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Promoción y protección de todos los derechos humanos, civiles, políticos, económicos, sociales y culturales, incluido el derecho al desarrollo

Informe del Grupo de Trabajo sobre la Detención Arbitraria

Adición

Misión a Marruecos* **

Resumen

El Grupo de Trabajo sobre la Detención Arbitraria efectuó una visita a Marruecos del 9 al 18 de diciembre de 2013.

Durante su visita, el Grupo de Trabajo tomó nota de las iniciativas en curso del Gobierno para establecer y consolidar una cultura de los derechos humanos en Marruecos. El Grupo de Trabajo valora que el amplio proceso de reforma estructural haya continuado tras su visita.

El Grupo de Trabajo acoge con agrado la aprobación de la Constitución en julio de 2011, hecho que supone un paso importante para el fortalecimiento de los derechos humanos, así como la creación del Consejo Nacional de Derechos Humanos como institución nacional independiente encargada de la protección y la promoción de los derechos humanos.

* El Grupo de Trabajo también visitó El-Aayun, en el Sáhara Occidental, los días 15 y 16 de diciembre de 2013. Puesto que fue realizada por un grupo de titulares de mandato independientes, esta visita no debe interpretarse como la expresión de opinión política alguna respecto de la condición presente o futura del territorio no autónomo del Sáhara Occidental. Ese territorio está sujeto al derecho a la libre determinación de conformidad con los principios enunciados en las resoluciones 1514 (XV) y 1541 (XV) de la Asamblea General.

** El resumen del presente informe se distribuye en todos los idiomas oficiales. El informe propiamente dicho, que figura en el anexo del resumen, se distribuye únicamente en el idioma en que se presentó y en francés.

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En lo que respecta a los casos relacionados con la seguridad del Estado, como los casos de terrorismo, pertenencia a movimientos islamistas o en los que están involucrados partidarios de la independencia del Sáhara Occidental, el Grupo de Trabajo observó que los agentes de policía, en particular de agentes de la Dirección Nacional de Vigilancia, suelen recurrir a la tortura y los malos tratos. Muchos individuos han confesado mediante coerción y han sido condenados a penas de cárcel únicamente sobre la base de la confesión extraída.

Pese a que en el artículo 23 de la Constitución se afirma explícitamente que la detención arbitraria o secreta y la desaparición forzada son delitos de suma gravedad, y aun tomando nota de las medidas adoptadas para combatir esas prácticas, el Grupo de Trabajo recibió denuncias de fuentes dignas de crédito relativas a casos actuales y pasados de detención en régimen de incomunicación que merecerían una investigación en profundidad. El Grupo de Trabajo también recibió denuncias en las que se asegura que Marruecos ha sido punto de partida, país de tránsito y lugar de destino de entregas extrajudiciales ilegales en el contexto de la lucha internacional contra el terrorismo.

El Grupo de Trabajo también recibió denuncias que señalaban un aumento de las detenciones masivas de migrantes y solicitantes de asilo y de la violencia contra estos grupos por parte de las fuerzas de seguridad, en especial en el norte del país.

A pesar de que la ley prevé, para las causas penales ordinarias, el acceso a un abogado durante las primeras 24 horas de la detención policial, en la práctica ese período parece no respetarse totalmente. Además, dicho acceso requiere una autorización del Fiscal General del Reino. Asimismo, la Ley de Lucha contra el Terrorismo (Nº 3-03) permite la detención policial por un máximo de tres periodos consecutivos de 96 horas, y restringe el derecho a un abogado a una visita supervisada de media hora en el ecuador de esos 12 días.

El Grupo de Trabajo observa que el sistema de justicia penal de Marruecos se basa excesivamente en las confesiones como prueba principal para apoyar una sentencia condenatoria. El artículo 293 del Código de Procedimiento Penal prohíbe admitir como prueba toda confesión o declaración realizada bajo coacción, de conformidad con el derecho internacional. Sin embargo, de las quejas se desprende que los funcionarios del Estado se sirven de la tortura para obtener pruebas o confesiones en la fase inicial de los interrogatorios, en particular en casos de lucha antiterrorista o de seguridad interna.

El Grupo de Trabajo también observa un recurso excesivo a la prisión preventiva. Por lo general, la reclusión como medio de castigo parece seguir siendo la norma, más que la excepción. Faltan alternativas a la privación de libertad. El hacinamiento en las prisiones fruto de esta situación representa un problema grave que debe abordarse.

Pese a que, de acuerdo con el artículo 460 del Código de Procedimiento Penal, el funcionario de la policía judicial encargado de los menores puede internarlos en un centro específico para ese grupo de edad, el Grupo de Trabajo descubrió que había un número considerable de niños, de 14 años los más jóvenes, reclusos en prisiones ordinarias. Según distintas informaciones, la Fiscalía General del Reino no suele requerir medidas alternativas a la privación de libertad, pese a lo previsto en los artículos 501 a 504 del Código de Procedimiento Penal. Además, los menores a menudo permanecen reclusos durante un largo período antes de ingresar en un centro de protección de menores.

En relación con El-Aayun, en el Sáhara Occidental, el Grupo de Trabajo recibió numerosas quejas de detención arbitraria, del recurso a la tortura y los malos tratos para obtener confesiones y de que se solía hacer un uso excesivo de la fuerza al reprimir las manifestaciones y durante la detención de manifestantes partidarios de la libre determinación del pueblo saharauí.

Al final del informe, el Grupo de Trabajo formula una serie de recomendaciones clave al Gobierno.

