



Universal Periodic Review: Morocco

Third cycle

Submission to the Stakeholders' Summary

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1. The present contribution falls within the framework of the second cycle of the Universal Periodic Review (UPR) pertaining to the general human rights situation in Morocco and takes into account the recommendations made in 2012.

1. Background and framework

1.1 General political context

2. The popular uprisings of the Arab Spring have not spared the Kingdom of Morocco, which faced a wave of protests during the beginning of 2011. What was initially called the "20 February Movement" ultimately led to social and political demands calling for institutional reforms.

3. Morocco has recently undergone a tangible change in the protection and promotion of human rights. However, despite the progress commended by the international community, significant shortcomings and recurrent violations of human rights continue to persist.

1.2 Constitutional framework developments

4. Under public pressure, a new constitution enshrining the protection of human rights was adopted by referendum on 1 July 2011. The new legislation expands the Parliament's jurisdiction and strengthens the powers of the Prime Minister, now leader of the government, who can dissolve the House of Representatives by Decree of the Council of Ministers. This legislation requires the King to appoint the Prime Minister from within the political party that obtains the most votes in the elections of the House of Representatives.

1.3 Legal framework

5. The Minister of Justice has initiated a project to reform the Code of Criminal Procedure (CCP) to bring into conformity the judicial system with the 2011 Constitution and the international obligations of Morocco. This project reorganizes the conditions of detention, introduces alternatives to detention, and makes audio-visual recording of interrogations of preliminary investigation compulsory. The draft reform of the Criminal Code, criminalizing particularly the fact of "undermining the allegiance of citizens to the State and institutions" was strongly criticized by the opposition.

6. On 5 May 2016, the Government's Council passed Bill No. 10-16 complementing the provisions of the Penal Code which criminalizes, among others, enforced disappearance and redefines the crime of torture. However, this bill has so far not been made public.

1.4 Scope of international obligations

7. Morocco ratified the International Convention for the Protection of All Persons from Enforced Disappearances (ICCPED) - without making a declaration under article 31 – on 14 May 2013 and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatments (OPCAT) on 24 November 2014.

During the last UPR, several countries recommended that Morocco ratify the Optional Protocol to the International Covenant on Civil and Political Rights (OP ICCPR) and establish an individual complaint mechanism.¹ Morocco has also yet to ratify the Rome Statute of the International Criminal Court.

1.5 Institutional framework, human rights and general policy measures

8. In 2012, several countries called upon Morocco to strengthen the national promotion and protection system for human rights.² In this context, the National Council for Human Rights (NCHR) - National Institution of Human Rights (NIHR) – has replaced the Consultative Council for Human Rights. The Council³ was established by Royal *dahir* (Decree) in March 2011, without the Parliament being

¹ Recommendation 129.5 (Belgium, Estonia, France and Spain).

² Recommendations 129.28 (Hungary), 129.29 (Nepal), 129.30 (Norway).

³ Provided for in Article 101 of the Constitution.

consulted. Following the ratification of the OPCAT, the NCHR assumed the role of the National Preventive Mechanism (NPM), which permits visitations to all places of detention in the country without restriction and without warning. This proposal was strongly criticized by some civil society organizations, which challenged its independence.

9. In 2015, the Accreditation Sub-Committee (ASC) of the Global Alliance of the National Human Rights Institutions (GANHRI) decided to re-accredit the new body with the "A" status. In the accreditation process, however, Alkarama raised several shortcomings with the Paris Principles, including its creation and the appointment process of its members.⁴ Alkarama noted that, in practice, the scope of the NCHR remains restricted in certain situations of violations of human rights.

10. Recommendations :

- a) Ratify the Rome Statute ;
- b) Recognize the competence of the Human Rights Committee to receive individual complaints by ratifying the Optional Protocol to the ICCPR and recognize that of the Committee on Enforced Disappearances under Article 31 of the ICCPED;
- c) Adopt a definition of torture and enforced disappearance consistent with the definitions contained in the respective conventions;
- d) Strengthen the independence of the NCHR vis-à-vis the executive.

