

MOROCCO: Human Rights at a Crossroads

I. SUMMARY	1
II. RECOMMENDATIONS.....	4
To the Government of Morocco	4
To the Equity and Reconciliation Commission	6
To the United Nations	7
To the U.S. Government.....	8
To the European Union and its member states	8
To the Arab League.....	9
III. INTRODUCTION: ADDRESSING PAST ABUSES.....	9
The Equity and Reconciliation Commission.....	14
Limits of the New Commission	16
2003 Report of the Advisory Council for Human Rights	23
IV. HUMAN RIGHTS AFTER THE CASABLANCA BOMBINGS.....	25
Counter-terror Legislation of 2003	26
Morocco's Criminal Justice System.....	27
The Judicial Police	29
The Public Prosecutor.....	33
The Investigative Judge.....	35
Allegations of Torture and Ill-Treatment in Pre-Trial Detention	37
Impunity for abuses.....	40
The Secret Detention Center at Temara	41
Access to Legal Counsel	43
Home Searches.....	46
V. CASE STUDIES.....	47
Abdelghani Ben Taous.....	47
Ahmed Chikou	49
Abderrezak er-Rtaoui	51
Aziz Shafai	52
Mohamed al-Asal	53
Abdelhamid Yazghi	54
Mohamed Oussama Boutaher	55
Issam Khaled	57
Mohamed Hassan Kittani.....	60
ABOUT THIS REPORT	62
APPENDIX I: Human Rights Watch Letter to the Moroccan Ministry of Justice.....	65
APPENDIX II: Response of the Ministry of Justice of the Kingdom of Morocco as provided by the Embassy of Morocco in Washington, DC	70

I. SUMMARY

Morocco has made impressive strides in human rights over the last fifteen years. These advances have included greater respect for basic civil and political rights, including freedom of expression and freedom of association. This period, especially since the accession of King Mohamed VI in 1999, has also witnessed efforts to address issues of impunity for serious and systematic past crimes, including “disappearances” and torture.

But Morocco has been no exception to the global backsliding in the protection of civil liberties and basic freedoms in the name of counter-terrorism. Important elements of the progress made during the last fifteen years are now endangered by the way that authorities have rounded up and imprisoned thousands of Moroccans accused of links to terrorism. The credible reports of torture and mistreatment of these suspects, and the clear denial of their civil rights during the judicial process, suggest that the broader freedoms Moroccans have enjoyed during the last decade and-a-half can be reversed. The stakes of the recent crackdown are high, not only for those suspected of involvement in militant or extremist groups, but for all Moroccans who have benefited from the reforms.

This report, based on a research visit to Morocco during January and February 2004, first surveys the steps that the government has taken to address issues of impunity for past human rights crimes, with particular attention to the role of the Equity and Reconciliation Commission established in January 2004 and the structural and political limitations within which it operates. The report then documents basic violations of due process rights of detainees who were arrested in the course of the authorities’ crackdown on suspected Islamist militants. These arrests began after the September 11, 2001 attacks in New York and Washington, and escalated significantly in the weeks and months that followed May 16, 2003. On that day, twelve suicide bombers killed thirty-three people, in addition to themselves, and wounded another 100 in coordinated attacks in Morocco’s largest city, Casablanca.

Human Rights Watch unreservedly condemns the May 2003 bombings. Indiscriminate attacks on civilians are the antithesis of human rights values, and the Moroccan government, like all other governments, has the right and the duty to prevent such crimes, and to bring to justice those who perpetrate them.

Counter-terror measures, however, must be conducted in ways that comply with Morocco's obligations under international human rights law. Individuals suspected of plotting or carrying out acts of violence must be afforded their basic rights at all times. A government may, in circumstances of a dire national emergency, suspend or derogate some rights, for a limited time, and to the extent strictly required by the exigencies of the situation, but under no circumstances can a state derogate from its obligation from the prohibition of torture and cruel, inhuman and degrading treatment. Detention should not be arbitrary, and must be subject to judicial review. In addition, the most fundamental fair trial standards must be respected.

As this report shows, Morocco's security forces and judiciary failed to uphold the rights of those arrested in the crackdown on suspected militants that followed the bombings of May 16, 2003. The police carried out massive arrests and home searches without judicial warrants, mostly in poor neighborhoods that are suspected Islamist strongholds. At least 2,000 were detained in the months following the attacks, according to human rights organizations. Many reported that they were then transported to a detention center in Temara, outside Rabat, that is operated by the General Directorate for the Surveillance of the Territory (Direction Générale de la Surveillance du Territoire, DGST, better known by its former name, the Direction de la Surveillance du Territoire, DST), the main domestic intelligence agency. While Moroccan authorities deny the existence of a DGST-run detention center, the testimonies we collected affirm earlier accounts of suspected Islamists who said they were interrogated by the DST at such a center. Those testimonies have been published by Moroccan newspapers and by other Moroccan and international human rights organizations.

In cases we examined, police held suspected Islamist militants in garde à vue detention beyond the legally permitted limit before bringing them before a judge. The police then falsified the recorded arrest date to make it appear that garde à vue had stayed within the legal bounds.

Many detainees stated that their interrogators subjected them to physical and mental torture and degrading treatment in order to extract a confession or to induce them to sign a statement they had not made. During their garde à vue detention, they had no access to a lawyer and the police did not disclose their whereabouts to relatives. In some cases lawyers were not given adequate time to study and prepare the defense for their clients. Many suspects were convicted and sentenced before October 1, 2003 – the date an amendment to the Criminal Procedural Code went into force and granted defendants the right to appeal their convictions on the facts.

Once police obtained incriminating statements from them, defendants found themselves on a fast track to conviction, deprived of virtually all means to exercise their rights to mount a defense in the pretrial investigation and during the trial itself. Defendants either were not informed of their right to a medical examination or not able to exercise it in a meaningful manner; they did not have legal counsel at all stages of the judicial process; and the trial judges admitted into evidence both statements made by third parties who were not present in court and confessions attributed to the defendant while he was being held in prolonged incommunicado detention. In addition the trial judges rejected defense motions to hear witnesses who might have provided exonerating testimony.

Moroccan authorities responded constructively to human rights criticism in 2004. They stated their intent to introduce a draft law criminalizing torture and to withdraw formal reservations they made when ratifying several international treaties on human rights. They vowed to carry out investigations when international or domestic human rights organizations present evidence of torture.

In another positive development, the state-created Commission on Equity and Reconciliation has begun its work of documenting grave human rights abuses committed in past decades, including hundreds of unsolved cases of forced disappearances. It has the power to compensate victims and their survivors, as well as to recommend means to rehabilitate and assist them and to memorialize the injustices they endured.

This commission represents a significant advance over past efforts in Morocco to address past human rights abuses and surpasses all other state institutions yet established in other Middle East and North African countries to address past abuses. However, its potential to succeed in the mission of providing remedies for past abuses and a truthful account of past state repression is constrained by several factors. Most significantly, the mandate of the commission prevents it from naming individual perpetrators and seems to focus on certain categories of abuse at the expense of other grave abuses. Further, the commission has no means to compel testimony or the production of information, raising the question of whether officials and former officials will cooperate with its investigations.

Human Rights Watch welcomes the affirmations by Moroccan authorities of their commitment to meet the country's human rights obligations, the acknowledgement of grave past abuses, and legal reforms that have been taken or are pending. Beyond the positive steps it has taken, Morocco must do far more to reverse the deterioration in human rights that has occurred in the treatment of persons suspected of involvement in

terrorist crimes. Given the pattern of human rights violations emanating from the crackdown on suspected Islamist militants and the application of the 2003 counter-terror law, Moroccan authorities should take immediate steps to bring all practices and laws into compliance with both the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment (CAT). Above all, law enforcement agents must be held accountable when they violate laws governing the detention and treatment of suspects. In order for this to happen, courts must fulfill their roles as a bulwark against police and prosecutorial abuse by independently reviewing the facts before them and rejecting evidence that is tainted by torture, improper coercion, or other procedural violations.

The international community has an important role to play in pressing the Moroccan authorities to meet these obligations under international human rights law regarding the treatment of persons suspected of terrorist crimes. First, Morocco, like other countries, is required to submit periodic reports to the Counter-Terrorism Committee (CTC) of the United Nations Security Council, under Security Council Resolution 1373 (2001), concerning steps it has taken to combat and prevent terrorism. The CTC should, in its review of periodic country reports, require that the reporting state take steps to ensure that counter-terrorism measures introduced or proposed are consistent with the country's human rights obligations. Second, Morocco is one of the countries to which the United States has reportedly extradited or rendered terror suspects. The U.S. or any other state sponsoring or facilitating such transfers has an obligation to ensure that such transfers do not violate the Convention against Torture's absolute prohibition against sending or returning a person to countries for detention and interrogation "where there are substantial grounds for believing that he would be in danger of being subjected to torture."

II. RECOMMENDATIONS

To the Government of Morocco

To address violations of international due process guarantees

- Amend the Criminal Procedure Code to include all the internationally recognized due process guarantees; adopt legislation to shorten the maximum duration of garde à vue (pre-arraignment) detention from the twelve-day maximum allowed under the 2003 counter-terror legislation. The legislation should conform to the U.N. Human Rights Committee's determination that a suspect must be brought before a judge or other officer authorized to exercise

judicial power within “a few days.” The legislation should give detainees the right to a lawyer when they are first questioned by the police, and ensure that police inform them both of that right and of the right to remain silent; those who cannot afford a lawyer should have the right to a court-appointed attorney; enforce compliance with the legal duration of garde à vue detention; and to ensure judges investigate when there is evidence police may have entered a false date of arrest into their registry.

- Amend the Criminal Procedure Code to require that investigative judges and trial judges grant defendants greater opportunities to produce exculpatory witnesses before the court and to cross-examine witnesses for the prosecution.
- Permit all defendants convicted under the Code of Criminal Procedure before October 2003, at a time when defendants had no right to appeal their convictions on factual grounds, to exercise such a right of appeal.

To end torture and other forms of ill-treatment

- Adopt legislation consistent with the recommendation of the U.N. Committee against Torture that “include[s] a definition of torture which is fully consistent with the provisions of articles 1 and 4 of the Convention.”
- Ensure that all allegations of torture and ill-treatment, including the use of coercion, threats and intimidation, be promptly and independently investigated, and if credible evidence is found against law enforcement officers, to bring them to justice.
- Ensure that detainees are immediately informed of their right to a medical examination, and that they can effectively and promptly exercise that right.
- Enforce Article 293 of the amended Criminal Procedure Code, which ensures the inadmissibility of any confessions made under “violence or duress,” and implement the U.N. Committee against Torture recommendation to “incorporate a provision prohibiting any statement obtained under torture from being invoked as evidence in any proceedings.”
- Withdraw all reservations that Morocco entered when ratifying the Convention against Torture, and make the necessary declarations provided for in Articles 21 and 22 of the Convention, so as to recognize the competence of the U.N. Committee against Torture (CAT) to make confidential investigations, and to consider individual complaints.

To prevent secret detentions

- Hold all detainees only in officially recognized places of detention, and cease all secret detentions, even if they take place on the premises of an officially recognized detention facility; amend Article 67 of the Criminal Procedure Code to ensure that authorities promptly convey to the family accurate information about a detainee's whereabouts and legal status, and provide them with prompt access to the detainee.
- Ensure that detainees are taken into custody only on the basis of an arrest warrant issued by a judge (except where genuinely detained in *flagrante delicto*).
- Allow immediate and unfettered access to Temara detention center to both national and international nongovernmental human rights organizations.

To enhance the effectiveness of the Equity and Reconciliation Commission

- Declare that officials who obstruct or fail to cooperate with the commission will face penalties.
- Declare that while the commission's mandate prevents it from identifying individual perpetrators, it should turn over to Morocco's judiciary investigative materials that will help the courts fulfill their duty to bring to justice perpetrators of grave abuses.
- Declare that no amnesty or statute of limitations will apply to those implicated in acts of "disappearance" or other grievous abuses of human rights; and that any case of enforced disappearance that the commission does not fully clarify by the conclusion of its mission will remain the subject of a continuing investigation for as long as the victim's fate is not clarified.

To the Equity and Reconciliation Commission

- Disclose publicly the extent to which it is receiving the necessary cooperation of past and present officials in its investigations, cooperation measured in terms of the provision of oral testimony, documents, including medical-legal records and existing court files, and other items of evidence; the commission should also disclose the impact of any non-cooperation on the commission's task of providing a full and truthful account of the period under its consideration.
- Publicly reaffirm the need for criminal accountability for grave abuses, even if the commission itself is prevented from naming individual perpetrators.

- Urge that any “disappearances” not successfully elucidated by the commission should remain the subject of ongoing investigation until the fate of the missing person is fully clarified, and that no amnesty or statute of limitations should apply to those implicated in “disappearances” or other grievous human rights abuses.
- Ensure that the commission or another state body provides equal consideration to *all* forms of grave abuse of human rights – and not just arbitrary detention and enforced disappearance – in terms of what the commission provides to victims in the way of compensation, assistance and all other measures.
- In light of the contested nature of events in the Western Sahara, the tighter security conditions in that region, and the large number of cases emanating from there, ensure that the commission gives equal consideration in its deliberations to Western Saharan victims of human rights abuse and to the Western Saharan population generally.
- Make full use of the commission’s mandate to propose safeguards to prevent a recurrence of past abuses by underscoring that serious, and in some ways similar, abuses are occurring today; recommend concrete measures to end commonplace abuses of the rights of suspects in police custody and the acquiescence in those violations by a judiciary that fails to exercise its constitutionally guaranteed independence.

To the United Nations

To the Special Rapporteur on Torture

- Request an invitation to visit Morocco to conduct an investigation of reports and allegations of torture and other mistreatment of detainees.

To the Working Group on Arbitrary Detention

- Request an invitation to visit Morocco and to conduct an investigation of reports and allegations of illegal and arbitrary detention of Moroccan detainees.

To the United Nations Security Council Counter-Terrorism Committee (CTC)

- Request that in its next report to the CTC, Morocco include information on counter-terrorism measures taken following the May 2003 attacks in Casablanca.

- Based on the review of the new and previous reports by Morocco, identify areas of concern, in particular vis-à-vis Morocco's compliance with the provision of Security Council Resolution 1456 requiring that counter-terrorism measures adopted by states comply with international human rights and humanitarian law. Request more information as warranted.
- Establish a long-term plan with Morocco for developing mechanisms for combating terrorism while protecting human rights.

To the U.S. Government

- In all communications from all agencies of the U.S. government to the government of Morocco, send a clear and consistent message that respect for human rights must be integral to any security policy, including counter-terrorism operations.
- Take all necessary measures to ensure that U.S. counter-terrorism assistance to Morocco is not used to violate human rights.
- Raise with the government of Morocco in all official meetings concerns over the treatment of suspects arrests in the context of the counter-terror campaign, and insure that any security policy and counter-terrorism cooperation conform to international human rights standards.
- Assist the Moroccan government with reforming the criminal justice system and with training programs for police, prosecutors and judges that include emphasis on the protection of due process rights of all detainees. This assistance should be conditioned on Moroccan authorities' demonstrating the political will to carry through the reforms and make judicial independence a reality.
- Do not extradite or arrange the rendition to Morocco of persons suspected of security or terrorist offenses unless and until the government provides verifiable guarantees that such persons will not be subject to torture or other ill-treatment in detention and interrogation; take steps to verify that suspects already returned to Morocco have not been subject to torture or ill-treatment.

To the European Union and its member states

- In all communications from all agencies of the European Union and its member states to the government of Morocco, send a clear and consistent message that respect for human rights must be integral to any security policy, including counter-terrorism operations.
- Raise with the government of Morocco in all official meetings concerns over the treatment of suspects arrested in the context of the counter-terror campaign,

and insure that any security policy and counter-terrorism cooperation conform to international human rights standards.

- Assist the Moroccan government with reforming the criminal justice system and with training programs for police, prosecutors and judges that include emphasis on the protection of due process rights of all detainees. This assistance should be conditioned on Moroccan authorities demonstrating the political will to carry through the reforms and to make judicial independence a reality.
- Do not extradite or arrange the rendition to Morocco of persons suspected of security or terrorist offenses unless and until the government provides verifiable guarantees that such persons will not be subject to torture or other ill-treatment in detention and interrogation; take steps to verify that suspects already returned to Morocco have not been subject to torture or ill-treatment.

To the Arab League

- Call upon the Moroccan government to respect and comply fully with the principles and obligations laid down in under Articles 7,8 and 13(a) of the Arab Charter on Human Rights (1994), which specify the right to presumption of innocence, the right to freedom from arbitrary arrest and detention, and the prohibition of torture or cruel, inhuman or degrading treatment.

III. INTRODUCTION: ADDRESSING PAST ABUSES

Morocco's progress on human rights, which began under the late King Hassan II in the late 1980s and continued under his son and successor, Mohamed VI, can be measured in many fields. Parliamentary elections, by all accounts, have become more transparent. Moroccans enjoy greater freedom to criticize public authorities, both in print and in public assemblies. In the late 1980s and early 1990s, King Hassan II freed most of the country's political prisoners and emptied the notorious secret Tazmamart prison, where accused coup plotters had languished long after completing their prison terms. The king also released hundreds of persons whom the police had forcibly "disappeared" years earlier. Many government critics and opposition politicians returned from long years of exile; one, Abderrahmane Youssoufi, was named prime minister by King Hassan II and served in that post from 1998 to 2002. In 2000, King Mohamed VI freed Islamist leader Abdeslam Yassine from house arrest that had been imposed a decade earlier.

The government in 1993 ratified the Convention on the Elimination of all forms of Discrimination against Women, the Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of

the Child, making Morocco a party to all the major international human rights treaties. In May 2004, then-Minister of Human Rights Mohamed Aujjar announced before parliament that the government was preparing to withdraw its reservations to six of the treaties to which it was a party.¹

Over the past decade, authorities have shown greater tolerance for the activities of local and international human rights organizations, and consulted with Moroccan organizations on how the state should address grave abuses committed in the past. Mohamed VI opened prisons to inspection by an independent monitoring organization, l'Observatoire Marocain des Prisons, which publishes its often-critical findings.² Legal reforms shortened the length of garde à vue detention and enhanced human rights protections for defendants and specifically for minors in court. In 2004, parliament adopted sweeping reforms of the family code, abolishing many of the provisions that denied women rights equal to those of men in matters of marriage, divorce, and custody of children.

The advances of the 1990s all came with qualifications of one sort or another. For example, newspapers grew bolder in their criticism of government policies and human rights abuses, but Moroccan journalists still wound up in prison, and their magazines were banned, for showing the monarchy “disrespect.” Sit-in protests became more commonplace – except when truncheon-wielding police were dispersing the protesters, who sometimes received prison terms for participating in “illegal” assemblies.

The progress, though uneven, was nonetheless genuine and gave Morocco the basis for claiming that, on civil and political rights, it had become one of the region’s most progressive countries.