Anexo

[inglés y francés únicamente]

Report of the Working Group on Arbitrary Detention on its visit to Morocco (9-18 December 2013)

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I. Introduction

1. The Working Group on Arbitrary Detention conducted an official visit to Morocco from 9 to 18 December 2013, at the invitation of the Government. The Working Group also visited Laâyoune, Western Sahara, on 15 and 16 December 2013.
2. The delegation was composed of the Working Group's Chair-Rapporteur, Mads Andenas (from Norway), its former Chair-Rapporteur, El Hadji Malick Sow (from Senegal) and Roberto Garretón (from Chile). They were accompanied by members of the secretariat of the Working Group from the Office of the United Nations High Commissioner for Human Rights, as well as interpreters of the United Nations Office in Geneva.
3. The Working Group would like to thank the Government of Morocco for extending an invitation to the Working Group to visit the country and for its full cooperation throughout the various stages of the mission. The Moroccan authorities provided the delegation with all the necessary information and arranged all the meetings it requested. The Working Group would also like to thank the United Nations Development Programme (UNDP) and the United Nations Mission for the Referendum in Western Sahara (MINURSO) for their comprehensive support during the visit.

II. Programme of the visit

4. The Working Group benefited from various meetings with State authorities and it appreciates the valuable information they provided. The Working Group met with the Ministers of Justice, the Interior and Health, the Minister in Charge of Moroccans Living Abroad and Migration Affairs, and the Deputy Minister for Foreign Affairs. It also met with the First President and the Chairs of the Chambers of the Supreme Court, and the First President and the Chairs of the Chambers of the Court of Appeal. It also met with representatives of the General Delegation for Prison Administration and Reintegration and of the Office of the Crown Prosecutor-General before the Court of Cassation; representatives of the General Directorate of National Security; the Delegate and personnel of the Interministerial Delegation for Human Rights; the President and members of the National Human Rights Council (CNDH) and representatives of the regional offices of CNDH; and the President of the Moroccan Bar Association. It further met with representatives of United Nations agencies and non-governmental organizations and with victims of arbitrary detention and their relatives.
5. In Laâyoune, Western Sahara, the Working Group met with the region's Wali (Governor) and with representatives of the General Directorate of National Security, the Royal Gendarmerie, the General Delegation for Prison Administration and Reintegration and the regional commission of CNDH. In addition, it met with representatives of the Sahrawi population, representatives of civil society organizations and victims of arbitrary detention and their relatives. The Working Group also met with a senior official of MINURSO.
6. The Working Group extends its thanks to the Interministerial Delegation for Human Rights for facilitating its visit and expresses its appreciation to the Government for providing it with unimpeded access to all detention facilities, in accordance with the terms of reference for fact-finding missions by special rapporteurs (E/CN.4/1998/45, appendix V).
7. The Working Group visited places where persons are deprived of their liberty in Casablanca, Rabat, Salé and Tangiers, and in Laâyoune, Western Sahara. The facilities visited by the Working Group were the Salé 1 and Salé 2 prisons, the local prisons in

Tangiers and Tetoyan, the Ain Sebaâ (“Oukacha”) local prison and the Centre for the Rehabilitation of Minors in Casablanca. The Working Group also visited the Al Maarif National Brigade of the Judicial Police in Casablanca, the transit zone of Mohamed V International Airport, the Temara Centre for the Protection of Children and the Ar-Ramzi University Hospital Psychiatric Centre. In addition, it made unannounced visits to police stations. It also visited the local prison in Laâyoune. The Working Group would like to point out that it was allowed to visit all the places of detention it had requested, and to interview in private detainees of its choice, without any restriction.

8. The Working Group shared its preliminary findings with the Government on 18 December 2013, at the conclusion of its visit. The Working Group also shared an advance version of the report with the Government, which provided comments on 6 and 15 July 2014 that were taken into consideration before the report was finalized.

III. Overview of the institutional and legal framework

A. Political, administrative and judicial structure

9. Morocco is a constitutional monarchy with a bi-cameral parliament. The upper house is the Chamber of Counsellors, with 270 seats. Its members are elected indirectly by local councils, professional organizations and labour unions to serve nine-year terms. The lower house is the Chamber of Representatives. It has 395 seats, and members are elected by popular vote to serve five-year terms. The King appoints the Head of Government from the party that wins the most seats in parliamentary elections; appoints all members of the Government on the basis of the Head of Government’s recommendations; and may, at his discretion, terminate the tenure of any minister, dissolve the Parliament, call for new elections, or rule by decree.

10. The highest judicial body is the Supreme Court. Its judges are appointed by the King and are supervised by the Superior Council of the Magistrature. Morocco was ranked 80th out of 142 countries for judicial independence by Transparency International for 2011-2012.¹

B. International human rights obligations

11. According to the preamble to its 2011 Constitution, the Kingdom of Morocco commits itself to complying with the international conventions duly ratified by it, within the framework of the provisions of the Constitution and the laws of the Kingdom, while ensuring respect for its immutable national identity, and, on the publication of those conventions, [their] primacy over the internal law of the country, and to harmonize in consequence the pertinent provisions of national legislation.

12. Morocco has ratified most of the major international human rights instruments, including the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Morocco has approved a law providing for accession to the Optional Protocol to the Convention against Torture, but has not yet deposited its instrument of ratification.

¹ www.transparency.org/country#MAR.

C. National legislation

13. The Constitution adopted in July 2011 guarantees the right to security of all persons and of their kin (art. 21). Furthermore, the Constitution provides for freedom of opinion, expression, speech and the press.

14. According to article 23 of the Constitution, no one may be arrested, detained, prosecuted or condemned outside of the cases and the forms provided by the law. Arbitrary or secret detention and enforced disappearance are crimes of the utmost gravity. They expose their authors to the most severe sanctions.

