, two sixteen-year-olds were arrested and deported by national police on several occasions, the last being 31 October 2001. Upon arrival at the border, the two children were handed directly over to Moroccan police officers without any family members or social workers present. Upon subsequent examination, a Spanish doctor certified that they had been subjected to abuse.³⁷ According to reports, these children had been living in Melilla for the past six years, were holders of valid residence permits, attended school and were under the care of the local municipality of Melilla. It is very unlikely that their deportation had anything to do with reuniting them with family members.

In August 2003, twelve children and five mothers were deported from Melilla. Eight-year-old Miloud was later arrested and kept separate from his mother,

35 OMCT Appeals concerning child suffering, Case ESP021100.CC, ESP021100.1CC, ESP210801.CC, ESP061101.EE, ESP210802, ESP 220803.CC

36 LO 4/2000 sobre derechos y libertades de los extranjeros en España y su integración social, modificada por LO 8/2000.

37 OMCT Appeal concerning child suffering, Case ESP 061101.EE.

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who herself was being held at the Moroccan border. According to reports, Miloud spent his days in detention either crying or trying to escape. Three other adolescents were also arrested and detained until their mothers were able to pick them up at the police station.

In its appeal, the OMCT commended the Spanish police for having prevented abuse by ensuring that children are handed over to family members upon arrival rather than to Moroccan police directly. Nevertheless, it is clear that these deportations are not in the children's best interests and will never be until the Moroccan government comes up with alternatives and can provide these children with adequate living conditions. Deportation only perpetuates discrimination and vulnerability to police brutality on both sides of the border.

In the past two years, the security response has become the norm and use of force against minors is on the rise. In addition, simply turning back minors at the border without their consent leads to further cases of violence and abuse against unaccompanied minors upon their return.

Three cases in point: Accounts gathered by the Bayti Association, summer 2003

There were three cases of torture and ill-treatment in Jaen, a small town near Algeiras and halfway between Cordoba and Seville, where many Moroccan and Sub-Saharan youths end up upon arrival in Spain:

- Karim, now aged 17, arrived in Spain for the first time when he was 14. Coercive means were used on three occasions to return him to Morocco and each time he made another attempt to return to Spain. The last time was particularly awful: When he refused to return to Morocco, police officers put him in handcuffs and shackles and then proceeded to beat him.

Upon returning to Spain, the public prosecutor sent Karim to an adult prison, despite the fact that he was a minor. The reason given was that he was violent and a "security risk". He has been languishing in a Jaen prison for the past eight months.

- Youssef, aged 14, was violently (i.e. blows, insults) sent back to Ceuta from Cordoba on several occasions. On his last return to Spain, police beat him and put him in a detention center.

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- Ahmed, aged 15, suffered inconceivable violence: when he tried to evade arrest, national police fired warning shots into the air to stop him. When they finally caught Ahmed, they beat his head and face with a billy club until he passed out. Taken before a judge, Ahmed was found guilty and was immediately sent back to Morocco. The judge did not order any investigation for police brutality.

A large number of minors move from center to center without any idea what they intend to do with their lives. When they reach the age of eighteen, they become adults and no longer qualify for assistance from these “halfway houses” on the border. Many flee and end up as vagrants, prostitutes and drug dealers.

RECOMMENDATIONS

1. General Recommendations

- Effectively implement the commitments made by virtue of international human rights covenants and conventions that Morocco has ratified: the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Rights of the Child.
- Prohibit torture in the Constitution and criminalize it in the Penal Code.
- Carry out closer inspection of detention centers and prisons; grant access to independent observers.
- Respect and strengthen the independence of the judicial branch by revising the statute of the Supreme Council of the Judiciary and limiting the Minister of Justice's powers and prerogatives.
- Establish a national strategy to promote human rights, in keeping with the recommendations made at the 1993 World Conference on Human Rights in Vienna; work with human rights NGOs to implement an action plan to inform and educate the general public regarding human rights issues.
- Work with the human rights movement so that adequate measures may be taken to shed light on the demise of missing persons and effectively help victims of serious human rights abuses and their families.
- Enact appropriate legislation and set up the right institutional structures to see to it that torture has no venue.
- Strengthen the role of public prosecutors, physicians and NGOs when it comes to supervising and visiting detention centers.
- Set up a national commission of inquiry - composed of representatives from the Ministry of Justice, the Parliament, human rights NGOs - to investigate complaints from individuals and organizations regarding the practice of torture and abduction.
- Revise laws granting immunity to high-ranking officials in order to facilitate police investigation, review of evidence and conviction of those responsible for acts of torture or cruel, inhuman or degrading treatment.