The significance of the progress can be gauged only by taking stock of the severity of the repression that had preceded it. In fact, it was only during the 1990s that the details of the earlier repression became widely known. In that decade’s freer atmosphere, Moroccans recounted, in a flurry of taboo-breaking books and articles, how the security services two and three decades earlier had crushed the palace’s real and suspected opponents. The secret police abducted and “disappeared” hundreds of men and women, including exiled opposition leader Mehdi Ben Barka, kidnapped on a Paris street

¹ “Wazir huquq al-insan: al-Maghreb yasta'id li raf at-tahafouzhaat 'ala sita ma'ahudaat dawliya khilal al-asabi' al-muqabila” [“Human rights minister: Morocco is preparing to lift the reservations to six international treaties during the coming weeks”], *Maghreb Arabe Presse*, May 20, 2004.

² See, e.g., « Maroc: situation préoccupante dans les prisons, selon une association, » *Agence France-Presse*, June 9, 2004.

in 1965. The luckier “disappeared” dissidents were eventually freed by the king after spending years in secret prisons like Tazmamart, Qalat Mgouna, and Agdez. The less fortunate remain missing to this day. Thousands of other dissidents were arrested and tortured in illegal detention in police stations like Derb Moulay Cherif in Casablanca, before being convicted in unfair mass trials and handed long prison sentences. The victims of repression included leftists, Islamists, advocates of independence for the disputed Western Sahara, and servicemen rounded up in the aftermath of unsuccessful coup attempts.

For years, Moroccan officials, from the king on down, flatly denied any pattern of human rights abuses. Hassan II said famously before an international television audience in 1989, “If one percent of the human rights violations suggested by Amnesty International were true, I wouldn’t get a wink of sleep.”³

But international and domestic pressure on human rights was building. Recognition of a public relations problem underlay the king’s creation, in 1990, of his Advisory Council for Human Rights, to which he assigned the task of “put[ting] an end to allegations . . . to close this dossier.”⁴

It was not until in October 1998 — thirty-seven years into the reign of King Hassan II and nine months before his death — that the palace issued its first, tentative acknowledgement of past violations. The king’s Advisory Council for Human Rights stated that it had looked into 112 cases of “disappearances” and determined that fifty-six of the persons in question had died. Morocco’s human rights minister, Mohamed Aujjar, declared, “Those who died will be declared dead. Death certificates and compensation will follow.”⁵

The king accepted the council’s findings and then ordered it to devise a plan to resolve outstanding human rights issues within six months. “We wish – and are resolved – to definitively close the human rights file,” the king told parliament on October 9, 1998. “We have given our orders to set in motion the necessary procedures to finish with this

³ Quoted in Jacques de Barrin, “Royal Privilege and Human Rights,” *Manchester Guardian*, December 18, 1990.

⁴ “His Majesty King Hassan II Announced the Setting Up of an Advisory Council for Human Rights,” English-language version of speech, Moroccan Ministry of Information, May 8, 1990. In English.

⁵ José Garçon, “Geste du Maroc pour les droits de l’Homme,” *Libération* (Paris), October 2, 1998.

subject, so that Morocco will no longer be burdened with a reputation that does not reflect its true face and corresponds neither with its past or present.”⁶

In April 1999, the Advisory Council for Human Rights published its final report on the 112 cases, proposing to the king a body to decide on paying financial compensation to some of the victims. The Council also declared the file on “disappearances” to be closed forthwith. This claim was quickly derided by human rights organizations and families of “disappeared” persons, both because the Council had failed to provide even the most rudimentary details of the 112 cases it mentioned — nothing on how or why these persons “disappeared” or who was responsible, or where they died or were buried — and because its list excluded hundreds of cases of “disappearances” that had been documented by nongovernmental organizations. Human rights organizations estimated the number of unresolved “disappearance” cases to be at least 600. Some of the estimates were far higher, with disputed cases from the Western Sahara accounting for most of the difference.

Far from being definitive, the Advisory Council’s 1999 report now appears, with five years’ hindsight, to have been the first small step in a still-evolving series of measures taken by authorities to address past abuses. These steps have been shaped, on the one hand, by the desire of authorities to protect institutions and individuals complicit in these abuses and, on the other hand, by the rising expectations of many Moroccan citizens as to what constitutes a satisfactory treatment of the past.

In July 1999, King Hassan II died and was succeeded by his son, Mohamed VI. In a speech delivered on August 20, 1999, the young monarch acknowledged state responsibility for “disappearances,” something his father had never done directly. He also announced the creation of an “Independent Arbitration Panel,” within the Advisory Council for Human Rights, to determine the level of compensation the state should pay to victims (or to their survivors) of forced disappearances and arbitrary detention for the “moral and material harm” they suffered.⁷

The arbitration panel created by King Mohamed VI received over 5,000 applications for compensation. Applicants had the right to submit any information and documents they deemed relevant to their claim. By the time it ceased to function, in July 2003, the panel

⁶ “Hassan II appelle le Parlement marocain à résoudre le dossier des droits de l’Homme,” Associated Press, October 9, 1998.

⁷ The text of the speech is online in French at www.maec.gov.ma/fr/ (consulted July 13, 2004). The internal regulations of the arbitration panel are online at http://www.ccdh.org.ma/article.php3?id_article=87&lang=fr (consulted July 28, 2004).

had paid out nearly 4,000 claims, according to figures provided by CCDH members.⁸ But it also was the target of criticism from the human rights community and of a boycott by many victims of human rights violations and victims' relatives. Among the complaints were that the panel had been tasked, arbitrarily, with compensating some forms of abuse while excluding others; that it offered financial compensation divorced from any process of establishing justice or the truth; that rather than being an arbiter designated by the parties in dispute, it was a top-down institution composed of state appointees; that it worked behind closed doors and according to methods that were not made public; and that it required applicants to sign an agreement to accept the panel's rulings as final.

Moroccan authorities, to their credit, took steps to acknowledge and make restitution for past grave abuses. But those steps were seen as inadequate by many participants in an increasingly sophisticated domestic and international debate over how past abuses should be addressed. Having won — with the arbitration panel — official acceptance of the principle of compensation, Moroccan civil society now focused its demands on creating an independent truth commission.⁹

⁸ Human Rights Watch has seen no official figures on the Panel's decisions. Its final report was submitted to the king in November 2003 and has not been made public. CCDH Secretary-general Driss Benzekri told Human Rights Watch on July 24, 2003, that the Arbitration Panel had received some 5,000 requests for compensation, rejected about 800 of them, mostly on the grounds that the abuse did not fall within the mandate of the panel; and issued compensation to all of the rest. Five months earlier, CCDH member Abdelaziz Benzakour stated that, as of the end of January 2003, Morocco had paid out more than US \$80 million to compensate 3,700 victims of disappearances and arbitrary detention. "Morocco pays 80m dollars compensation for 'disappearances,'" BBC Monitoring Middle East, February 21, 2003, text of report in English on the Moroccan news agency MAP web site. For a more detailed, but unsourced, breakdown, see « Les commissions de vérité et de réconciliation: l'expérience marocaine, Séminaire régional, Rabat, Maroc, 25-27 mars 2004, » International Federation of Human Rights, report no. 396, July 2004, p. 37, online at <http://www.fidh.org/IMG/pdf/Ma396f.pdf> (consulted September 16, 2004). Similar, but not identical, data, are attributed to Morocco's Ministry of Human Rights in the U.S. Department of State's Country Reports on Human Rights for 2003:

According to the Ministry of Human Rights, the commission had resolved 4677 cases, in which 3657 claimants were awarded \$ 94.5 million (945 million DH). The commission rejected 885 cases because they did not involve disappearances or arbitrary detention and 133 cases because the claimants did not respond to a summons to appear before the commission or did not supply documentation. Two cases were suspended, and a further 450 were considered to be duplicates.

Online at <http://www.state.gov/g/drl/rls/hrrpt/2003/27934.htm> (consulted September 17, 2004).

⁹ See, for example, the final declaration of the national conference on grave violations of human rights, November 9-11, 2001, published in *Attadamoun*, the monthly publication of the Moroccan Association for Human Rights, no. 83, December 2001. The declaration was signed by the Moroccan Association for Human Rights, the Moroccan Organization for Human Rights, and the Forum for Truth and Justice.

First, King Mohamed VI agreed to restructure the Advisory Council for Human Rights, in order to enhance its powers and independence.¹⁰ The docile body created by his father in 1990 had steadily lost credibility in light of the Moroccan public's rising public expectations and sophistication regarding human rights. In 2003, the revamped council submitted a proposal to establish an Equity and Reconciliation Commission that would advance the process of reckoning with the grave abuses of the past.

The Equity and Reconciliation Commission

The king embraced the proposal and inaugurated the commission on January 7, 2004, hailing it as “the last step in a process leading to the definitive closure of a thorny issue.” Moroccan officials now point to the commission as a key element in Morocco's democratic transition. For example, Morocco's report on its compliance with the International Covenant on Civil and Political Rights refers to the commission thus:

The creation of the Equity and Reconciliation Commission [seeks] to close definitively the file of human rights abuses committed in the past. It is tasked with making just reparations to achieve the rehabilitation of victims, their social reintegration, while conducting investigations to clarify cases of disappearance. The commission is working to seek the truth on forced disappearances, arbitrary detentions and the pursuit of a judicial treatment of human rights violations. It must respond to the demands of families, emphasizing the need to repair the harm suffered, which should not be limited to paying compensation but should also include rehabilitation, both in an individual and a collective sense, of the victims. In the case of persons who are determined to have died, the commission will seek to find where the bodies are buried and to establish the responsibilities of different state bodies.¹¹

Among its various duties, the new commission has taken over the arbitration panel's work of providing monetary reparations to victims. On April 15, 2004, it announced that it had already received more than 20,000 applications for compensation for acts of enforced disappearance and arbitrary detention that occurred between 1956 and 1999.¹²

¹⁰ Royal decree n°1-00-350 of April 10, 2001, on the reorganization of the Advisory Council for Human Rights, online in French at http://www.ccdh.org.ma/article.php3?id_article=82&lang=fr (consulted September 17, 2004).

¹¹ Paragraph 6. CCPR/C/MAR/2004/5, 15 avril 2004. Translated by Human Rights Watch from the French original.

¹² « Maroc: 20.000 demandes d'indemnisation pour les abus des 'années de plomb,' » Agence France Presse, April 15, 2004.

But the remedies that the commission was empowered to offer went well beyond cash awards to victims: it was tasked with proposing measures in the realms of social assistance, rehabilitation, returning victims' bodies to their families, and the creation of public memorials. During the first half of 2004, commissioners traveled around the country to consult with representatives of civil society and ordinary Moroccans on how to go about its work.

The commission boasts another role absent in the previous mechanisms. It is in some ways a truth commission, called upon to research and produce a historical record of acts of repression that took place from Morocco's independence in 1956 until the end of King Hassan II's reign in 1999. The record, which is to be completed by April 2005, will include both a general history of repression as well as specific details about the fate of the hundreds of "disappeared" Moroccans. The record is to spell out "the responsibility of state or other apparatuses in the violations and the incidents under investigation." Then, reflecting on the historical record it establishes, the commission is to make "recommendations and proposals for breaking once and for all with the practices of the past...and restoring and reinforcing confidence in the rule of law and respect for human rights."¹³

The commission launched a website in the summer of 2004 that provides information on its mission, members, founding documents, and public activities. The bilingual Arabic and French site (www.ier.ma) also reprints statements about the commission made by various nongovernmental organizations, and provides links to information on truth commissions in other countries and to other human rights websites. Although still under construction, the website contributes to the transparency of the commission and to conveying its objectives to a wider public.

The wide range of the commission's mandate constitutes recognition on the part of the state that victims and their survivors are entitled to more than just financial compensation and that past wrongs create obligations not only to victims but to Moroccan society at large.

With this broad mandate, the commission is by far the most serious effort yet initiated by Moroccan authorities to recognize, make amends for, and prevent the kinds of grave

¹³ Kingdom of Morocco, Advisory Council for Human Rights, "Recommendation for the setting up of a 'Justice and Reconciliation Commission.'" Undated text in English, provided by the Embassy of Morocco in Washington, DC. This text is available online in Arabic and French at www.ier.ma. The term *insaf*, or *équité*, in the name of the commission in Arabic and French, respectively, is best translated into English as "equity" rather than "justice."

human rights abuses committed in the past. There is no comparable state-sponsored effort underway anywhere else in the Middle East or North Africa, despite records of human rights abuses that are no less grave.

Limits of the New Commission

A number of constraints will impair the ability of the commission to address past abuses to the satisfaction of the widest possible array of Moroccans, and in conformity with international principles on accountability for the commission of grave abuses and on the right of victims to reparations. Most critics nevertheless agree that the commission, whose members include several of Morocco's most respected independent human rights activists, is a serious initiative in the evolving process of reckoning with past abuses. Morocco's major human rights organizations all declared their readiness to engage with the commission, despite their reservations, rather than boycott it.¹⁴

The following are some of the key constraints likely to determine the effectiveness of the commission:

Impunity

The commission cannot name perpetrators. Its statutes say, in Article 9, that it will "Examine the responsibility of state or other apparatuses in the violations and the incidents under investigation." However, according to Article 6, "The purview of the committee is non-judicial. It will not determine individual responsibility for violations."¹⁵ This point was elaborated in the earlier, authoritative¹⁶ proposal of the Advisory Council for Human Rights to establish the commission, accepted by Mohamed VI in 2003. It states:

The work of the commission shall proceed within the framework of the ongoing process for settling, in a nonjudicial manner, past human rights abuses. Upon conducting the necessary inquiries, the commission shall not in any case invoke any type of individual responsibility, or undertake

¹⁴ See, for example, the criticisms of the commission offered in a May 11, 2004 communiqué issued by the joint "follow-up committee" formed by the Moroccan Organization for Human Rights, the Moroccan Association for Human Rights, and the Forum for Truth and Justice.

¹⁵ Royal decree no. 1.04.42 of April 10, 2004, setting forth the statutes of the Commission on Equity and Reconciliation, online in French and Arabic at www.ier.ma (consulted September 24, 2004).

¹⁶ This proposal, and the king's approval of it, is invoked in the preamble to the decree setting forth the commission's statutes.

any initiative whatsoever that may give rise to dissension and rancor, or sow discord.¹⁷

Thus, even if the commission successfully produces a truthful account of abuses that occurred and compensates and rehabilitates victims, it cannot, by itself, do much to end the impunity enjoyed so far by the perpetrators. Their continued impunity is unacceptable insofar as the hundreds of enforced disappearances and the thousands of other grave violations committed in Morocco in the 1960s, 1970s, and 1980s constitute grave crimes for which there should be no amnesty or statute of limitations.

Although the commission, which is not a judicial body, cannot itself establish individual responsibility for violations, it should publicly urge Morocco's judiciary to ensure that perpetrators are held criminally accountable, and assist in that process by turning over the findings of its investigations to prosecutors or investigative judges, and urge them to open criminal investigations. And it should remind all Moroccans that their right to seek justice before the courts, for "disappearances" and other crimes, is not precluded by the commission's existence or by their acceptance of compensation from the commission.¹⁸

Unfortunately, these steps can accomplish little so long as Morocco's judiciary lacks full independence in politically charged cases. The commission needs therefore to advocate forcefully and publicly in favor of reforming the judiciary in such a way that it becomes

¹⁷ Article 10 of "Recommendations of the Human Rights Advisory Council for setting up a 'Justice and Reconciliation Commission.'" Online in French and Arabic at www.ier.ma.

¹⁸ The truth commissions in El Salvador and South Africa are two that did identify perpetrators by name, without usurping the conventional domain of trial courts. The Salvadoran commission, in its final report, defended its decision thus:

[T]he whole truth cannot be told without naming names. After all, the commission was not asked to write an academic report on El Salvador, it was asked to investigate and describe exceptionally important acts of violence and to recommend measures to prevent the repetition of such acts. This task cannot be performed in the abstract, suppressing information (for instance, the names of persons responsible for such acts) where there is reliable testimony available, especially when the persons identified occupy senior positions and perform official functions directly related to violations or the cover-up of violations. Not to name names would be to reinforce the very impunity to which the Parties instructed the Commission to put an end.

The Salvadoran commission was mindful that, even if its deliberations were not bound by the country's laws of criminal procedure, it had to apply evidentiary rules that protected the rights of those susceptible to being named as perpetrators. (See the "Mandate" chapter of the commission's report, online at http://www.usip.org/library/tc/doc/reports/el_salvador/tc_es_03151993_mandate.html [consulted September 17, 2004].)

Whether or not a commission decides to name names, it still has the duty, when faced with cases of grave abuse, to turn over the evidence collected to the justice system for possible prosecution.

capable of conducting independent investigations and rendering fair decisions, both in cases where the defendants are opponents of the government and when the defendants are state agents. The commission can also urge administrative actions, calling on the executive branch to sanction public servants who are found, after a fair hearing, to have engaged in grave abuses of human rights.

Arbitrary limitations to the mandate

The statutes of the commission indicate that it will focus its work on two types of human rights violations. They do not spell out what the commission's responsibilities are with respect to other types of abuses and to their victims. Article 5 defines "grave violations of human rights, "for the purpose of these statutes," to mean, simply, "enforced disappearance and arbitrary detention." All other key definitions stem from this one. "Victim," for example, refers to "a person who was subjected to arbitrary detention or enforced disappearance." "Compensation for damages" means "the totality of measures undertaken to benefit persons who suffered material or psychological harm, either as a victim, or as the beneficiary of a victim, of an enforced disappearance or an arbitrary detention..."

What about other forms of grave abuse that occurred during the same period, such as the torture and long-term imprisonment of prisoners of opinion after unfair trials? The killing or maiming of persons by the police using excessive force to quell marches and disturbances? The indiscriminate reprisals against the civilian population of rebellious regions, such as the Rif in 1958 and Khenifra in the mid-1970s? By explicitly defining grave violations to mean two particular types of abuse, the statutes of the commission suggest that victims of other abuses will not necessarily receive equal treatment in terms of compensation or truth-telling. The commission has not, to our knowledge, expressed an official position on whether, and how, victims of other grave abuses ought to be compensated. Nor has it indicated what place it plans to accord their ordeal in its final "truth" report, alongside its coverage of enforced disappearances and arbitrary detentions. However, individual commissioners told Human Rights Watch the commission was not limiting its attention to these two forms of abuse. And, in its public activities and fieldwork, the commission has displayed wider interests. For example, the commission, according to its website, sent representatives to an event commemorating the more than one hundred persons killed during a failed coup attempt against King Hassan II in 1971. And commission President Driss Benzekri said the

body intended to examine the question of persons killed during violent disturbances in Casablanca and reportedly buried in mass graves.¹⁹

It is worth recalling that the now-defunct arbitration panel on compensation also operated with a mandate limited to cases of enforced disappearance and arbitrary detention. It went beyond that mandate by compensating a limited number of victims outside these categories, such as certain Moroccans who had spent years in exile because of their political beliefs or activities. It nevertheless rejected many other applicants on the grounds that the type of violation they allegedly suffered fell outside the panel's mandate.

In the view of Human Rights Watch, the commission should interpret the definition of "grave human rights abuses" to include all forms of internationally recognized abuses of human rights that rise to a certain level of gravity; or it should declare the need for additional mechanisms in Morocco to ensure that victims of other forms of grave abuse enjoy equal rights to compensation, rehabilitation, and assistance, and equal rights to have their stories included in the formal truth-telling process.

