

MOROCCO

I. INTRODUCTION

1. Legal Framework

1.1. The Constitution

The Kingdom of Morocco has a population of 27 million composed of various ethnic groups, the majority of which are Arab-Berber.¹

Morocco became independent on 18 November 1956. Its present Constitution was adopted on 13 September 1996 establishing Morocco as a democratic, social and constitutional Monarchy. The Constitution enshrines Morocco's adherence to universally recognised human rights,² however only provides for a limited number of civil and political rights, which do not include the right to life or freedom from torture.³

The judiciary is comprised of four levels of courts of general jurisdiction: commune and district courts hear minor civil and criminal cases; courts of first instance have a general competence to hear all civil and criminal cases, except those explicitly assigned to other courts; appeal Courts hear appeals, try serious criminal offences and the Supreme Court, which reviews the lawfulness of judgments of lower courts but does not hear individual fundamental rights petitions.⁴ The Constitutional Council may review the constitutionality of laws⁵ and the High Court of Justice is competent to try members of government for crimes committed in the exercise of their duty.⁶ There are also special courts, administrative courts and a Permanent Military Tribunal.⁷ The Constitution guarantees the independence of the judiciary.⁸

1.2. Incorporation and Status of International Law in Domestic Law

¹ See for general information on Morocco, Core Document forming the initial part of State Party Reports, Morocco, UN Doc. HRI/CORE/Add.23/Rev.1, 15 April 2002, paras.1-10.

² Parts of the preamble read: "Aware of the need of incorporating its work within the frame of the international organisations of which it has become an active and dynamic member, the Kingdom of Morocco fully adheres to the principles, rights and obligations arising from the charters of such organisations, as it reaffirms its determination to abide by the universally recognised human rights."

³ See Articles 5, 8-11, 14 and 15 of the Constitution.

⁴ See Dahir (law) of 15 July 1974 establishing the Kingdom's legal system, the Code of Civil Procedure, various provisions of the Code of Penal Procedure and the Code of Military Justice. See for an overview Core Document, supra. FN 1, paras. 26-36.

⁵ Ibid., para.48. and Articles 78-81 of the Constitution.

⁶ Articles 88-92 of the Constitution.

⁷ Core Document, supra., paras.37-47.

⁸ Article 82.

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The Kingdom of Morocco has become party to the following relevant international treaties on human rights and humanitarian law:⁹

- Geneva Conventions (26 July 1956)
- Refugee Convention (7 November 1956)
- Convention on the Prevention and Punishment of the Crime of Genocide (24 January 1958)
- The International Convention on the Elimination of All Forms of Racial Discrimination (27 October 1969)
- The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (27 March 1979)
- The Convention on the Rights of the Child (14 June 1993);
- The Convention on the Elimination of All Forms of Discrimination against Women (14 June 1993)
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (21 June 1993)

Morocco is a monist country. International treaties duly incorporated by publication in the Official Bulletin become an integral part of domestic law.¹⁰ Customary international law is considered to be the law of the land. It is the settled judicial practice of the Supreme Court that when there is a contradiction between a domestic law and an international law, the latter prevails, provided that it has been published in the Official Bulletin.¹¹ The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified on 21 June 1993, was published in the Official Bulletin (No. 4440 of 19 December 1996).

2. Practice of Torture: Context, Occurrence, Responses

2.1. The Practice of torture

Under the former King Hassan II, who ruled from 1961-1999, torture was a common practice. This was particularly the case in the Western Sahara, a contested area situated between Morocco and Mauritania, which was annexed by Morocco in 1975. Since then, mainly from 1975 to the early 1990's, Moroccan forces are reported to have committed gross human rights violations, such as extra-judicial killings, involuntary and enforced disappearances, many of which remain unaccounted for today,¹² as well as torture, in its

⁹ Date of accession or receipt of instrument by UN.

¹⁰ See, on ratification of treaties, Article 31 of the Constitution: "(1) The King accredits ambassadors to foreign powers and international organizations. Ambassadors or representatives of international organizations are accredited to Him; (2) He signs and ratifies treaties. However, treaties relating to the State finances cannot be ratified without prior approval of the Chamber of Representatives; (3) Treaties inconsistent with the provisions of the Constitution are approved in accordance with the procedures necessary for the revision of the Constitution."

¹¹ See, for example, decisions No. 49 of 1 October 1976, No. 5 of 3 November 1972 and No. 162 of 3 August 1979.

¹² According to Amnesty International, "a substantial proportion of the approximately 450 remaining "disappeared" - mostly Sahrawi - do not figure among the 242 cases the Working Group on Enforced or Involuntary Disappearances (WGEID) has submitted to the Moroccan government. See Amnesty International, *Morocco/Western Sahara: Turning the page: achievements and obstacles*, January 1999, AI Index: MDE 29/01/99, and addendum to that report, August 1999, AI Index: MDE 29/05/99, p.3.

fight against the Polisario Front (*Frente Popular para la Liberación de Saguia el-Hamra y Río de Oro*), which itself has reportedly committed serious human rights abuses.¹³

In other parts of Morocco, torture was, and continues to be committed predominantly by the police, the royal secret service and members of the royal armed forces.¹⁴ It is apparently used mainly against political opponents of the regime but also in the course of criminal investigations to extract confessions and to punish and in other incidents to extort money. There are also several reported incidents of death in custody, allegedly as a result of torture.¹⁵ While the practice of torture became less frequent after King Mohammed VI came to power, recently there have been reports about increased torture in secret places of detention, mainly perpetrated in the context of the combat against "terrorism."¹⁶