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- Revise those legal provisions that undermine protection of civil liberties.

Regarding civil liberties:

- Declaration formalities should be maintained, in particular when it comes to freedom of association and freedom of the press. Declaration formalities and legal requirements should be handled by the court and should lead to the automatic enjoyment of these freedoms. Competent authorities wishing to annul the declaration should be required to obtain a court order to do so and only in cases provided for by law.
- Adequate safeguards should be established to ensure that people can exercise their right to assemble and demonstrate. Such safeguards should be identical to those existing in democratic countries.
- Acts construed as insulting Islam, undermining the monarchy, or endangering territorial integrity should be specified in order to avoid arbitrary judgments.
- Objective criteria should be used when deciding whether or not to grant public utility status to an association. Public utility status is an important lever that associations can use to promote their activities. Refusal to grant public utility status should be justified and allow for appeal in court.
- The justice system should be revised to reinforce the independence of judges and strengthen safeguards of due process. This is absolutely necessary if civil liberties are to be protected.

Regarding the prison situation:

- The Penal Code should be revised to provide for alternative punishment to imprisonment for certain offenses. Capital punishment should be abolished from criminal law.
- Prison guards should be given a professional code of ethics to follow and should be punished for any acts of violence that they commit.
- The supervisory commissions provided for in Articles 661 and 662 of the Criminal Procedure Code should be set up and placed under the responsibility of the Chief Justice.

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- A Parole Board should be set up to consider compassionate release of prisoners suffering from cancer, mental illness or other hardship, especially if they have already served part of their sentence.
- Prisoner health, delivery of health care and hospitalization should be monitored. The independence of health personnel should be ensured so that they can perform the duties given to them by the new law on management of prisons.

2. Recommendations regarding women

- The Moroccan government should take into account specific consequences that may result when women are subjected to sexual torture, such as unwanted pregnancies and miscarriages.
- The Moroccan government should revise its laws to eliminate all forms of discrimination against women, in particular specific provisions of the Penal Code concerning:
 - Rape
 - Paternity testing
 - Abduction of minors
 - Abduction of married women.
- The Moroccan government should see to it that recourse and compensation is available to the most vulnerable groups of women (Amazighs, illiterate women and prostitutes).
- The Moroccan government should help female victims of violence by providing them with female police officers, psychological counselors, legal advisors, physicians and social workers.
- Conditions of detention should match international standards that Morocco has agreed to apply, in particular Article 8 of the UN Standard Minimum Rules for the Treatment of Prisoners, which states that the different categories of prisoners must be kept in separate institutions or parts of institutions on account of their age and sex.

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- Finally, the Moroccan government should launch a major information and training campaign (initial and ongoing) for judges, public prosecutors and law enforcement officers, covering gender-related issues and specific types of violence that affect women.

3. Recommendations regarding children

- While awaiting effective implementation of the Family Code, the Bayti Association and the OMCT would like to draw the Committee Against Torture's attention to the importance of effective birth registration as a means of protecting minors from torture and other inhuman or degrading treatment. We recommend that the Committee urge the Member State to bring birth registration up to 100% as quickly as possible.
- The Bayti Association and the OMCT recommend that the Committee Against Torture demand the Moroccan Government to urgently revise its legislation and procedures to ensure that children are afforded special protection and that they are accompanied when complaints are filed. Children should also receive compensation when they have been subjected to torture and ill-treatment and undergo psychosocial and medical rehabilitation if necessary. These changes in legislation should be accompanied by seminars and training for law enforcement officers, juvenile judges, social workers and health personnel. In order to ensure immediate implementation of these legislative changes, special departments should be set up and handbooks published for civil servants, parents and children. These handbooks should be written in a style that is both clear and accessible to all readers.
- The Bayti Association and the OMCT recommend that the Committee Against Torture ask the Moroccan government about progress made on the Committee on the Rights of the Child's recommendations concerning torture and inhuman and degrading treatment committed by police officers against children. We further recommend that the Committee strongly reiterate those recommendations that have not yet been adequately implemented.
- The Bayti Association and the OMCT recommend that the Committee Against Torture reiterate the Committee on the Rights of the Child's Observations and urge the Moroccan government to quickly step up its