Lack of powers to compel testimony or cooperation

The commission was given no statutory powers to compel public officials to cooperate or to provide it with testimony or documents, casting doubt on how, in the absence of the threat of sanctions, the commission would pry open state secrets. The statutes of the commission, in Article 10, demand cooperation from state institutions but mention no consequences for noncooperation:

To achieve the aforementioned goals, and in accordance with the royal order establishing the Commission on Equity and Reconciliation, all public authorities and institutions are to cooperate with the commission and provide it with all information and data enabling it to fulfill its objectives.

"The king assured us that he would make sure that authorities cooperate with the commission," commission President Driss Benzekri told Human Rights Watch on February 3, 2004. "Authorities confirmed to us they were aware of the king's decision.

¹⁹ Article published in *al-Bayane*, September 22, 2004, and online at http://www.ier.ma/article.php3?id_article=347&lang=fr (consulted October 1, 2004).

But the commission has no legal powers in this regard and our requests for cooperation are not legally binding. We will have to see how it will work,” Benzekri said.

Benzekri has hinted at the need for the commission to disclose the usefulness of the cooperation it ultimately receives from the public administration. *Al-Bayane* newspaper, in an article posted on the commission’s website, reported:

Mr. Benzekri indicated that the work of accessing official archives is already under way. He cited the arrangements to facilitate access that the administration has been providing. But concerning the value of those archives, he indicated that this would be disclosed in the report, after the work is completed.²⁰

Human Rights Watch urges the commission to disclose fully and publicly at appropriate intervals, the extent to which it is receiving the necessary cooperation of past and present officials in its investigations, and the impact of any non-cooperation on its task of providing a full and truthful account of the period under its consideration. Cooperation should be measured in terms of the provision of oral testimony, documents, including medical-legal records and existing court files, and other items of evidence.

The need to enhance transparency

The commission has decided to hold a series of public hearings at which victims and others may speak. As of this writing, the commission is still debating the modalities of these hearings, including their wider dissemination, and other mechanisms by which the public will participate in its work of uncovering and recording facts about past events. The commission is also charged with completing a final report by April 2005. It has not, to our knowledge, announced whether it will release that report in its entirety or classify portions of it.

There is a place for confidential deliberations in a commission of this sort, especially one that is enjoined from naming individual perpetrators. Article 4 of its statutes states that the commission’s deliberations shall be confidential. The Advisory Council’s proposal for the commission states, “The commission and its members shall observe full secrecy in respect of their sources of information as well as their discussions and deliberations.” Confidentiality can also protect witnesses from being threatened or harmed.

²⁰ Ibid.

Nevertheless, the success of the commission depends partly on maximizing transparency and the access it allows to the public in general and to victims in particular. This applies to the receiving members of the public, holding public hearings, and releasing and disseminating to the fullest possible extent its findings and conclusions.

Fairness toward Western Saharan (Sahraoui) victims

The commission faces a particular challenge in doing justice to abuses that occurred in the Western Sahara, a disputed territory that is claimed by Morocco. For years, debate inside Morocco on the disposition of the Western Sahara has been stifled by officially encouraged chauvinism on the issue and laws punishing persons who question the “Moroccan-ness” of the region. Authorities continue to persecute advocates of an independent Western Sahara, and are generally less tolerant of dissent in this region than elsewhere.

The commission must approach abuses related to the conflict in the Western Sahara as thoroughly and fairly as those that occurred elsewhere. In light of the politically charged debate over this territory and the existence of armed conflict there during the 1970s and 1980s, it is not surprising that estimates vary widely on the number of Sahraouis “disappeared” by Moroccan security services. Some organizations provide lists of 400 to 500, some as many as place the number at 1,500, most of them missing since the 1970s.

Some sources insist the higher figures include cases of persons who may be missing but whom Moroccan security services never took into custody, including some who died in combat and whose bodies were not recovered, and others who fled the region on their own. For example, commission President Driss Benzekri told Human Rights Watch, “There are only fifty to eighty [Sahraoui] cases where there is good evidence of a forced disappearance. On the other cases we don’t have the information....We need the archives of the army. And we need to talk to the families.”

Benzekri also told Human Rights Watch, “There has been no discrimination in terms of how compensation claims are being handled [between Western Saharan applicants and other applicants]. The Western Sahara is part of Morocco administratively.”²¹

²¹ Human Rights Watch interview, Rabat, February 3, 2004.

Yet large numbers of Western Saharans remain particularly distrustful of the state's efforts to pay compensation and "close" files. The commission must do its utmost to inspire confidence in its handling of this dossier.

Obligation toward the Present

Finally, the commission has begun its work under the cloud of the present deterioration in human rights practices. There has been no resumption of systematic "disappearances," as occurred in the 1960s, 1970s and 1980s. Nevertheless, the mistreatment of those arrested today recall in some ways the past abuses for which the commission is supposed to help Morocco achieve closure. Suspected Islamist militants have been arrested without warrants and have then gone "missing" for weeks and sometimes months; some have been tortured or ill-treated, and then sentenced to long prison terms after patently unfair trials. Seventeen have been sentenced to death, although none has been executed. (The last known execution of a person sentenced to death in Morocco occurred in 1993.) Also, while the commission is seeking "the truth" about past abuses, government authorities are for the most part denying the present pattern of violations.

Monitoring present-day human rights conditions in Morocco is not part of the brief of the Commission on Equity and Reconciliation. Nevertheless, the commission's statutes explicitly link its examination of the past to its obligations toward Morocco's future. The commission is to propose, on the basis of lessons learned from the past, "safeguards that such acts will not be repeated," as well as ways "to reinforce the rule of law and human rights standards."²² This language tracks the advisory council's proposal for the commission, approved by King Mohamed VI, which states that the commission will make "proposals for...breaking once and for all with the practices of the past...and restoring confidence in the rule of law and respect for human rights."

Commission President Benzekri suggested that this responsibility could offer a kind of trade-off in what the body was able to achieve: "Guaranteeing stability and preventing recurrence could compensate for lack of individual responsibility."²³ In other words, the commission, prevented from naming individual perpetrators, could measure its achievement instead in terms of erecting safeguards against a reversion to past practices.

²² Articles 5 and 9, respectively, of Royal decree 1.04.42 of April 10, 2004.

²³ Human Rights Watch interview, Rabat, February 3, 2004.

Some Moroccans bristle at the notion that the round-up of suspected Islamist militants following suicide bombings in the nation's economic capital should be compared in any way to the wide-scale torture and "disappearances" of activists three and four decades ago. But the current crackdown shows that, despite Morocco's undeniable progress on human rights, the security forces are once again breaching the rule of law with impunity, and the courts can still be put at the service of the executive branch. This is a threat to the human rights of all Moroccans and, in crafting its recommendations, the commission can ignore this only at peril to its own credibility.

Moroccan human rights organizations have proposed a number of such safeguards against abuse that the commission should consider adopting: a purge of officials implicated in grave abuses; enactment of stiffer criminal penalties for state agents who violate laws or human rights recognized in the Moroccan constitution; an overhaul of the judiciary to strengthen its independence; the dismissal of judges who manifestly failed in their duties in the past to provide defendants with fair trials; and ratification of the optional protocols to international human rights treaties.²⁴

2003 Report of the Advisory Council for Human Rights

Regrettably, the restructured Advisory Council for Human Rights tarnished its own credibility with the release on June 15, 2004, of its first-ever annual report on human rights in Morocco.²⁵ The report was eagerly anticipated for various reasons. First, the report covered a year during which the new counter-terror law and the crackdown on suspected militants was exacting heavy toll in human rights terms. Second, the council's handling of these developments would test whether the restructuring of the council, begun in 2001, had succeeded in enhancing its strength and independence. A decree of April 10, 2001 explicitly endowed the council with the job of investigating current abuses: it was to "examine, on its own initiative or at the request of the party concerned, cases of human rights violations that are brought to its attention, and to make recommendations to the appropriate authorities."²⁶ A 2003 decree states that the council should be "objective and impartial in its démarches and analyses, firm and demanding in the face of violations of human rights." The annual report that the council is to produce

²⁴ See, for example, « Pour un règlement juste et équitable du passé des atteintes graves aux droits humains au Maroc » a memorandum presented in April 2004 to the commission by the Association de défense des droits de l'homme au Maroc (ASDHOM-France), Association des Marocains en Belgique pour la défense des droits de l'Homme (AMBDH – Belgique), Association de soutien des droits de l'Homme au Maroc (KMM – Hollande). Online at http://www.asdhom.org/scripts/as_doc_showDocument.php?numero=41 (viewed September 22, 2004).

²⁵ Advisory Council for Human Rights, Kingdom of Morocco, *Annual Report on the Condition of Human Rights in Morocco, 2003* (in Arabic).

²⁶ Royal decree no. 1-00-350 of April 10, 2001.

should contain “an objective and precise evaluation of the situation of human rights in Morocco.” That report should document “the violations and abuses of human rights, [and provide] an analysis of the impediments to progress in specific areas.”²⁷

In view of these commendable standards, the council’s report for the year 2003 is weak, both in documenting specific abuses and in recommending specific measures to halt them.²⁸ It reports that the council learned of nine cases where the time limit for garde à vue detention had been exceeded, nine cases where police did not inform families of a detention, and two cases of illegal detention. The report provides neither details on the cases nor any assessment of how widespread these practices were. The report briefly describes two cases of death in detention without reaching any conclusions. It also says that all cases of “disappearances” raised by families had been “clarified.” It makes no mention of the unacknowledged detention facility at Temara that had stoked much controversy throughout the year as an interrogation center for suspected militants. Nor does it mention the role of the Directorate for the Surveillance of the Territory (Direction de la Surveillance du Territoire, DST, recently renamed the Direction Générale de la Surveillance du Territoire, DGST).

The report acknowledges the allegations, concerns, and arguments of human rights groups concerning illegal arrests, abuse during interrogation, violations of due process rights, and violations of fair trial standards, and affirms that the fight against terrorism should be carried out with full respect for human rights and international treaties. But overall, the council’s report understates the extent of the problems, especially in light of the volume of case-specific information that had already been published by Moroccan news media and by domestic and international human rights organizations. The report offers little analysis of the present human rights situation and makes few useful recommendations. The report praises the 2003 amendments to the Criminal Procedure Code but offers only minimal criticism of them from a rights perspective, and makes almost no specific recommendations regarding the impact of the 2003 counter-terror law on due process protections.

²⁷ “Règlement intérieur du CCDH,” March 2003, online at http://www.ccdh.org.ma/article.php3?id_article=84&lang=fr. Published in the *Official Bulletin of the Kingdom of Morocco*, no. 5204, April 15, 2004.

²⁸ For critiques of the annual report by Moroccan human rights defenders, see remarks by Abderrahim Berrada in *al-Ayam*, July 29, 2004, and Abdelaziz Nouaydi in *Le Journal Hebdomadaire* online, www.lejournal-hebdo.com (consulted July 20, 2004).

IV. HUMAN RIGHTS AFTER THE CASABLANCA BOMBINGS

On the night of May 16, 2003, in the most devastating such attack in Morocco, twelve suicide bombers struck five locations in Casablanca — a large hotel, two restaurants, a Jewish civic association, and the Jewish cemetery in the old city. The attacks killed thirty-three people in addition to the bombers and injured more than one hundred. Minister of Justice Mohamed Bouzoubaâ and other officials claimed shortly after the attacks that the perpetrators belonged to two Islamist groups, Sirat al-Mustaqim, which means “the righteous path” in Arabic, and Salafia Jihadia, an alliance of militants in Morocco and other Maghreb countries accused of links with al-Qaeda.²⁹ As far as Human Rights Watch is aware, no groups have issued credible claims of responsibility.

Following the May 2003 bombings, Morocco’s security forces started a campaign of massive arrests, mainly in Casablanca, ostensibly to capture and bring to justice those responsible for planning and carrying out the attacks, or for planning further attacks. Moroccan human rights organizations estimated the number of persons arrested at between 2,000 and 5,000.³⁰ On May 17, 2004, that is, one year after the bombings, Justice Minister Bouzoubaâ stated 2,112 Islamists had been charged in connection with those events, 400 of whom had already been in detention at the time on other charges. The minister added that 903 persons had been convicted in these cases, of whom seventeen were sentenced to death.³¹

The credible reports of torture and mistreatment of these suspects, and the clear denial of their civil rights during the judicial process, have exposed the fact that the broader freedoms that Moroccans have enjoyed during the last decade-and-a-half were never institutionalized and can thus be easily reversed. For this reason, the stakes of the recent crackdown are high, not only for those suspected of involvement in militant extremist groups but for all Moroccans who have benefited from the ongoing reforms.

²⁹ Tracy Wilkinson and Sebastian Rotella, “Local Hands’ Accused in Morocco Blast,” Los Angeles Times, May 19, 2003.

³⁰ Moroccan Organization for Human Rights and the International Federation for Human Rights, « Observations and Recommendations on the Report by the Moroccan Government in pursuance of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, » October 2003, p. 12, <http://www.fidh.org/magmoyen/rapport/2003/ma2011a.pdf> (consulted July 23, 2004).

³¹ « Maroc: 2.112 islamistes inculpés après les attentats de Casablanca (ministre), » Agence France Presse, May 17, 2004. The letter from the justice ministry to Human Rights Watch put the figures slightly differently: « [T]he number of persons brought to justice on charges of terrorism reached 1,748 as of June 3, 2004 [since May 16, 2003], including 315 cases still under investigation, 199 cases still ongoing before the district court or the court of appeals, and 1,234 cases in which sentence has already been passed.”

Counter-terror Legislation of 2003

On May 29, 2003, less than two weeks after the Casablanca bombings, the Moroccan parliament, in a special session, passed the Law to Combat Terror (Bill 03.03).³² The bill had been pending before the parliament through the winter session. Moroccan human rights groups had argued that the legislation would unnecessarily compromise basic human rights and that the existing Penal Code and Criminal Procedure Code provided adequate law enforcement measures to combat illegal and criminal activity of any kind.³³

The new counter-terror legislation amended and added articles to the Penal Code and Criminal Procedure Code, and introduced a broad definition of terrorism. A list of specific acts can be classified as terrorist when they “are deliberately perpetuated by an individual, group or organization, where the main objective is to disrupt public order by intimidation, force, violence, fear or terror.”³⁴ The list of acts includes theft, extortion, and the “promulgation and dissemination of propaganda or advertisement in support of such acts.”³⁵ This definition of terrorism has been applied to convict and imprison journalists who “incite violence.”³⁶

The legislation amends the Penal Code by increasing the severity of sentences for such offenses when they are judged to be acts of terrorism. For example, a life sentence for a given offense becomes a death penalty if the act is deemed an act of terror.³⁷ Any person convicted of “being privy to information pertaining to terrorist offenses without reporting such offenses to the police, civil or military authorities” can receive a prison term of five to ten years.³⁸

³² Published in the *Official Bulletin of the Kingdom of Morocco*, no. 5112, May 29, 2003.

³³ Memorandum regarding the counter-terror bill 03.03, Secretariat of the National Network against the Anti-Terror Bill – an ad hoc consortium of prominent human rights groups and other civil society organizations, Rabat, February 24, 2003. Human Rights Watch interview with Abdelaziz Nouaydi of the Moroccan Organization of Human Rights, Rabat, January 29, 2004.

³⁴ Moroccan Penal Code, Article 218-1.

³⁵ Moroccan Penal Code, Article 218-2.

³⁶ Mohamed al-Hurd, editor of the Oujda-based *ash-Sharq* weekly, was given a three-year prison sentence but was then pardoned and released by the king on January 7, 2004. The charges against him and two other editors were based on an article by Zakariya Boughrara, an Islamist activist, which appeared in the May 5-May 20, 2003 issue of *Al-Hayat al-Maghribiya* and was reprinted on June 5 in *ash-Sharq*. In the article, Boughrara discussed the history of the Islamist movement in Morocco and its relationship with the country's intelligence services. The article, which criticized the Moroccan intelligence services for doing the “dirty work” of the U.S. Central Intelligence Agency, was written before the May 2003 suicide attacks in Casablanca.

³⁷ Moroccan Penal Code, Article 218-7.

³⁸ Moroccan Penal Code, Article 218-8.

In cases determined to be “terrorist,” the legislation increased from eight to twelve days the permissible length of time a detainee can be held in garde à vue police custody before being brought before the investigative judge. It also allows the judicial police, with the prosecutor’s approval, to prevent suspects being investigated from meeting with their lawyers for up to ten days. The Criminal Procedure Code does not mandate that a detainee be immediately brought before the prosecutor when placed in garde à vue. Lawyers told Human Rights Watch that in practice, in terrorism cases, the prosecutor does not see the detainee until the end of the garde à vue, or even later if police hold the person beyond the legal maximum.

The U.N. Committee against Torture expressed in November 2003, concern about Morocco’s counter-terror legislation, notably “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 counter-terrorist legislation.”³⁹

According to Moroccan human rights defenders, police conducted most of the arrests in the days after the May 2003 bombings according to the old legal framework, before the counter-terror law had taken effect. The fact that the government did not need to rely on the new law to arrest and investigate suspects, they contend, showed that it was not needed.⁴⁰ However, since its adoption at the end of May 2003, the new law has been used to round up, hold, and prosecute defendants suspected of links to Islamist groups.

Morocco’s Criminal Justice System

The Moroccan criminal justice system is based on the French model. Many of the amendments to the penal and criminal procedure codes enacted since independence in 1956 were repressive measures intended to facilitate the prosecution of opposition forces and critics of the government.⁴¹

³⁹Conclusions and Recommendations of the Committee against Torture, Morocco, 5/2/2004, CAT/C/CR/31/2[online],

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/35b5adec21c0a623c1256e680033c4fb?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/35b5adec21c0a623c1256e680033c4fb?Opendocument);

U.N. Commission on Human Rights: “Civil and Political Rights, Including the Questions of: Torture and Detention, Report of the Special Rapporteur, Theo van Boven, E/CN.4/2004/56/Add.1, pp. 211-212.

⁴⁰ Human Rights Watch interview with attorney Moustafa ar-Ramid, Casablanca, February 10, 2004. Ar-Ramid is also a deputy in parliament and a member of the Party for Justice and Development, an Islamist party.

⁴¹ Abdelaziz Nouaydi, “The Right to a Fair Trial in the Moroccan Criminal Procedure,” in David Weissbrodt and Rüdiger Wolfrum, eds., *The Right to a Fair Trial*, Berlin: Springer, 1997, at pp. 165-218 (Series; Beiträge zum ausländischen öffentlichen Recht und Völkerrecht; Bd. 129).

The criminal justice system has three basic branches: the investigative prosecution branch, which includes the judicial police (*shorta qadba'iya*) acting under the direction of the public prosecutor; the investigative judges (*qadba' at-tabqiq*); and the trial judges (*qadba' el-hokoum*). The police and the prosecutor carry out the initial investigation of the suspect. The investigative justice conducts a second investigation, and then decides whether to refer the case to trial. The 2003 counter-terror law assigns to the criminal chamber of the Court of Appeal of Rabat exclusive jurisdiction for terrorism offenses.

