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Chairman
UN Committee on Civil and Political Rights
Office of the High Commissioner for
Human Rights
UNOG-OHCHR
1211 Geneva 10
Switzerland

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Dear Chair Salvioli,

RE: MOROCCO/WESTERN SAHARA – LIST OF ISSUES

Please find below information prepared by Amnesty International for the Human Rights Committee (the Committee) towards its preparation of a List of Issues for the Kingdom of Morocco (hereafter Morocco), at the 116th session of the Committee to be held in March 2016. This letter contains Amnesty International's concerns about Moroccan authorities' implementation of the International Covenant for Civil and Political Rights (ICCPR) since Morocco's fifth periodic review in October and November 2004. The organization will provide a more comprehensive submission in advance of the 118th session in October 2016 when the Committee will review Morocco's sixth periodic report.

**TORTURE AND OTHER ILL-TREATMENT IN DETENTION (ART 2, 7)
INVESTIGATING ALLEGED TORTURE OR OTHER ILL-TREATMENT**

In December 2004, the Committee recommended that Morocco ensure that complaints of torture and other ill-treatment are examined promptly and independently, and hold those responsible through disciplinary and criminal proceedings.¹

Since then, Amnesty International has noted Moroccan authorities' continuing failure to adequately address allegations of torture and other ill-treatment and hold perpetrators accountable in new and less recent cases alike. This was one of the findings of Amnesty International's report *Shadow of Impunity: Torture in Morocco and Western Sahara*, published in May 2015, based on 173 cases of alleged torture or other ill-treatment between 2010 and 2014 both in Morocco and Moroccan-administered Western Sahara.²

The findings revealed how prosecutors and judges largely failed to investigate reports of torture and other ill-treatment, turning a blind eye to visible injuries, failing to follow-up on written complaints and refusing to order medical examinations. In the rare cases where courts granted medical examinations, they were delayed, consisting only of cursory physical examinations sometimes conducted in presence of security forces, with examination reports inaccessible to victims or their legal counsel and generally falling well short of standards defined in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

On 29 May 2014, the Minister of Justice and Liberties circulated instructions to prosecutors and judges, encouraging them to order medical examinations when faced with reports of torture or other ill-treatment. Amnesty International welcomed these ministerial instructions as a positive step and noted reports of investigations being opened following some cases of alleged

¹ Human Rights Committee, Concluding Observations on Morocco, CCPR/CO/82/MAR, December 2004, para. 14.

² Amnesty International, *Shadow of Impunity: Torture in Morocco and Western Sahara*, 19 May 2015, (Index: MDE 29/001/2015) <https://www.amnesty.org/en/documents/mde29/001/2015/en/>; on official denials of the existence of the Temara secret detention centre, see p. 78-80.

torture in detention in 2015; however perpetrators are yet to be held to account. In other cases of alleged torture and other ill-treatment, Amnesty International continued to receive reports of judicial authorities refusing to order medical examinations.³

Moroccan authorities also continue to deny the existence of a secret detention centre in Temara, near the capital Rabat, where dozens of persons accused of terrorism and other serious offences said they were detained incommunicado and tortured between 2003 and 2011, in allegations documented by UN Special Procedures and human rights groups including Amnesty International and Human Rights Watch.⁴ Some former detainees, including Ethiopian national Binyam Mohamed, alleged they were detained and tortured in the secret detention centre following extraordinary rendition to Morocco by the United States government.⁵

MONITORING PLACES OF DETENTION

In November 2004, the Committee also recommended that all places of detention should be subject to independent inspection.⁶ Ten years later, 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. Amnesty International welcomed the accession while calling on Moroccan authorities to allow independent human rights groups, local and international, to access detainees, in order to complement the work by Morocco's National Preventive Mechanism, which has yet to be established, over two years after accession to the OPCAT.⁷

THE RIGHT TO A FAIR TRIAL (ART 6, 7, 9, 10, 14)

LENGTH OF PRE-ARRAIGNMENT DETENTION

Following Morocco's fifth review, the Committee recommended that Morocco review its legislation to reduce the excessive length during which suspects may be held in pre-arraignment detention, particularly in relation to terrorism offences.⁸

In the period since the Committee's recommendation, Moroccan authorities have not decreased the length of pre-arraignment detention. Article 66 of the Code of Criminal Procedure (CCP) continues to allow judicial police officers to hold suspects for up to three days for ordinary offences (48 hours and an optional 24-hour extension), eight days for national security offences (96 hours renewable once) and 12 days for terrorism offences (96 hours renewable twice). A proposed amendment to the CCP⁹ would see pre-arraignment detention restricted to misdemeanours and felonies punishable by imprisonment but otherwise leaves the length of pre-arraignment detention unchanged.