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efforts to improve the situation of minors in conflict with the law by doing the following:

- Regarding the new Criminal Procedure Code: The notion of “retention” established in the new Criminal Procedure Code should be clarified: What difference is there between “retention” and “police custody”? How does it afford better protection to minors?;
- Reasons used to justify arrest and prosecution: cases of vagrancy and begging involving minors should no longer be considered as offenses but rather as situations of risk requiring ancillary or protective measures. There is no reason why children should be arrested or deprived of their liberty for such cases;
- Juvenile officers at the Criminal Investigation Department and juvenile judges: there is an urgent need to develop training in “child rights” and “child psychology” approaches;
- Administering of juvenile justice in police stations and courtrooms: procedures should be clarified and supervisory mechanisms should be set up;
- Handling of minors: special areas should be set aside in police stations and courtrooms for children and adolescents;
- Detention: Minors should no longer be put in prison; stays in juvenile detention centers should be kept to a bare minimum; conditions of detention are in need of constant improvement;
- Rehabilitation: there is a need for more suitable rehabilitation programs for young people (trained counselors in sufficient number, appropriate working tools and conditions), innovative programs and reinsertion procedures. Detention centers should be more open to their surroundings (i.e. interaction with families, schools, private sector, training facilities...). Moreover, legal recognition should be given to families that host minors and public interest activities should be developed (e.g. alternatives to imprisonment);
- Prevention: There is a need for preventive outreach programs, general awareness campaigns for all stakeholders, mentoring and financial aid to families in difficulty.

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- The Bayti Association and the OMCT recommend that the Committee Against Torture ask the Member State about migration in general and more specifically about its direct responsibility in cases of abuse. Morocco could enrich the debate on a common multifaceted approach to migration between the African and European continents: long-term mutually beneficial sustainable development that takes into account the priorities of both host country and country of origin; revision of visa policies; enactment of laws governing seasonal work; cooperation between police officers and customs officials to efficiently crack down on child trafficking networks.
- The following measures are urgently needed to address the issue of unaccompanied minors:
 - Street programs should be set up and run by mentors who understand the situation in Morocco and the Moroccan culture. These mentors would work with both Moroccan and Spanish law enforcement officers;
 - Information campaigns should be launched to raise awareness of the reality of migration and dispel the myth of a European El Dorado;
 - Spanish authorities should work with Moroccan consulates to issue temporary permits to minors;
 - Youth programs should be adapted to take into account children's backgrounds;
 - Minors should only be sent back to their home country if the return is guaranteed to succeed. More importantly, the minor's consent must be obtained.

ANNEX 1

**CONCLUSIONS AND RECOMMENDATIONS
OF THE COMMITTEE AGAINST TORTURE**

THIRTY-FIRST SESSION

MOROCCO

STATE VIOLENCE IN MOROCCO**EXAMEN DES RAPPORTS SOUMIS PAR LES ÉTATS PARTIES EN
APPLICATION DE L'ARTICLE 19 DE LA CONVENTION**

1. The Committee considered the third periodic report of Morocco (CAT/C/66/Add.1 and Corr.1), together with the additional oral information submitted by the State party delegation, at its 577th, 580th and 589th meetings (CAT/C/SR.577, 580 and 589), held on 12, 13, and 20 November 2003, and adopted the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the third periodic report of Morocco, which provided it with detailed information on the efforts made by the State party, since the consideration of the second report in 1999, to implement the Convention, and also the information given orally by the Moroccan delegation, which furnished positive information concerning measures to implement the Convention taken since the submission of the third report on 23 March 2003. The Committee thanks the delegation for the frank and constructive dialogue established with it.
3. The third periodic report was submitted slightly late since it had been scheduled for 2002. It was not completely consistent with the general guidelines regarding the form and contents of periodic reports, notably because it did not devote a part to measures taken to comply with the conclusions and recommendations previously addressed to the State party by the Committee.