The amendments to the Criminal Procedure Code that took effect in October 2003 included several enhancements of the right of the defendant to a fair trial. These include an expansion of the right to appeal convictions that entail prison terms. Until October 2003, criminal convictions could not be appealed on the facts; defendants could only seek a quashing of the conviction by the Court of Cassation on the grounds of misapplication of the law by the lower courts.⁴² Under international law, the right of appeal should not be limited to serious crimes or particular offenses, but rather apply to any person convicted of any criminal offense.⁴³ Appeals that are limited to questions of law and do not allow the reexamination of facts fail to satisfy the internationally guaranteed right to appeal.⁴⁴

But even with the improvements made to the Criminal Procedure Code, Morocco's criminal justice system still does not, in law and in practice, meet international standards with regard to respecting due process rights that would insure a fair trial. For example, the right to a fair trial requires that the accused enjoy the same right as the prosecution to present evidence and to cross-examine witnesses. It also requires that the prosecution disclose the evidence to the accused, in time to enable the defense to prepare its case. This is known as "equality of arms."

In cases researched by Human Rights Watch, trial court judges systematically refused defense requests to call witnesses. They acted as if they believed that they were in compliance with Article 287 of the Criminal Procedure Code simply by hearing oral

⁴² See Articles 396-415 of the Criminal Procedural Code. The Cassation process aims at reviewing the legal application that the lower judges have given to the incriminating acts. In other words, the Cassation reviews the application of law and procedure and does not review the facts.

⁴³ See Article 14 of the ICCPR. See also U.N. Human Rights Committee, General Comment 13, para 17 (April 13, 1994).

⁴⁴ The U.N. Special Rapporteur on extrajudicial, summary or arbitrary executions has expressed concern about appeal procedures that review only legal aspects and not facts. U.N. Commission on Human Rights, "Extrajudicial, Summary or Arbitrary Executions: Report of the Special Rapporteur," E/CN.4/1994/7, para. 113 and 404; see also, Manfred Nowak, U.N. Covenant on Civil and Political Rights: CCPR Commentary (Kehl am Rhein: N.P. Engel, 1993), p. 266.

arguments regarding testimonies mentioned in the report of the investigative judge, instead of calling before the trial court defense witnesses and allowing the cross-examination of witnesses for the prosecution. Article 287 states that the trial court “cannot base its decision except on defenses and arguments presented during hearings, and discussed orally and physically before it.”

It was a breach of the right to a fair trial for judges to deny defense requests to call prosecution witnesses for cross-examination – especially when those witnesses’ testimony were entered into the record by the investigative judge, at a time when the accused was often not properly or adequately represented by a lawyer, or when the legal representation of the defendant was very limited.

The Judicial Police

The judicial police are responsible for collecting evidence of crimes and identifying the perpetrators. They operate under the supervision of the public prosecutor. Only security force personnel having the status of judicial police are authorized to arrest, detain, or take and record initial statements by suspects, and to conduct home searches.⁴⁵

Most of the cases cited in this report involve detainees who reported to their lawyers and relatives that they believed that they were held in the custody of officers of the DST, an agency that is not authorized by law to arrest, detain, or question suspects. Justice Minister Bouzoubaâ confirmed that the DST is not authorized to conduct these operations and denied the DST had actually done so. In September 2003, he said the DST “doesn’t have the status of judicial police. It’s the judicial police which investigate cases submitted to it by the DST.”⁴⁶

According to a recent joint statement emanating from the ministries of justice and interior, the DGST (the new name of the DST) is “an intelligence agency tasked with watching over the protection and the safeguarding of the security of the state and its institutions.” It is “assigned to look for and to prevent, through the collection of intelligence, activities that are inspired, or undertaken or supported by subversive or terrorist movements” while also being responsible for “responding to interference by external foreign agents.”

⁴⁵ Articles 18, 21 and 59 of the Moroccan Criminal Procedure Code.

⁴⁶ *Libération* (Casablanca) and *Le Matin du Sahara et du Maghreb*, September 10, 2003, cited in Amnesty International, *Morocco/Western Sahara: Torture in the “Anti-Terrorism” Campaign – The Case of Témara Detention Center*, June 24, 2004, MDE 29/004/2004.

“But in all cases,” the statement continues, “whether in combating terrorism or counter-espionage, it is agents of the judicial police of the National Security and of the Gendarmerie Royale who, on the basis of information gathered by the DGST, and under the supervision of the prosecutor’s office, carry out arrests of suspects and bring them before the judiciary.”⁴⁷

DGST personnel “actually lack the credentials of officers of the judicial police that would permit them to carry out arrests, searches, seizures, or interrogations,” the statement continues. “This does not, however, rule out the existence of cooperative relations in the domain of information and intelligence, between the DGST and the judicial police, as is found throughout the world.”⁴⁸

Moroccan law does not require that statements made to the police (a recorded statement is known as a *mahdhar* in Arabic or a *procès verbal* in French) be taken in the presence of an attorney. A suspect has the right to ask for an attorney only when the judicial police, with approval of the public prosecutor, decide to extend police custody beyond the initial 48 hours in ordinary crimes, and beyond 96 hours in cases deemed to involve terrorism or state security.⁴⁹ But the police can further delay access to a lawyer for a total of ten days from the start of garde à vue detention in terrorism cases, with the approval of the public prosecutor.

In the vast majority of cases researched by Human Rights Watch, the police took statements from suspects when they were in incommunicado detention, with no access to an attorney or the outside world. It is under such conditions, in Morocco as in countless other countries, that the likelihood of coerced confessions and statements is greatest. The United Nations Commission on Human Rights stated that “prolonged incommunicado detention may facilitate the perpetration of torture and can in itself constitute a form of cruel, inhuman or degrading treatment or even torture.”⁵⁰ The U.N. Human Rights Committee, which is responsible for monitoring the compliance of states with the International Covenant on Civil and Political Rights, has observed that

⁴⁷ Quoted in Karim Boukhari, “L’Etat police de la DST,” *Tel Quel Online*, http://www.telquel-online.com/137/zoom_137.shtml (viewed July 29, 2004).

⁴⁸ Quoted in « Le gouvernement ordonne l'ouverture d'enquêtes sur les allégations de torture émanant d'ONG nationales et internationales, » *Maghreb Arab Presse*, July 20, 2004.

⁴⁹ Article 66 of the Criminal Procedure Code. State security crimes are listed in Articles 181-218 of the Penal Code.

⁵⁰ U.N. Commission on Human Rights, Resolution 2003/32, adopted in the 57th meeting on April 23, 2003, chap. XI. E/CN.4/2003/L.11/Add.4. See also the U.N. Committee against Torture CAT/C/SR.251, p.18.

“[p]rovisions should also be made against incommunicado detention” as effective means of preventing cases of torture and ill-treatment.⁵¹

Under international human rights law, anyone arrested or detained must be brought promptly before a judge or other independent officer authorized by law to exercise judicial power.⁵² Moroccan law makes the detainee more vulnerable to abuse by failing to provide him the right to be examined by a physician while in garde à vue detention. Under the Code of Criminal Procedure, the detainee can exercise this right only once he is brought before the prosecutor.⁵³

The judicial police, when authorized by the public prosecutor, may detain a person suspected of a crime for up to three days without a judicial order from the investigative judge. Under the counter-terror legislation of 2003, the judicial police have the authority to determine that “the necessity of the investigation” requires detaining a suspect for 96 hours in cases of alleged terrorism offenses.⁵⁴ This four-day period of police garde à vue detention can be extended twice more with written authorization from the public prosecutor.⁵⁵ In short, in cases that are deemed terror-related, a person may be held in custody without review by a judge for up to twelve days without any right to appeal or challenge the lawfulness of the detention. Under Morocco’s Criminal Procedure Code, such an extension of garde à vue requires that the detainee appear before the prosecutor.⁵⁶ The prosecutor can thus observe the detainee’s condition and should be accountable for any signs of mistreatment. As noted earlier, however, defense lawyers told Human Rights Watch that in many cases, especially those involving terrorism suspects, the prosecutor did not observe the detainee before extending the period of detention. Under the October 2003 amendments to the Criminal Procedure Code, the prosecutor must see persons in pre-trial detention on at least a weekly basis.

Twelve days of detention without judicial review constitutes a violation of Morocco’s obligations under international human rights law. The International Covenant on Civil and Political Rights (ICCPR) states in Article 9(4), “Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order

⁵¹ Human Rights Committee, General Comment 20, Article 7 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 30 (1994), para. 11.

⁵² Article 9(3) of the ICCPR.

⁵³ Criminal Procedure Code, Articles 73 and 74.

⁵⁴ Prior to the counter-terror legislation, only in cases involving state security offenses did police have the authority to detain a suspect for 96 hours, renewable for an additional 96 hours with the prosecutor’s approval.

⁵⁵ Criminal Procedure Code, Article 80.

⁵⁶ Criminal Procedure Code, Article 80.

that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.” International treaties do not specify the time limit for such a judicial review. However, the U.N. Human Rights Committee has stated that it must occur within “a few days” of the person’s arrest, a formulation that does not encompass a delay of twelve days.⁵⁷

Under Morocco’s Criminal Procedure Code, judicial police must maintain a registry that includes the identity of all persons under garde à vue detention; the reason for the detention; the beginning and end time of the garde à vue period; a record of the notification of the detainee’s family; the period of investigation; a log of the times when questioning began and ended; rest hours given to the detainee; the suspect’s physical health, and the food provided to him or her.⁵⁸ The detainee has to sign the registry when the garde à vue detention is ended; if he or she refuses, this is to be noted in the record.

In addition, according to Article 67 of the Code of Criminal Procedure, an “officer of the judicial police must notify the family of the detained, by one means or another, once a decision is made to place him in garde à vue detention. The officer must indicate that in the records.” Among those interviewed by Human Rights Watch, nearly all lawyers and relatives of detainees held in terrorism cases said the judicial police did not inform the families about the whereabouts of their relatives until long after the end of the garde à vue period, which routinely lasted longer than the legal limit. Several families told us the first word they had of their arrested relative’s whereabouts was via news broadcasts on television, after he had been transferred from garde à vue to pre-trial detention.

The system for police notification of kin came in for criticism in the annual report of the Advisory Council for Human Rights. It notes that Article 67 does not provide adequate guarantees to ensure that the family is indeed notified; nor does it provide penalties for failure to notify.⁵⁹

In response to Human Rights Watch’s letter, the ministry of justice said that after reviewing cases mentioned in the letter, it determined that in no case had the applicable law on garde à vue detention or on any other matter been violated. The ministry’s

⁵⁷ Human Rights Committee, General Comment 8, Article 9 (Sixteen session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc HRI/GEN/1/Rev.1 at 8 (1994), online at www1.umn.edu/humanrts/gencomm/hrcom8.htm (viewed July 30, 2004).

⁵⁸ Criminal Procedure Code, Article 66.

⁵⁹ Advisory Council for Human Rights, Kingdom of Morocco, *Annual Report on the Condition of Human Rights in Morocco, 2003* (in Arabic), released on June 15, 2004, p. 53.

response added that usually the accused persons and their lawyers raise those violations in later stages of the judicial process without furnishing evidence to support their allegations.

The ministry of justice's letter also responded to the allegations made to Human Rights Watch by defense attorneys and family members that suspects were blindfolded when taken to the prosecutor and sometimes when first questioned by the prosecutor. The ministry said that such allegations were groundless and, moreover, no complaints of this nature had been filed.

Under Morocco's code of criminal procedure, a statement taken by the judicial police in misdemeanor and felony cases is considered an "authentic instrument admissible as *prima facie* evidence," and can be discarded only if procedural irregularities are proven during the trial.⁶⁰ In practice, this rule allows the public prosecution and the investigative judge to accept almost automatically these statements and incorporate them in their final reports. This presumption in favor of the validity of the statement purportedly made to police compromises the right of the accused to the presumption of innocence at each stage of the judicial process,⁶¹ and makes it more difficult for him to exercise his right to challenge statements and confessions made under duress. To protect the rights of the defendant, the police registry and reports prepared during the investigative, pre-trial phase should remain inadmissible in trial court until the prosecution meets the burden of proving their veracity and their legal validity according to the Code of Criminal Procedure. There should be a very strong presumption against the admissibility of any confessions made while the suspect is being held in prolonged incommunicado detention, as this is when torture and ill-treatment are most likely to occur. As a general rule, convictions based solely on confessions are highly suspect.

The Public Prosecutor

Under the Code of Criminal Procedure, the public prosecutor oversees apprehension of suspects, their detention, and their delivery before the justice system.⁶² In this connection, the public prosecutor oversees the conduct of the judicial police and is responsible for ensuring compliance with the laws governing *garde à vue* detention, through such means as visiting and monitoring police detention centers.⁶³ The public

⁶⁰ Articles 289 and 290 of the Criminal Procedure Code. See also Morocco's third periodic report to the U.N. Committee against Torture, U.N. Document CAT/C/66/Add.1 (May 21, 2003), paragraph 163 at p. 28.

⁶¹ Article 14(2) of the ICCPR states: "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law."

⁶² Moroccan Criminal Procedure Code, Article 40.

⁶³ Moroccan Criminal Procedure Code, Article 45.

prosecutor also oversees the conditions of persons held in garde à vue detention, and has the authority to end that detention.⁶⁴

Requests for medical examinations

Under certain circumstances, the prosecutor has the right to question and investigate suspects directly. When a suspect is detained in cases of *flagrante delicto*, a representative of the public prosecutor “must” tell the suspect that he or she has the right to choose a lawyer and if he or she is unable or unwilling to choose one, the head of the criminal chamber of the appropriate court is to appoint one. The public prosecutor “must” order a medical examination if he or she notices marks of violence on the suspect’s body or is asked by the suspect or the defense attorney for such an examination.⁶⁵ The medical examination has to take place immediately, before the prosecutor commences the investigation.

In response to Human Rights Watch’s letter, the justice ministry denied that any violations had occurred with regard to the right of persons to request a medical examination to determine whether they had been subject to torture or violence. The ministry’s response emphasized procedural safeguards, such as the role of the public prosecution in overseeing the judicial police, and the authority of the prosecutor to order a medical examination if he or she notices marks of violence and torture on the suspect’s body, or is asked by the detainee for such an examination.

The ministry said that in the cases cited by Human Rights Watch, the judicial authorities did not order such examinations since they noticed nothing that would warrant them. Nor, the ministry continued, do the case files show that the defendants had requested such examinations or registered any complaint when they were first presented to the public prosecutor or the investigative judge, despite the fact that they were in most of the cases already represented by a lawyer.

In many of the cases researched by Human Rights Watch, detainees’ families asserted that they had no legal representation when they appeared before the prosecutor, or that the legal representation was of poor quality. In some of the cases researched, detainees reportedly were not informed of their rights under the law. Human Rights Watch was unable to determine if this may have resulted in some detainees failing to request a medical examination before they were brought before the investigative judge or the trial

⁶⁴ Moroccan Criminal Procedure Code, Article 66.

⁶⁵ Moroccan Criminal Procedure Code, Article 73.

court, or if some asked for medical exams and the authorities simply refused to register their demand.

Enhanced powers

The reforms to the Criminal Procedure Code that took effect in October 2003, together with the 2003 counter-terror legislation, give new authority to the office of the public prosecutor.⁶⁶ The public prosecution, which belongs to the executive branch, enjoys exclusive authority to authorize an extension of garde à vue detention in terrorism cases for up to twelve days and in state security offenses for up to eight days, without the suspect having a right of appeal or judicial review. The prosecution also has the exclusive authority to refer police officers to the criminal chamber for any misconduct.⁶⁷

The legal reforms also enhance the powers of the public prosecutor at the expense of the investigative judge. For example, the investigative judge cannot issue an arrest warrant without consulting the prosecutor.⁶⁸ The Criminal Procedural Code obliges the investigative judge to inform the prosecution of many of his steps, and prior to the exercise of some of his own powers.⁶⁹ Finally, the public prosecutor has the authority to refer cases to investigative judges and also can submit a motion to the criminal chamber of the court in question asking for the reassignment of the investigative judge, even in the middle of an investigation, “to guarantee the appropriate conduct of justice.” In those courts that have more than one investigative judge attached to them, the prosecutor may assign a case to the investigative judge of his choosing.⁷⁰ These enhanced powers give prosecutors further means of undermining the potential independence of the judicial investigation.

The Investigative Judge

Investigative judges, in the Moroccan criminal justice system, determine whether there is sufficient evidence to bring someone to trial. As noted above, their findings of fact are not easily contested during a trial. The legal status of the investigative judge is nonetheless ambiguous in the criminal justice system. On the one hand, under Article 19 of the Criminal Procedure Code, the investigative judge is considered part of the judicial

⁶⁶ *Dirasat wa Abhath fi Qanun al-Mastara al-Jana'iya al-Jadid* [Studies and Analyses of the New Criminal Procedure Code], a special double volume (II and III) of *Anfas Hokoukia*, an Arabic-language legal journal published in Rabat, December 2003.

⁶⁷ Criminal Procedure Code, Article 30.

⁶⁸ Criminal Procedure Code, Article 154.

⁶⁹ See Articles 93, 99, 100, 134, 175, 179, and 196.

⁷⁰ Criminal Procedure Code, Articles 90 and 91.

police and thus under the supervision of the public prosecutor. On the other hand, the preamble as well as many articles of the Criminal Procedure Code emphasizes the separation between the three components of the criminal justice system: the public prosecutor (including the judicial police), the investigative branch of the judiciary, and the trial branch.

When a suspect is brought before an investigative judge, the judge has to identify the accused, and must inform him or her “immediately” of the right to choose a legal counsel. If the defendant does not choose a lawyer, the investigative judge must appoint one, at no cost to the defendant, from among the members of the local bar association.⁷¹ The defendant must have legal representation when the investigative judge takes his or her testimony, during the examination of the case by the investigative judge, and, if the case goes to trial, before the panel of trial judges hearing the case.

The investigative judge informs the accused of the offenses attributed to him and that “he is free not to make any statement.”⁷² Moroccan law, however, does not require the judicial police or the prosecutor to notify a suspect of his rights to remain silent and not to incriminate himself. In at least two cases Human Rights Watch investigated, suspects reported being brought into the office of the investigative judge blindfolded, and claimed they had not been informed about their full rights even at this stage of the investigation.

The investigative judge has the duty to order an examination by a medical expert if he notices any marks on the suspect’s body that warrant such examination. Moreover, the investigative judge must order a medical examination whenever it is requested by a defense attorney or by a suspect who has been held in garde à vue detention.⁷³ The investigative judge can summon and hear witnesses separately without the suspect present, or bring them into the proceedings to confront the suspect directly.⁷⁴ The investigative judge can also allow or prevent the defense attorney from raising questions during this phase.⁷⁵

⁷¹ Criminal Procedure Code, Article 134.

⁷² Criminal Procedure Code, Article 134.

⁷³ Criminal Procedure Code, Article 134.

⁷⁴ Criminal Procedure Code, Articles 119 and 125. The confrontation between a suspect and other suspects or witnesses is a common pre-trial investigative technique in which contested accounts are presented based on earlier statements made before the judicial police in order to ascertain their validity and authenticity.

⁷⁵ Article 140 of the Criminal Procedure Code. The law is silent about whether this includes procedural or substantive questions, or both.

Allegations of Torture and Ill-Treatment in Pre-Trial Detention

Moroccan human rights activists, lawyers representing detainees, family members of detainees, and several journalists all told Human Rights Watch of detainees whom they said had been tortured in police custody following the May 16 bombings. Local and international human rights organizations have also raised these concerns.⁷⁶ Human Rights Watch did not have direct access to prisoners currently in prison. Their allegations were conveyed to us by their lawyers and family members who visited them after their transfer to pre-trial detention.