The Committee also recommended that Moroccan authorities amend legislation to allow suspects access to a lawyer from the beginning of their period in custody.¹⁰

When this recommendation was put forward, suspects could only access a lawyer from the time at which their custody was extended (48th hour for ordinary offences, 96th hour for national security and terrorism offences). A 2011 amendment to Morocco's CCP allowed suspects to instruct a lawyer before the end of the first half of the main period of custody, subject to authorization by the Office of the Prosecution, which could delay this communication up to 12 hours after the expiry of the first half of the main period of custody.

³ Amnesty International, *Shadow of Impunity*, p. 48-49.

⁴ Amnesty International, *Morocco/Western Sahara: Torture in the "anti-terrorism" campaign - the case of Temara detention centre*, 23 June 2004, (Index: MDE 29/004/2004) <https://www.amnesty.org/en/documents/MDE29/004/2004/en/>; Human Rights Watch, *Morocco: Stop Looking for Your Son - Illegal Detentions under the Counterterrorism Law*, 25 October 2010, <https://www.hrw.org/report/2010/10/25/morocco-stop-looking-your-son-illegal-detentions-under-counterterrorism-law>. On official denials of the existence of the Temara secret detention centre, see Amnesty International, *Shadow of Impunity* p. 78-80.

⁵ Amnesty International, *USA: Crimes and impunity: Full Senate Committee report on CIA secret detentions must be released, and accountability for crimes under international law ensured*, 20 April 2015, (Index AMR 51/1432/2015) <https://www.amnesty.org/en/documents/amr51/1432/2015/en/> p. 66

⁶ Human Rights Committee, Concluding Observations on Morocco, CCPR/CO/82/MAR, December 2004, para. 14.

⁷ Amnesty International, "Morocco/Western Sahara: Accession to OPCAT must be followed by swift implementation," 1 December 2014 (Index MDE 29/011/2014) <https://www.amnesty.org/en/documents/mde29/011/2014/en/>

⁸ Human Rights Committee, Concluding Observations on Morocco, CCPR/CO/82/MAR, December 2004, para. 15.

⁹ This refers to the latest publicly available version of the draft bill to amend the Code of Criminal Procedure, made public on the website of the Ministry of Justice and Liberties in November 2014. It has yet to be approved by Morocco's Council of Ministers in order to become a draft law and be debated and voted on by legislators.

¹⁰ Human Rights Committee, Concluding Observations on Morocco, CCPR/CO/82/MAR, December 2004, para. 16.

ACCESS TO LAWYERS IN CUSTODY

A proposed amendment to the CCP would allow suspects to access lawyers directly from the first hour of custody without the need for an authorization by the Office of the Prosecution, which is a positive step. However, it leaves the current 30-minute limit on the communication with the lawyer, which Amnesty International recommends to remove. In the proposed amendment, the Office of the Prosecution could still delay the communication for up to half the initial period of custody (24 hours for felonies and 48 hours for national security and terrorism offences).

Furthermore, Amnesty International recommends that Moroccan authorities also grant all suspects a legally enforceable right to legal counsel during police interrogation, as an important safeguard against torture and other ill-treatment and coerced “confessions” leading to unfair trials. The current draft proposal only allows lawyers to witness police interrogations of juveniles, disabled persons, and those suspected of misdemeanours or felonies and released on bail.

EXCLUSIONARY RULE

Compelling suspects to incriminate themselves or others, including through the use of torture or other ill-treatment during interrogation in police custody, violates the presumption of innocence. Article 293 of Morocco’s CCP prohibits the use of coerced statements in proceedings. However, Moroccan authorities’ failure to adequately investigate allegations of torture or other ill-treatment in police custody has caused the admission of contested, allegedly coerced statements in proceedings, leading to unfair convictions, as Amnesty International and Human Rights Watch have documented.¹¹

The over-reliance on police interrogation reports for convictions is aggravated by Article 290 of the CCP, which states that police interrogation reports are taken as accurate until proven otherwise. The current proposal to amend the CCP keeps this problematic article. Amnesty International recommends that statements or “confessions” made by a person deprived of liberty other than those made in the presence of a judge and with the assistance of a lawyer have no probative value in proceedings, and that authorities ensure that reports prepared by the judicial police during the investigative phase remain inadmissible in court until the prosecution meets the burden of proving their veracity and legal validity.

In addition, Moroccan authorities have yet to implement calls by the UN Working Group on Arbitrary Detention to immediately release and adequately compensate four individuals imprisoned by Moroccan authorities following convictions based on forced “confessions”. Mohamed Hajib (WGAD decision No. 40/2012), Abdessamad Bettar (No. 3/2013) and Ali Aarrass (No. 25/2013) remain imprisoned while Mohamed Dihani (No. 19/2013) was recently released after serving his sentence.