B. Positive aspects

4. The Committee takes note of the following positive new developments:
 - (a) The declaration by the State party delegation of the intention of the executive, up to the highest level, and of the legislature, to implement the Convention, which is directly applicable in Morocco, to adopt institutional, normative and educational measures, in consultation with local and international associations, and to develop technical cooperation in the area of human rights with the United Nations Development Programme (UNDP), the Office of the United Nations

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High Commissioner for Human Rights and non-governmental organizations (NGOs). This political will has also been reflected in the release of political prisoners, including a group of 56 who were released in November 2002, and in the compensation of victims;

- (b) The broadening of the mandate of the Consultative Council on Human Rights (CCDH); the appointment of a “mediator”, the Diwan al-Madhalim, responsible for considering cases of human rights violations submitted to him and for forwarding to the competent authorities the requisite proposals and recommendations; the establishment of the Mohamed VI Foundation for the reintegration of prisoners, which is presided over by the King himself; the establishment of the Human Rights Documentation, Information and Training Centre; the prison reform, including the adoption of measures to assist persons subjected to any form of detention or imprisonment, notably juveniles in the child protection centres, and the implementation of measures to ensure medical care and training for detainees and prisoners;
- (c) The substantial reform of the relevant legislation initiated by the State party, in particular the Code of Criminal Procedure and the draft reform of the Criminal Code, in consultation with CCDH and the competent human rights associations, notably with regard to the presumption of innocence, the right to a fair trial, the right of appeal and consideration of the specific needs of women and juveniles;
- (d) The remarkable efforts to develop training and education in the area of human rights, notably the organization by the Human Rights Documentation, Information and Training Centre of training for prison service officials, senior prison medical personnel and forensic physicians;
- (e) The unlimited access to detainees and prisoners accorded to independent local NGOs;
- (f) The payment of compensation, following the recommendations made by the Independent Arbitration Commission set up within CCDH on compensation for material damage and moral injury suffered by victims of disappearance or arbitrary detention and their next of kin;
- (g) The assurance that the State party will act on the recommendations and concerns addressed to it by the Committee.

C. Subjects of concern

5. The Committee expresses concern about:

- (a) The non-existence of information on the full implementation of article 2 of the Convention, notably in the cases provided for in paragraphs 2 and 3 relating to exceptional circumstances and an order from a superior officer or a public authority as grounds for excluding criminal responsibility;
- (b) The considerable extension of the time limit for police custody, the period during which the risk of torture is greatest, both in criminal law and in anti-terrorist legislation, which has been effected subsequent to the consideration of the second periodic report;
- (c) The non-existence, during the period of police custody, of guarantees of rapid and appropriate access by persons in custody to a lawyer and a doctor, and to a relative;
- (d) The increase, according to some information, in the number of arrests for political reasons during the period under consideration, the increase in the number of detainees and prisoners in general, including political prisoners, and the increase in the number of allegations of torture and cruel, inhuman or degrading treatment or punishment, allegations implicating the National Surveillance Directorate (DST);
- (e) The lack of information about measures taken by the judicial, administrative and other authorities to act on complaints and undertake inquiries, indictments, proceedings and trials in respect of perpetrators of acts of torture, notably in the case of acts of torture verified by the Independent Arbitration Commission for compensation for material damage and moral injury suffered by the victims of disappearance or arbitrary detention and their next of kin;
- (f) The application to acts of torture of the prescription period provided for by ordinary law, which would appear to deprive victims of their inprescriptible right to initiate proceedings;
- (g) The non-existence of a provision of criminal law prohibiting any statement obtained under torture from being invoked as evidence in any proceedings;

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- (h) The number of fatalities in prisons;
- (i) Prison overcrowding, and the allegations of beatings and violence between prisoners.