In November 2003, the U.N. Committee against Torture expressed its concern regarding “the increase, according to some information, in the number of arrests for political reasons...., 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).”⁷⁷

Moroccan authorities must address these allegations of torture in accordance with the country’s commitments under international human rights law, particularly under the Convention against Torture.

Defense lawyers told Human Rights Watch that because detainees have the right to be examined by a medical expert only when they are first presented before the public prosecutor, the judicial police typically wait for the traces to disappear before presenting detainees to the prosecutor and the investigative judge.⁷⁸

⁷⁶ Local and international human rights organizations reported in November 2003 to the U.N. Committee against Torture about a number of cases in which persons detained and charged with terrorism alleged that they had been tortured and ill-treated by police and apparently by DST agents. Moroccan Organization for Human Rights, *Muhakamat ikhtal fiha mizan al-adalah* [Trials in which the scales of justice have been tipped], Rabat, November 2003: <http://www.omdh.org/news/16mai.htm> ; Amnesty International, “Briefing to the Committee against Torture,” November 2003, <http://web.amnesty.org/library/Index/ENGMDE290112003?open&of=ENG-MAR>. International Federation for Human Rights (Fédération Internationale des droits de l’Homme, FIDH), *Les autorités marocaines à l’épreuve du terrorisme: la tentation de l’arbitraire*, report no. 379, February 2004, www.fidh.org/IMG/pdf/ma379f-3.pdf ; Amnesty International, *Torture in the “anti-terrorism” campaign - the case of Témara detention centre*, <http://web.amnesty.org/library/Index/ENGMDE290042004?open&of=ENG-MAR>

⁷⁷ Conclusions and recommendations of the Committee against Torture: Morocco, February 5, 2004, CAT/C/CR/31/2. (Concluding Observations/Comments), online at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CAT.C.CR.31.2.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CAT.C.CR.31.2.En?OpenDocument).

⁷⁸ Human Rights Watch interview with attorney Mohamed Sebbar, president of the Forum for Truth and Justice, Rabat, February 2, 2004. Also, Human Rights Watch interview with attorney Taoufiq Moussaif, Rabat, February 3, 2004.

The amendments to the Criminal Procedure Code that took effect in October 2003 render inadmissible as evidence any confession made under “violence or coercion.”⁷⁹ However, Morocco’s Penal Code does not include a definition of torture which is fully consistent with the provisions of Convention against Torture.⁸⁰ Moroccan authorities have promised, most recently in July 2004, to introduce for adoption an amendment toward this end.

Under Morocco’s international human rights commitments, the competent national authority must promptly and impartially examine all allegations of torture or other cruel, inhuman, or degrading treatment or punishment, and the government must hold responsible and punish those who encourage, order, tolerate, or perpetrate acts of torture, including the officials in charge of the place of detention where the prohibited act is found to have taken place.⁸¹

The U.N. Committee against Torture noted in its 2003 conclusions and recommendations, after reviewing Morocco’s periodic report, that Morocco should “clearly prohibit any act of torture” and “ensure that all allegations of torture or cruel, inhuman or degrading treatment are immediately investigated impartially and thoroughly,” and “ensure that appropriate penalties are imposed on those responsible and that equitable compensation is granted to the victims.”⁸²

In many cases researched by Human Rights Watch, lawyers and family members recounted what defendants told them about the methods used to extract confessions or to coerce their signatures on statements they said they did not make during garde à vue detention. These methods ranged from physical violence to verbal humiliation, threats

⁷⁹ Article 293 of the Criminal Procedure Code. Article 15 of the Convention against Torture stipulates that states party to the convention shall ensure that “any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.”

⁸⁰ Article 1 of Convention defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

⁸¹ See also: Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) annexed to the U.N. Commission of Human Rights resolution 2000/43 and UN General Assembly resolution 55/89.

⁸² U.N. Committee against Torture, “Conclusions and Recommendations: Morocco, February 5, 2004, para. 6, CAT/C/CR/31/2, online at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/35b5adec21c0a623c1256e680033c4fb?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/35b5adec21c0a623c1256e680033c4fb?Opendocument).

of violence and sexual abuse against them and their female relatives.⁸³ These alleged violations occurred during garde à vue detention, a period when, according to the Code of Criminal Procedure, the judicial police has custody of the detainee. However, numerous detainees, including some whose cases are described below, said they believed they were taken for interrogation at facilities run not by the judicial police but rather by the DST intelligence agency, whose agents are not legally empowered to detain and question suspects. Interrogation by a non-judicial agency at an unauthorized detention site significantly increases the risks of torture owing to the absence of accountability and transparency.

In response to Human Rights Watch's letter, the ministry of justice said that the complaints of torture and improper means of coercion were baseless:

It is to be noted that in the majority of the statements issued by the judiciary police and the examining magistrate, no mention is made of any request on the part of the aforementioned individuals for a medical expert while in police custody. Neither was there any evidence to move the judicial authorities to call for a medical examination. Furthermore, the prisoners themselves did not mention any abuse or call for a medical expert during their first appearance before the judiciary police or the prosecutor, although in nearly every instance they were accompanied by their attorneys.

The reply of the ministry fails to address several salient points. First, a serious deficiency of Morocco's Criminal Procedure Code is that it does not require the judicial police to inform detainees about their rights, including the right to request an independent medical examination by a competent authority. Second, required meetings of prosecutors with detainees when ordering extensions of garde à vue detention often failed to take place, particularly in terrorism cases, delaying considerably the opportunity to request such an examination. Third, some detainees did not have legal counsel and therefore may not have been aware of their right to ask for medical examinations. Finally, Human Rights Watch finds it remarkable that no documents whatsoever relating to requests for medical examinations were found in the cases that we reviewed. The ministry's reply does not address the question of whether the prosecutors did in fact

⁸³ The U.N. Human Rights Commission stated in April 2003 that: "intimidation and coercion, as described in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, including serious and credible threats, as well as death threats, to the physical integrity of the victim or of a third person, can amount to cruel, inhuman or degrading treatment or to torture." Resolution 2003/32 of the HRC adopted in the 57th meeting on April 23, 2003, chap. XI. E/CN.4/2003/L.11/Add.4.

fulfill their obligations under Moroccan law to inform detainees of this right, or whether the investigative judges met their obligation to record such requests in the case files, which they are solely responsible for compiling.

Morocco is among the few states that declared, in accordance with Article 28 of the Convention against Torture, that they did not recognize the competence of the U.N. Committee against Torture under the Convention's Article 20 to conduct confidential investigations.⁸⁴ Morocco also does not recognize the competence of CAT under Article 22 of the Convention to consider individual complaints. By making such declarations, the Moroccan government undermined the implementation of the Convention against Torture within the country.⁸⁵

In July 2004, authorities said that the government "has no objection to lifting the reservations regarding Article 20 of Convention against Torture and will undertake, in the very near future, the necessary steps to do so."⁸⁶

Impunity for abuses

Morocco is obliged under international human rights law to take effective measures in order to prevent torture and ill-treatment of detainees. These measures should include investigating promptly and impartially credible allegations of torture and ill-treatment of detainees, and filing criminal and disciplinary charges when credible evidence is found. Failure to do so fosters the culture of impunity among law enforcement agents and consequently contributes to the institutionalization of torture.

In its response to Human Rights Watch concerning the status of investigations and disciplinary measures pursuant to allegations of police mistreatment of persons in garde à vue detention, the ministry of justice restated the provisions of the Criminal Procedure Code on the role and authority of the public prosecution to oversee and supervise the conduct of the judicial police. The ministry provided no information on disciplinary or criminal actions taken against law enforcement agents. Lawyers and human rights organizations with whom we spoke could cite no cases involving terror suspects where a

⁸⁴ Under Article 20 of Convention against Torture, if the Committee against Torture receives reliable information indicating that torture is being systematically practiced in the territory of a State party, the Committee shall invite that State party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.

⁸⁵ U.N. Commission on Human Rights, "Report of the U.N. Secretary General on status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment", E/CN.4/2004/52.

⁸⁶ « Le gouvernement ordonne l'ouverture d'enquêtes sur les allégations de torture émanant d'ONG nationales et internationales, » *Maghreb Arab Presse*, July 20, 2004.

policeman had been disciplined for abusing suspects, except for the death of Mohamed Bounit. In that case, according to the 2003 report of the Moroccan Advisory Council for Human Rights, police officers are facing charges in connection with his death in June 2003 while being transported in a police vehicle.⁸⁷

In response to the publication in June 2003 of the first annual report of the Advisory Council for Human Rights, the government said it had ordered that investigations be opened into allegations of torture coming from domestic and international nongovernmental organizations.⁸⁸ Human Rights Watch commends this statement of intent, so long as authorities ensure that the investigations that are opened meet international standards for impartiality and transparency.⁸⁹

The Secret Detention Center at Temara

In at least four of the cases presented in this report, the detainee indicated the place of interrogation as Temara, a compound just south of Rabat on the road to Casablanca. Numerous and concordant reports by local and international human rights organizations and by independent Moroccan newspapers have characterized Temara as a secret, unacknowledged detention facility run by the DST, which has its national headquarters in Temara.⁹⁰ The DST is a domestic intelligence-gathering agency attached to the ministry of interior. The DST is not part of the judicial police and as such, does not come under the supervision of the office of the prosecutor or the investigative judge, and is not authorized by law to arrest, detain, and interrogate persons suspected of criminal offenses.

⁸⁷ Advisory Council for Human Rights, Kingdom of Morocco, *Annual Report on the Condition of Human Rights in Morocco, 2003* (in Arabic), released on June 15, 2004, p. 40.

⁸⁸ Joint statement from the ministries of justice and interior, July 20, 2004, cited in « Le gouvernement ordonne l'ouverture d'enquêtes sur les allégations de torture émanant d'ONG nationales et internationales, » *Maghreb Arab Presse*, July 20, 2004.

⁸⁹ U.N. General Assembly, "Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," GA Resolution 55/89 Annex 4/Dec/2000 [online] http://www.unhchr.ch/html/menu3/b/h_comp51.htm; Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (The Istanbul Protocol), Submitted to United Nations Office of the High Commissioner for Human Rights, August 9, 1999, [online] http://www.phrusa.org/research/istanbul_protocol/

⁹⁰ Moroccan Organization for Human Rights, *Muhakamat ikhtal fiha mizan al-adalah* [Trials in which the scale of justice have been tipped], Rabat, November 2003 [online], <http://www.omdh.org/news/16mai.htm>; Amnesty International, "Briefing to the Committee against Torture, November, 2003, [online], <http://web.amnesty.org/library/Index/ENGMDE290112003?open&of=ENG-MAR>; Fédération Internationale des droits de l'Homme, *Les autorités marocaines à l'épreuve du terrorisme: la tentation de l'arbitraire*, report no. 379, February 2004, [online], www.fidh.org/IMG/pdf/ma379f-3.pdf; Amnesty International, *Torture in the "anti-terrorism" campaign - the case of Temara detention centre*, 24 June, 2004, [online], <http://web.amnesty.org/library/Index/ENGMDE290042004?open&of=ENG-MAR>

The detention center at Temara is, according to the allegations made by detainees featured in this report and by others cited elsewhere, a place where in recent years DST interrogators have routinely tortured and otherwise mistreated suspected Islamist militants in order to coerce confessions or to force them to sign statements they did not make.

Moroccan authorities have denied the existence of a detention facility run by the DST. As noted above, Justice Minister Bouzoubaâ stated in September 2003 that the DST “doesn’t have the status of judicial police,” implying that its agents do not arrest, detain, or interrogation suspects. Rather, he explained, the DST submits information to the judicial police, who then conduct criminal investigations, including arrests, on the basis of that information. Then-Human Rights Minister Mohamed Aujjar told Human Rights Watch on February 5, 2004, “There are no detentions outside the law. There is no DST detention center in Temara. In Temara, there is a brigade of the judicial police and there is a DST facility, but the DST facility is not for detaining people.”

The justice ministry’s June 2004 letter to Human Rights Watch similarly denied the existence of any DST detention facility:

In what regards the existence of a special facility used as a detention center by the National Territory Surveillance Department, according to the provisions of the Criminal Code, all suspects are to be placed in custody at a station of the judiciary police or of the Royal Police, which are subject to inspection by the public prosecutor.

Justice Minister Bouzoubaâ repeated this denial in an interview with the state-run Maghreb Arab Presse agency on July 2. “The days of secret detention centers are over,” he said. The detention facility in Temara, he said is “legal” and “operated by the National Police.”⁹¹

Nevertheless, the evidence is compelling that interrogations take place at a Temara facility that is operating in a secretive fashion, whether or not it is nominally under the direction of the judicial police. Islamist suspects taken there uniformly reported that they were held incommunicado and interrogated by agents they believed were attached to the DST. The written police statements taken from detainees who said they were interrogated at Temara never, to our knowledge, listed Temara as the place where the

⁹¹ « La Maroc nie l'existence de centres de détention secrets, » Reuters, July 2, 2004.

interrogation occurred. The case of Abdelghani Ben Taous (see below) illustrates the problem. Human Rights Watch examined the statement prepared by the judicial police in his file, which, according to his lawyer, falsified both where he was held and when he was first detained, thus obscuring the fact that he had been held in garde à vue detention well beyond the legal limit. The police registry stated that Ben Taous was arrested on June 23, 2003, rather than the actual date of June 10, and also stated that Ben Taous' place of detention was Anfa police station in Casablanca. The registry nowhere mentions Temara, although according to his lawyer Ben Taous spent only one day in Casablanca and more than two weeks in Temara. To the best of our knowledge, no relatives of persons taken to Temara for interrogation were formally notified by authorities that they were being held in Temara. Detainees report being blindfolded when they are transported to and from this facility, and recognized where they were by such indicators as the distance traveled to reach it and by the sounds of animals in the nearby zoo that they were able to hear from their cells.

The U.N. Human Rights Committee has stated that “to guarantee the effective protection of detained persons, provisions should be made for detainees to be held in places officially recognized as places of detention and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends. To the same effect, the time and place of all interrogations should be recorded, together with the names of all those present and this information should also be available for purposes of judicial or administrative proceedings. Provisions should also be made against incommunicado detention.”⁹²

Access to Legal Counsel

According to the Criminal Procedure Code, a person whose garde à vue detention is extended beyond the initial forty-eight hours by the judicial police has the right to contact a lawyer, with the public prosecutor's permission, for a meeting limited to thirty minutes.⁹³ The meeting has to take place “under the surveillance of judicial police officer in circumstances that guarantee the confidentiality of the meeting.”⁹⁴ The lawyer is prohibited from discussing and sharing with anyone anything mentioned in the meeting until the end of the garde à vue detention.

⁹² Human Rights Committee, General Comment 20, Article 7 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 30 (1994), para. 11.

⁹³ Article 66 of the Criminal Procedure Code.

⁹⁴ Article 66 of the Criminal Procedure Code.

But a suspect under investigation for state security and terrorism offenses has no right to contact an attorney during the first ninety-six hours of garde à vue detention. Only after the detention is extended does the suspect obtain the right to meet his attorney for a limited time. However, even then the suspect's meeting with his attorney may be subject to additional delays if those delays are approved by the public prosecutor. Under the 2003 counter-terror legislation, the judicial police may deny for a total of ten days a meeting between a lawyer and a suspect held in garde à vue in connection with terrorism offenses, provided that they have obtained authorization from the public prosecutor.⁹⁵ It is not required that the suspect be presented to the public prosecutor to secure this authorization.

Only when a suspect is brought before an investigative judge is legal representation mandatory.⁹⁶ This can be, in terrorism cases, as long as twelve days. It is the investigative judge who must immediately inform the suspect of his or her right to appoint a lawyer; and if the suspect does not hire a lawyer but requests one, the judge must appoint a lawyer to represent him or her for free.⁹⁷ The only exception, under the amendments to the Code of Criminal Procedure that took effect in 2003, is in *flagrante delicto* cases (when the suspect is alleged to have been "caught in the act" of committing an offense), when the suspect's lawyer has the right to be present at the investigation by the public prosecutor and to submit documents or other written materials.

In November 2003, the U.N. Committee against Torture, responding to Morocco's most recent report, expressed its concern about "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."⁹⁸

Under international human rights law the right to a fair trial requires access to a lawyer during detention, interrogation, and preliminary investigation. The U.N. Human Rights Committee has stated that "all persons arrested must have immediate access to counsel."⁹⁹ Moreover, it has been widely recognized that prompt and regular access to a lawyer is an important safeguard against torture, ill-treatment, coerced confessions, and

⁹⁵ According to the amended Article 66, the garde à vue detention in state security crimes is ninety-six hours, renewable once for the same period, and in terrorist charges the detention period is ninety-six hours renewable twice.

⁹⁶ Criminal Procedure Code, Article 139.

⁹⁷ Criminal Procedure Code, Article 134.

⁹⁸ U.N. Committee against Torture, Conclusions and Recommendations: Morocco, February 5, 2004.

⁹⁹ Concluding Observations of the Human Rights Committee: Georgia, UN Doc. CCPR/C/79/Add.74, 9 April 1997, para. 28, online at www1.umn.edu/humanrts/hrcommittee/Georgia97.htm (consulted September 30, 2004).

other abuses.¹⁰⁰ Under international human rights law, access to a lawyer may be delayed only in exceptional circumstances, as prescribed by law. The U.N. Special Rapporteur on Torture has recommended that anyone who has been arrested “should be given access to legal counsel no later than 24 hours after the arrest.”¹⁰¹ The Special Rapporteur also noted, on a separate occasion, that “detainees must have a right of access to a lawyer from the outset of detention, the lawyer must be present during the interrogation and the detainee must have the right to talk to the lawyer in private.”¹⁰² In no case should access begin later than forty-eight hours from the time of arrest or detention.¹⁰³

Without immediate access to legal counsel, many detainees, according to testimonies of lawyers and family members of detainees, were coerced into confessing and could not exercise their due process rights during the pre-trial stages, including their right to ask for a medical examination or to remain silent during the police investigation. In many cases, detainees were denied access to lawyers and family members until they appeared before the investigative judge.

Although legal representation is mandatory before the investigative judge, in some cases, such as those of Ahmed Chikou and Aziz Shafai (see below), detainees were not even at that point informed about their right to choose an attorney and did not have legal representation.

The ministry’s response said that a check of the cases cited by Human Rights Watch revealed that none of those defendants or their lawyers had raised the lack of legal representation with the prosecutor or the investigative judge. Human Rights Watch, given the consistency of its numerous testimonies, stands by its finding. As mentioned above, Morocco’s Criminal Procedure Code requires that a suspect have legal counsel when he or she is brought before an investigative judge. The ministry’s explanation, that the case files do not indicate that the defendants or their attorneys objected to the lack of legal representation, does not address the obligation to ensure that defendants have legal representation at this phase of the pre-trial detention. Moreover, the investigative judge normally decides what and what not to include in the official case files. If in fact instances of infringement of the right to counsel are not recorded in the files, this may

¹⁰⁰ Human Rights Committee General Comment 20, para. 11; Report of the UN Special Rapporteur on torture, (E/CN.4/1992/17), 17 December 1991, para. 284.