PRINCIPLE OF LEGALITY

In December 2004, the Committee recommended that Morocco amend legislation on terrorism to clearly define the scope of the offence of terrorism currently defined as a “serious attack using violence”.¹²

The definition of terrorism in Morocco’s Penal Code (Article 218-1) remains unchanged, and the imprecision of the definition has proven to be equally problematic in relation to the offence of “advocating terrorism” (Article 218-2), which has been used to prosecute journalists for their work disseminating news, including journalist Ali Anouzla.¹³

Furthermore, a 2015 amendment to the Penal Code has added similarly vague offences of joining or attempting to join, promoting, advocating or failing to denounce “terrorist entities, organizations, gangs or groups, whatever their form, or aim” (Article 218-1-1).¹⁴

FREEDOM OF RELIGION OR BELIEF (ART 18)

Following Morocco’s last review, the Committee had recommended that Moroccan authorities adapt their legislation and practices to ensure compliance with Article 18 of the ICCPR.¹⁵

¹¹ Amnesty International, *Shadow of Impunity*, Chapter 4; Human Rights Watch, *Just Sign Here: Unfair Trials Based on Confessions to the Police in Morocco*, 21 June 2013, <https://www.hrw.org/report/2013/06/21/just-sign-here/unfair-trials-based-confessions-police-morocco>

¹² Human Rights Committee, Concluding Observations on Morocco, CCPR/CO/82/MAR, December 2004, para. 20.

¹³ Amnesty International, “Morocco: Stop using ‘terrorism’ as a pretext to imprison journalists,” 20 May 2014, <https://www.amnesty.org/en/latest/news/2014/05/morocco-stop-using-terrorism-pretext-imprison-journalists/>

¹⁴ Law n° 86-14 amending the Penal Code, 20 May 2015, available at: <http://adala.justice.gov.ma/production/legislation/fr/Nouveautes/codepenal.pdf>

¹⁵ Human Rights Committee, Concluding Observations on Morocco, CCPR/CO/82/MAR, December 2004, para. 21.

However, legislation has remained unchanged since then. Imprisonment remains a sanction for converting or attempting to convert Muslims (Article 220 of the Penal Code) or for Moroccans breaking the Ramadan fast in public (Article 222), while proposed changes to the Penal Code¹⁶ would add a new offence of insulting or mocking religions, which also carries the threat of imprisonment (Article 219). The draft law also proposes imprisonment as a sanction for “deliberately causing disorder” during a religious ceremony (Article 221).

Morocco also continues to have an interpretive declaration to Article 14, paragraph 1 of the Convention on the Rights of the Child that restricts children’s freedom of thought, conscience and religion. Morocco’s declaration is as follows:

“Declarations: The Government of the Kingdom of Morocco interprets the provisions of article 14, paragraph 1, of the Convention on the Rights of the Child in the light of the Constitution of 7 October 1996 and the other relevant provisions of its domestic law, as follows: Article 6 of the Constitution, which provides that Islam, the State religion, shall guarantee freedom of worship for all. Article 54, paragraph 6, of Act 70-03 (the Family Code), which stipulates that parents owe their children the right to religious guidance and education based on good conduct. By this declaration, the Kingdom of Morocco reaffirms its attachment to universally recognized human rights and its commitment to the purposes of the aforementioned Convention.”

FREEDOM OF EXPRESSION (ART 19)

In November 2004, the Committee recommended that Moroccan authorities prevent the harassment of journalists and amend legislation to protect freedom of expression.

Moroccan authorities have yet to amend Press Code and Penal Code provisions that criminalize peaceful free expression and punish it with prison terms. While the Minister of Communication has promised to remove prison terms in its overhaul of the Press Code, journalists continue to be prosecuted and convicted under Penal Code articles that do contain imprisonment as a sanction. The draft proposal to amend the Penal Code leaves these dispositions untouched except for some variations on the length of prison terms and the amount of fines.

They include “offending” royalty (Article 179) and public officials (Article 263), including by “falsely reporting” an offence to an official (Article 264 – different from perjury), offending “bodies established by law” (Article 265), “defamation” (Articles 442 and 443, and proposed new Article 448-3), “public insult” (Articles 443 and 444), “slandering denunciation” (Article 445) and “disrespecting national emblems and symbols” (Article 267-1 to 267-4).

Journalist Hamid El Mahdaoui was handed a three-month suspended prison sentence in August in relation to his work reporting on a death in custody in the north of the country last year, while a host of publications and journalists have been prosecuted and convicted for defamation and slander over the summer.¹⁷ It is worth noting that journalists also faced different kinds of restrictions in the form of administrative obstacles, such as Ali Lemrabet, months only after his ten-year ban on journalism ended.¹⁸

Worryingly, No amendments have been made to the offences of “slandering denunciation” and “falsely reporting” which have been used against individuals and organizations in retaliation for reporting human rights violations. For example, Oussama Housne, 23, and Wafae Charaf, 28, two Moroccans who reported they were abducted and assaulted by unknown persons in reprisals for their peaceful activism are serving, respectively, three and two-year prison terms on such charges.¹⁹ Moroccan authorities have insisted that the allegations were false and made in bad faith, but Amnesty International is concerned that that imprisonment is an inherently disproportionate restriction on expression and is not appropriate penalty for slander or false reporting. It is particularly worrying that that the two were imprisoned despite the fact that they did not name particular individuals as responsible for the assault (or even say that it was carried out by state agents). Moroccan officials have also filed

¹⁶ This refers to the latest publicly available version of the draft bill to amend the Penal Code, made public on the website of the Ministry of Justice and Liberties in March 2015. It has yet to be approved by Morocco’s Council of Ministers in order to become a draft law and be debated and voted on by legislators.