D. Recommendations

6. The Committee recommends that the State party:
 - (a) In the context of the ongoing reform of the Criminal Code, include a definition of torture which is fully consistent with the provisions of articles 1 and 4 of the Convention;
 - (b) In the context of the ongoing reform of the Criminal Code, clearly prohibit any act of torture, even if perpetrated in exceptional circumstances or in response to an order received from a superior officer or public authority;
 - (c) Limit the period of police custody to a strict minimum and guarantee the right of persons in police custody to rapid access to a lawyer, a doctor and a relative;
 - (d) Include in the Code of Criminal Procedure provisions organizing the imprescriptible right of any victim of an act of torture to initiate proceedings against any torturer;
 - (e) Take all necessary measures to eliminate impunity for public officials responsible for torture and cruel, inhuman or degrading treatment;
 - (f) Ensure that all allegations of torture or cruel, inhuman or degrading treatment are immediately investigated impartially and thoroughly, especially allegations relating to cases and situations verified by the aforementioned Independent Arbitration Commission and allegations implicating the National Surveillance Directorate in acts of torture, and ensure that appropriate penalties are imposed on those responsible and that equitable compensation is granted to the victims;
 - (g) Inform the Committee of the outcome of impartial inquiries into all deaths in police custody, detention or prison, in particular deaths alleged to be the result of torture;

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- (h) In the context of the ongoing reform of the Criminal Code, incorporate a provision prohibiting any statement obtained under torture from being invoked as evidence in any proceedings, in conformity with article 15 of the Convention;
 - (i) Withdraw the reservation made concerning article 20 and make the declarations provided for in articles 21 and 22 of the Convention;
 - (j) Devote a part of its next periodic report to measures taken to comply with the conclusions and recommendations addressed to it by the Committee;
 - (k) Provide in its next periodic report detailed statistics on complaints of acts of torture or other cruel, inhuman or degrading treatment or punishment perpetrated by public officials, and on inquiries, proceedings and criminal and disciplinary sanctions relating to those complaints, disaggregated by offence, age and sex of victim, and position of the perpetrator of the offence. The State party should also provide information on the results of any inspection of any place of detention, the measures taken by the authorities to find solutions to the problems of prison overcrowding, and action taken on allegations of violence between prisoners
7. The Committee recommends that the present conclusions and recommendations, and the summary records of the meetings at which the State party's third periodic report was considered, should be widely disseminated in the country in the appropriate languages.
8. The Committee requests the State party to provide within one year information on the action it has taken on its recommendations contained in paragraph 6, subparagraphs (c), (f) and (g) above.

ANNEX 2

TESTIMONIES AND STATISTICS

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Appendix 1- Accounts

« I, Mbarek TAOUSS, member of the Amazigh Tilelli Association, former political prisoner and coordinator of the ANAPEC's Victim Support Committee, declare to the Amazigh people as well as to the local, national, and international community that I was kidnapped and tortured on 28 February 2003 in Tinghir (OUARZAZAT province) by DST agents and that the events that transpired took place in the presence of uniformed police officers.

This is what happened:

On my way home from an appointment with a dental surgeon in Tinghir, I took the bus for Goulmima at about nine p.m. The bus stopped off at a restaurant about ten kilometers from Tinghir.

As I entered the restaurant, four individuals grabbed me, threw me to the ground and started beating and kicking me... They dragged me to the restroom where they continued to attack me. They then put me in handcuffs. I asked them to stop torturing me and to prosecute me if I had done anything wrong. I asked them to call an ambulance because they had seriously injured me. I was bleeding from the nose and mouth... However, they ignored my pleas. My belongings were strewn all over the floor...

The entire incident lasted over an hour and took place in the presence of two police officers in uniform. The owner of the restaurant was also there along with various witnesses/accomplices to this Bukarin-style charade. When they were through, my assailants gave me back my belongings and walked out the door as if nothing had happened. The "law enforcement" officers did not even try to stop them.

By the time I left the restaurant, the bus had already gone. So, I started walking back to Tinghir. I found a hotel room and spent the entire night dizzy and terrified. The next morning, I got on the bus and returned to Goulmima.