2.2. Domestic Responses

In 1990, King Hassan II appointed the Consultative Council on Human Rights (CCDH). It is a body composed of a Chair and 44 members who are proposed by various organisations and appointed by dahir (royal decree). Their task is to assist the King by providing advice on all issues relating to human rights.¹⁷ The powers of the CCDH have been broadened by King Mohammed VI by a dahir in 2001, and include, besides assisting the Government in its human rights policy, the duty "to study the harmonisation of domestic legislation and regulations with international human rights charter and conventions...", the power to investigate human rights violations and make recommendations, as well as activities aimed at raising awareness.¹⁸

In 1993, Morocco set up a Ministry of Human Rights (MHR). Amongst its other activities, it has the mandate to investigate human rights violations and refer such cases to the competent authorities.¹⁹

¹³ See, for background information, UN Documents on Western Sahara, on the homepage of the United Nations Mission for the referendum in Western Sahara <http://www.un.org/Depts/dpko/missions/minurso/background.html> and Amnesty International reports on Western Sahara.

¹⁴ See *Rapport alternatif de l'OMDH au deuxième rapport périodique du gouvernement marocain dans le cadre de La Convention Internationale Contre La Torture, Mai 1999, Dossier relatif aux décès survenues dans le locaux dépendant de la police judiciaire et des autorités locales où impliquant la force publique, 1989-1997* and AI, *Turning the Page*, supra, pp.14 et seq.

¹⁵ See *ibid.*, p.17. See, also, the cases mentioned in the Country Report on Human Rights Practices: Morocco, 2001, Released by the US State Department, Bureau of Democracy, Human Rights, and Labor 4 March 2002.

¹⁶ See Amnesty International, Morocco/Western Sahara: reports of secret detention and torture on the rise, 21 February 2003, AI Index: MDE 29/001/2003.

¹⁷ The Council is chaired by the first president of the Supreme Court and composed of five Ministers (Justice, Foreign Affairs, Interior, Religious Endowments (*Habous*) and Human Rights), as well as representatives of various civil organisations (political parties, trade unions, human rights associations, the Association of Moroccan Magistrates, the Moroccan Bar Association, university professors and the National Medical Association).

¹⁸ See Core Document, supra, paras. 23, 24.

¹⁹ *Infra*, III, 2.3.2. According to the Government, its tasks include: "(a) To review all draft legislation and regulations for compliance with the principles of human rights and suggest necessary corrections; (b) To identify any causes for failure to respect or apply the principles and rules relating to human rights, and to strive to ensure that they are respected more strictly; (c) To suggest measures for the establishment and development of institutions which can strengthen respect for

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The government has adopted a series of measures to stop officials from using torture as a means of interrogation. Human rights education and training have been promoted and carried out in recent years at universities as well as at other institutions, including the National Institute of Judicial Studies, an establishment for training and re-training judges; the Ministry of the Interior's training college, where senior officials are trained; the training college of the *Gendarmerie Royal*; the Royal Police College and the Royal Military Academy.²⁰ Finally, it should be noted that in April 1998, the Ministry responsible for human rights and the office of the United Nations High Commissioner for Human Rights signed a memorandum of intent to create a human rights training and documentation centre in Morocco.²¹

Some legislative measures have been taken to combat torture and a commission for compensation for "disappearances" and arbitrary detention has been set up.²² However, the more far-reaching reforms and specific steps as recommended by international bodies, such as the incorporation of a specific criminal offence of torture in line with Article 1 of the Convention, still await implementation.²³

2.3. International Responses

The Committee against Torture has considered the two state reports submitted by Morocco to date. In its latest observation in 1999, the Committee expressed its concern about: "a) The persistent non-existence, in Moroccan criminal legislation, of a definition of torture fully consistent with that contained in article 1 of the Convention, and of the classification as crimes of all acts liable to be characterized as torture pursuant to article 4 of the Convention; (b) The maintenance of the reservations expressed in respect of article 20 and the non-existence of the declarations provided for in articles 21 and 22 of the Convention; this considerably restricts the scope of the Convention in respect of Morocco; c) Despite the efforts made, the persistence of allegations of torture and ill-treatment; d) The nonconformity of Moroccan legislation with the provisions of the Convention relating to return, expulsion and extradition."²⁴

Equally, the Human Rights Committee observed that it "is concerned at the number of allegations of torture and ill-treatment of detainees by police officials, and that these have been dealt with, if at all, only by disciplinary action and not by the imposition of

and the promotion of human rights; (d) To harness all educational and other resources in order to disseminate, promote and strengthen the culture of human rights; (e) To strengthen dialogue and cooperation with associations that are directly or indirectly concerned with human rights." Core Document, supra, para. 22.

²⁰ See, Second periodic reports of States parties due in 1998: Morocco, UN Doc. CAT/C/43/Add.2, 5 January 1999, para.68 et seq.

²¹ Ibid., para.75.

²² See infra V.

²³ According to information provided by the Ministry of Human Rights to REDRESS, a draft penal code that is currently under review in Parliament contains an article explicitly criminalising torture.