¹⁰¹ Report of the U.N. Special Rapporteur on torture, UN Doc. E/CN.4/1990/17, December 18, 1989, para. 272; see also U.N. Doc. E/CN.4/1995/34, January 12, 1995, para. 926.

¹⁰² Report of the Special Rapporteur on Torture, Theo van Boven, on his visit to Spain, submitted to the 60th session of the Human Rights Commission on February 6, 2004, E/CN.4/2004/56/Add.2, parag. 41 p. 13.

¹⁰³ Principle 7 of the Basic Principles on the Role of Lawyers (1990).

reflect the fact that judges decided not to make note of those complaints in compiling the record, which is not required to be a verbatim account of the proceedings.

Home Searches

Under Moroccan law, home searches and seizures of property generally cannot take place without the written consent of the person whose house is to be searched. Searches should take place only between 6:00 a.m. and 9:00 p.m. Under the 2003 counter-terror legislation, home searches in cases of terrorism offenses can take place between 9:00 pm and 6:00 a.m. with a warrant from the public prosecutor.¹⁰⁴ Moreover, when the prosecutor has issued a warrant, the home search can be conducted in alleged terrorism offenses without the consent of the homeowner. But even then it must be conducted in the presence of the person whose home is being searched or, if that is not possible, in the presence of two persons who are not members of the judicial police.¹⁰⁵ An investigative judge can also authorize judicial police to search a home during night-time hours in the presence of a representative of the public prosecutor.¹⁰⁶

The right to protection from unlawful and arbitrary interference in one's privacy, family, and home is well-recognized in international human rights law.¹⁰⁷ The U.N. Human Rights Committee has stressed that in order to avoid arbitrary interference with an individual's rights, "even interference provided for by law" must be reasonable in particular circumstances and consistent with the aims of the ICCPR. The Committee further stated that "searches of a person's home should be restricted to a search necessary for necessary evidence and should not be allowed to amount to harassment."¹⁰⁸

In cases researched by Human Rights Watch, family members and lawyers stated that home searches sometimes were conducted in the middle of the night by plainclothes security officers who often did not identify themselves or present search warrants. They described how some of the searches were conducted in an intimidating and threatening manner, leaving disarray behind them.

¹⁰⁴ Criminal Procedure Code, Article 62.

¹⁰⁵ Criminal Procedure Code, Articles 60 and 79.

¹⁰⁶ Criminal Procedure Code, Article 102.

¹⁰⁷ Article 17 of the International Covenant on Civil and Political Rights (ICCPR) states, "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation."

¹⁰⁸ U.N. Human Rights Committee, General Comment 16, adopted at the 23rd session, 1988), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 21 (1994).

V. CASE STUDIES

Abdelghani Ben Taous

Abdelghani Ben Taous teaches Islamic studies at a high school in Casablanca. He is forty-five years old, married and the father of three children. He was arrested on June 10, 2003, during a midnight raid on his home by uniformed and plainclothes security officials. Ben Taous was grading student exams when they arrived, according to his sister, Jamila Ben Taous. She told Human Rights Watch that more than ten armed security men surrounded his house and forced open the door without presenting a search warrant. They handcuffed and hooded him and took him away barefoot. They confiscated religious books and documents that are legal in Morocco, as well as Ben Taous' mobile telephone, personal checks, and passport.¹⁰⁹

Jamila Ben Taous said that the day following Abdelghani's arrest she went to the central police station in Casablanca, where she was told that her brother had been taken to the Temara detention center. Ben Taous's lawyer, Taoufiq Moussaif, told Human Rights Watch that his client was questioned by the judicial police for one day following his arrest, and then taken to Temara for interrogation.¹¹⁰ Ben Taous's wife Fatima, who was the only family member allowed to attend the trial, said when she first saw her husband in court he was weak and could not stand on his own, and needed to sit when addressing the panel of judges.¹¹¹ His wife also said that, during the trial, Ben Taous said that he had signed a confession under torture and duress. A journalist who covered many of trials of Islamists in Rabat and attended the trial of Ben Taous told Human Rights Watch that he testified that he had been sexually abused during his interrogation.¹¹²

The government accused Ben Taous of being an "amir" of the illegal Salafia Jihadia organization in Casablanca, an accusation that he denied.¹¹³ Moussaif, the lawyer who agreed to represent Ben Taous, said he took Ben Taous as a client after he had been in detention for almost a month without access to a lawyer. He told Human Rights Watch

¹⁰⁹ Human Rights Watch interview with Jamila Ben Taous, Casablanca, February 4, 2004.

¹¹⁰ Human Rights Watch interview with advocate Taoufiq Moussaif, Rabat, February 3, 2004.

¹¹¹ Human Rights Watch interview with Fatima El-Kenti, Casablanca, February 4, 2004.

¹¹² Interview with Khdiya Ali-Mousa, journalist with the Moroccan weekly *Attajdid* on February 7, 2004, Rabat. See also *Attajdid* newspaper, August 11, 2003, p. 3. *Attajdid* is the organ of the Party for Justice and Development, a legal Islamist party.

¹¹³ *Amir* means "commander" in Arabic, and also has acquired the meaning of "prince." It has come to be used to designate a person to whom allegiance is owed.

that in the police log the date of Ben Taous's arrest was recorded as June 23, 2003 – and not the actual date of June 10 – so as to cover up the illegally long period he was held in garde à vue detention in Temara. The judicial police registry viewed by Human Rights Watch states that Ben Taous “was held in garde à vue detention from 9:30 am on June 23, 2003 until 5:00 pm on June 26, 2003, when he was presented before the crown prosecutor in the Rabat Court of Appeals, and the relatives of the concerned were notified about this process.” The registry also states that Ben Taous' place of detention was Anfa police station in Casablanca, and nowhere mentions Temara, although according to his lawyer he spent only one day in Casablanca and more than two weeks in Temara.

The police and security services accused Ben Taous during his interrogation of spreading the ideology of jihad in Morocco. The official charges include forming a “criminal gang” to prepare and commit acts of terrorism; attempted murder; attempted theft; attempted manufacture and attempted possession of explosives; attempted collection of funds with the intent to use them for terrorist acts and incitement to commit terrorist acts. Ben Taous was also accused of threatening the internal peace of the country by committing offenses intended to destabilize the country; holding unauthorized public meetings; and initiating activities in associations not licensed for such activities. Ben Taous denied involvement with any terrorist group or carrying out any illegal activity. During his interrogations, according to his lawyer, he condemned the Casablanca bombings of May 16, 2003.

According to his lawyer, Ben Taous spent about two weeks in the Temara detention center. His attorney told Human Rights Watch that at Temara he endured beatings with a stick, electric shocks, slaps on the face, shackling, verbal intimidation and humiliation, and sleep deprivation. The lawyer also told Human Rights Watch that his client reported that several security officials stripped him and put their fingers into his anus on two occasions, threatening to rape him. After two weeks of interrogation he was presented to the prosecutor, who saw him for only a few minutes before referring him to an investigative judge. Then he was taken to Salé Prison near Rabat where, according to his lawyer, he was placed in a solitary cell with two sheets but no bed or mattress. He spent nearly one month in solitary confinement.

Moussaif told Human Rights Watch that on July 23, 2003 authorities transferred his client from pre-trial detention in Salé prison into the hands of DST officials in Temara after he had refused to sign a document that retroactively gave his consent to the search of his house. Ben Taous's second detention at the Temara security compound lasted nine days. When Moussaif next saw him, on July 31, his client appeared exhausted and traumatized, but showed no marks of having been tortured. But Ben Taous told

Moussaif that he had indeed been tortured again. Moussaif had access to visit Ben Taous only after enlisting the help of the head of the bar association of Rabat (*al-naqib*), who learned from officials at the ministry of justice that Ben Taous had been transferred to a different prison for questioning on a different case.

During the trial, attorney Moussaif argued that Ben Taous's confessions were made under torture and duress, and that he had been forced to sign statements while blindfolded. The prosecutor denied the allegations and claimed that there was no material proof of his allegation of torture. The trial court in Rabat Court of Appeals did not address the torture allegations and stated in its final ruling that the defendant's "denial is only a vague defensive argument aimed at escaping criminal responsibility."¹¹⁴

Based primarily on the confession that he made before the judicial police, Ben Taous was found guilty on most of the charges and sentenced to twenty years in prison.¹¹⁵

Ahmed Chikou

Ahmed Chikou is a 53-year-old resident of Casablanca, married and the father of five children. He sells mobile phones and other electronic devices. He was arrested in his shop around 10:00 a.m. on June 6, 2003, by uniformed police officers and other security men in plainclothes. According to his brother, Ibrahim Chikou, the security force arrived at Ahmed's shop in a Mercedes 240 and a police wagon. Ahmed was accused of holding money on behalf of al-Tayeb Bentissi, allegedly a prominent member of the illegal "Moroccan Islamic Fighting Group" (*al-Jama'a al-Islamiyya al-moukatala al-maghribiyya*). Chikou's lawyer, Taoufiq Moussaif, told Human Rights Watch that Chikou kept his savings in his house and shop and never had a bank account. During the search of his shop the police found and confiscated 914,600 Moroccan dirhams (worth approximately US\$109,000) and US\$100 in cash. Chikou admitted that he had agreed to safeguard the amount of \$17,000, which he exchanged into dirhams in order to comply with laws on possession of foreign currency, but he claimed he did not know the source of the funds or that it had any connection to terrorist organizations. Chikou's brother Ibrahim, who witnessed the arrest, told Human Rights Watch that the security men questioned his brother in his store for about fifteen minutes. He saw four persons in plainclothes taking his brother to his house in order to conduct a search there. Ibrahim said that they did not find anything in the house but left it in disarray.

¹¹⁴ Criminal Chamber of the Rabat Court of Appeals, Court File number: 22-2003-622, p. 15.

¹¹⁵ The public prosecutor asked the court to sentence Ben Taous to death. Ben Taous was acquitted by the Criminal Chamber of Rabat Court of Appeal of "the attempted premeditated murder and the attempted theft of monies." Ruling published on August 8, 2003, Criminal Chamber, Casablanca Court of Appeals, Court File 22-2003-622, p. 13.

After Chikou was taken by the security officers, his family did not know his whereabouts for about two months. “We asked in many police stations about my brother, as well as the prosecutor’s office,” Ibrahim told Human Rights Watch, “but they wouldn’t give us information about him. We thought he might have died.”¹¹⁶ He also said that the first four lawyers whom the family approached to represent Chikou refused to take the case due to its sensitivity. Eventually Moussaif agreed, and saw Chikou for the first time after the investigative judge had completed his report on the case and only a few days before the trial began in mid-August 2003. Chikou’s brother told Human Rights Watch that the police never notified the family about Chikou’s detention and that they got information about him only through Moussaif.

The police falsified the date of Chikou’s arrest in their registry, Moussaif said, changing it from June 6 to July 20, 2003, in order to cover up the illegally long *garde à vue*.¹¹⁷ According to Moussaif, Chikou was blindfolded during the interrogation by police and was forced to sign a statement that he had not read. The investigative judge noted in his final order referring the suspect to the criminal chamber that when Chikou was represented by a court-appointed attorney during the judge’s investigation, he repudiated the statements he had purportedly made to the police and said he was innocent of all charges.¹¹⁸ Moussaif told Human Rights Watch that his client told him that the police had verbally abused him and threatened to rape his wife. Chikou’s brother, Ibrahim, told Human Rights Watch that Chikou had been verbally threatened but not physically tortured.

The judicial police registry indicates that Chikou was extensively questioned about his past, about his interest in religious studies, about the names of persons who attended religious lessons, and about preachers and religious scholars. Chikou appeared on August 5, 2003, before the investigative judge. According to Moussaif, who began to represent Chikou only after the investigation phase had been completed, his client did not have legal representation before the investigative judge. This contradicts the assertions both by the state prosecutor and the investigative judge that Chikou had been represented before them by a court-appointed lawyer named Kamal al-Alaoui. According to Moussaif, passport stamps show that al-Alaoui was not even in Morocco

¹¹⁶ Human Rights Watch interview with Ibrahim Chikou, Casablanca, February 9, 2004.

¹¹⁷ Human Rights Watch interview with attorney Taoufiq Moussaif, Rabat, February 3, 2004. The report of the judicial police states that Chikou was held in police custody from July 20 until July 25, 2003, and that his family had been notified about his custody.

¹¹⁸ Decision of Judge Abd Al Qader Achentouf, Rabat Appellate Court, August 15, 2003, p.12.

on August 5, 2003, the date in question.¹¹⁹ The investigative judge also mentioned, in a document dated August 15, 2003, that Kamal al-Alaoui represented al-Tayeb Bentissi, another defendant in the same case who incriminated Chikou in his testimony. If attorney Kamal al-Alaoui indeed represented both defendants, then the conflict of interest in his multiple representations jeopardized Chikou's right to proper legal representation at his trial.

The prosecutor asked the court to sentence Chikou to twenty years in prison for forming a criminal gang for the purpose of committing terrorist acts; participation in collecting and managing funds for terrorist acts; organizing public meetings without a permit; and conducting activities on behalf of an unlicensed association. The panel of trial judges refused requests by Chikou's defense to call witnesses in order to prove the real date of arrest and the violation of the legal time limit for garde à vue detention. The Court stated that those witnesses were not part of previous legal proceedings, that the police investigation had been properly concluded, and that no procedural irregularities had been found in the police's record-keeping, which had been supervised by the public prosecutor.

The court also dismissed a defense challenge to the court's jurisdiction over the case, based on the argument that the offenses in question were alleged to have taken place before the promulgation of the counter-terror legislation, which assigned exclusive jurisdiction to the Rabat Court of Appeals to hear all terror cases. The court stated that, according to the records of the judicial police, the facts and the alleged acts formed an uninterrupted series in time and were part and parcel of the criminal investigations launched following the May 16, 2003 bombings. Even if some of the acts were committed before May 28, the date the counter-terror law took effect, the judges argued, jurisdiction properly resided with this court. The court acquitted Chikou on the charge of forming a terrorist organization but sentenced him to five years in prison and a fine of 500,000 dirhams (about US\$60,000) for holding the \$17,000 for a member of a terrorist organization, and for organizing a public meeting without a permit.¹²⁰

Abderrezak er-Rtaoui

¹¹⁹ Attorney Mohammed Sebbar of Rabat confirmed to Human Rights Watch by telephone on June 18, 2004, that he has a photocopy of the pages from the passport of attorney Kamal al-Alaoui that show he was outside Morocco on the date of Chikou's appearance before the investigative judge.

¹²⁰ Cash totaling about 730,000 dirhams (US\$87,000) that belonged to Chikou's business was also confiscated. Criminal Chamber of Rabat Court of Appeals, Court File number 22-03-687, ruling delivered on September 10, 2003.

Abderrezak er-Rtaoui is 45 years old, married, and the father of seven. He has a grocery store in Casablanca and suffers from rheumatism in his back. He was arrested on May 18, 2003, at 9:00 p.m. His daughter Khadija told Human Rights Watch that six persons in plainclothes came to their house at around 5:30 p.m. that day. They knocked, pushed the door open, and asked about her father, who was not at home. They searched the house without presenting a search warrant and left it in disarray.¹²¹ They also took Abd al-Razzaq's younger brother, Mohamed er-Rtaoui, into custody.

The next day, at 10:00 p.m., Abderrezak returned home under the escort of nine security men. According to Khadija, he was in terrible shape. Two men were holding his arms. They searched the house once again and seized religious books. They left again with Abderrezak. The family contacted police stations and the court but could get no information about his whereabouts or his health. A few weeks after his arrest the family learned about his arrest through a media report that carried the names of persons listed by the public prosecutor as having been detained following the Casablanca bombings. Abderrezak was represented by an attorney appointed by the court, Ibrahim Massoudi from Casablanca. Abderrezak's mother, Naima al-Beqaoui, told Human Rights Watch that when she visited him in Kenitra prison, he told her that police had blindfolded him and forced him to sign a statement. His mother said he told her that while he was in police custody he was stripped, beaten, tortured with electric shocks, and deprived of sleep. He was sentenced to thirty years in prison for terrorist crimes on August 18, 2003.

Aziz Shafai

Aziz Shafai, 24 years old, is a second-year university student in mathematics and physics. He comes from a poor family and worked part-time to support his studies. The family lives in the Sidi Moumen neighborhood of Casablanca. Six of the twelve May 2003 suicide bombers came from Sidi Moumen.

Shafai was arrested on the night of May 18, 2003, for alleged links to the bombings. According to his lawyer, al-Ftouhi Abd al-Haq, he was arrested because his cousin was one of the bombers.¹²² Aziz confessed that his cousin had told him one week before the actual bombing that a terrorist act would be carried out; but that he did not take it seriously, know any details, or know that his cousin would be one of the bombers.

¹²¹ Human Rights Watch interview with Khadija er-Rtaoui, Casablanca, February 6, 2004.

¹²² Human Rights Watch interview with attorney al-Ftouhi Abd al-Haq, Casablanca, February 9, 2004.

When Aziz was arrested, he was studying for one of his final exams. His sister, Khadija Shafai, told Human Rights Watch that her brother was pious and open-minded. She said that seven plainclothes police carried out the arrest and searched the home for forty-five minutes, finding only religious texts.¹²³ The security force told the family that Aziz would be released after questioning and investigation. Khadija said the family did not learn of Aziz's whereabouts until the end of July, when the media named him as a member of one of three groups allegedly connected to the May 16 bombings.

Abd al-Haq was appointed to represent Shafai only when he was about to face trial. Abd al-Haq told Human Rights Watch that he had his first chance to meet Shafai only after Shafai had been referred to a trial panel and after the investigation judge has already concluded his work. He said Shafai told him he had been coerced to confess and that during his police investigation he was asked to respond to questions with a simple "yes" or "no." The lawyer said that no marks of physical torture were evident. When the lawyer met with Shafai in prison they could not talk freely because guards closely monitored meetings between lawyers and clients. Abd al-Haq told Human Rights Watch that Shafai told him that he figured out that he was standing before an investigative judge only by reading the sign on the judge's table. According to Abd al-Haq, Shafai said the investigative judge did not inform him of his right to have an attorney. During the trial, Abd al-Haq told Human Rights Watch, the judicial panel refused the defense's request to call any of the witnesses who had appeared before the investigative judge, explaining that whatever had been reported and established by the investigative judge was adequate and acceptable for the trial phase. Shafai was convicted on charges related to his foreknowledge of and alleged association with individuals responsible for the May 2003 bombings, including murder and causing harm to the security of the state, and sentenced to thirty years in prison.

Mohamed al-Asal

Mohamed al-Asal was born in November 1976 and works as an auto mechanic. He lives in the Casablanca slum of Sekouila and was arrested on May 21, 2003, at 10 p.m. His wife, Bahidja Guerrouani, told Human Rights Watch that six men dressed in civilian clothes came to their house in a large, black unmarked car.¹²⁴ Al-Asal was arrested outside the house. He was handcuffed by the security men, who escorted him back into the house in order to carry out a search. His wife told Human Rights Watch that the men presented no search warrant. The security force searched the house and confiscated

¹²³ Human Rights Watch interview with Khadija Shafai, Casablanca, February 6, 2004.

¹²⁴ Human Rights Watch interview with Guerrouani Bahidja, Casablanca, February 6, 2004.

a photograph, a cell phone, and 300 dirhams (about US\$35). They told her to be quiet but did not hit her or anyone else.