Obviously, this "legal" assault could not have taken place if my assailants had not been following me. They did what they did to me in the restaurant because their masters felt that I was a "subversive" element. These Makhzen agents, who are supposed to protect the safety of citizens, seriously violated my rights.

Their attempt to intimidate and neutralize me has only strengthened my convictions and my commitment to the principles and aims

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of the Amazigh Movement. I issue an appeal to all human rights activists everywhere in national and international organizations to help me in this time of need.

Goulmima, 4 march 2003

by Mbarek TAOUSS

CHRII Case

The events that transpired in Safi on 21 April 2003 can only be described as a heinous crime committed by the State. 38-year-old Muhammad Rachid Chrii, a respected human rights activist, revered by the local community, was arrested by a group of men who identified themselves as officers from the Criminal Investigation Department. The officers took him to a house belonging to a friend of one of the police officers where they proceeded to torture and rape him with a bottle. They then presented him to a public prosecutor who charged him with drug trafficking. Hundreds of citizens immediately took to the streets in protest. Petitions and demonstrations were organized to denounce for the umpteenth time the abuses of “the new era”. As usual, police justified their actions by first charging the defendant and then pointing the finger elsewhere to establish his guilt. “His brother is a well-known drug trafficker. So, that makes him guilty as well.”

After the angry protests in rue Safiote, the charges were dropped and local police officers were blamed for not having clearly understood the “new concept of law and order”. However, the real reason for the rising abuses is that the authorities have intentionally cultivated an atmosphere of permissiveness. If it is acceptable to torture people at police stations in Temara (with the palace practically right next door) why wouldn't it be acceptable to do so in Safi? Such permissiveness is even more insidious when attempts are made to legitimize so called “progressive” policies by associating them with the names of illustrious human rights activists.

Source: *Journal Hebdomadaire*, 3-9 May 2003

Appendix 2

Overcrowding of Moroccan prisons in figures

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OVERCROWDING OF MOROCCAN PRISONS IN FIGURES			
Date of census	Prison	Normal Capacity	No. of inmates
12 January 2001	Okacha Complex	4,000	7,358
14 May 2000	Kenitra Correctional Facility	1,200	1,897
27 April 2000	Essaouira Correctional Facility	400	709
23 March 2000	El Jadida Correctional Facility	1,000	1,382
01 June 2000	Meknes Correctional Facility	1,200	1,469
13 April 2000	Safi Correctional Facility	1,500	2,208
20 July 2000	Boulmharez Marrakech Correctional Facility	1,800	2,782
05 January 2000	Inezgane Correctional Facility	800	2,059
November 2001	Tanger Correctional Facility	1,600	2,986
January 2002	Khouribga Correctional Facility	250	384
November 2001	Tetouan Correctional Facility	500	1,147
February 2001	Ksar El Kebir Correctional Facility	140	255
November 2001	Oued Laou Correctional Facility	750	868
January 2002	Souk El Arbaa Correctional Facility	1,200	1,369
November 2001	Ain Kadous-Fez Correctional Facility	600	1,710
November 2001	Kalaa Sraghna Correctional Facility	400	509
November 2001	Beni Mellal Correctional Facility	600	884
August 2001	Safi Correctional Facility	1,500	2,404
2002	Laayoune Correctional Facility	200	446

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Appendix 3

Quality of medical care in Moroccan prisons

Penal Reform International sent a team of physicians to Rabat to assess medical care conditions in Moroccan prisons and propose a training and cooperation program to improve medical care given to inmates. The team visited two prisons considered to be exemplary from 11-15 June. The following paragraphs were taken from the report that they drafted upon completion of their visit:

The paramedical staff is unqualified (normally prison guards acting as nurses or doctor's assistants) and in short supply. Roles become blurred and many medical tasks could perfectly well be handed over to certified nurses. As a result, medical care is substandard and provided at specific - and usually very limited - times. In some cases, health personnel have to deal with the incoming flow of patients as if they were on an assembly line. They allot 3-4 minutes for each patient and then move on. Health personnel simply cannot feel motivated nor provide quality healthcare under such conditions.