²⁴ See Concluding observations of the Committee against Torture: Morocco, UN Doc. A/54/44, paras.190-196, 17 May 1999, para.195.

criminal sanctions on those responsible for such violations. In fulfilment of its obligations under article 7 of the Covenant, the State party should adopt firm measures to eradicate the practice of torture and enact legislation to make torture a criminal offence and to exclude the admissibility in evidence of any confession or statement obtained by torture or duress; appropriate mechanisms should be established for independent monitoring of police detention centres and penitentiaries, all reports of torture and ill-treatment must be investigated, the persons responsible should be prosecuted, and victims of torture must be granted compensation.²⁵

Finally, the Working Group on Enforced or Involuntary Disappearances expressed its concerns about the lack of investigations into past disappearances.²⁶

II. PROHIBITION OF TORTURE UNDER DOMESTIC LAW

Neither the constitution nor statutory law contain an express prohibition of torture. However, Article 10 of the Constitution provides that "no one may be arrested, detained or punished except in the cases and in the manner prescribed by law."²⁷ While there is consequently no definition of torture in domestic law, Article 1 of the Convention against Torture is in principle applicable by virtue of its incorporation into domestic law.

III. CRIMINAL ACCOUNTABILITY OF PERPETRATORS OF TORTURE

1. The substantive law: Criminal offences and punishment

There are several criminal offences that could be applied in the absence of a specific offence of torture. However, none of these provisions captures the specific characteristics of torture.²⁸ Assault and battery are punishable with various forms of punishments depending on the injury caused. If the offence causes any disability of less than 20 days, it carries a punishment of one month to two years,²⁹ and if such disability lasts for more than 20 days, one to five years imprisonment.³⁰ If the assault or battery

²⁵ See Concluding observations of the Human Rights Committee: Morocco, UN Doc. CCPR/C/79/Add.113, 1 November 1999, para.16.

²⁶ See Report of the Working Group on Enforced or Involuntary Disappearances, UN Doc. E/CN.4/2000/64, 21 December 1999, para.74: "The Working Group received allegations that the Government had taken no further steps to investigate the disappearances of more than 200 Moroccans and Saharawis who disappeared between 1984 and 1991, in breach of article 9 of the Declaration. ... It was further reported that a royal amnesty continued to protect those responsible for enforced or involuntary disappearances from legal prosecution. The failure on the part of the authorities to carry out serious investigations and to institute legal proceedings was also denounced." See also, the 2002 report of the Working Group UN Doc.E/CN.4/2002/79, 18 January 2002, para.223: "The Working Group understands the difficulties involved in gathering the information necessary to determine the whereabouts of victims of enforced disappearances that occurred many years ago, but the 115 outstanding cases that are still unelucidated remain a matter of serious concern. The Group wishes to remind the Government of its obligation under article 13 of the Declaration to continue to conduct investigations for as long as the fate and whereabouts of the victims of enforced disappearance remain unclarified."

²⁷ See on the absence of an express prohibition of torture in Moroccan law, OMDH, *Rapport alternatif*, supra, article 2.

²⁸ See for a brief analysis of the applicable offences, *ibid.*, supra, article 4.

²⁹ Article 400 Penal Code. There is a higher punishment if the assault was premeditated, carried out with felonious intent or with a weapon.

³⁰ Article 401 Penal Code.

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causes mutilation or permanent disability, the punishment ranges from five to twenty years.³¹ In case it results in the death of the victim, without the intent to kill, it carries a punishment of ten to twenty years or life imprisonment.³² While attempted assault and battery are not punishable, "an act of violence does not necessarily imply direct and violent physical contact with the victim and may be characterized by an action or attitude likely to cause acute fear or intense distress in the victim."³³

If any of these crimes is committed by a judge, a public official³⁴ or law enforcement personnel who unlawfully use or order the use of violence against persons in or in connection with the exercise of their functions, the punishment for the above-mentioned offences is increased. For example, the punishment is doubled for assault or battery resulting in temporary disability to work and life imprisonment for such acts causing mutilation, permanent disability or death.³⁵ Moreover, under article 225 of the Penal Code, "Any magistrate, public official, agent or representative of the authorities or of the security forces who orders or performs an arbitrary act infringing individual freedom or the civil rights of one or more citizens shall be liable to civic dishonour."³⁶

Homicide is punishable by life imprisonment, and in aggravating circumstances, capital punishment.³⁷ Rape is punishable by five to ten years imprisonment, and in aggravating circumstances, such as when the person committing the offence is in a position of authority, ten to twenty years imprisonment.³⁸ Finally, the use of torture or barbaric acts employed to commit another crime, carries the death penalty.³⁹

All public officials are subject to disciplinary measures that can be imposed by their superiors for any unlawful acts or omissions committed in the course of their duties. The Inspector-General of the Department of National Security is competent to carry out inquiries into the conduct of police officers, in particular, following complaints of unlawful conduct or abuse of authority. The Inspector-General has the power to propose disciplinary punishment of the official concerned and to call for prosecution.

2. The procedural law

³¹ Article 402 Penal Code.

³² Article 403 Penal Code.

³³ See Morocco's 1999 State Report to CAT, supra, para. 49.

³⁴ According to Article 224 of the Penal Code officials are "all persons who, in some capacity, have a paid or unpaid function or mandate, even a temporary one, and who work in that capacity for the State, public administration, local authorities, public institutions or other public services."

³⁵ Article 231 Penal Code.

³⁶ Civic dishonour includes punishments ranging from reprimand to dismissal.

³⁷ Articles 392 and 393 Penal Code.

³⁸ Article 486 (1) and Article 487 Penal Code.