15. Article 22 of the Constitution stipulates that everyone shall have the right to physical and moral integrity, which shall not be undermined under any circumstances by any person, private or public; that no one shall inflict upon another, under any pretext whatsoever, any cruel, inhuman or degrading treatment which undermines their dignity; and that the practice of any form of torture, by anyone, is a crime punishable by law.

IV. Findings of the Working Group

A. Positive aspects

16. In the course of its visit, the Working Group noted the important and ongoing efforts of the Government to establish and consolidate a culture of human rights in Morocco. The Working Group encourages that process and expresses the hope that it will lead to the prevention and combating, in law and in practice, of any kind of violation that would constitute arbitrary deprivation of liberty. The Working Group appreciates that the extensive structural reform undertaken by Morocco to consolidate the promotion and protection of human rights has continued since its visit in December 2013.

17. The Constitution enshrines the primacy of international human rights law over national law, which has resulted in encouraging changes from the normative point of view. Such changes have included amendments to the Penal Code, the Code of Criminal Procedure and the laws governing the main judicial institutions and the deprivation of liberty of women, minors, persons with mental disabilities, irregular migrants and asylum seekers.

18. It was in that context that Morocco ratified the International Convention for the Protection of All Persons from Enforced Disappearance; that the Ministry of Justice initiated a national dialogue leading to the development of a national charter for the reform of the justice system; that the Code of Criminal Procedure was amended by Act No. 35.11 of 17 October 2011; and that the process for the ratification of the Optional Protocol to the Convention against Torture was launched.

19. The Working Group found that CNDH and its various regional offices are making a significant contribution to the promotion and protection of human rights in the country. In accordance with article 161 of the Constitution, CNDH was established as the independent national institution responsible for the protection and promotion of human rights, and the preservation of individual and collective freedoms. It replaces the former Advisory Council on Human Rights (CCDH), which was established in 1990 and was one of the key institutions in the democratic transition in Morocco. The Working Group encourages the Government of Morocco and civil society to maintain their commitment to strengthening CNDH and to provide it with all the necessary means to ensure its proper functioning.

20. Notwithstanding those positive achievements, the Working Group notes a number of issues that are of particular concern and to which it would like to draw the Government's attention.

B. Cases involving allegations of terrorism or threats against national security

21. The Anti-Terrorism Act (No. 03-03), adopted in the wake of the Casablanca bombings of 16 May 2003, has, as a legal framework, been responsible for numerous violations of human rights and it remains in force in its original form.

22. The Anti-Terrorism Act extends the time limits on custody to up to 96 hours, renewable twice. This means that detainees may be held for up to 12 days upon written consent from the prosecution before being brought before the investigating judge. In addition, communication with a lawyer is only possible 48 hours after the renewal of custody is granted. Hence suspects may be deprived of all contact with the outside world for six days before being allowed to communicate for half an hour with a lawyer and, even then, under the control of a police officer (Code of Criminal Procedure, art. 66, para. 6). The Working Group notes that those provisions, which restrict crucial safeguards, such as early contact with counsel, significantly increase the risk of torture and ill-treatment. The Working Group also notes with concern that the definition of the crime of terrorism is rather vague.

23. The Working Group heard several testimonies of torture and ill-treatment in cases involving allegations of terrorism or threats against national security. In those cases, the Working Group concurs with the Special Rapporteur on torture that a systematic pattern of acts of torture and ill-treatment during the arrest and detention process can be detected.²

24. In such cases, it appears that suspects are often not officially registered, that they are held for weeks without being brought before a judge and without judicial oversight, and that their families are not notified until such time as the suspects are transferred to police custody in order to sign confessions. In many cases, victims are then transferred to a police station, where a preliminary investigation is opened, dated from the transfer to avoid exceeding the limits placed on the custody period.

25. The Working Group came across numerous cases that had occurred in the aftermath of the attacks in Casablanca in May 2003, when thousands of suspects were arrested, often by officials of the National Surveillance General Directorate (DST), and held incommunicado or at unknown places of detention. According to the Government, all places of deprivation of liberty are known, regulated and controlled by the public prosecutor or the competent administration they come under. The Working Group also heard testimonies of recently arrested terrorism suspects who had allegedly been tortured in order to extract confessions from them.

26. In May 2011, delegations from Parliament and CNDH reported finding no evidence of a detention facility located at the DST headquarters in Témara. However, testimonies indicate that persons are detained incommunicado at that and other locations. Article 23 of the Constitution explicitly states that secret or arbitrary detention and enforced disappearance are crimes of the utmost gravity. During its meetings with the authorities and CNDH, the Working Group was informed that such crimes had now been eliminated. However, in the course of its visit, the Working Group received allegations, by sources deemed to be credible, of past and present cases of incommunicado detention³ which would warrant further investigation.

² Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/22/53/Add.2), para. 14.

³ The Working Group wishes to refer to the joint study on global practices in relation to secret detention in the context of countering terrorism (A/HRC/13/42) undertaken by a number of special procedures mandate holders.

27. The Working Group also received allegations that Morocco has served as a departure point, a transit country and a destination for illegal extraordinary renditions carried out in the context of the international fight against terrorism. This has been the subject of discussions with the Government. Such extraordinary renditions have allegedly been accompanied by incommunicado detention and/or detention in secret places, as well as acts of torture and ill-treatment, particularly during the questioning of suspects.

