

EXECUTIVE SUMMARY

# SHADOW OF IMPUNITY

TORTURE IN MOROCCO  
AND WESTERN SAHARA

AMNESTY  
INTERNATIONAL



STOP ~~TORTURE~~ CAMPAIGN

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**AMNESTY  
INTERNATIONAL**



First published in 2015 by  
Amnesty International Ltd  
Peter Benenson House  
1 Easton Street  
London WC1X 0DW  
United Kingdom

© Amnesty International 2015

Index: MDE 29/1491/2015  
Original language: English  
Printed by Amnesty International,  
International Secretariat, United Kingdom

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# EXECUTIVE SUMMARY

**‘His Majesty King Mohamed VI informed me that he will not tolerate torture, although he could not rule out that there are isolated cases. Other officials acknowledged that torture was not State policy but that “bad habits” will take time to eradicate. Measures, including the installation of CCTV in police stations and training for officers, have been proposed. The litmus test of such commitments is accountability. Impunity is the most powerful fuel for human rights violations.’**

Opening remarks by then UN High Commissioner for Human Rights Navanathem Pillay at a press conference in Rabat, Morocco, 29 May 2014

Moroccan authorities have repeatedly declared in recent years their determination to eradicate torture. Under King Mohammed VI, the ground-breaking transitional justice work of the Equity and Reconciliation Commission (IER) led to the acknowledgement of state responsibility for widespread torture, among other grave human rights violations, between Morocco's independence in 1956 and the end of former King Hassan II's reign in 1999, a period known as the "years of lead". In 2006, legislators tightened the definition of torture in the Penal Code and Moroccan authorities accepted the competence of the UN Committee against Torture to receive communications by individuals alleging violations of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) in Morocco and Western Sahara. In 2011, Morocco's new Constitution further prohibited torture through its Article 22. Moroccan authorities also invited UN human rights bodies for country visits, including the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (Special Rapporteur on torture) in September 2012 and the Working Group on Arbitrary Detention (WGAD) in December 2013. In November 2014, Morocco acceded to the Optional Protocol to the

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), promising greater efforts to detect and prevent torture in detention.

Tangible change, however, requires more than ink on paper. As this report shows, torture and other ill-treatment in detention continue to be reported regularly across Morocco and Western Sahara, although on a lesser scale than in previous decades. These abuses persist due to the failure to implement existing safeguards, including investigating alleged torture. They are also fuelled by the resulting sense of impunity that casts a shadow over authorities' declared commitment to end torture.

This report draws on 173 cases of torture and other ill-treatment alleged to have taken place between 2010 and 2014. These cases were documented during fact-finding visits in 2013 and 2014 in 17 locations across Morocco and Western Sahara as well as ongoing monitoring. Amnesty International delegates met and interviewed numerous individuals previously arrested and detained, their families and lawyers, human rights activists and defenders, representatives of Morocco's National Council for Human Rights (CNDH), and Moroccan officials, and analysed legal and medical documentation. The organization's ability to conduct fact-finding visits to the country has been curtailed since the authorities' denial of entry to an Amnesty International delegation in October 2014, and the rejection of subsequent requests to enter Morocco until this report went to press. Amnesty International is pursuing its efforts to end this impasse in cooperation with the Moroccan authorities. A preliminary assessment of findings was communicated to the Moroccan authorities in a memorandum on 19 March 2015, and a response, appended to this report, was received on 20 April 2015.

Methods of torture and other ill-treatment documented by Amnesty International range from beatings and stress positions to asphyxiation and drowning techniques as well as psychological and sexual violence including rape threats, and rarely, rape. Ill-treatment also arises from harsh conditions of detention in the holding cells in police and gendarmerie stations where hygiene, food and medical care are reported to be cruelly lacking.

A wide range of people are tortured. Survivors whose experience is described in this report include protesters and activists challenging poverty, inequality or the exploitation of natural resources; political and student activists with left-wing or Islamist affiliations; supporters of Sahrawi self-determination; individuals accused of terrorism offences; and people suspected of ordinary crimes.

Such abuses can happen from the moment of arrest, in broad daylight or behind the tinted windows of vehicles used by security forces. Those arrested in the context of forcibly dispersed protests often reported violence upon arrest and subsequently. In particular, student activists but also bystanders arrested in the context of campus protests described how security officers brutalized and threatened them upon arrest before interrogators further ill-treated them in custody. Accounts of torture and other ill-treatment in plain view of other students on campus or fellow-detainees in security vehicles suggested that a brazen sense of impunity among some security forces. Similar accounts emerged with regard to torture and other ill-treatment in *garde à vue* detention suggesting a similar sense of impunity.