³⁹ Article 399 Penal Code: "*Est puni de la peine de mort, quiconque pour l'exécution d'un fait qualifié crime emploie des tortures ou des actes de barbarie.*"

2.1. Immunities

There are no amnesty or immunity laws covering acts of torture.

2.2. Statutes of Limitation

All criminal offences, including those applicable in cases of torture, are subject to a period of limitations of twenty years, while misdemeanours (*délit*) are prescribed after five years.⁴⁰

2.3. Criminal Investigations

Any person may lodge a complaint about a crime to the criminal investigation officers or the crown prosecutor.⁴¹ A victim of a crime also has the right to institute criminal proceedings. This can be done by summoning the alleged perpetrator directly before the competent court for cases relating to minor offences. For more serious offences, the victim has to bring a claim before the examining judge (*juge d'instruction*) by becoming a "*partie civile*".⁴² With regard to the investigation and trial of offences that relate to executive and judicial officials, such as commanders, chief superintendents or criminal investigation police officers, the President of the Appeal Court may, if so requested by the Prosecutor's Office or the victim that has brought a claim, order the case to be examined by a magistrate from a different district than the one where the accused carries out his/her functions.⁴³

In general, the crown prosecutor is in charge of public prosecutions while the judicial police, i.e. those designated as criminal investigation officers,⁴⁴ may investigate criminal offences under their supervision.⁴⁵ Upon receiving information about the commission of a crime, any public officials, including the investigation officers, have to inform the Crown prosecutor immediately.⁴⁶ An investigation is obligatory only for crimes that carry a punishment of life imprisonment or the death penalty. The investigation officers are to carry out a preliminary investigation by gathering evidence and taking steps to identify

⁴⁰ Article 4 Criminal Procedure Code (*Code de Procédure Penale*), 10 February 1959 (CPP).

⁴¹ Article 40 CPP even stipulates an obligation to bring a complaint for those persons who have witnessed an attack on the life of another person.

⁴² Articles 56 and 93 CPP.

⁴³ See Articles 266-270 CPP. According to the government, the aim of these provisions is to "prevent investigations and trial from being too accommodating or lenient, see Initial Reports of States Parties due in 1994, Addendum, Morocco, UN Doc. CAT/C/24/Add.2, 10 August 1994, para. 69.

⁴⁴ See Articles 19-33 CPP. Persons holding the rank of criminal investigation officer are listed in article 20 of the Code of Penal Procedure. They belong to the gendarmerie and the national police. They are responsible for reporting offences, gathering evidence and finding perpetrators, supervised by the Crown Prosecutor and the head of the prosecution service and monitored by the criminal chamber of the Appeal Court (art. 16, et seq. of the Code of Penal Procedure).

⁴⁵ Articles 37, 42 CPP.

⁴⁶ Articles 23(1) and 39 CPP.

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the perpetrators of the crime.⁴⁷ In carrying out the preliminary investigation into a crime, the investigation officers may arrest and detain a suspect for 48 hours for questioning.⁴⁸

Following the preliminary investigation, the examining magistrate carries out a preparatory investigation. In the course of this investigation, he/she may order a medical examination.⁴⁹ The Crown Prosecutor and the examining magistrate are required to present for medical examination any person brought before them at the end of his period in custody, if the person so requests, or on their own initiative if there are signs that the person may have been subjected to violence.⁵⁰ The Crown Prosecutor has the power to request the examining magistrate to carry out other measures of investigations.⁵¹ If a corpse is found, the Crown Prosecutor may order a post-mortem to be carried out.⁵²

Following the termination of the investigation, the examining magistrate is to send the dossier to the Crown Prosecutor, who in turn has to address his/her demands to the examining magistrate within eight days.⁵³ If the examining magistrate believes that the facts do not reveal the commission of a crime, that there is insufficient evidence to bring charges against the suspect or the offender could not be identified, he/she may take a decision not to bring charges.⁵⁴ The "*partie civile*" has the right to challenge such a decision before the pre-trial chamber (*chambre d'accusation*).⁵⁵ The Crown Prosecutor may equally appeal against the decisions of the examining magistrate before the pre-trial chamber.⁵⁶ If the examining magistrate is of the opinion that the facts as presented constitute a crime, he/she will refer the case to the Crown Prosecutor so that the latter can proceed to the pre-trial chamber with a request for prosecution.⁵⁷ The Court then decides whether there is sufficient evidence to charge the suspect with a criminal offence, and, as the case may be, orders the case to be discontinued or brings it before the Criminal Court.⁵⁸

Moreover, in relation to criminal investigation officers, the head of the prosecution service or the president of the Court may bring a case concerning professional misconduct by such officers in the exercise of their functions before the criminal chamber of the pre-trial chamber which supervises the criminal investigation officers.

⁴⁷ Articles 18, 21 and 78 CPP. Such investigation differs depending on whether the perpetrator is caught red-handed, in which case the police has greater powers.

⁴⁸ Articles 82 CPP.

⁴⁹ Article 89 CPP.

⁵⁰ Articles 76 and 127 CPP.

⁵¹ Article 90 CPP.

⁵² Article 79 CPP.

⁵³ Article 195 CCP.

⁵⁴ Article 196 CCP. In such case, the judge might order the "*partie civile*" to pay some or all of the legal costs.

⁵⁵ Article 207 CPP.

⁵⁶ Article 204 CPP. See for the procedure followed by the pre-trial chamber, Articles 213 et seq. CPP.

⁵⁷ Article 200 CPP.

⁵⁸ Articles 231, 232, 235-239 CPP.