28. Most of the detainees convicted for terrorism-related offences are serving their sentences in the Salé 1 and Salé 2 prisons and the Tulal Prison in Meknès. The Working Group visited both prisons in Salé. In this context, it heard allegations that solitary confinement is used as a disciplinary measure, for periods ranging from several days to several weeks. Following its visit, the Working Group received information that one of the individuals interviewed during its visit had reportedly been subjected to solitary confinement for several days, allegedly as a form of reprisal.

C. Confessions obtained under torture

29. Article 293 of the Code of Criminal Procedure states that a confession, like any other evidence, is subject to the discretion of the judge and that any confession obtained under torture is inadmissible.

30. The Working Group notes the considerable importance accorded to confessions in the context of a trial. Through interviews with detainees serving long sentences, the Working Group found that confessions had often been obtained as a result of torture. Such confessions were set out in the police records and served almost exclusively as evidence for prosecution and conviction.

31. According to the authorities, confessions alone are not sufficient for a conviction and the provision of other corroborating material evidence is necessary. However, the Working Group learned that the minutes of the preliminary interview, as established by the police on the basis of confessions obtained under torture, are in practice rarely rejected by the trial court. Testimonies received indicate that many cases that are submitted to the courts are based solely on confessions by the accused, in the absence of material evidence.

32. The Working Group also learned that courts and prosecutors do not comply with their obligation to initiate an *ex officio* investigation whenever there are reasonable grounds to believe that a confession has been obtained through the use of torture and ill-treatment, or to order an immediate, independent medical examination (see arts. 74 (8) and 135 (5) of the Code of Criminal Procedure) if they suspect that a detainee has been subjected to ill-treatment. This is the case even if the person recants before the judge and claims to have been tortured.

33. It appears that judges favour an interpretation of article 291 of the Code of Criminal Procedure whereby records established by the judicial police are *prima facie* evidence. Such an interpretation is tantamount to reversing the burden of proof by requiring the accused to prove his innocence, which is contrary to the principle of the presumption of innocence, as stated in article 23 of the Constitution. It also creates conditions that encourage the torture and ill-treatment of suspects.

34. In its jurisprudence concerning Morocco, the Working Group has consistently expressed its concern with regard to convictions on the basis of confessions made in the course of a preliminary hearing. The cases of Mohamed Dihani (Opinion No. 19/2013), Abdessamad Bettar (Opinion No. 3/2013) and Mohamed Hajib (Opinion No. 40 /2012) show a pattern whereby those individuals were convicted solely on the basis of reports drawn up by the police while they were in custody, during which time they were subjected to torture. It was also on the basis of confessions obtained under torture that Ali Aarrass (Opinion No. 25/2013) was sentenced in November 2011 to a 15-year prison sentence, after having been extradited from Spain.

35. In that regard, the Working Group wishes to emphasize that confessions made in the absence of a lawyer are not admissible as evidence in criminal proceedings. This applies in particular to confessions made during the time spent in police custody.

36. The Working Group recalls the concluding observations of the Committee against Torture following its consideration of Morocco in 2011, in which the Committee expressed its concern that “under the State party’s current system of investigation, confessions are commonly used as evidence for purposes of prosecution and conviction”. The Committee noted “with concern that convictions in numerous criminal cases, including terrorism cases, are based on confessions, thus creating conditions that may provide more scope for the torture and ill-treatment of suspects (arts. 2 and 15)”.⁴

37. The guarantees of a fair and equitable trial laid down in article 11 of the Universal Declaration of Human Rights and in article 14 of the International Covenant on Civil and Political Rights exclude self-incrimination and grant the right to legal assistance and representation and to other measures of protection in order to ensure that no evidence is obtained by confession. Under article 14, paragraph 3 (g), of the Covenant, no person may be compelled to testify against himself or to confess guilt.

38. In its jurisprudence, the Human Rights Committee has stated that that provision “must be understood in terms of the absence of any direct or indirect physical or psychological coercion from the investigating authorities on the accused with a view to obtaining a confession of guilt”.⁵ In its views on communication No. 1769/2008, *Bondar v. Uzbekistan*,⁶ the Committee found violations of article 14, paragraph 3 (b) and (d), on the grounds that the victim was not provided with a lawyer during the interrogation and his right to have the assistance of a lawyer of his own choosing was denied.⁷ The Committee also found a violation of article 14, paragraph 3 (g), owing to a confession being obtained under torture.⁸

39. The Working Group also recalls general comment No. 32 (2007) of the Human Rights Committee, in which the Committee stated that:

article 14, paragraph 3 (g), guarantees the right not to be compelled to testify against oneself or to confess guilt. This safeguard must be understood in terms of the absence of any direct or indirect physical or undue psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt. A fortiori, it is unacceptable to treat an accused person in a manner contrary to article 7 of the Covenant in order to extract a confession. Domestic law must ensure that statements or confessions obtained in violation of article 7 of the Covenant are excluded from the evidence, except if such material is used as evidence that torture or other treatment prohibited by this provision occurred, and that in such cases the burden is on the State to prove that statements made by the accused have been given of their own free will. (citations omitted) (para. 41).⁹

⁴ Committee against Torture, CAT/C/MAR/CO/4, para. 17.

⁵ Human Rights Committee, communication No. 1033/2001, *Singarasa v. Sri Lanka*, para. 7.4; also, communications No. 253/1987, *Kelly v. Jamaica*, para. 5.5; No. 330/1988, *Berry v. Jamaica*, para. 11.7; No. 912/2000, *Deollall v. Guyana*, para. 5.1

⁶ Committee on Human Rights, *Bondar vs. Uzbekistan*, Communication No. 1769/2008 (CCPR/C/101/D/1769/2008). See also the jurisprudence of the Inter-American Court of Human Rights, including the cases of *Tibi v. Ecuador*, Judgment of 7 September 2004, Series C, No. 114, para. 146; *Maritza Urrutia v. Guatemala*, Judgment of 27 November 2003, Series C, No. 103, para. 93; *Cantoral-Benavides v. Peru*, Judgment of 18 August 2000, Series C, No. 69, para. 104.