¹⁷ Amnesty International, “Morocco: Court orders suspension of news website, editors fined for “false news” and “defamation””, 16 August 2015, (Index: MDE 29/2260/2015) <https://www.amnesty.org/en/documents/mde29/2260/2015/en/>

¹⁸ Amnesty International, “Morocco: Harassment of an outspoken journalist”, 4 August 2015, (Index: MDE 29/2211/2015) <https://www.amnesty.org/en/documents/mde29/2211/2015/en/>

¹⁹ Amnesty International, “Morocco : More than 200,000 people worldwide demand the immediate and unconditional release of torture complainants Wafae Charaf and Oussama Housne”, 20 October 2015 (Index: MDE 29/2672/2015) <https://www.amnesty.org/en/documents/mde29/2672/2015/en/>

complaints against individuals who filed torture complaints before French courts and UN human rights bodies, including anti-torture NGO Action by Christians Against Torture (ACAT-France) and two torture complainants it supported.²⁰

With regard to state security, Article 206 of the Penal Code currently penalises “propaganda aiming to harm the integrity, sovereignty, or independence of the Kingdom, or to undermine the loyalty that citizens owe to the Moroccan people's State and institutions” and punishable by fines and up to five years' imprisonment. The current proposal to amend the Penal Code proposes harsher sanctions, with up to 10 years' imprisonment, and increases the upper limit of the fine ten-fold.

Amnesty International is concerned about the use of such provision, including in cases like that of El Maati Monjib and his co-defendants. He and four other co-defendants are facing trial under Article 206, accused of taking foreign funding to undermine national security. El Maati Monjib, a historian and head of the NGO Freedom Now, and his co-defendants Hicham Mansouri and Samad Ayyach of the Moroccan Association for Investigative Journalism, Hicham Al Miraat of the Association for Digital Rights, Mohamed Essaber of the Moroccan Association for the Education of Youth, were involved through their respective associations in promoting the Storymaker smartphone citizen journalism app in Morocco.

The draft law similarly leaves unchanged problematically vague definitions of “advocating” and “promoting” terrorism and terrorist groups, with dangerous consequences. The case against journalist Ali Anouzla, who was detained for over a month and is being prosecuted for “advocating” terrorism after commenting critically on a video by Al Qaeda in the Islamic Maghreb two years ago, remains open. Meanwhile, journalist Mustapha El Hasnaoui remains detained although he was accused of no violent act.²¹

FREEDOM OF ASSOCIATION (ART 22)

In the years since the Committee's recommendation that Morocco respect the right to freedom of association, Moroccan authorities have continued to restrict legitimate activities by civil society associations, and notably human rights groups such as the Moroccan Human Rights Association (Association marocaine des droits humains, AMDH) and the Moroccan League for the Defense of Human Rights (Ligue marocaine pour la défense des droits humains, LMDDH), as well as the Adl Wal-Ihsane peaceful opposition group.²² This, in spite of Morocco's legislation on associations remains declarative with regard to registration and to organizing events and activities.

Groups that criticized the government's human rights record were harassed by the authorities, who prevented them from carrying out legitimate public events and internal meetings, often informally through verbal warnings or by using the security forces to block access to venues.²³ Authorities restricted research activities by international human rights groups, including Amnesty International, Human Rights Watch and the Spanish International Institute for Nonviolent Action.²⁴

In June the authorities expelled two Amnesty International staff members who were visiting Morocco to investigate conditions for migrants and refugees at the country's border with Spain. The authorities said they had not given permission for the visit, despite previously informing Amnesty International that no such permission was required.²⁵

FREEDOM OF ASSEMBLY (ART 21)

In December 2004, the Committee recommended that Morocco remove obstacles to the exercise of freedom of assembly.

Authorities continue to torture or otherwise ill-treat protesters in detention, to prosecute them on trumped-up charges and sentence them to prison terms. Protesters against a silver mine near Imider in the Atlas Mountains involved in a peaceful occupation since August 2011 were imprisoned on trumped-up charges.²⁶ In September 2013, security forces forcibly dispersed a

²⁰ Amnesty International, FIACAT (Fédération internationale de l'ACAT), FIDH (Fédération internationale des ligues des droits de l'homme), Fondation Alkarama, Human Rights Watch, Ligue des droits de l'homme, OMCT (Organisation mondiale contre la torture), REDRESS, REMDH (Réseau euroméditerranéen des droits de l'homme), TRIAL (Track Impunity Always), 9 February 2015 (Index : MDE 29/0002/2015) <https://www.amnesty.org/en/documents/mde29/0002/2015/fr/>; Amnesty International, *Shadow of Impunity*, pp. 65-67.