When examining a case referred to it, the criminal chamber orders an investigation. If such an investigation confirms the facts of the accusation, disciplinary proceedings may be initiated against the concerned officer who may be suspended or dismissed from the criminal investigation police. Finally, the Chamber may refer the case to the crown prosecution for action if it considers that a criminal offence has been committed.⁵⁹

There is no specific law of protection for victims of crimes, including torture, but the court may order measures of protection. Victims enjoy a range of procedural rights when becoming a *partie civile*,⁶⁰ such as challenging decisions by the examining magistrate.⁶¹

2.4. Human Rights Ministry/Consultative Council on Human Rights

Torture survivors and relatives of torture victims may also complain to the Ministry of Human Rights (MHR) and the CCDH.⁶² The MHR has a Department for the Receipt and Investigation of Complaints. According to the government: "If the complaint is ill-founded, the complainant is informed and is also told of the reasons for its rejection. (I)f a complaint which does fall within the Ministry's competence seems to be well-founded, the case is investigated more fully. If it emerges from the investigation of the case that acts of torture have been committed against a person, the Ministry informs the authorities concerned and the Ministry of Justice so that the case can be pursued in the necessary way."⁶³ Thus, the Department in the MHR can refer cases to the Crown Prosecution and the responsible authorities to institute disciplinary proceedings.

The CCDH has the power to investigate cases of human rights violations. Its powers of investigation are not specified. Following such an investigation, the CCDH may make the necessary recommendations to the competent authorities, but it has neither the power to initiate prosecutions itself nor to monitor the progress of cases referred to in such a way.⁶⁴

2.5. Trials

Trials against public officials take place before the court of first instance or the court of appeal.⁶⁵ The Standing Tribunal of the Royal Armed Forces is competent to hear trials concerning offences committed by members of the armed forces.

⁵⁹ See Articles 244-250, in particular Article 248 CPP.

⁶⁰ See on the position of the *partie civile* and its rights, Articles 9-14; 333-340 and 491 CPP.

⁶¹ Articles 207, 208 CPP.

⁶² See for general information on the CCDH and the MHR, *supra*, I, 2.2.

⁶³ See Morocco's report to the CAT, *supra*, para.112.

⁶⁴ *Dahir* of 2001: The Council has been granted the following prerogatives: "On its own initiative or at the request of the party concerned, to study cases of violations of human rights which are submitted to it and to make the necessary recommendations to the competent authority," see Core Document, *supra*, para.24.

⁶⁵ See Articles 434 et seq. CPP.

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Proceedings are largely inquisitorial. The judge has to be convinced of the guilt of the accused on the basis of the evidence examined.⁶⁶ A victim of a crime may present evidence during the trial, either as *partie civile* or in another capacity.⁶⁷ Judges have discretionary sentencing power and the King may pardon convicted offenders.⁶⁸

3. The Practice

No overall statistics on the number of complaints of torture are available. Until recently, few victims complained to the authorities for fear of consequences in the light of threats and harassments against victims, witnesses and human rights defenders. In most cases where complaints had been lodged, no charges were filed and the actions carried out and the results of the investigations have not been disclosed. While the government has acknowledged the need to investigate human rights violations, such a need has not been translated into effective investigations on the ground. Investigations are either not opened, delayed or closed on the lack of sufficient evidence. Contrary to the law, often no medical examination of detainees and others are carried out, even though such action is warranted by existing injuries. While autopsies have been carried out in cases of deaths in custody, the prosecution and the courts have in several documented cases accepted the version of the police that the death resulted from a suicide and not from torture, even when the visible injuries indicated otherwise.⁶⁹

While the fact that the MHR investigates complaint of human rights violations may add weight to subsequent criminal or disciplinary proceedings, the procedure itself does not provide an effective complaint mechanism. Similarly, the CCDH lacks the institutional structure and investigative power needed to play a more influential role, as its major function continues to be an advisory one. It has also failed to call for more vigorous steps to be taken, especially in relation to cases of past disappearances.⁷⁰

The courts have also not taken a vigorous stance in torture cases. There are no provisions providing for the inadmissibility of confessions extracted by torture.⁷¹ Courts have convicted defendants on the apparent basis of forced confessions and have most failed to carry out or request investigations where defendants raised allegations of torture.⁷² Judges are also seen to have shown deference to the authorities.⁷³

⁶⁶ See Articles 288 et seq. and 434 et seq. CPP.

⁶⁷ See Articles 333 et seq. CPP.

⁶⁸ See for the latter, Article 34 of the Constitution.

⁶⁹ See on this paragraph the general comments in the Alternative Report of the OMDH, *supra*, on Moroccan practice relating to Articles 12 and 13 of the Convention against Torture.

⁷⁰ See Amnesty International, *Turning the page*, *supra*, pp.4 et seq. and Human Rights Watch, *World Report 2002*, Morocco.

⁷¹ In its 1999 Report to the CAT, *supra*, para.115, the Government referred, concerning Moroccan law on Article 15 of the Convention against Torture, to Articles 288 and 289 CPP, according to which offences may be proved by any type of evidence and the judge decides on the basis of his/her personal conviction. The decision may be based only on evidence produced in court and discussed orally before the judge.

⁷² See OMDH, *Rapport Alternatif*, *supra*, Articles 12 and 15.