Guerrouani said that after they took al-Asal away, she went to the local police headquarters to ask about his whereabouts. They told her to get out and refused to answer her questions. About sixteen days later, she first learned of his status when the newspapers carried names of persons arrested in the aftermath of the May 16 attacks. Some fifty persons were arrested from the neighborhood where al-Asal and his family live, which was home also to several of the perpetrators of the May 16 attacks.

Al-Asal was tried before the Casablanca Appeals Court on July 6, 2003. A court-appointed lawyer defended him. Guerrouani said family members were prevented from attending the trial and that only the lawyer and journalists were allowed in.

Al-Asal was accused of plotting a bomb attack in Marrakesh, belonging to a “criminal gang,” “attacking national security,” “plotting to destroy public property,” and attending “unauthorized meetings.” The court convicted him and sentenced him to life in prison. He was sent to Kenitra prison.

Guerrouani said when she visited her brother, he told her that he was first held in police custody in Casablanca and then transferred to Temara detention center. He told her that police had inserted a bottle in his anus and made him sign a blank sheet of paper that they filled out later.

Abdelhamid Yazghi

Abdelhamid Yazghi, a 46-year-old unemployed accountant from Casablanca, was arrested on June 11, 2003, at 9 p.m. His sister, Hassana Yazghi, said a man in plainclothes approached the neighbors, asked them about Abdelhamid, and then asked him to come out. When Yazghi came into the courtyard, the man pretended as though he was an old friend, Hassana said. There were several other men who came with this man and who remained at a distance until they came forward to place Yazghi in handcuffs. Hassana said they all wore civilian clothes, and one had a weapon. She said they claimed that Yazghi was “hosting foreigners,” which he denied. Hassana said she asked the men if they had a warrant, and that they replied, “We have instructions from high up, so don’t bother us about that.”

Hassana said that for three months after Yazghi's arrest, the family knew nothing about his whereabouts. It was only through relatives of men detained in Salé prison that the family learned about his detention.¹²⁵

The police log shows the date of Yazghi's arrest as June 27, 2003, according to Hassana. She said that when their mother visited Abdelhamid for the first time, he could not stand up straight. He told his family that he first spent seventeen days in Ma'arif detention center in Casablanca, a facility operated by the judicial police, and then five days in the Temara compound, where he was blindfolded, tortured, and ill-treated under interrogation. Yazghi told his relatives that the police had presented him with a written statement that did not correspond to what he had told them, warning that if he refused to sign it he would face more torture.

The trial took place in September 2003 and lasted for three sessions. The last session started at 8 a.m. and continued until 4 a.m. the next day. Then at 7 a.m., after the judges deliberated, journalists came out of the chambers with the verdict. Yazghi was sentenced to ten years for harboring terrorists and failing to inform the authorities about them, among other charges.

Mohamed Oussama Boutaher

Mohamed Oussama Boutaher's arrest on June 8, 2003, came three months after he had been released from nine months of detention without charge, first in Syria and then in Morocco. Boutaher's wife, Rabia al-Baccali, told Human Rights Watch that Boutaher, a freelance merchant born in 1969, was picked up from his house in the al-Fareh area of Casablanca by a man wearing street clothes who identified himself as a policeman and said that Boutaher should come "have a coffee" with him. When he did not return from his "coffee," Boutaher's mother went to the local police headquarters but could get no information. The mother told Human Rights Watch that at police headquarters she encountered the man who had invited her son for "coffee." When she called to him, "You took my son yesterday," the man replied, "Don't be afraid, I'll feed him and he'll be back home the next day." But he did not return. Each day Boutaher's mother went to the court to see if he would be brought in. Twenty-four days after his arrest, the family heard his name mentioned on television, among a list of persons who would be brought to trial in Rabat's Court of Appeals, the court with jurisdiction over defendants charged under the counter-terror law. She then traveled to the Rabat courthouse in an effort to learn his whereabouts.

¹²⁵ Human Rights Watch interview with Hassana Yazghi, Casablanca, February 6, 2004.

The first time the family visited Boutaher in prison, he told them he had spent twenty days in detention, first in Casablanca and then in Temara, before being transferred to Salé prison. He cried and said he had been tortured with electricity and forced to provide the names of persons he did not know. He told his mother that the police blindfolded him and said, “We’re going to bring you before someone who will recite things to you and you are to say, ‘Yes, you did these things.’ If you deny you did those things, look out.” Boutaher said the police escorted him into a room, removed his blindfold, and he signed a statement before a man who Boutaher said did not identify himself as a judge. At his second session before this man, according to Boutaher, he identified himself as the investigative judge. But when Boutaher denied to this judge that he had made the statements ascribed to him in the police report, the judge replied that he had already signed his name to them. The investigative judge did not take into consideration Boutaher’s allegations of torture, Boutaher’s wife said.

His wife said that Boutaher was represented at trial by a court-appointed attorney, Mohamed Sidi Khoia, based in Rabat. The lawyer visited Boutaher once in prison before the trial.

In September 2003, the Rabat Court of Appeals convicted Boutaher of possession of arms and explosives and theft, and sentenced him to twelve years in prison. Al-Baccali said that Boutaher was convicted on the basis of his “confession” before the police. As of February 2004 he was serving his sentence in Kenitra prison.

Al-Baccali told Human Rights Watch that prior to her husband’s latest arrest, Syrian authorities had detained him in July 2002, while he was in that country, and held him for three months without charge. They then turned him over to Moroccan authorities, who held him for six more months before releasing him without charge in March 2003. Boutaher’s family had no idea what had happened to him until a man who had been detained with him in Morocco came to tell them that Boutaher was being held in the Temara detention center. The family had sought information, without success, from the ministry of justice, about his whereabouts. It was not until many months after his release – and subsequent re-arrest – that the ministry replied, informing the family that Boutaher was serving a sentence in Kenitra prison.¹²⁶

¹²⁶ Omar Al-Omari, “As-soultat al-magribiya toufrej ‘an al-moukhtataf Oussama Mohamed Boutaher,” [the Moroccan authorities release the abducted Oussama Mohammed Boutaher] *Attajdid* weekly, March 6, 2003, p.4.

Issam Khaled

As the previous case of Mohamed Oussama Boutaher shows, Moroccan security authorities have sometimes taken custody of Moroccan nationals arrested in foreign countries without notifying their families or providing access to defense lawyers.

Issam Khaled, a Moroccan living and working legally in Italy, was detained on November 18, 2003, as a terrorist suspect by Italian security services and deported to Morocco with five other Moroccan nationals the next day. Upon their arrival in Morocco they were interrogated for hours and then held incommunicado for periods ranging from a few days for some to two months for others.

Khaled, twenty-six years old, was working as a carpenter in Italy. The Moroccans with whom he was deported had been living in Italy for up to fifteen years and left wives, children, and property in Italy when they were deported.

The Italian newspaper *Corriere Della Sera* reported on November 19, 2003, that the prosecutor's office of Turin had ordered the six be arrested, but the investigative judge rejected the request for lack of evidence. The minister of interior decided instead to issue deportation orders against them and an Algerian citizen, based on a dossier prepared by Italian intelligence agencies saying they were suspected of having come from training camps of al-Qaeda in Afghanistan, and that they were working to recruit fighters and collect money for terrorist activity.¹²⁷

Khaled told Human Rights Watch that on November 18, 2003, a Special Forces unit raided his apartment in Turin. That night about twenty Moroccans living and working in Turin were arrested in similar raids. Describing his own experience, Khaled said:

The force included ten armed persons whose faces were masked. They asked to see my papers and my passport. They said they had information that in the house there are arms and forged papers and that they have a search permit from the ministry of interior.¹²⁸

¹²⁷ Di C. Mar, "In Sei Rinchiusi in una Caserma a Rabat: 'Nessuna notizia dei nostri parenti espulsi,'" *Corriere Della Sera*, November 22, 2003. See also: Di Guido Olimpio, "Per gli espulsi il rischio delle celle maghrebine," *Corriere Della Sera*, November 20, 2003; Di Fiorenza Sarzanini, "Espulsi sette islamici - legati ai terroristi," *Corriere Della Sera*, November 19, 2003.

¹²⁸ Human Rights Watch interview with Issam Khaled, Casablanca, February 10, 2004. See also *as-Sabah* daily newspaper, November 21, 2003, and January 7, 2004.

Khaled was taken to a Turin police station (the Questura di Torino) with his apartment-mate Mohamed Mezoui. They were told they would be questioned and released after an hour. Mezoui was released after two hours. During the raid the security forces confiscated Khaled's legal papers as well as US\$1,100 and 1,000 Euros (about US\$1,200) in cash. He said that he had saved this amount to take with him back to Morocco on a planned visit, after four years of working abroad and after he obtained the documents and permits that would have allowed him to return to Italy.

Khaled described his ordeal in the police station in Turin before his deportation. He was held in a large hall together with the twenty other young Moroccan men arrested the same night:

First they took my fingerprints. Then I waited for almost 20 hours. Like the other Moroccans who were detained that night I was interrogated for one hour after midnight. There was no log or any other form of recording of the investigation. They told me I was a terrorist. I denied any involvement in any terrorist or illegal activity. Then they said there are three available options: one, to work for Italian security intelligence in return for a monthly salary and citizenship; two, to sign that I am a terrorist; three, handing me over to Morocco on the basis that I am a terrorist. They said it would be better for me to choose either to work for the security services or to admit that I was a terrorist because sending me back to Morocco would be risky, since human rights are not respected there and you would not know where you are.

Khaled told Human Rights Watch that he was given half an hour to choose. Reluctantly, he accepted to be sent to Morocco. He was told by the investigators that he would arrive in Morocco the next day. He said that Italian authorities rejected his request to be represented by an attorney and told him nothing further about the reasons for his detention and deportation. He could not retrieve his money or the other confiscated belongings. He refused to sign anything, including his consent to be sent back to Morocco.

At 5 a.m. the following day, November 19, Khaled was taken to Malpensa airport with five other Moroccans detained with him and whom he knew from Turin. Khaled, Azeddine Sadraoui, 25, and Nabil Hamrad, 21, were guarded by fourteen security personnel and placed at about 11:30 a.m. on an Alitalia flight to Casablanca. The other three Moroccans were put on a separate flight.

Upon arrival at Casablanca's Mohamed V International Airport at around 2:00 p.m., Moroccan security officers told the six that they would be investigated. They were blindfolded, handcuffed, and driven in two cars for about forty-five minutes. Khaled described the place to which they were taken as looking like a prison. It had approximately ten cells. Each man was put in a solitary cell. He remained in his cell until around 9:00 pm. Then, he said,

The interrogation lasted for three hours. During the entire interrogation my eyes were covered. I heard the voices of three investigators. They asked me about my personal life and background, and how I immigrated to Italy. They asked me about names of people and if I belonged to any group or association, which I answered in the negative. I signed a statement without seeing it because I was forced to do so. I spent three days in solitary confinement, in a cell that was one and-a-half meters by two and-a-half meters in size. It had no window, just a small hole in the door. Each day I was interrogated, but for a shorter time than the day before. In the first day of my interrogation one of the investigators hit me on the face. They threatened to send me to prison for fourteen years. They constantly cursed and insulted me. On November 22, after three days in their custody, I was released, along with Saïd Bouchraa and Mbarek Boutkayoud, two of the other five men.

Since Khaled's release the Royal Gendarmerie summoned him once for a half-hour-long investigation in his hometown of Khourigba, during which he was asked questions about his personal life.

Three of the Moroccans who were deported with Khaled from Italy, Sadraoui, Hamrad, and Noureddine Lemor, were "missing" for about two months while in Moroccan custody. Casablanca-based attorney Moustafa al-Ramid, who represented their families, told Human Rights Watch that he inquired with the Moroccan authorities about the fate of the three men while they were unaccounted for, and that he also published an announcement in a newspaper. While the government refused to provide information, it did not deny holding the three citizens.¹²⁹ The three men were released without any charges filed against them and after spending two months in incommunicado detention.

¹²⁹ Human Rights Watch interview with attorney Moustafa ar-Ramid, Casablanca, February 10, 2004. Al-Ramid is also a deputy in parliament and member of the Party for Justice and Development.

Khaled, who was in touch with the three men since their release, told Human Rights Watch that the security services kept them under tight surveillance and required them to report when they leave their residences.

Khaled's testimony raises serious concerns with regard to the treatment of Moroccan citizens who are handed over by foreign countries. Under Moroccan law, judicial police must maintain a registry that includes the identity of all persons under garde à vue detention; the reason for the detention; the beginning and end of the garde à vue period; the period of investigation; the hours of rest permitted to the detainee, his physical health, and the food provided to him. When the judicial police decide to place a suspect under garde à vue detention, they must immediately inform his kin and note the means of notification in the registry.¹³⁰

The security authorities who arrested Khaled at Casablanca airport did not exceed the legal period of time a person can be held under garde à vue detention. But the fact that he was not brought before a judge or prosecutor, and the way he was treated in custody, violate both national and international law with regard the treatment of persons in custody. Khaled was, according to his testimony, blindfolded at all times while interrogated. He was coerced to sign on documents he could not read. During the duration of his detention, he did not have access to a lawyer and to family members and was humiliated, beaten and verbally abused and threatened by his interrogators. The two-month incommunicado detention of Sadraoui, Hamrad, and Lemor constitutes, by virtue of its duration, a grave violation of international standards and of Moroccan law governing garde à vue detention.

In response to Human Rights Watch's letter, which included some preliminary findings regarding these three Moroccans held incommunicado for two months, the ministry of justice stated simply that the information provided by the Human Rights Watch letter about this case was inadequate to provide an answer. This response is not credible, given that a member of parliament had publicized the case, including the names of the three men at the time of their detention, in November 2003.

Mohamed Hassan Kittani

Mohamed Hassan Kittani is a well-known preacher and theologian from a prominent family in Rabat. The criminal procedures that led to his trial were significantly different from most cases presented above. But the case is linked to the others by the violation of

¹³⁰ Criminal Procedure Code, Article 67.

the right to a fair trial, most notably, the trial court's refusal to summon for cross-examination witnesses whose testimony before the police and investigative judges in other cases was admitted into evidence and formed the basis for convicting the defendant.

Mohamed's brother, Hamza Kittani, told Human Rights Watch that the judicial police and other security officials treated his brother respectfully, due to his religious and social status. In February 2003, Kittani was arrested for two days and investigated on suspicion of inciting violence. The report of the investigative judge refers to his sermons at a mosque in Salé mentioning Bosnia, Chechnya, and Afghanistan. During his investigation, Kittani denied the charges of incitement. The crown prosecutor ultimately decided to close the criminal investigation against him. But shortly after his release, an investigative judge of the Rabat Court of Appeals issued an arrest warrant for Kittani. He surrendered to the police on February 18, 2003, and was charged with organizing a criminal gang, being a member of the illegal Salafia Jihadia organization, disturbing the public order, conducting activities in an unauthorized association, and incitement to violence. Kittani remained in pre-trial custody and was denied release on bail. After the May 16 attacks in Casablanca, the investigative judge transferred Kittani's criminal file to the Casablanca Court of Appeals, asserting that his case was connected to the Yousef Fikri group, an Islamist cell whose members had been convicted in July 2003 of murdering several Moroccans who violated the group's notion of Islamic morality.

In July 2003, Kittani was tried for inciting violence and for being one of the spiritual leaders who inspired and encouraged the May 2003 suicide bombings. Kittani denied the accusations against him and even cited his own statement condemning the May 16, 2003 attacks that he had asked his family to release on his behalf days shortly after they occurred.¹³¹

Kittani's lawyers denied the accusations against their client and asked the trial panel to summon twenty-five persons who were accused of terror charges in separate cases and whose testimonies the prosecution and the investigative judge had apparently relied upon to support the charges against Kittani.

The trial panel decided to postpone its decision on calling the prosecutor's witnesses and instead ordered testimony from Kittani first. After hearing Kittani's denial of all

¹³¹ In a 2002 press interview before his arrest, Kittani disavowed violence and repudiated two violent Islamist groups in Morocco, Takfir w'al-Hijra and Sirat al-Mustaqim. "Arab daily reports on arrest, sentencing of Islamic fundamentalists in Morocco," BBC Monitoring, August 11, 2002, providing a translation of a report that appeared in *al-Hayat* daily, August 8, 2002.

accusations against him and of any link to the twenty-five persons who allegedly mentioned his name in their statements, the panel of judges once again refused to call these men as witnesses, and asked the prosecution and the defense to present their arguments on the substance of the charges. Kittani's defense lawyers decided to withdraw from the case, protesting that they could not properly defend their client without being able to summon defense witnesses and to cross-examine the witnesses for the prosecution. The court assigned Kittani a new lawyer despite his objections, and gave that lawyer only a few hours to prepare. On September 25, 2003, Kittani was convicted and sentenced to twenty years in prison.¹³²

The court explained that its verdict was based on Article 288 of the Criminal Procedure Code, which allows a finding of guilt on the basis, *inter alia*, of statements made by other defendants taken by the judicial police in separate but related criminal proceedings, without the need to call those defendants and to hear their testimonies in court.¹³³

In response to Human Rights Watch's letter, the ministry of justice repeated very briefly the chronology of events in Kittani's trial and noted that "with regard to the dismissal of the request to summon witnesses, the court has full authority to decide based on the circumstances of each case separately."

ABOUT THIS REPORT

This report is based on a mission conducted by Human Rights Watch researchers in January-February 2004, and on follow-up research. The purpose of the mission was to document the treatment of those persons who had been arrested in the crackdown on suspected Islamist militants since the coordinated bombings in Casablanca on May 16, 2003. Because of our focus on these recent cases, most of the suspects were either still in pretrial detention or in prison and therefore inaccessible for interviews. For these cases, we relied on testimony and documents provided to us by lawyers and relatives who had met with the detainees.

Human Rights Watch's researchers met with lawyers, human rights defenders, relatives of prisoners, journalists, diplomats, ex-detainees, and Moroccan officials, in Rabat, Casablanca, and Fez. We were generally able to conduct our work freely. In one instance, however, an ex-detainee declined to meet with us, explaining that he was under police

¹³² Casablanca Criminal Appellate Court, file 2003-5-907. See also, Dominique Pettit, « Terrorisme - la justice marocaine sévit contre les intégristes, » Agence France-Presse, September 26, 2003.

¹³³ *Ibid.*, p. 28.

surveillance. And in Fez, after a Human Rights Watch researcher had photographed the Court of Appeals, police stopped him and drove him to a police station, where he was questioned for almost one hour before being released.

Human Rights Watch wrote to Moroccan authorities prior to the arrival of the research team, informing them of the purpose of the visit and requesting meetings with pertinent officials. On February 5, the delegation met with then-Minister of Human Rights Mohamed Aujjar. The Human Rights Watch delegation also met, on February 3, with Driss Benzekri and Moustapha Iznasni. Benzekri is secretary-general of the Advisory Council for Human Rights and president of the Commission on Equity and Reconciliation. Iznasni is a member of both bodies.