²¹ Amnesty International, “Morocco. Stop using ‘terrorism’ as a pretext to imprison journalists,” 20 May 2014, <https://www.amnesty.org/en/latest/news/2014/05/morocco-stop-using-terrorism-pretext-imprison-journalists/>

²² Amnesty International Annual Report 2014/2015 <https://www.amnesty.org/en/documents/pol10/0001/2015/en/>

²³ Amnesty International, “Morocco/Western Sahara: Lift restrictions on associations”, 26 November 2014, <https://www.amnesty.org/en/documents/mde29/010/2014/en/>

²⁴ Amnesty International deploras the Moroccan authorities' decision to ban youth camp, 2 September 2014 (MDE 29/006/2014) <http://www.amnesty.org/en/library/info/MDE29/006/2014/en>

²⁵ Amnesty International staff members expelled from Morocco (Press release, 11 June)

²⁶ Amnesty International, *Shadow of Impunity*, pp. 34-37.

peaceful protest camp in Tizimi near the city of Assa in southern Morocco, triggering protests in the surrounding area. Reports of torture or other ill-treatment of detainees, including children, emerged after dozens were arrested.²⁷

Authorities also imprisoned peaceful protesters on charges of “rebellion” (Article 300 of the Penal Code) for allegedly failing to immediately obey dispersal orders. In April 2014, authorities arrested nine members of Morocco’s unemployed graduates movement and sentenced them to 28-month prison terms, 12 of which were suspended.²⁸

In Western Sahara, authorities continued to use excessive and disproportionate force to disperse non-violent protests. They continued to prosecute protesters, notably participants in the unprecedented May 2013 protests in Laayoune and Smara for Sahrawi self-determination. Protester Hamza Ljoumai was recently sentenced to a two-year prison term for taking part in the protests, in spite of being allegedly tortured to “confess.”²⁹

ACCOUNTABILITY FOR PAST ABUSES (ART 2)

In December 2004, the Committee called on Morocco to conduct necessary investigations to identify, try and punish those responsible for disappearances³⁰ under the rule of King Hassan II, known as the “years of lead” (1956-1999), characterized by repression of political dissent, the enforced disappearance of hundreds of individuals, arbitrary detention of thousands of others and the systematic use of torture and other ill-treatment both in Morocco and Western Sahara.

Those responsible for abuses under the “years of lead” continue to escape accountability despite achievements during Morocco’s transitional justice process led by the Equity and Reconciliation Commission (IER) after it was established in 2003. The IER’s work led to some ground-breaking developments with regard to the right to truth and recognition of state responsibility in grave human rights violations, including torture. However, the IER fell short of identifying individual perpetrators and its mandate excluded holding individual perpetrators accountable. To date, the Moroccan authorities have yet to implement recommendations made by the IER, including a national strategy to combat impunity. Morocco ratified the International Convention for the Protection of All Persons from Enforced Disappearance in 2013, but did not recognize the competence of the Committee on Enforced Disappearances to receive and consider communications from or on behalf of victims or other states parties. They have not implemented the Convention into national law so far, although the government has proposed legislative amendments in this regard.

Moroccan authorities have yet to address issues falling outside of the remit of the IER in bring to justice perpetrators of human rights violations during the “years of lead” and complete institutional reforms without any further delay³¹. In particular, Amnesty International calls on the Moroccan authorities to ensure that full, impartial and independent investigations are conducted into all cases of human rights violations committed in the period falling under the remit of the IER, including those where the IER or its Follow-up Committee were not able to reach conclusions, giving particular priority to cases of enforced disappearances, and to bring suspected perpetrators to justice in fair proceedings.³²

SEXUAL AND GENDER-BASED VIOLENCE (ART 2, 3 AND 17)

LAWS ON VIOLENCE AGAINST WOMEN

Article 2 of the ICCPR guarantees that states must provide an effective remedy to anyone whose rights under the treaty have been violated, without discrimination. This means that states have an obligation to prevent, investigate and punish acts of gender-based violence, regardless of whether they are perpetrated by state agents or by private persons. In December 2004, the Committee expressed concerns at the high level of domestic violence against women

²⁷ Amnesty International, *Shadow of Impunity*, pp. 29-31.

²⁸ Amnesty International Annual Report 2014/2015 <https://www.amnesty.org/en/documents/pol10/0001/2015/en/>

²⁹ Amnesty International, *Shadow of impunity*, p. 28.

³⁰ Human Rights Committee, Concluding Observations on Morocco, UN doc. CCPR/CO/82/MAR (2004), para. 12.