There have been few convictions of perpetrators of torture as evidenced by the figures provided by the government. According to information provided by the Ministry of the Interior, from 1 January 1997 to 20 April 1998, 35 police officers of all ranks were brought to trial for various offences and acts exceeding their authority in the period from 1 January 1997 to 20 April 1998. During the same period, 266 other officials, from the rank of constable to that of commissioner, were subject to administrative penalties for unseemly or unsatisfactory conduct. No breakdown is given as to how many of these cases concern torture.⁷⁴ According to statistics compiled and published by the Ministry of Justice, from 1 January 1994 to the end of February 1998, 31 cases were brought against criminal investigation officers and State officials for violence and abuses committed in the course of their duties.⁷⁵ Out of these cases, 15 were brought for assault and battery and use of violence, 12 for arbitrary detention, 1 for rape and several others for abuse of authority. As of 1999, 3 of these cases had resulted in a criminal conviction while 1 case had been dismissed and one resulted in an acquittal while the others were pending.⁷⁶

In addition, there have been no adequate investigations into the several hundred cases of documented enforced or involuntary disappearances and none of the perpetrators has been brought to justice. The government and the CCDH have not taken any steps to set up or call for a special body to investigate these crimes and prosecute those responsible. Many observers attribute this to a lacking political will, as the government has failed to acknowledge the number of "disappeared" persons and the organised and systematic nature of these crimes.⁷⁷

⁷³ There are genuine question marks about the independence of the judiciary, as the magistrates are appointed by royal decree following the proposal of the "Conseil Supérieur de la magistrature" and the Ministry of Justice has the power, according to the *Dahir* on the Magistrates, November 1974, to transfer or temporarily suspend a magistrate. See *ibid.*, *Premier Partie*, A.

⁷⁴ See Morocco's 1999 Report to the CAT, para.24.

⁷⁵ *Ibid.*, para.25.

⁷⁶ See, the information provided by a Moroccan government official, in Summary Record of the 383rd meeting: Luxembourg, Morocco, UN Doc. CAT/C/SR.383. (Summary Record), 12 May 1999, para.14: "Three police officers had been sentenced to terms of imprisonment ranging from 3 to 12 years in the case of Hamid Mourabet, who had died in police custody in 1996. Three police officers were also being prosecuted in connection with the death in police custody of Houssein Al-Mernissi in 1997. In the case of Youssef Rami, who had died in hospital following an assault in a police station in 1996, the examining magistrate had decided to terminate the inquiry but the Office of the Public Prosecutor had demanded that the investigation of three police officers should be continued. The Committee would be kept informed of developments. Lastly, Rabat Appeal Court had sentenced a police officer in July 1998 to 10 years' imprisonment for torture and ill-treatment of a detainee."

⁷⁷ Me Chouaib Mellouk, *Le dévoilement de la vérité: principe global, valable, utile et salutaire pour tout le monde, Le jaillissement de la vérité, un défi parmi les grands défis de la transition démocratique*, 18 May 2001.

IV. CLAIMING REPARATION FOR TORTURE

1. Available Remedies

1.1. Constitution

The Constitution does not provide a right to a remedy or a right to reparation.

1.2. Civil Law

The principle of compensation for victims is set out in article 77 of the Code of Obligations and Contracts: "Any act whatsoever perpetrated by a person who, without being authorized by law, knowingly and intentionally causes material or moral injury to another person obliges its perpetrator to redress that injury, once it has been established that the act is the direct cause of the injury. Any stipulation to the contrary is void."

Public officials are personally responsible for injury caused by their bad faith or by serious errors committed in the performance of their duties.⁷⁸ The state is liable for any injury caused directly by the functioning of their departments and by errors committed by their employees in the course of their duties.⁷⁹ In such a case, the state and the concerned public official are jointly liable. The State may have recourse against the culpable officer.⁸⁰ Damages are awarded for pecuniary and non-pecuniary harm.⁸¹

The suit may be brought before the competent administrative court, i.e. the court where the tort was committed or where the defendant resides,⁸² which has jurisdiction to hear actions for the redress of injuries caused by the acts or activities of public officials.⁸³

The president of the tribunal, who appoints a "*juge rapporteur*,"⁸⁴ has considerable powers and may order, either upon request of the parties or on his/her own motion, such measures as visiting the scene of the act, an investigation or the appointment of an expert witness.⁸⁵ The plaintiff carries the burden to prove the infliction of torture and the extent of damages. The civil claim is in principle independent of the outcome of any

⁷⁸ Article 80 Code of Obligations.

⁷⁹ Article 79 Code of Obligations.

⁸⁰ Article 226: "the offences provided for in article 225 render liable both the perpetrator and the State, except in the event of recourse by the State against the said perpetrator." See for Article 225 Penal Code, *supra*, III, 1.

⁸¹ Article 78 Code of Obligations.

⁸² See Articles 26 (6) and 518-528 Code of Civil Procedure for the rules on "domicile."

⁸³ Chapter II, Article 8 of the Act establishing Administrative Courts, Loi 41-90 du 11 juillet 1991. In respect of territorial jurisdiction, the provisions of the Civil Procedure Code are applicable unless stipulates otherwise. See Article 10 *ibid.* and Chapter I, Section 2 which outlines the applicable procedure differing from the civil procedure code.

⁸⁴ Chapter I, Article 4 of the Act establishing Administrative Courts.