2. Cooperation with human rights mechanisms

2.1 Cooperation with treaty bodies

11. Alkarama referred several cases of extradition proceedings of people to countries where they were likely to be victims of torture to the UN Committee against Torture (CAT). The Moroccan authorities have honoured their commitments by implementing the CAT injunctions to refrain from extraditing these people.

2.2 Cooperation with special procedures

12. Morocco has not addressed a standing invitation to special procedures. However, the Special Rapporteur on torture and other cruel, inhuman or degrading treatments (SRT) visited Morocco from 15 to 22 September 2012, and the Working Group on Arbitrary Detention (WGAD) from 9 to 18 December 2013.

13. However, Alkarama regrets that the opinions of the WGAD calling for the release and compensation of individuals including Mohamed Hajib, Absessamad Bettar Ali and Rachid Aarrass Ghribi Laroussi, have yet to be implemented by the authorities. After the 2003 Casablanca bombings, they were detained, like hundreds of other people, following unfair trials and judgments based on confessions obtained under torture.

14. Recommendations :

- a) Ensure compliance with Article 3 of the Convention against Torture ;
- b) Implement all WGAD opinions and proceed with the release of all arbitrarily deprived of their liberty as a result of unfair trials.

⁴ Alkarama, *L'institution nationale des droits de l'homme du Royaume du Maroc devant le Comité international de coordination des INDH*, 16 July 2015, <http://fr.alkarama.org/component/k2/item/1924-maroc-conseil-national-des-droits-de-l-homme-2015-rapport-d-alkarama-pour-le-comite-international-de-coordination-des-indh?Itemid> = Available in French only (consulted on 15 September 2016).

3. Implementation of human rights obligations

3.1 Equality and non-discrimination

15. Morocco repealed paragraph 2 of Article 475⁵ of the Penal Code, which allowed rapists to escape prosecution by marrying their victims. Alkarama welcomes the unanimous vote of 22 January 2014 in the House of Representatives in favour of the repeal.

3.2 Right to life, liberty and personal security

3.2.1 The death penalty

16. Following the second UPR, Morocco rejected the principle of a *de jure* abolition of the death penalty.⁶ Even though it is not applied *de facto*, the death penalty remains at the top of the criminal penalties hierarchy.

17. This penalty applies to crimes of aggravated homicide, torture, armed robbery, arson, treason, desertion, and attempt on the life of the King or any member of the Royal family. At the end of 2014, the number of those sentenced to death was estimated at 117.⁷ The number of crimes punishable by the death penalty significantly decreased following the mobilization of the civil society and a network of parliamentarians.

3.2.2 Procedural safeguards in detention

18. Article 23 of the Constitution provides that every detainee has the right to legal assistance and the possibility to contact his relatives. The CCP allows for a meeting limited to 30 minutes between the detainee and his counsel during the first 24 hours of detention.

19. In practice, the WGAD noted that this right is often ignored, as the record date of arrest is regularly postponed. Some lawyers affirmed that they could not meet with their clients during the first hearing before the judge.⁸

20. On 17 September 2012, the Minister of Justice declared that he would initiate a video recording project of all hearings on criminal matters during the preliminary police investigation, without further details.

21. Alkarama noted that the General Delegation of the Prison Administration and Rehabilitation is directed by a General Delegate appointed by the King – ultimately depriving the Ministry of Justice of such control.

3.2.3 Torture and ill-treatments

22. Although the practice of torture has significantly declined since 2011, serious violations revealed by the Equity and Reconciliation Commission (ERC), committed between 1956 and 1999, remain unpunished - in violation of the right to an effective remedy for the victims and their beneficiaries.

23. After his visit in 2013, the SRT noted that in cases concerning the security of the State - terrorism, membership in, or support of, Islamist movements for the independence of Western Sahara - torture was still practiced during the arrest and the police custody period, particularly in centres administered by the Directorate for Territorial Surveillance (DTS).

24. Similarly, it is important to note that the allegations of torture or ill-treatments made by the victim in custody are not systematically followed by prompt and impartial investigations.

⁵ Article 475 of the Penal Code provides *inter alia* that "when a nubile minor, abducted or diverted married her abductor, the abductor cannot be prosecuted on a complaint of people entitled to apply for the annulment of the marriage and may only be condemned after the marriage annulment has been pronounced".