³¹ For a detailed list of recommendations, please see *Amnesty International Broken promises: the equity and reconciliation commission and its follow-up*, 6 January 2010, available at: <https://www.amnesty.org/en/documents/MDE29/001/2010/en/>

³² Amnesty International, “Morocco/Western Sahara: Time for truth 50 years after disappearance of opposition leader Mehdi Ben Barka”, 28 October 2015 (Index: MDE 29/2747/2015) <https://www.amnesty.org/en/documents/mde29/2747/2015/en/>

in Morocco and called on the Moroccan authorities to “take suitable practical measures to combat this phenomenon”³³. Yet Moroccan law continues to fail to adequately protect women from all forms of violence. Instead it reflects a societal emphasis on a woman’s “honour” and “respectability” rather than on her rights as a survivor of violence. Amnesty International urges the Morocco authorities to address serious shortcomings in the Penal Code and to criminalize all forms of violence against women and girls, including by introducing legal provisions prohibiting domestic violence as well as sexual harassment, assault and rape, consistent with international law and standards.³⁴

The definition of rape (Article 486 of the Penal Code) falls short of international standards and refers to the act by which “a man has sexual relations with a woman against her will”. This provision should be amended in line with the highest international human rights law and standards by being gender neutral and defined in such a way as to address and criminalize all forms of forced and coercive sexual invasion, including penetration by objects. Marital rape should also be recognized as a specific criminal offence. Article 488 of the Penal Code, which provides for harsher sentences if rape and “indecent assault” (*attentat à la pudeur*) result in a woman losing her virginity and therefore legislates for differential penalties depending on whether a victim is a virgin or not, must be repealed. Consensual sexual relations between adults (Articles 489, 490 and 491 of the Penal Code) are criminalized, thus violating the right to privacy and impeding victims from reporting sexual assault and rape, and must also be repealed. The Moroccan authorities should ensure that sexual harassment is defined in Moroccan law in line with international standards – that is, any form of unwanted verbal, non-verbal or physical conduct of a sexual nature that has the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment – and is subject to criminal or other legal sanctions (Article 503-1 of the Penal Code). The Moroccan authorities have yet to move forward on a draft law, announced in 2013, criminalizing violence against women and children. Amnesty International calls on them to adopt a specific and comprehensive law to address gender-based violence, in consultation with women’s rights groups.

In addition to legal reforms, the Moroccan authorities should also implement a policy of preventing gender-based violence as well as ensuring that survivors have access to redress and reparations. Political leaders must lead the way in shifting attitudes by publicly condemning acts of sexual and gender-based violence, and sending a clear and unambiguous message that women and girls are not responsible for sexual violence. The Moroccan authorities must ensure that women are better represented within law enforcement agencies and the judiciary, and provide adequate and effective gender-sensitive training for law-enforcement officials and judges. The Moroccan authorities should also maintain accurate official statistics on the extent of gender-based violence and the authorities’ response in order to understand its prevalence, the contexts in which it occurs, and help focus government action.

ACCESS TO ABORTION (ART 6, 7)

Although international law requires that states ensure access to abortion when a woman’s life and physical and mental health is in danger and in cases of rape or incest, abortion in Moroccan law is still criminalized, unless the health of the mother is at risk, and is subject to spousal consent, thereby impeding women’s autonomous decision making (Articles 449-452 and 454-458 of the Penal Code). In December 2004, the Committee asked the Moroccan authorities to “relax the legislation relating to abortion”³⁵. Following a series of consultations with civil society organizations King Mohammed VI spoke out on 15 May 2015 in favour of broadening access to abortion in cases of rape, incest, danger to the mother's health or foetal malformation. A draft law has yet to be made public.

In a submission published on 1 April 2015,³⁶ Amnesty International called on the Moroccan authorities to decriminalize abortion and ensure access to safe and legal abortions, particularly in cases where the life, physical or mental health of a pregnant woman is in danger, in cases of rape or incest, and in certain cases of severe or fatal foetal impairment. Amnesty International further called on the Moroccan authorities to provide comprehensive access

³³ Human Rights Committee, Concluding Observations on Morocco, UN doc. CCPR/CO/82/MAR (2004), para. 28.

³⁴ Amnesty International, *Morocco: Amendment of rape provision is a step in the right direction*, January 2014, <https://www.amnesty.org/en/latest/news/2014/01/morocco-amendment-rape-provision-step-right-direction/>

³⁵ Human Rights Committee, Concluding Observations on Morocco, UN doc. CCPR/CO/82/MAR (2004), para. 29

³⁶ See Amnesty International, *Morocco: Amnesty International's submission in the context of the national debate on abortion*, 31 March 2015 (Index: MDE 29/1341/2015), <https://www.amnesty.org/en/documents/mde29/1341/2015/en/>

to contraception and to sexual and reproductive health care, to ensure access to appropriate care for women suffering medical complications following an abortion (legal or not) and to remove the requirement for spousal consent.

DISCRIMINATION AGAINST WOMEN, INCLUDING UNEQUAL ACCESS TO INHERITANCE

In December 2004, the Committee asked the Moroccan authorities to “review its legislation and ensure that any gender-based discrimination in the area of inheritance (...) is eliminated”.³⁷ Article 19 of Morocco’s new Constitution adopted in July 2011 guarantees equality between men and women. However, Moroccan authorities have yet to amend discriminatory provisions within the Family Code, introduced in 2004, which perpetuate gender inequality. In October 2015, Morocco’s National Human Rights Council released a report on gender equality and parity in Morocco, in which it called on the Moroccan authorities to amend the Family Code in order to give women equal rights in marriage, divorce, relationships with children and inheritance.³⁸ Amnesty International calls on the Moroccan authorities to amend all discriminatory provisions against women in the Family Code, including in matters of inheritance.