Rooms are in poor condition and there are never enough of them. As a result, doctors are forced to administer treatment to different patients in the same room at the same time. Medical files are not kept under lock and key and are therefore accessible to anyone and everyone. It is not possible to guarantee doctor-patient privilege under such conditions.

Only a very small number of correctional facilities provide specialist consultation services. Given the importance of specialist care, such services should be available everywhere.

There is no established hierarchy in clinics, which leads to confusion as to who does what in the clinic.

No initial training is provided: physicians arriving for the first time in a correctional facility have no idea what prison conditions will be like. They have to learn through trial and error and come up with their own solutions to the organizational and ethical dilemmas that they often face. There is very little contact between health personnel working in different correctional facilities, which reinforces the feeling that they are on their own.

Health personnel are not independent, which prevents them from providing quality care and adhering to medical ethics.

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Medical examination rooms can be “requisitioned” for other purposes. The financial officer decides what medical supplies and drugs should be purchased. The warden, the financial officer and the accountant cosign medical prescriptions. With the exception of some correctional facilities, medical certificates cannot be issued to inmates. Instead, they must be handed over to the warden or even sent directly to the public prosecutor. This goes against the most elementary principle of confidentiality. If a judge requires medical information, he must call upon a medical expert other than the attending physician (cf. doctor’s professional code of ethics).

Wardens decide who works when and where. In many cases, prison guards are asked double as paramedics, which blurs the distinction between two normally separate functions. This results in poor medical care and very little professional secrecy. The warden assesses physicians, which raises the question of how non-medical personnel are able to judge whether physicians are doing their job properly.

Physicians must give their approval before prisoners are placed in solitary confinement. This must be done only for prison-related matters and physicians must only intervene if there are medical contraindications, in compliance with Principle 3 of the UN Principles of Medical Ethics adopted on 18 December 1982, which states: “It is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health...”

There are inadequate links between prison physicians and public healthcare structures. Medical practitioners in prisons are cut off from the natural links that should exist with other public healthcare structures through the Ministry of Health: since physicians are not permitted to work part-time in prisons and part-time elsewhere, they feel isolated and unable to interact with colleagues or obtain further training. Such interaction and training are indispensable for those working in the medical profession.

In many cases, new inmates had never been to a doctor prior to incarceration. With very little interaction between prison physicians and public healthcare structures, it is unlikely that inmates will receive follow-up care upon release from prison, making reinsertion more difficult.

In conclusion

We have observed that healthcare conditions in Moroccan prisons:

Are detrimental to health personnel, who feel cut off from their colleagues and very discouraged in some cases;

Make it more difficult to recruit new healthcare staff and lead to greater staff turnover as health personnel look for better jobs elsewhere;

Undermine independence and doctor-patient privilege (exposing health personnel to possible criminal penalties under the Penal Code).

Information provided by l'AMDH

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Name of victim	Type of violation	Person responsible for violation	Date	Action taken	Response from authorities
Idriss bouzid	Death in prison		03/01/2002	- Family contacted - Letter to public prosecutor. - Letter to regional governor. - Prison warden contacted - claims inmate committed suicide	No response
Md bousetta	Death in prison	Prison guard supervisor and a few prisoners	27/11/2002 Layoune Correctional Facility	Letter to Minister of Justice.	Investigation launched and culprits arrested
Hakimi Belksem	Right to hospitalization	Management of Oukacha Prison	October 2002	- Letter to Department of Corrections - Letter to Minister of Justice.	Positive outcome for inmate
Idriss amekhchoun	Prison conditions	Management of central prison	May 2002	-Letter to Department of Corrections	No response
Itidki Hari	Not released after prison sentence was served	Management of Oukacha Correctional Facility	October 2002	Prison management contacted Letter to Ministry of Justice and Ministry of Human Rights Letter to public prosecutor Press release.	
Essanhaji Said	Not released after prison sentence was served	Management of Oukacha Correctional Facility	27/09/2002	Contacted: Minister of justice. Public prosecutor. Minister of Human Rights. Press release.	
"Sleeping cell" group	Denied visits from family	Management of Ouchaka Correctional Facility	August 2002	Contacted: Minister of justice Department of Corrections	
Redouane Biyadi	Denied right to be transferred to another prison	Warden of Sidi Moussa Correctional Facility	Early November 2002	Contacted: Department of Corrections	Request denied because of length of prison sentence
Abdelaziz El Bassari	Right to hospitalisation	Management of Ouchaka Correctional Facility	November 2002	Contacted: Department of Corrections	
Ben Dalal Zahra	Not permitted to re-main alone with spouse	Management of Ouchaka Correctional Facility	October 2002	Contacted: Minister of justice, Department of Corrections	Partial response