⁸⁵ Article 55 Code of Civil Procedure. See for the details of the various measures of verifying the claim, Articles 59-102 *ibid.*

related criminal proceedings.⁸⁶ However, if the claim has already been the subject of another proceeding or is pending before another tribunal, the defendant may raise the objection of *lis pendens*, which has to be made before pleading on the merits.⁸⁷ The judge has discretion in awarding some or all expenses, including fees and costs, taking into account the particular circumstances of the case.⁸⁸

The office of the clerk of the court enforces the decisions of the administrative tribunal.⁸⁹ The enforcement of judgments follows the rules laid down in the Code of Civil Procedure.⁹⁰

1.3. Criminal Law

Victims of a criminal offence that has resulted in bodily suffering or material or moral injury may bring a civil suit in the course of criminal proceedings.⁹¹ The Penal Code also establishes joint civil liability of the State and public officials for acts violating the individual freedom of the rights of citizens.⁹² Such action may be brought at the same time and the criminal court is competent to adjudicate such cases regardless of the identity of the natural or legal person in civil or public law responsible for the injury.⁹³ It may also be filed separately before a civil court.⁹⁴ A legal action for damages may be brought either before the examining court or the trial court. The plaintiff has to claim and prove that he suffered injuries or damages as a result of torture or ill-treatment and has to specify the amount of damages claimed.⁹⁵

The court may in its judgment rule on restitution and the award of damages.⁹⁶ According

⁸⁶ The claim for damages for a crime may, according to Article 10 (1) CPP, be brought separately from the prosecution proceedings: "*L'action civile peut être exercée séparément de l'action publique devant la juridiction civile compétente. Toutefois, il est sursis au jugement de cette action par la juridiction civile, tant qu'il n'a pas été prononcé définitivement sur l'action publique lorsque celle-ci a été mise en mouvement.*" Once such an action is brought before the civil court, it may no longer be brought before the criminal court in criminal proceedings. Equally, if already brought before the Criminal Court, the action may no longer be brought before the Civil Court. Article 11 CPP: "*La partie lésée qui a exercé son action devant la juridiction civile compétente ne peut la porter devant la juridiction répressive. Il n'en est autrement que si cette a été saisie par le ministère public avant qu'un jugement sur le fond ait été rendu par la juridiction civile;*" Article 12: "*Lorsque la juridiction répressive est saisie de l'action publique et de l'action civile, la survenance d'événements éteignant l'action publique laisse subsister l'action civile qui reste soumise à la compétence de cette juridiction.*"

⁸⁷ See Articles 109, 110 and 49 Code of Civil Procedure.

⁸⁸ See Articles 124-129 Code of Civil Procedure.

⁸⁹ Chapter X, Article 49 of the Act establishing the Administrative Court.

⁹⁰ Articles 428-506 Code of Civil Procedure.

⁹¹ Article 7 CPP: "*L'action civile en réparation du dommage cause par un crime, un délit ou une contravention appartient à tous ceux qui ont personnellement subi un dommage corporel, matériel ou moral, directement cause par l'infraction.*"

⁹² Article 226 Penal Code.

⁹³ Article 9 CPP: "*L'action civile peut être exercée en même temps que l'action publique, devant la juridiction répressive saisie de cette dernière. Cette juridiction est compétente quelle que soit la personne physique ou la personne morale de droit civil ou de droit public responsable du dommage.*"

⁹⁴ Article 10 CPP, see text supra.

⁹⁵ See Articles 93, 99 and 333 to 340 CPP.

⁹⁶ Article 491 CPP and Article 105 Penal Code.

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to law, "the award of damages shall ensure that the victim obtains full redress for the personal, current and established injury that he has been directly caused by the offence."⁹⁷

2. Practice

While torture survivors have claimed reparation in some cases, most torture survivors appear to have refrained from taking any legal action or claiming reparation in other ways. In remote areas, in particular in the contested territory of the Western Sahara, this dearth of cases may be due to a lack of access to justice. With regard to other cases, the lack of evidence has been identified as one of the biggest obstacles to claiming reparation for torture successfully. In the absence of convictions in criminal cases, torture survivors could neither rely on evidence produced during criminal trials nor make use of the possibility of bringing supplementary civil suits as part of criminal trials.⁹⁸

V. GOVERNMENT REPARATION MEASURES

On 16 August 1999, the arbitration commission for compensation was established within the official CCDH by royal order. The commission consists of three Supreme Court judges, four members of the CCDH, and one representative of the Ministry of the Interior and the Ministry of Justice each.⁹⁹ Its mandate is to award compensation to victims of prolonged illegal detention and to the relatives of "disappeared" persons.¹⁰⁰ It has no specific mandate to compensate for torture. Applications for compensation had to be presented to the Commission by 31 December 1999 in writing, together with supporting documents.¹⁰¹ A member designated as *rapporteur* by the President of the Commission carries out a preliminary examination of the claim and refers the case to the full Commission if he or she considers the documentation to be in accordance with formal requirements and sufficient to decide on the claim.¹⁰² The hearings on the claims are in *camera*, and are based on the principles of justice and equity.¹⁰³ The decisions of the Commission are unanimous and final.¹⁰⁴ It has discretion in awarding compensation, which might also be awarded as interim compensation.¹⁰⁵ The decision has to include

⁹⁷ Article 108 Penal Code.

⁹⁸ See on this point *Rapport alternatif*, supra, Article 14.

⁹⁹ Article 6 of the legal document which governs proceedings, *Reglement Interieur, Instance d'Arbitrage Indépendante pour l'indemnisation des prejudices materiel et moral subis par les victimes de la disparation et de la detention arbitraire et leurs ayants droit*.