⁷ CCPR/C/101/D/1769/2008, para. 7.4.

⁸ *Ibid.*, para. 7.6.

⁹ Human Rights Committee, general comment No. 32, Article 14: Right to equality before courts and tribunals and to fair trial (CCPR/C/GC/32), para. 41.

40. According to the Special Rapporteur on torture:

Interrogation should take place only at official centres and the maintenance of secret places of detention should be abolished under law. It should be a punishable offence for any official to hold a person in a secret and/or unofficial place of detention. Any evidence obtained from a detainee in an unofficial place of detention and not confirmed by the detainee during interrogation at official locations should not be admitted as evidence in court. No statement of confession made by a person deprived of liberty, other than one made in presence of a judge or a lawyer, should have a probative value in court, except as evidence against those who are accused of having obtained the confession by unlawful means.¹⁰

41. One of the aims of the provisions of article 11 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights is to provide guarantees against all forms of direct or indirect, physical or psychological pressure by the authorities on the accused with a view to obtaining a confession. The right not to be compelled to testify against oneself or to confess guilt, and access to counsel and legal aid are not only measures intended for the protection of the interests of the individual, but are also measures, in the interest of society as a whole, of the trustworthiness and effectiveness of the judicial process, and of the reliability of evidence. Confessions made in the absence of legal counsel are not admissible as evidence in criminal proceedings. This applies especially to confessions made during the time spent in police custody.

D. Basic legal safeguards

42. Moroccan law provides a number of basic safeguards for persons taken into custody that are designed to prevent arbitrary detention. Article 23 of the 2011 Constitution provides that any detained person has the right to be informed immediately, in a fashion which is comprehensible to him, of the reasons for his detention, and of his rights, including the right to remain silent. The presumption of innocence and the right to an equitable process are also guaranteed in the Constitution.

Access to a lawyer

43. The issue of confessions obtained under torture or ill-treatment directly affects the issue of access to a lawyer during the initial phase of police interrogations, especially during police custody and in cases relating to national security or the fight against terrorism.

44. Article 23 of the Constitution provides that a person in custody must benefit, as soon as possible, from legal assistance and the possibility of communicating with relatives, in conformity with the law. However, immediate and direct access to a lawyer from the outset of detention is neither guaranteed under existing statutory law or in practice. The Code of Criminal Procedure (Section 66 of Act No. 35.11 of 17 October 2011) allows access to a lawyer during the first 24 hours after arrest, upon the authorization of the Prosecutor's Office, for only 30 minutes and in the presence of an investigator. At the request of the investigator, the Prosecutor's Office can delay contact with a lawyer for another 12 hours after the first 24 hours in custody.

45. During its meetings with police officers, the Working Group found that some of them were reluctant to inform detainees of their right to have access to a lawyer in criminal cases. Moreover, the right to have access to a lawyer within the legal time frame may even be violated simply by tampering with the record of arrest dates. Furthermore, testimonies

¹⁰ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment (E/CN.4/2003/68), para. 26 (e).

from lawyers indicate that, in practice, they are often denied access to their clients within the legal time frame. Hence, in the majority of cases, lawyers meet their clients only at the first hearing before the judge.

46. As mentioned above, under the procedure provided for in the Anti-Terrorism Act, police custody can last for three consecutive periods of 96 hours and during that time there is no meaningful right to a lawyer except for the monitored half-hour interview that can occur at the halfway point of those 12 days. The Working Group takes note of the existence of draft legislative amendments aimed at ensuring that a person taken into custody will have access to a lawyer more quickly. It calls upon the Government to ensure that access to a lawyer is provided from the very outset of arrest or detention, without having to obtain the authorization of the Prosecutor currently required by law. That right should be granted as a principle of law.

E. Excessive use of detention on remand

47. During its visits to detention facilities, the Working Group observed the excessive use of detention on remand. Moreover, in general, the use of detention as a means of punishment still seems to be the rule rather than the exception. The authorities openly acknowledged that prison overcrowding as a consequence of that situation was a problem which needed to be addressed. The Government informed the Working Group that, as of December 2013, there was a prison population of approximately 67,000 detainees (comprising both convicted and pre-trial detainees, who are not always kept separate). The Working Group was presented with conflicting figures as to the total capacity of the prison system, but the rate of overcrowding would in any case be greater than 30 per cent.

48. In Salé 1, with a total capacity of 3,500 places, there were 4,462 prisoners (3,115 in pre-trial detention; 1,347 convicts). In Salé 2, with a total capacity of 246 places, there were 194 prisoners (82 in pre-trial detention; 112 convicts). In the Oukacha prison in Casablanca, with a total capacity of 6,400 places, there were 8,123 prisoners (1,054 in pre-trial detention; 7,069 convicts).

49. Overcrowding inevitably leads to serious violations, such as denial of or insufficient access to medical care, nutrition, sanitation, security and rehabilitation services. The Working Group noted that the General Delegation for Prison Administration and Reintegration had recently launched a major project to close some of the oldest prisons, build new prisons, and expand and renovate others in order to improve prison conditions.

50. The Working Group urges the Government to encourage the use of alternatives to detention, such as judicial or penal mediation. The Working Group recommends that a system be devised for arranging bail and making more frequent use of non-custodial penalties in the case of less serious offences.