Student and Sahrawi activists and protesters repeatedly spoke of deliberate violence aimed at

dissuading them and onlookers from dissent, even if peaceful. Some Sahrawis including children said security officers detained them and beat them in vehicles before releasing them without formal arrest.

The continuum of violence that begins with arrest in public spaces, sometimes as security forces deploy excessive or unnecessary force to disperse protests, extends to coercion and violence in custody. The most striking pattern that emerged from Amnesty International's research was the use of torture or other ill-treatment during interrogations by police and gendarmes during *garde à vue* detention, often to force suspects to incriminate themselves or others in crimes they may not have committed.

The benefits of improved anti-torture legislation and safeguards are not being reaped due to a wide implementation gap. During *garde à vue* detention, key safeguards are routinely flouted, including the notification of families upon arrest, the right to legal counsel, the right to remain silent during questioning and the right not to be forced to self-incriminate. Detainees unable to access legal counsel during *garde à vue* detention are all the more vulnerable to torture and other ill-treatment. Judicial police officers also appear to focus on securing "confessions" of guilt at any cost. This appears to stem from the emphasis that Morocco's criminal justice system places on confessions as evidence for infractions and misdemeanours.

Forms of torture and other ill-treatment described cover a broad range, including threats and psychological pressure as well as sexual violence. Two men told Amnesty International that police officers raped with objects. The definition of rape currently included in the Penal Code is neither gender neutral nor broad enough to protect them.

In several cases documented by Amnesty International, security forces arrested individuals who appeared to be peacefully exercising their rights to freedom of expression, association and assembly. Courts then prosecuted them and sometimes sentenced them to prison terms on ostensibly trumped-up charges.

The Code of Criminal Procedure equips prosecutors and investigative judges to investigate alleged torture or other ill-treatment, including through medical examinations. It also requires investigating judges to issue reasoned decisions when they refuse to grant a medical examination requested by a defendant. However, in courts, prosecutors and judges alike largely failed to investigate reports of torture and other ill-treatment in cases documented by Amnesty International, reinforcing impunity. Accounts portrayed prosecutors and investigating judges often turning a blind eye to visible injuries, while complaints by defendants and their lawyers in courts repeatedly fell on deaf ears. Written complaints lodged with judicial authorities were equally ill-fated. When investigative judges were reported to have explicitly refused medical examinations, they also appeared not to justify their decision in breach of national legislation.

In the rare cases where courts granted medical examinations, they appeared to be sub-standard, losing precious evidence and skewing subsequent decisions not to open investigations into torture allegations. Medical examinations documented by Amnesty International were inadequate in several ways, contravening standards established in the Istanbul Protocol. They were carried out after significant delay, once physical injuries had

partially or fully healed. Some said security forces were present during the examination, making the detainee less likely to report abuses for fear of reprisals and potentially intimidating doctors. Others described cursory physical examinations. All except for Ali Aarrass said that psychological evaluations were not done. Several said those examined or their lawyers did not receive medical examination reports, or received them too late to be able to make use of them in court, in breach of national legislation. Others claimed that medical reports were inaccurate.

Four cases of suspicious deaths amidst allegations of abuse by security forces were also analysed, including two deaths in custody. In two cases, families told Amnesty International they had no knowledge of whether autopsies had been carried out and that they had received no autopsy report, while no requests for second autopsies by independent forensic pathologists were granted.

The deficit in investigations in relation to reports of torture or other ill-treatment rests in part on an erroneous interpretation that the burden to prove such allegations with complainants alone. In May 2014, the Minister of Justice and Liberties issued instructions to prosecutors and investigating judges to resolve this issue. While some courts have ordered medical examinations and investigations following allegations of torture, others have showed resistance, and it is still too soon to measure the full effect of the ministerial instructions.

The deficit in investigations also means that courts continue to use contested, torture-tainted "confessions" to secure convictions in spite of the legal ban on the use of coerced statements in proceedings. This problem is compounded by the excessive reliance on confessions within Morocco's criminal justice system, and particularly for infractions and misdemeanours, frequently resulting in unfair trials. Since torture was criminalized in 2006, Amnesty International only documented one instance where a court overturned a conviction after recognizing that it relied on a confession extracted by torture in police custody.