¹⁰⁰ See Article 3 *ibid.*: "L'Instance d'arbitrage a pour mission de fixer les indemnities consecutives aux prejudices materiel et moral subis par les victims de la disparation ou de la detention arbitraire et leurs ayant droit."

¹⁰¹ See Articles 12 and 13 *ibid.*

¹⁰² Articles 15 and 16 *ibid.*

¹⁰³ Articles 21 and 22 *ibid.*

¹⁰⁴ Articles 24 and 26 *ibid.*

¹⁰⁵ Article 23 *ibid.*

the identity of the claimant, the grounds justifying his or her claims, or the reasons for rejecting such claim, and the amount of compensation awarded.¹⁰⁶

The CCDH fixed the number of disappearances to 112 cases even though human rights organisations have documented several hundred unresolved cases.¹⁰⁷ In June 2002, the CCDH announced that the arbitration commission had, since its creation, paid out compensation to 712 persons in 376 cases. The amount of compensation varied from an equivalent of \$1,000 to more than \$10,000. The level of the amount awarded has varied according to unpublished criteria, such as the length of the period of secret detention, and the degree of physical or psychological damage. There are allegations, as yet unverified, that there is a marked discrepancy between the amount received by Moroccan "disappeared" and Sahrawi "disappeared," even where they have suffered roughly similar experiences.¹⁰⁸

Moreover, the work of the Commission and its limited mandate has met with criticism for the lack of transparency and for not forming part of a larger truth-seeking project. Some relatives of persons who "disappeared" said they would accept no money so long as the fate of their loved ones was not revealed. Other victims said they wanted the abusers either identified or held accountable before they would seek compensation.¹⁰⁹

VI. LEGAL REMEDIES IN CASES OF TORTURE WAS COMMITTED IN THIRD COUNTRIES

1. Prosecution of acts of torture committed in third countries

Moroccan criminal law recognises the active personality¹¹⁰ as well as the protective principle.¹¹¹ The draft penal code recognises the passive personality principle.¹¹²

The relevant criminal procedure code does not allow for the exercise of universal jurisdiction. While universal jurisdiction could be exercised on the basis of Article 5(2) of the Convention against Torture, which is directly applicable in Morocco, there is no practice or jurisprudence to this end.

¹⁰⁶ Article 25 *ibid.*

¹⁰⁷ See *supra*, I., 2.2.

¹⁰⁸ According to information received by REDRESS, Survivors of Tazmamert secret detention centre (Moroccan former "disappeared" who spent up to 18 years in secret detention) received DH 3.5 million [\$380,838.50], while survivors of Qalat Mgouna (Sahrawi former "disappeared" who spent up to 16 years in secret detention) received DH 1.65 million [\$165,395.30]. The difference cannot be explained by difference in length of detention or conditions. The same difference appears between money received by (Moroccan) families of those who died in Tazmamert (c. DH 2.5 million \$250,598.90) and money received by (Sahrawi) families of those who died in Qalat Mgouna (DH 500,000 \$50,119.80).

¹⁰⁹ See Me Chouaib Mellouk, *Vérité*, *supra*.

¹¹⁰ Article 751 CPP.

¹¹¹ Article 755 CPP.

¹¹² Article 701 CPP.

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Diplomats and foreign States are granted immunity in accordance with the Vienna Convention on Diplomatic Relations, 1961 and customary international law.

Extradition is governed by the Law of 8 November 1958 relating to the extradition of aliens, or, if in place, any extradition treaty between Morocco and the requesting country.¹¹³ Extradition can be granted for crimes recognised in Morocco punishable by at least correctional penalties provided that they are criminal offences in the requesting State and carry a maximum punishment of at least two years imprisonment.¹¹⁴ Thus, depending on the law of the requesting state, most criminal offences that can be applied in lieu of a specific crime of torture in Morocco are crimes for which extradition may be granted. An extradition request is not to be granted for political offences.¹¹⁵ Torture, as well as genocide, crimes against humanity and war crimes are not considered to be political offences. The law also specifies that Moroccan nationals should not be extradited. Extradition requests may, according to recent extradition treaties, also be refused if there is reason to believe that the person in question will be subjected to a procedure which does not afford the guarantees internationally considered to be essential for ensuring respect for human rights, or that he will serve his sentence in inhumane conditions.¹¹⁶

No cases are known in which Moroccan courts exercised jurisdiction over acts of torture committed abroad.

2. Claiming reparation for acts of torture committed in third countries

Moroccan courts have jurisdiction to hear any claims relating to injury if such legal action is brought either at the place where the tort was committed or at the place of the defendant's residence.¹¹⁷ Thus, a torture survivor will only be able to claim reparation for torture committed abroad before civil courts if the perpetrator has his or her place of residence in Morocco. A civil suit may, however, be brought in the course of criminal proceedings in those, so far hypothetical, cases where Moroccan courts try perpetrators of torture committed abroad.

Diplomats and foreign States are granted immunity in accordance with the Vienna Convention on Diplomatic Relations and customary international law.

There are no known cases in which torture survivors or relatives of torture victims have claimed compensation for torture committed abroad before Moroccan courts.

¹¹³ Article 1 Extradition Law.

¹¹⁴ Torture is not expressly mentioned as an extraditable crime, see OMDH, *Rapport Alternatif*, supra, Article 8.

¹¹⁵ Article 5(2) Extradition Law.

¹¹⁶ See Morocco's 1999 report to the CAT, supra, paras.38 and 66.

¹¹⁷ Article 28 (6) Code of Civil Procedure.