We were not granted our request to meet also with Minister of Justice Mohamed Bouzoubaâ or other appropriate officials in the justice ministry. However, after our visit, Human Rights Watch wrote to the justice minister on May 7, 2004, summarizing the concerns that arose from our field research. The ministry replied with a six-page letter on June 5, 2004.¹³⁴ The response, like numerous official responses to similar allegations made in the past by other human rights organizations,¹³⁵ categorically denies the allegations made in Human Rights Watch's letter while underscoring the many human rights protections contained in Moroccan law. Although we dispute many of the answers provided, Human Rights Watch welcomes the response as a sign of the importance that the government attaches to discussing human rights issues. The ministry's letter is reprinted as an appendix to this report.

Human Rights Watch is grateful to the many human rights lawyers and associations, journalists, ex-detainees, prisoners' relatives, and diplomats who provided information to us. Human Rights Watch wishes also to thank the government of Morocco for our meeting with the minister of human rights and for the written reply from the justice ministry to our letter of May 7, 2004. We also wish to thank the Commission on Equity and Reconciliation for our meeting on February 3, 2004.

This report was written by Jamil Dakwar, Furman Fellow at Human Rights Watch, and Eric Goldstein, research director for the Middle East and North Africa at Human Rights

¹³⁴ Appendix B is the English translation of the letter as provided by the Embassy of Morocco on August 12, 2004.

¹³⁵ A similar letter was sent to Amnesty International, dated March 30, 2004, and entitled, "Response of the Moroccan Justice Ministry to allegations of torture in Morocco." Other official statements, affirming Morocco's attachment to human rights principles and denying specific allegations of abuse, are cited in the report by Amnesty International, Morocco/Western Sahara, *Torture in the "Anti-Terrorism" Campaign*.

Watch. It was edited by Joe Stork, Washington director of the Middle East and North Africa division of Human Rights Watch. Widney Brown, deputy program director of Human Rights Watch, and Wilder Tayler, legal and policy director of Human Rights Watch, reviewed the report. Tarek Radwan, associate of the Middle East and North Africa division of Human Rights Watch, provided production assistance.

APPENDIX I: Human Rights Watch Letter to the Moroccan Ministry of Justice

His Excellency Mr. Mohamed Bouzoubaâ
Minster of Justice
Ministry of Justice
Rabat
Morocco

VIA FACSIMILE: 011- 212-37-773-0772

Your Excellency,

As you may know, Human Rights Watch conducted a research mission to Morocco from January 27 to February 13, 2004. One objective of our visit was to gather information about arrests and trials of terrorism suspects following the Casablanca bombings of May 16, 2003.

As the first anniversary of those terrible events approaches, we wish to express our solidarity with the victims, their families, and all Moroccans who expressed their revulsion at those crimes. The perpetrators of all such acts must be brought to justice.

At the same time, the mass arrests that followed the attacks gave rise to concerns about ill-treatment and unfair trials, and about Morocco's compliance with its international human rights commitments in these areas.

We regret that we did not have the opportunity to meet with you or any other official from the Justice Ministry during our visit, despite our formal request for such a meeting. We did, however, have the pleasure of being received by Human Rights Minister Mohamed Aujjar on February 5, 2004.

Our purpose in writing to you today is to share our preliminary findings and invite your comments. We will ensure that our final report reflects pertinent official information, as long as it is received by June 7, 2004. You are welcome to respond in English, French, or Arabic.

- Our initial findings point to a pattern of human rights violations committed during the pre-trial and trial phase against suspects accused of being linked to terrorist acts. In several cases that we studied, there were allegations of physical torture and ill-treatment as well as threats of violence. To the best of our knowledge, these allegations were not investigated by the prosecutor's office and were not seriously addressed by the trial courts.
- In some cases the detainees did not have access to a lawyer during the pre-trial proceedings and complained that they were forced to sign forced confessions while blindfolded and unable to read. In several cases, detainees alleged that their statements were falsified. Lawyers described to us how the actual date of arrest was falsified by the police in order to cover up *garde à vue* detentions that lasted long beyond the period allowed by law.
- We have also documented cases in which detainees were blindfolded during their entire interrogation as well as during their first encounter with the public prosecutor representative, and thus answered questions without understanding that they had passed into a new phase of the judicial process.
- In some cases detainees said they were transferred to the interrogation and security compound in Temara where they were subject to abusive methods of investigation. The existence and the use of an unacknowledged place of detention would be a violation of both Moroccan and international law.
- In some cases, we found that lawyers were not allowed to call defense witnesses or to cross-examine witnesses and testimonies that were used by the prosecution and the investigative judge to charge defendants.

The following are summaries of few cases that highlight the above mentioned violations of basic human rights:

- **Abdelghani Ben Taous**, 45 years old and disabled, who was convicted and sentenced to twenty years in prison for terror charges, cites numerous instances of torture and sexual abuse during his detention. He alleged that while he was in *Direction de la Surveillance du Territoire* (DSI) custody during the month of June 2003 in the Temara secret detention center, security forces beat him with a stick and tortured him with electric shocks. The physical abuse he described also included being suspended from the floor, choked and slapped on the face. Ben Taous stated that he was deprived of sleep and that lights were left on in his cell both day and night. (Court File Number: 22-2003-622, Rabat Criminal Appellate Court)

Ben Taous' lawyer also alleged that he has been a victim of sexual abuses and sodomy by several security officials during the same period. Security forces stripped him, and one of his torturers twice inserted his fingers in Ben Taous' anus and threatened to rape him.

Ben Taous' lawyer told HRW that his client was deprived of counsel for a significant period of time and forced to sign a confession. His lawyer, who was hired by family members, could not see him for 18 days. On July 23, 2003, DST took Ben Taous from pre-trial detention in Salé prison to the DST interrogation compound at Temara after he refused to sign a retroactive agreement consenting to a search of his house that had already taken place. During his second detention at Temara, he was again subject to torture. His lawyer was able to see him on July 31, 2003, only after the head of the Rabat Bar intervened.

At the trial, Ben Taous' lawyer raised complaints of torture and forced confession. His lawyer also noted that the date of his arrest was forged and changed to June 23, 2003. However, the trial judge ordered no investigation, and the court record does not accurately and adequately reflect these complaints.

- **Danbat Moustafa**, 33 years old and from Casablanca (prisoner number 26385 in Kenitra prison, where he is now serving a life sentence), turned himself in to the police on June 16, 2003. He alleged that he was sent to the secret security compound of Temara and held there for five days, where interrogators stripped him and inserted a bottle into his anus and threatened to rape him. According to his wife, Khadija, marks of torture and abuse were still apparent when her husband first appeared in Court, limping and unable to sit normally. The judicial panel refused the lawyer's request to investigate these allegations of torture and to allow a medical expert to examine his client.
- **Ahmad Chikou**, who was arrested on June 6, 2003 in Casablanca, said that during his interrogation he was blindfolded and that he was forced to sign a false statement that he had never read before. His interrogators threatened to rape his wife. The police recorded his date of his arrest as July 20, 2003, rather than the true date of June 6, in order to cover up the illegally long *garde à vue* detention. (Court File Number: 22-03-687, Rabat Criminal Appellate Court).
- **Abderrezaq Ertaoui**, who was arrested on May 18, 2003 and sentenced on August 18, 2003 to 30 years by the Casablanca Criminal Appellate Court (and currently held in Kenitra prison), alleged that while in police custody, he was blindfolded and pressured to sign his statement. He also claimed that he was stripped, tortured by electroshocks, and deprived of sleep. (Court File Number: 26406/03, Casablanca Criminal Appellate Court).
- **Aziz Chafai**, who was arrested in his house in Casablanca on May 18, 2003, had no access to a lawyer during his pre-trial proceedings. The first time he saw a lawyer was after the investigative judge concluded his investigation report. Aziz' lawyer,

Maitre al-Ftouhi Abd al-Haq, said that his client was held in incommunicado detention with no access to a lawyer until he was brought before a trial panel. The trial panel refused to call witnesses and accepted all the findings that were made by the investigative judge. The lawyer also complained that he could not freely meet and talk to Aziz due to the common practice of close surveillance of lawyer-defendant meetings. Aziz told his lawyer that he knew he was brought before an investigative judge only by reading the sign that was on the judge's table and that he was not told about his right to have an attorney at this stage of the investigation. (Court File Number: 840/2003, Casablanca Appellate Criminal Court).

- **Yazghi Abdelhamid**, a 46 year-old accountant from Casablanca, was arrested on June 11, 2003, but the recorded date of his arrest was June 27, 2003. He told his family that he spent 17 days in Ma'arif detention in Casablanca and 5 days in the Temara compound, where he was tortured and ill-treated, and blindfolded when he was interrogated.
- **Mohammad Shadeli and Nuredin Elgerbau**i were arrested by the DST on July 17, 2002 in their homes in Casablanca, and were sentenced to twenty years on July 11, 2003. According to their lawyer, they were held for ten days in Temara, where they were beaten by sticks, tortured by electric shocks, endured verbal humiliation and were forced to take off their clothes. (Court File Number: 2003/5/744, Casablanca Criminal Appellate Court).
- **Mohammad Hassan Kittani** was tried for inciting violence and for being one of the spiritual leaders who motivated and encouraged the suicide bombing on May 16, 2003. Kittani's defense lawyers asked the trial panel to call the twenty five persons who were also accused of terror charges in separate files and whose testimonies the prosecution and the investigative judge used as the only source of evidence to support the charges against Kittani. The trial panel decided to postpone its decision on calling the prosecutor's witnesses and instead ordered testimony from Kittani first. After hearing Kittani's denial of all accusations against him and of any link to the twenty five persons who allegedly mentioned his name in their statements, the judicial panel once again refused to call these men as witnesses and asked the prosecution and the defense to argue on the substance of the charges. Subsequently, Kittani's defense lawyers decided to withdraw from the case, explaining that they could not properly defend their client without being able to call and cross-examine the prosecution's or defendant's own witnesses. Over Kittani's objections, the Court appointed a state lawyer to defend him, and gave the lawyer only a few hours to prepare. On September 25, 2003, Kittani was convicted and sentenced to 20 years. The Court explained in its verdict that based on article 288 of the Criminal Procedure Code, it had the power to establish its conviction, inter alia, based on statements from other defendants that were taken by the judicial police in separate but related criminal proceedings, without the need to call those defendants and to hear their testimonies in Court. (Court File Number: 2003-5-907, Casablanca Criminal Appellate Court)

Our preliminary findings also include cases of Moroccans living abroad who were sent back to Morocco and upon their arrival were held without due process and with no judicial oversight for several months. For example, **Azeddine Sadraoui**, **Noureddine Lemor** and **Nabil Hamrad**, three Moroccans citizens who were deported from Italy to Morocco on November 19, 2003, were secretly and illegally held incommunicado for two months, without charge and with no legal or judicial process. During their detention, they had no access to a lawyer. Neither their lawyer nor their families could obtain information about their location and their legal status. Even after their release from detention, they continue to be subject to strict surveillance by the security services.

We would appreciate your comments on any or all of the above-mentioned preliminary findings and cases. We also appreciate receiving more information on the following questions:

- What is the number of detainees who were arrested by the judicial police or any other security body since May 16, 2003, in connection with terrorism charges? What is the number of the detainees who have faced terrorism charges and have been brought to trial since May 16, 2003?
- What measures, including investigations and disciplinary measures, have been taken since May 16, 2003 to deter and punish physical abuse committed by members of security forces against persons in custody?

I thank you for your cooperation and welcome any questions or comments you may have. I look forward to your thoughtful and timely reply.

Sincerely,

Sarah Leah Whitson
Executive Director
Middle East & North Africa Division

CC: The Honorable Aziz Mekouar, Moroccan Ambassador to the United States

APPENDIX II: Response of the Ministry of Justice of the Kingdom of Morocco as provided by the Embassy of Morocco in Washington, DC

The Constitution of Morocco has espoused the principles of Human Rights as they are universally recognized. Such an engagement requires Morocco to abide by these principles, not only in its legislation but also within government institutions insofar as they are charged with the protection of individual liberties and the defense of society from criminal activity, ensuring a safe environment for its citizens.

For this reason, the Ministry of Justice has striven to elaborate the rules of the Criminal Code in such a way that they embody and reflect these noble principles. It has worked to develop a relationship of communication and cooperation with national and international human rights organizations, responding to their periodic investigations, exchanging information and providing answers when there arises any violation of the law or abuse of authority infringing upon the rights of individuals or groups.

Your report is seen to focus on a group of individuals claiming to have been victims of acts of torture, sexual abuse, and illegal detention in a facility of the National Territory Surveillance Department. They also claim to have suffered the following abuses: denial of legal counseling; interrogation while blindfolded; confessions obtained through coercion; detention beyond the legal period of time; and finally, the refusal of the court to hear witnesses or to call in a medical expert to examine certain among them in spite of clear evidence of torture. In addition, they protest that the majority of them were not informed by the examining magistrate of their right to appoint an attorney. The individuals in questions are as follows: Abdelghani Ben Taous, Mostafa Denbat, Ahmed Chikou, Abderrazak Zitouni, Aziz Chafii, Abdelhamid El Yagzhi, Mohamed Chadli, and Nouredine Gharbaoui.

1. Physical and mental torture of prisoners and the inhuman treatment to which they were subjected:

As we treat of this question, it is important to point out that the Criminal Code has given the Attorney General the authority to oversee the work of the judiciary police as well as to monitor the procedures followed for arrest and detention. The law also clearly stipulates that a detailed report be provided concerning the conditions of the arrest of suspects as well as the subsequent investigation and perquisites.

In the event that the Attorney General or the District Attorney notices any sign of violence or torture on the suspect when he is presented before the court, or if the suspect makes a request concerning such acts of torture, the Attorney General or District Attorney will immediately call in a medical expert and open an investigation of the affair.

In order to enforce these provisions of the law, the Ministry of Justice has issued several circular letters to judiciary officials and conducted several meetings with them in order to sensitize them to the importance of respecting the principles of human rights, of opposing all forms of violence and torture regardless of the parties concerned, and of taking appropriate legal action in the event of such abuse.

It is to be noted that in the majority of the statements issued by the judiciary police and the examining magistrate, no mention is made of any request on the part of the aforementioned individuals for a medical expert while in police custody. Neither was there any evidence to move the judicial authorities to call for a medical examination. Furthermore, the prisoners themselves did not mention any abuse or call for a medical expert during their first appearance before the judiciary police or the prosecutor, although in nearly every instance they were accompanied by their attorneys.

2. Violation of the right to be assisted by an attorney when questioned by the public prosecutor or the examining magistrate:

The report speaks of a disregard for the right of the accused to appoint his own attorney. In the event that the accused is caught in the act of committing an offense, the Criminal Code requires the prosecutor to inform the accused of his right immediately to appoint an attorney, to question the accused about his identity, and to notify him of the offenses with which he is charged. The examining magistrate must also verify the identity of the accused when he is presented before him for the first time and inform him of the charges as well as of his right to an attorney. If the accused does not exercise his right to choose his own defense, the examining magistrate, on the request of the accused, will appoint an attorney and make note of his appointment in the official statement.

In examining the files of the individuals who claim to have suffered abuse, it is clear that neither they nor their attorneys made any mention of such abuse before the public prosecutor or the examining magistrate.

3. The use of violence to obtain confessions and the signing of statements under coercion:

The allegations that violent methods were used to obtain confessions or that the signing of statements was obtained under threat are groundless and unsupported by any evidence, since no complain was lodged by the individuals in question or by their lawyers during the course of legal proceedings. Moreover, the Criminal Code expressly provides that confessions obtained through violence or under threat are not to be accepted in court and places the confession, along with all other evidence, under the discretionary authority of the judge.

4. Illegal police custody:

The Criminal Code provides that, after an individual has been taken into custody, the judiciary police must immediately inform the public prosecutor as well as the individual's family so that the procedure followed for police custody might be properly monitored. When the judiciary police requests the extension of police custody, the law requires that the accused appear before the Attorney General or the District Attorney, who will inspect his condition and hear the prisoner in order to judge the relevance of prolonging the period of detention, before making a decision. The judiciary police are also required to note in its official records the date and time when the accused was taken into police custody as well as the date of the appearance before the public prosecutor. These records are subject to the oversight of the public prosecutor.

After a review of the statements issued by the judiciary police, it is clear that the procedures set out for arrest and detention were fully respected in these cases. However, it is common for the accused and their lawyers to protest against abuse before the public prosecutor or before the [examining committee] only after the trial is underway and not at the beginning, in order to verify allegations which, in most cases, are unfounded and used by the accused or their attorneys as a ploy for the defense.

The allegations claiming that the accused were presented blindfolded before the public prosecutor are false and have no legal basis. Such a claim was never made, either before the public prosecutor on the occasion of the first appearance of the accused before the examining magistrate, or during the course of the trial. Furthermore, no such complaint has been lodged on their behalf with any organ of the judiciary system.

In what regards the existence of a special facility used as a detention center by the National Territory Surveillance Department, according to the provisions of the Criminal Code, all suspects are to be placed in custody at a station of the judiciary police or of the Royal Police, which are subject to inspection by the public prosecutor. After they have appeared before the public prosecutor and been formally charged, they are transferred to a facility under the authority of the [Penitentiary and Rehabilitation Administration, in accordance with the organic law of this Administration.]

The case of Mr. Mohammed Hassan El Kattani:

The report addressed a number of issues that had given rise to numerous questions, in particular concerning the position adopted by the court when presented with a request of the attorney of the above-named accused, calling for the subpoena of witnesses who testified against the accused in order to hear them again and challenge their testimony. The court, at the request of the public prosecutor, ordered the postponement of the subpoena of witnesses in order first to interrogate the accused.

After the interrogation of the accused in presence of his attorney and of the other persons charged in the same case, the court deliberated concerning the request for the subpoena of witnesses and decided for its denial. The attorney for the defense protested against the decision of the court and withdrew from the session. The court immediately assigned a new attorney for the defense. The accused rejected the assignment of a new attorney, insisting on the return of his original attorney. The court therefore decided to proceed with the session without the presence of an attorney for the defense, considering that it had exhausted all means provided by the law and could not remain inactive, at the mercy of the defendant and his attorney. The court invoked as justification the Supreme Court decision No. 759 L 7 of May 19, 1964, which states as follows: 'The proper functioning of the court cannot be subject to the will of the defendant or his attorney; if such were the case, the latter would be capable of obstructing justice, which cannot be the intention of the legislator.

In conclusion, it is within the competence of the court to deny such a request for the subpoena of witnesses, according to its assessment of the circumstances of each case.

In what regards the emigrants and exiled citizens mentioned in the report, the information provided is insufficient to the formulation of a reply.

In reply to two questions raised by the report:

The report asks for specific information on two questions:

The first question regards the number of individuals brought to justice on charges of terrorism since the events of May 16.

The second question concerns the measures taken to prevent and punish abuse against detainees by members of the police force.

In answer to the first question: the number of persons brought to justice on charges of terrorism reached 1,748 as of June 3, 2004, including 315 cases still under investigation, 199 cases still ongoing before the district court or the court of appeals, and 1,234 cases in which sentence has already been passed.

As for the second question, the Criminal Law has given the public prosecutor the authority to oversee the work of the judiciary police as well as the procedures for arrest and detention. It also provides that in the event of a violation of these procedures, the police statement is declared null and void and the members of the police accused of the offence are to undergo disciplinary measures that may include termination of employment; in addition, the public prosecutor must request an investigation when a member of the judiciary police is suspected of abuse. If guilt is established, a legal action is brought against the officer, in accordance with the law.