⁶ Recommendation 131.3 (Belgium) and 131.5 (France).

⁷ Amnesty International, *Condamnation à mort et exécution en 2014*, 2015, London, p. 66.

⁸ Report of the Working Group on Arbitrary Detention: mission in Morocco, on 4 August 2014, A/HRC/ 27/48/Add.5, para. 45.

25. In addition, Alkarama notes the inadequacy of medical examinations at the beginning of the detention and the absence of any investigations into allegations of torture. Furthermore, the physicians responsible for the medical or forensic examinations generally make reports which are inconsistent with the Istanbul Protocol. Under the authority of the General Delegation for the prison administration and rehabilitation rather than the Ministry of Health, these doctors are not independent.

26. A main concern for Alkarama is the overcrowding nature of prisons. According to the International Centre for Prison Studies, the number of people in custody, including preventive custody, reached 76 000 - with a total capacity of about 40 000, constituting an occupancy rate of 157% in 2014.⁹

27. Recommendations :

- a) Ensure the prosecution of the perpetrators of serious crimes, including those committed between 1956 and 1999;
- b) Ensure effective compliance with the procedural guarantees provided by the Constitution;
- c) Ensure the independence of the Prison Administration by placing the General Delegation for the Prison Administration under the control of the Ministry of Justice;
- d) Fight against prison overcrowding by limiting the use of pre-trial custody.

4. Right to a fair trial and independence of the judiciary

4.1 General framework

28. Under the 2011 Constitution, no one shall be arrested, detained, prosecuted or sentenced outside of the law. During the second UPR, Morocco accepted to adopt the international norms on Human Rights in national trials.¹⁰

4.2 Arbitrary detention

29. Although Article 293 of the CCP considers any evidence inadmissible obtained under torture, Alkarama remains concerned about the extent of importance the courts give to confessions. The WGAD noted, in particular, that many court cases were entirely based on confessions extracted under torture, and in the absence of any physical evidence.¹¹ Allegations of forced confessions made by the accused are almost never investigated.

30. After the 2003 Casablanca bombings, thousands of suspects were arrested, most often by DST agents and held secret or *incommunicado*, especially in central Temara - closed since 2011 - before being sentenced after unfair trials.

31. Alkarama welcomes the adoption of the reform of the Military Justice by the Parliament on 22 October 2014, which put an end to prosecutions of civilians before the military courts during peacetime. In July 2016, the Court of Cassation of Rabat cancelled the condemnation of 24 Sahrawi civilians prosecuted for the murder of 11 policemen by a military court in February 2013, following the events of Gdim Izik.

32. Recommendation :

- a) Provide for a review mechanism of final criminal convictions pronounced after unfair trials.

⁹ Institute for Criminal Policy Research in Prison Studies, <http://www.prisonstudies.org/country/morocco> (consulted on 15 September 2016).

¹⁰ Recommendation 129.74 (Iraq).

¹¹ Report of the Working Group on Arbitrary Detention: mission in Morocco, 4 August 2014, A/HRC/ 27/48/Add.5, para. 31.

5. Freedom of expression, association and peaceful assembly and the right to participate in public and political life

5.1 Infringement to freedom of opinion and expression

33. Following the second UPR, Morocco eliminated prison sentences for press related offenses in order to ensure freedom of expression.¹²

34. The Ministry of Communication has since submitted a project on the Law of the press and edition, which aims to replace the prison sentences to fines.¹³ This project does not fully guarantee the right to freedom of expression as highlighted by the NCHR.¹⁴ However, prison sentences remain in the Penal Code for "threat to national symbols, to the King's person, to religion or even the Moroccan flag".¹⁵

35. Since 2012, charges have been brought against journalists for "insulting the King" or "undermining the territorial integrity" for comments made on the status of Western Sahara.

5.2 Right to peaceful assembly, repression of demonstrations

36. In Morocco, political parties, trade unions and associations officially registered only are allowed to organise demonstrations on public roads after submitting a preliminary statement.¹⁶ Spontaneous gatherings of citizens are considered "mobs" that can be dispersed by the police. Nevertheless, the Minister of Justice addressed a circular to prosecutors indicating that police intervention is only justified in cases of armed gatherings likely to disturb the public order.¹⁷

37. Morocco undertook immediate steps to implement the provisions of the new Constitution ensuring respect for international standards of human rights - particularly the right to peaceful assembly and association.¹⁸ In practice, however, the police regularly resort to excessive and unjustified use of force in order to disperse peaceful demonstrations.