Over the past year, the authorities have begun to prosecute and imprison individuals who reported abuses for "false reports" and "slander of security forces", following complaints by security agencies. In particular, two activists were imprisoned following convictions for false allegations and slander against their alleged torturers although they had not identified them in their complaints. Such prosecutions are likely to deter victims from seeking justice and entrench impunity for state agents who commit serious violations of human rights.

Whereas Moroccan law bans the use of forced "confessions" in proceedings, courts relied on them as the main and sometimes the only evidence to secure convictions in virtually all cases studied by Amnesty International that involved prosecutions. This was despite defendants' efforts to recant these "confessions," report that they had been forcibly obtained and request their exclusion. This striking disparity between law and practice owes much to the lack of conclusive investigations into torture allegations, exacerbated by the interpretation of courts that the burden to prove alleged torture rests with complainants. Amnesty International has documented several cases where this provision was applied for more serious offences, including offences punishable by life imprisonment and the death penalty, such as under Morocco's Law 03-03 on Combating Terrorism, despite the higher evidentiary standard required by law.

The lack of adequate investigations has compounded the prevailing impunity for past and present torture and other ill-treatment in Morocco and Western Sahara. Despite its achievements, the IER's limited mandate prevented it from establishing individual criminal responsibility, leaving victims and their families ill-equipped to successfully prosecute perpetrators in Morocco's courts. Meanwhile, authorities have yet to adequately investigate alleged secret detention and torture during the first decade of Morocco's counter-terrorism years following the 2003 Casablanca bombings. The failure to hold accountable any official for torture in relation to such high-profile events has overshadowed recent efforts to prosecute perpetrators in less politically sensitive cases.

Some complainants have opted to circumvent domestic barriers to accountability by seeking redress through foreign courts, particularly in France. Rather than investigating the allegations, Moroccan authorities brought counter-complaints on charges including defamation, public insult and false reporting, revealing a determination to escape accountability. A move to end the competence of French courts over abuses alleged to have taken place in Morocco through an agreement on judicial cooperation signed in January 2015 showed a worrying willingness by French authorities to shield Moroccan officials in their determination to escape accountability and repudiate their obligations under international law.

There is a yawning gap between declared commitments to end torture and the failure to investigate perpetrators and hold them accountable. Meanwhile, safeguards in law are routinely breached in practice. This dissonance raises the question of whether there is genuine political will to eradicate torture, which cannot be achieved without ending impunity and its corrosive effects on security forces. In this regard, some foreign governments have displayed a particularly unhelpful disposition to be satisfied with declarations of human rights reforms, even when these are contradicted by persisting violations on the ground, as if strategic cooperation to counter terrorism or control borders can only be done at the expense of human rights.

With judicial reforms, Morocco is at a crossroads. It is poised to reform its judiciary in a long-awaited process that could further strengthen safeguards during *garde à vue* detention, and resolve the investigative failings that are perpetuating impunity and fuelling persisting torture. If the reforms empower the courts and strengthen their independence, they could signal an end to the impunity for torture that has cast a shadow over Morocco and Western Sahara for decades.

Amnesty International is calling on the Moroccan authorities to confront torture by taking three key measures, among other recommendations included at the end of the report. These are:

- Ensuring lawyers are always present during police interrogations of all suspects.
- Ensuring prosecutors and judges investigate reports of torture and other ill-treatment when faced with signs or credible allegations, and that they are held accountable if they fail to do so.
- Protecting those who report torture from reprisals.



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# I WANT TO HELP

# SHADOW OF IMPUNITY

## TORTURE IN MOROCCO AND WESTERN SAHARA

Abuse can begin from the moment of arrest, in broad daylight or behind the tinted windows of police vehicles. In the absence of sufficient safeguards, police interrogations can turn violent, often to force suspects to “confess”. Anyone can be tortured – protesters, political or student activists, as well as people suspected of terrorism offences or ordinary crimes.

Moroccan legislation outlaws torture and the authorities have repeatedly promised to eradicate it, yet existing safeguards in police custody and courts are routinely flouted and accountability remains elusive. Courts often fail to act when first confronted with signs of torture, reinforcing the climate of impunity. In the cases where courts grant medical examinations, these are often sub-standard. Torturers are given further incentives for their crimes when coerced “confessions” are used to secure convictions. Meanwhile, the authorities have started to prosecute some people who dared to report torture or lodged complaints about torture in foreign courts.

This report contains numerous disturbing testimonies from survivors of torture and other ill-treatment. Amnesty International is calling on Morocco’s authorities to use the current judicial reform process to strengthen anti-torture safeguards and ensure that torturers are held to account. Only then will torture be stopped.

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May 2015

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