F. Irregularities in the records

51. During its visits to police stations and police headquarters, the Working Group noted serious irregularities in the records, particularly in the administrative records of custody. The Working Group observed corrections that had been poorly made, either by hand or using correction fluid, as well as errors such as logging a release date as of a date prior to the date of entry, or simple non-recording of the release date.

G. Juveniles in conflict with the law

52. Moroccan criminal legislation regarding juveniles provides for a juvenile system which operates with specially trained prosecutors and judges. In practice, according to information received by the Working Group, any public prosecutor or deputy prosecutor may be responsible for the case of a juvenile.

53. Article 460 of the Code of Criminal Procedure provides that the judicial police officer in charge of juveniles may detain the juvenile in a dedicated place. However, the Working Group found a significant number of children, some as young as 14 years old, in ordinary prisons. The conditions of detention of those juveniles were difficult, in part owing to the overcrowding described above. The Working Group found that 14-year-old boys were often kept in the same cell as 24-year-old men.

54. The General Prosecutor's Office rarely requests alternative measures of detention, as provided for in articles 501 to 504 of the Code of Criminal Procedure. In addition, juveniles often remain in custody for a long period before being admitted to a child protection centre.

55. The Group recommends that the Government ensure that, in the case of juvenile offenders, imprisonment remains an exceptional measure and placement in centres for the protection of children is considered a priority.

H. Detention of asylum seekers and migrants in an irregular situation

56. With regard to asylum seekers and migrants in an irregular situation, Morocco is a party to the Convention relating to the Status of Refugees, of 1951, and the Protocol thereto, of 1967. While recognizing the difficult situation for the authorities with regard to addressing the flow of irregular migrants, especially in the north, the Working Group wishes to express its concerns about that particularly vulnerable group.

57. The Working Group takes note of the legal provisions governing the expulsion of undocumented migrants, particularly Act No. 02-03 on the entry and residence of foreign nationals in Morocco. However, the Working Group received allegations of mass arrests and violence in the context of raids and the detention of migrants and asylum seekers, particularly in the north. An increasing number of foreigners have been arrested during identity checks since 2009. However, according to the Government, foreign individuals are not detained on account of their irregular situation.

58. The Working Group received information that undocumented migrants have been escorted to the borders or otherwise expelled, in violation of Moroccan law, without having been given the opportunity to exercise their rights. Several allegations have been made that hundreds of migrants have been abandoned in the Algerian desert without food or water. Morocco has failed to provide information about those allegations or about the places and regimes of detention used for foreign nationals awaiting deportation who do not come under the authority of the Prison Service.

59. The Group was informed that the Government is striving to elaborate a strategy and action plan with a view to devising a comprehensive migration policy based on full respect for human rights. To that end, the Government has established commissions on: (a) the development of a new legal and institutional framework for asylum, trafficking and immigration; (b) refugees; and (c) review and possible regularization of the status of certain irregular migrants.

I. Psychiatric institutions

60. The Working Group welcomes the strategic plan of the Ministry of Health and the draft law (2012) amending the old Royal Decree No. 1-58-295 with respect to the protection of persons in mental health institutions. The Working Group was informed that there are 2,042 beds for psychiatric patients throughout the country.

61. Article 134 of the Criminal Code stipulates that whoever commits a misdemeanour or felony as a result of mental disability must be placed in a psychiatric institution. However, perpetrators of minor infractions are handed over to the administrative authority if proven to be exempt from criminal liability, which excludes them from medical monitoring and the necessary treatment. Reports indicate that, in cases where the placement of an individual in a psychiatric institution has been decided upon, the implementation of the decision often takes a long time, which leads to situations where persons with mental illnesses remain incarcerated for excessively long periods.

V. Laâyoune, Western Sahara

62. The Working Group received numerous submissions and testimonies relating to the legal and political status of the territory, as well as complaints concerning a vast array of human rights violations other than arbitrary detention. It also received multiple requests for interviews, and written submissions on matters within its mandate. Consistent with the terms of reference of the mandate, the present report will not deal with allegations of human rights violations other than arbitrary detention, nor will it address issues relating to the status of Western Sahara as a Non-Self-Governing Territory.

63. Regarding cases within its mandate, the Working Group found that torture and ill-treatment were used to extract confessions and that protestors were subjected to excessive use of force by law enforcement officials. The testimonies received indicate that members of the Sahrawi population are specifically, but not exclusively, the victims of such violations.

64. The Working Group received numerous complaints indicating a pattern of excessive use of force in repressing demonstrations and in arresting protestors or persons suspected of participating in demonstrations calling for self-determination of the Sahrawi population. During their transfer to or upon their arrival at a police station, people arrested are beaten, insulted and forced to reveal the names of other protestors. The Working Group received information about the alleged abandonment of the victims in rural areas after the assaults. Reports indicate that those practices are aimed at punishing and intimidating protestors in order to prevent further support for the call for independence. On occasion, protests become violent and the security forces are attacked by demonstrators. Even on those occasions, it is the duty of law enforcement bodies to ensure public order without resorting to excessive violence.

65. Other allegations indicate that Moroccan police forces regularly raid the private homes of alleged or known supporters of independence for Western Sahara, using procedures that include beating and ill-treatment of the inhabitants.

66. The Working Group visited the prison of Laâyoune and the Gendarmerie station in the port of Laâyoune. At the time of the Working Group's visit, there were 368 prisoners in the prison, including 36 minors. Although the Working Group was allowed to interview in private detainees of its choice in both facilities, without any restriction, the Working Group noted with serious concern that some of the interviewees expressed fear of reprisals after having spoken to the delegation.