38. For example, demonstrations of organisations of unemployed young people, which have been taking place in Rabat, are being systematically repressed. On 7 January 2016, the police violently dispersed a peaceful protest of trainee teachers in Inezgane, injuring dozens of them. Some participants were seriously injured in the head and required emergency medical care.¹⁹

39. Recommendations :

- a) Ensure that all restrictions to freedom of expression and information follow a legitimate goal and that they are necessary and proportionate, in accordance with article 19 (3) of the ICCPR ;
- b) Ensure the effective implementation of the United Nations Basic Principles on the use of force and the use of firearms in the context of law enforcement operations.

¹² Recommendations 129.85 (Belgium), 129.86 (Canada), 129.87 (Chili), 129.90 (Estonia), 129.91 (France), 129.92 (Germany), 129.96 (Slovakia).

¹³ Draft legislation n. 88-13 adopted by the House of Representatives on 22 June 2016.

¹⁴ National Human Rights Council, *Avant-projet de Loi, Code de la presse et de l'édition*, Contribution to the public debate n°8, 8 October 2014, http://cndh.ma/sites/default/files/cndh_-_memo_presse_vf.pdf (Available in French only - consulted on 15 September 2016).

¹⁵ Articles 265, 299, 431, 179 of the Penal Code.

¹⁶ Dahir n.1-58-377 on public gatherings, article 11.

¹⁷ Abdelali El Hourri, « Ramid désavoue la police: les attroupements pacifiques sont libres », *Medias24*, <http://www.medias24.com/DROIT/158751-Ramid-desavoue-la-police-les-attroupements-pacifiques-sont-libres-circulaire.html> (Available in French only - consulted on 15 September 2016).

¹⁸ Recommendations 129.94 (Holy-See), 129.80 (Sweden), 129.95 (Mexico).

¹⁹ Human Rights Watch, *Morocco: Protests Violently Dispersed*, 18 January 2016, <https://www.hrw.org/news/2016/01/18/morocco-protests-violently-dispersed-0> (consulted on 21 September 2016).

6. Human rights and fight against terrorism

40. In 2002 Morocco committed to fully respecting human rights in the counter-terrorism context, particularly the rights of the defence and the abstaining from torture.²⁰

41. However, in terrorism related cases, the procedural safeguards that can prevent acts of torture and ill-treatments remain inadequate. According to the provisions of the Anti-Terrorism Law nr.03-03 adopted after the Casablanca attacks, the right to counsel is limited. Only a 30 minute meeting, carried out under surveillance, is allowed during the period of police custody - which can last for up to 12 days.

42. Alkarama notes, with particular concern, that this law does not contain a definition of terrorism consistent with international standards. During the 2011 review of Morocco by the CAT, the Committee was concerned about the broad scope of application of the law which includes offenses of "glorification of terrorism" and "incitement to terrorism" (article 218 of the Penal Code) which do not necessarily imply a real risk of violent action to be legally constituted.²¹

43. In 2013, Ali Anouzla, founder of the news website *Lakome*, was condemned under this statutory provision for posting the link of an Al Qaeda in the Islamic Maghreb video which was already previously published in another prominent foreign newspaper. Since 2015, glorification of terrorism is punishable by a sentence of 5 up to 15 year-imprisonment.²²

44. Recommendations :

- a) Amend law against terrorism n°03-03 in a way which guarantees respect for the fundamental rights of the accused, and particularly reduce the legal period of police custody in accordance with the applicable international standards;
- b) Adopt a precise definition of terrorism, in conformity with international standards.

²⁰ Recommendation 129.124 (France).

²¹ Committee against Torture, *Final Observations of the Committee against Torture on the Fourth Periodic Review of Morocco*, 21 December 2011, CAT/C/MAR/CO/4, para. 8.

²² Law n. 86-14 of 21 January 2015 amending and completing some provisions of the Code of Criminal Procedure on the fight against terrorism.