RIGHT TO PRIVACY (ART 17)

Moroccan legislation criminalises consensual same-sex relations through Article 489 of the Penal Code and authorities regularly prosecute men for alleged same-sex relations.³⁹ Meanwhile, Article 490 criminalises consensual sexual relations between unmarried persons. Journalist Hicham Mansouri and his co-defendant are currently serving a ten-month prison term following a conviction for adultery and complicity in adultery in March 2015.⁴⁰ In addition to breaching the right to privacy, these dispositions are an obstacle in the way of survivors of sexual violence seeking access to justice, as they run the risk of being accused of illegal sexual relations.

DEATH PENALTY (ART 6)

The Moroccan authorities have been maintaining a de facto moratorium on executions since 1993 but continue to sentence people to death in spite of Article 20 of Morocco’s 2011 Constitution which enshrines the right to life. According to government information, nine death sentences were imposed in Morocco and Western Sahara in 2014; 117 people – 114 men and three women – were on death row at the end of the year.

In December 2004, the Committee called on the Moroccan authorities to reduce to a minimum the number of offences punishable by the death penalty, with a view to abolishing capital punishment, and to commute the sentences of all persons sentenced to death. A draft bill to amend the Penal Code proposes to reduce the number of offences punishable by the death penalty but to keep it for eight offences including assault on the King or his life, on the life of Crown Prince or the life of a member of the royal family, treason, endangering territorial integrity in time of war, an act of terrorism that has caused death as well as murder with premeditation (Articles 163, 165, 167, 181, 190, 218-3 and 393 of the Penal Code). New offences proposed in the draft legislation, including genocide, crimes against humanity and war crimes (Articles 448-5 to 448-14) would also carry the death penalty.

Amnesty International opposes the death penalty under all circumstances and for all crimes, as the ultimate, cruel and degrading punishment and a violation of the right to life, and calls on the Moroccan authorities to reduce the number of capital offences with a view to abolishing capital punishment.

MOROCCO’S INVOLVEMENT IN SPAIN’S SUMMARY EXPULSIONS (ARTICLE 13)

Article 13 of the ICCPR prohibits arbitrary and collective expulsions of aliens and provides substantive and procedural guarantees to any person whose expulsion is sought. These include the right to challenge an expulsion and its lawfulness before a competent authority.

Ongoing cooperation between Spain and Morocco on border and migration control and the summary return of third

³⁷ Human Rights Committee, Concluding Observations on Morocco, UN doc. CCPR/CO/82/MAR (2004), para. 33

³⁸ National Council for Human Rights, Gender equality and parity in Morocco. Preserving and implementing the aims and objectives of the Constitution, 20 October 2015, available at: http://www.cndh.org.ma/sites/default/files/cndh_-_r_e_-_web_parite_egalite_uk_-pdf

³⁹ Amnesty International Annual Report 2014/2015 <https://www.amnesty.org/en/documents/pol10/0001/2015/en/>

⁴⁰ Amnesty International, “Jail term for press advocate upheld: Hicham Mansouri”, 27 May 2015 (Index: MDE 29/1754/2015) <https://www.amnesty.org/en/documents/mde29/1754/2015/en/>

country nationals from Spain to Morocco raise serious concerns in light of the repeated reports of human rights violations by Moroccan authorities against migrants, asylum-seekers and refugees in the country; in particular near the Spanish enclaves. In a report⁴¹ published on 17 November 2015, Amnesty International spoke to migrants and refugees who said they were apprehended by the Spanish Civil Guards either within the border fences or right after passing them, and immediately returned to Morocco without any identification or a chance to seek asylum. They were not provided with a chance to explain their individual circumstances or appeal their return. On occasion, Moroccan Auxiliary Forces are even granted entry to the territory between the Spanish border fences to then take migrants and refugees apprehended back to Morocco.

Amnesty International also documented serious allegations of excessive or unnecessary use of force by Moroccan security officers against migrants during operations aimed at preventing their irregular entry into Melilla over the border fence or into Ceuta by boat. Allegations also include instances where excessive force was used on Spanish territory within the Spanish border fences or upon migrants' summary expulsion from Melilla to Morocco under the gaze of the Spanish Civil Guards

Yours sincerely,



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For further information please see the following Amnesty International documents:

General

- Amnesty International Annual Report 2014
<https://www.amnesty.org/en/documents/pol10/0001/2015/en/>
- Amnesty International, Morocco: unprecedented legal reforms must uphold human rights, 16 April 2015:
<https://www.amnesty.org/en/documents/mde29/1438/2015/en/>