STATE VIOLENCE IN MOROCCO

LIST OF INMATE DEATHS IN CASABLANCA'S OKACHA CORRECTIONAL FACILITY OVER NINE-MONTH PERIOD (JUNE TO SEPTEMBER 2002)

First and last name	Inmate no.	Date of death	Location of death
Konko Ibrahim	41935	6 January	Avereos Hospital
Al Amouki Khalid	47110	11 January	Hospital 20 August
Essafi Abdenabi	50839	29 January	Prison infirmary
Mouzhir Jamal	53375	31 January	Avereos Hospital
Ahmed Souilhat	46721	2 February	Avereos Hospital
Bouata Moustapha	51687	5 February	Prison infirmary
Najim Abderrahmane	36682	6 February	Avereos Hospital
Moukhtari Rachid	48446	24 February	Prison infirmary
Bounif Idriss	54435	9 March	Avereos Hospital
Maarouf Mounir	52283	10 March	Prison infirmary
Halabi Mohamad	48798	12 May	Avereos Hospital
Harba Touria	56036	3 April	Avereos Hospital
Etermassi Mohamad	56273	28 April	Hospital Muhammad V
Mouhajir Mohamad Al Arabi	42882	3 June	Avereos Hospital
Foudoul Al Har Mouhamad	37111	24 May	Prison infirmary
Belbassi Abdelouhed	56035	20 June	Avereos Hospital
Najib Abdelkarim	58475	12 July	Avereos Hospital
Al Aslani Khalid	56615	13 June	Prison infirmary
Ben Akal Zineb	7099	20 July	Avereos
Hassoun Mohamad	60180	15 July	Prison infirmary
Ben Aouda Otman	61814	16 August	Avereos Hospital
Addemagh Mohamad	61820	19 August	Avereos Hospital
Ben Omar Hamoud	61815	22 August	Avereos Hospital
Addebagh Mohamad	62311	4 September	Avereos Hospital
Aouad Abdemajid	63218	19 September	Avereos Hospital
Chalib Said	57352	20 September	Avereos Hospital
Azouhal Ismail	61816	19 September	Avereos Hospital

La Violence étatique au Maroc

Le programme "Procédures spéciales" de l'Organisation mondiale contre la torture (OMCT) a présenté avec le soutien de l'Union Européenne et de la Confédération suisse, le présent rapport sur la violence étatique et la pratique de la torture au Maroc, à l'occasion de la 31^e session du Comité contre la Torture qui s'est tenue à Genève du 10 au 21 novembre 2003 et durant laquelle le rapport officiel du Maroc a été étudié.

Ce rapport a été préparé conjointement avec trois ONG marocaines actives dans la défense des droits de l'Homme :

- l'Association Démocratique des Femmes Marocaines (ADFM),
- l'Association BAYTI
- l'Observatoire Marocain des Prisons (OMP).

Cette étude se divise en trois parties. Les premiers chapitres font le point sur la torture et les peines ou traitements cruels, inhumains ou dégradants commis par les agents de l'Etat de manière générale (et notamment en milieu carcéral). Une seconde et une troisième partie sont consacrées respectivement à la torture et aux peines ou traitements cruels, inhumains ou dégradants à l'égard des femmes et des enfants. Cette approche transversale est assez inédite et permet de mettre en lumière la situation de groupes particulièrement vulnérables. En outre, les observations finales et les recommandations du Comité contre la Torture, adoptées à l'issue de l'examen du rapport officiel, se trouvent en annexe.



L'Organisation mondiale contre la torture (OMCT) remercie la Communauté Européenne et la Confédération helvétique pour leur soutien.