67. The Working Group regrets that its meetings with civil society in Laâyoune were monitored.

68. With regard to the events surrounding the closure of the Gdeim Izik camp in November 2010, the Working Group was informed that 25 Sahrawi civilians had been convicted by a military court for their alleged role in the violent clashes that occurred in Western Sahara. The Working Group met with 22 of those detainees in the Salé 1 prison.¹¹ It received testimonies of torture and ill-treatment and observed the deteriorating health conditions of some of the detainees due to the prison conditions. The trial has been repeatedly postponed, without reasons being provided by the court. On 17 February 2013, the military court issued its verdict, rejecting all requests to investigate the allegations of torture and refusing to order medical examinations in relation to the allegations of rape raised by several of the defendants. The military court did not issue a written judgement. The Working Group expresses concern that the allegations of torture and ill-treatment during the almost two years of pre-trial detention have not been investigated. The fact that the case is before a military, rather than a civilian, court contributes to the lack of transparency and the refusal to investigate the allegations of mistreatment.

69. The Working Group has subsequently been informed that a number of the detainees in the Gdeim Izik group have started hunger strikes and that their health conditions are further deteriorating.

70. The Working Group wishes to express its concern about the broad competence of the military court, which can try civilians accused of terrorism, illegal possession of a firearm, and so forth. Such courts are composed of military judges and military prosecutors and defence lawyers, with the exception of the court president. Information before the Working Group indicates that it is not possible to appeal the court's decisions. However, the Government has subsequently submitted that the military court is not the competent court with regard to terrorism cases and that decisions of the military court can be appealed to the Supreme Court. Clarification of the practice in this respect will therefore be a topic for the visit follow-up process.

71. The Working Group reiterates that the court should only be competent to try military personnel, for exclusively military offences. In this respect, the Working Group notes that a draft law on military tribunals was passed in March 2014 by the Council of Ministers presided over by King Mohamed VI. The draft law provides for the exclusion of civilians from the jurisdiction of military tribunals, regardless of the offence committed. It also allows the withdrawal of military personnel from military jurisdiction when they commit common law offences. The draft law (No. 108-13) is currently before Parliament for adoption.

VI. Conclusions

72. The Working Group welcomes the adoption, in July 2011, of the new Constitution, marking an important step towards the strengthening of human rights.

73. The Working Group believes that the establishment of National Human Rights Council (CNDH) as the independent national institution responsible for the protection and promotion of human rights is a very positive development. It has the potential to become an effective monitoring mechanism and mediator between State and citizens if its recommendations are implemented in good faith.

74. The Working Group notes that article 22 of the Constitution stipulates that the practice of any form of torture, by anyone, is a crime punishable by law. However, in cases related to State security, such as cases involving terrorism, membership in Islamist movements or supporters of independence for Western Sahara, the Working

¹¹ The Working Group was informed that two of the 25 Sahrawi civilians had been released and a third individual transferred to a local hospital.

Group found that there is a pattern of torture and ill-treatment during arrest and in detention by police officers, in particular agents of the National Surveillance Directorate (DST). Many individuals have been coerced into making a confession and have been sentenced to imprisonment on the sole basis of that confession.

75. Whereas article 23 of the Constitution explicitly states that secret or arbitrary detention and enforced disappearance are crimes of the utmost gravity, and while noting measures undertaken to combat such practices, the Working Group received allegations of past and present instances of incommunicado detention and allegations that Morocco had served as a departure point, a transit country and a destination for illegal extraordinary renditions carried out in the context of the international fight against terrorism.

76. The Working Group also received allegations of an increase in mass arrests and violence by security forces against asylum seekers and migrants in an irregular situation, particularly in the north of the country.

77. Despite the legal provision for access to a lawyer in the first 24 hours after arrest in ordinary criminal cases, that provision seems not to be fully respected in practice. In addition, authorization has to be obtained from the Crown Prosecutor-General. The Working Group notes with concern that the Anti-Terrorism Act (No. 03-03) provides for police custody for up to three consecutive periods of 96 hours with no right to a lawyer, except for a half-hour monitored visit at the midpoint of those 12 days.

78. The Moroccan criminal judicial system relies heavily on confessions as the main evidence to support conviction. Complaints received by the Working Group indicate the use of torture by State officials to obtain evidence or confessions during initial questioning, in particular in counter-terrorism or internal security cases. The Working Group wishes to emphasize that confessions made in the absence of a lawyer are not admissible as evidence in criminal proceedings; this applies in particular to confessions made during the time spent in police custody.

79. The Working Group observed the excessive use of detention on remand. In general, detention as a measure of punishment still seems to be the rule rather than the exception and there is a lack of alternatives to detention. Prison overcrowding as a consequence of this situation is a serious problem, which needs to be addressed.

80. The Working Group found a significant number of children, some as young as 14 years old, in ordinary prisons. Reports indicate that the Prosecutor General's Office rarely requests alternative measures of detention, as provided for in articles 501 to 504 of the Code of Criminal Procedure. In addition, juveniles often remain in custody for a long period before being admitted to a child protection centre.

81. In Laâyoune, Western Sahara, the Working Group received numerous complaints that torture and ill-treatment were used to extract confessions, as well as complaints indicating a pattern of excessive use of force in repressing demonstrations calling for self-determination of the Sahrawi population.