On torture and other ill-treatment, secret detention and unfair trials

- Amnesty International, *Shadow of Impunity: Torture in Morocco and Western Sahara*, 19 May 2015:
<https://www.amnesty.org/en/documents/mde29/001/2015/en/>
- Amnesty International, *USA: Crimes and impunity: Full Senate Committee report on CIA secret detentions must be released, and accountability for crimes under International law ensured*, 20 April 2015:
<https://www.amnesty.org/en/documents/amr51/1432/2015/en/>
- Amnesty International, "Morocco/Western Sahara: Accession to OPCAT must be followed by swift implementation," 1 December 2014:
<https://www.amnesty.org/en/documents/mde29/011/2014/en/>
- Amnesty International, *Morocco/Western Sahara: Torture in the "anti-terrorism" campaign - the case of Temara detention centre*, 23 June 2004:
<https://www.amnesty.org/en/documents/MDE29/004/2004/en/>

⁴¹ See Amnesty International, *Fear and fences: Europe's approach to keeping refugees at bay*, 17 November 2015 (Index: EUR 03/2544/2015) <https://www.amnesty.org/en/documents/eur03/2544/2015/en/>

On freedoms of expression, association and assembly

- Amnesty International, “Morocco : More than 200,000 people worldwide demand the immediate and unconditional release of torture complainants Wafae Charaf and Oussama Housne”, 20 October 2015: <https://www.amnesty.org/en/documents/mde29/2672/2015/en/>
- Amnesty International, “Morocco: Court orders suspension of news website, editors fined for “false news” and “defamation” ”, 16 August 2015: <https://www.amnesty.org/en/documents/mde29/2260/2015/en/>
- Amnesty International, “Morocco: Harassment of an outspoken journalist”, 4 August 2015: <https://www.amnesty.org/en/documents/mde29/2211/2015/en/>
- Amnesty International, “Amnesty International staff members expelled from Morocco”, 11 June 2015: <https://www.amnesty.org/en/latest/news/2015/06/amnesty-international-staff-members-expelled-from-morocco/>
- Amnesty International, “Jail term for press advocate upheld: Hicham Mansouri”, 27 May 2015: <https://www.amnesty.org/en/documents/mde29/1754/2015/en/>
- Amnesty International, FIACAT (Fédération internationale de l’ACAT), FIDH (Fédération internationale des ligues des droits de l’homme), Fondation Alkarama, Human Rights Watch, Ligue des droits de l’homme, OMCT (Organisation mondiale contre la torture), REDRESS, REMDH (Réseau euroméditerranéen des droits de l’homme), TRIAL (Track Impunity Always), 9 February 2015 : <https://www.amnesty.org/en/documents/mde29/0002/2015/fr/>
- Amnesty International, “Morocco/Western Sahara: Lift restrictions on associations”, 26 November 2014: <https://www.amnesty.org/en/documents/mde29/010/2014/en/>
- Amnesty International deplors the Moroccan authorities’ decision to ban youth camp, 2 September 2014: <http://www.amnesty.org/en/library/info/MDE29/006/2014/en>
- Amnesty International, “Morocco: Stop using ‘terrorism’ as a pretext to imprison journalists,” 20 May 2014: <https://www.amnesty.org/en/latest/news/2014/05/morocco-stop-using-terrorism-pretext-imprison-journalists/>

On accountability for past abuses

- Amnesty International, Morocco/Western Sahara: time for truth 50 years after enforced disappearance of opposition leader Mehdi Ben Barka, 28 October 2015: <https://www.amnesty.org/en/documents/mde29/2747/2015/en/>
- Amnesty International, *Broken promises: the equity and reconciliation commission and its follow-up*, 6 January 2010: <https://www.amnesty.org/en/documents/MDE29/001/2010/en/>

On gender-based violence and sexual and reproductive rights

- Amnesty International, Morocco: Amnesty International's submission in the context of the national debate on abortion, 31 March 2015: <https://www.amnesty.org/en/documents/mde29/1341/2015/en/>
- Amnesty International, Morocco: Amendment of rape provision is a step in the right direction, 22 January 2014: <https://www.amnesty.org/en/latest/news/2014/01/morocco-amendment-rape-provision-step-right-direction/>
- Amnesty International, *Morocco: Amnesty International's submission in the context of the national debate on abortion*, 1 April 2015: <https://www.amnesty.org/en/documents/mde29/1341/2015/en/>
- Amnesty International, Morocco: Amendment of rape provision is a step in the right direction, 23 January 2014: <https://www.amnesty.org/en/latest/news/2014/01/morocco-amendment-rape-provision-step-right-direction/>

On the use of the death penalty

- Amnesty International, Death sentences and executions 2014, 1 April 2015: <https://www.amnesty.org/en/documents/act50/0001/2015/en/>

On the rights of refugees and migrants

- Amnesty International, Fear and fences: Europe's approach to keeping refugees at bay, 17 November 2015: <https://www.amnesty.org/en/documents/eur03/2544/2015/en/>