82. Finally, the Working Group regrets that its meetings with civil society in Laâyoune were monitored.

VII. Recommendations

83. The Working Group appreciates that the Government of Morocco has already taken steps to implement some of the recommendations made by the Working Group during its visit. In a spirit of cooperation and partnership, the Working Group recommends that the Government continue to take decisive steps to implement the following recommendations:

(a) Ensure, through amendments to legislation, that access to lawyers of a suspect's own choosing is granted from the moment of apprehension, without the presence of an investigator and without requiring the authorization of the prosecutor, including in cases of threats against national security and terrorism. It should be granted as a matter of law and any official who denies access to a lawyer should be sanctioned;

(b) Make certain that all suspects have the right to enjoy, in practice, other basic safeguards provided for by law, which include their right to be examined by an independent physician; to contact a relative or friend; to be informed of their rights and the charges against them; and to be brought before a judge without delay;

(c) Amend the Anti-Terrorism Act (No. 03-03) to remedy the vague definition of the crime of terrorism and reduce the period of police custody from 96 hours, renewable twice;

(d) Amend the Code of Criminal Procedure to indicate that, where there is an allegation of torture or ill-treatment, the burden of proof lies with the prosecution to establish beyond reasonable doubt that any confession made has not been obtained by unlawful means. Allegations of torture and ill-treatment should be admitted at any stage of the trial and courts should be obliged to launch *ex officio* investigations whenever there are reasonable grounds to suspect torture or ill-treatment;

(e) Take all necessary steps to ensure that criminal convictions are based on evidence other than the confession of the persons charged, especially when such persons retract their confessions during the trial, and make certain that, except in cases involving charges of torture, statements made under torture are not invoked as evidence in any proceedings, in accordance with article 15 of the Convention against Torture;

(f) Ensure that reports prepared by the judicial police during the investigative phase remain inadmissible in the trial court until the prosecution meets the burden of proving their veracity and legal validity, in accordance with the Code of Criminal Procedure;

(g) Review criminal convictions that have been based solely on confessions in order to identify cases in which the conviction was based on confessions obtained under torture or ill-treatment, and take the appropriate remedial measures;

(h) Ensure strict adherence to registration from the very moment of arrest, in particular in cases involving national security and terrorism suspects; and ensure that police station chiefs and investigating officials and police officers, including members of DST, are held criminally accountable for any unacknowledged detention;

(i) Strengthen efforts to combat incommunicado and secret detention, in accordance with article 23 of the Constitution;

(j) Conduct effective and impartial investigations into all cases of extraordinary renditions in which the State may have played a role, bring to light the

facts surrounding such cases, and prosecute and punish those responsible for such renditions;

(k) Reform the judicial system to guarantee that all pretrial detainees receive a fair and speedy trial;

(l) In order to combat the severe overcrowding in prisons, use alternatives to pretrial detention, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and study the possibility of decriminalizing certain offences and of reducing prison sentences. A system could be devised for arranging bail and making more frequent use of non-custodial penalties in the case of less serious offences;

(m) Continue the commitment to strengthening CNDH and to providing it with all the necessary means to ensure its proper functioning;

(n) Take concrete and sustained measures to finalize the process of ratification of the Optional Protocol to the Convention against Torture, and subsequently establish an effective national preventive mechanism, in accordance with article 17 of the Optional Protocol; and initiate an inclusive consultation process of all actors involved, including civil society organizations;

(o) Ensure budgetary allocations to provide the national preventive mechanism with sufficient human and other resources to enable it to inspect all places of detention regularly, receive complaints, and initiate prosecutions and follow them through to their conclusion;

(p) With regard to migrants, refugees and asylum seekers, work in closer cooperation with the Office of the United Nations High Commissioner for Refugees, the Office of the United Nations High Commissioner for Human Rights, the Special Rapporteur on the human rights of migrants and other United Nations entities;

(q) Take all necessary measures to prevent mass arrests and further violence and investigate reports of violence against sub-Saharan migrants, refugees and asylum seekers;

(r) Ensure that the legal safeguards governing the practice of escorting undocumented migrants to the borders and the expulsion of foreign nationals are effectively enforced and that such practices and expulsions are carried out in accordance with international and domestic law. The Government should undertake impartial, effective investigations into allegations that, during expulsions, migrants have been subjected to ill-treatment or excessive use of force. It should also ensure that those responsible are brought to justice and receive sentences that are commensurate with the seriousness of their acts;

(s) Consider alternative and non-custodial measures, such as reporting requirements, before resorting to the detention of migrants, refugees and asylum seekers;

(t) Establish a system of regular visits to police stations, with a specific focus on juvenile offenders; not hold juveniles in regular prisons, but in child protection centres; and investigate all complaints of torture and ill-treatment of juveniles, in particular allegations of corporal punishment;

(u) Consider amending article 473 of the Code of Criminal Procedure to change the age at which a juvenile offender can be imprisoned from 12 to 18 years, and stress that the imprisonment of juveniles is an exceptional measure;

(v) Provide specialized prosecutors and specialized judicial police officers for cases involving juvenile offenders;

(w) Take effective measures to prevent reprisals, including intimidation, disciplinary measures and ill-treatment, against detainees, victims of arbitrary detention and their families, activists and others who spoke to the Working Group during its visit, and to promptly investigate and punish the perpetrators of acts of reprisal;

(x) Consider amending article 134 of the Criminal Code in order to ensure that all offenders suffering from a mental disability are placed in a psychiatric institution, regardless of the degree of the offence;

(y) With regard to Laâyoune, Western Sahara, investigate promptly all allegations of torture and ill-treatment in the context of arrests during and after demonstrations and at the prison of Laâyoune; prevent instances of arbitrary deprivation of liberty; hold the perpetrators accountable; and provide compensation to the victims;

(z) Expeditiously adopt the draft law on military tribunals in order to ensure that civilians are not sentenced by a military court, and review the verdicts handed down by the military court in the case of the 25 Sahrawi men in the Gdeim Izik case.
