



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

**Comments by the Government of Morocco^{*} to the conclusions and
recommendations of the Committee against Torture**

[22 November 2004]

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- Annexes to the present report are available with Secretariat

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Recommendation (c): Limit the period of police custody to a strict minimum and guarantee the right of persons in police custody to rapid access to a lawyer, a doctor and a relative.

1. Reply: The police are required to notify the public prosecutor's office and the person's family whenever they place a person in police custody. This requirement is laid down in article 67 of the Code of Criminal Procedure, which reads as follows:

- (a) "Every police officer shall make a note in the transcript of any interview conducted with any person in police custody of the date and time of that person's arrest and release or of his referral to the competent magistrate.
- (b) "To these details shall be added either the signature or the thumb print of the person in police custody or a note indicating that he refused or was unable to sign or to make a thumb print and explaining the reasons for this.
- (c) "The same information shall be registered in the logbook to which reference was made in the preceding article.
- (d) "As soon as a person is placed in police custody, the police officer shall use any means of communication to notify the person's family and shall indicate in the police report that this was done. He shall send the public prosecutor's office a daily list of the persons placed in police custody during the previous 24 hours."

2. The period of police custody during the preliminary investigation stage is 48 hours and the public prosecutor's office must be notified in each case. This period may be extended for an additional 24 hours in the event of a flagrante delicto offence. If the matter relates to a preliminary investigation, the period of police custody remains the same; however, where an extension is requested, the person concerned must be presented to the King's public prosecutor or the King's prosecutor, who will examine him and listen to what he has to say. The prosecutor weighs up the arguments presented in the extension application before taking his decision. Article 80 of the Code of Criminal Procedure reads as follows:

- (a) "If the matter relates to a serious offence or a lesser offence which is punishable by a term of imprisonment and if a police officer needs to keep a person at his disposal for the purposes of the investigation, the officer may hold the person in police custody for up to 48 hours with the permission of the public prosecutor's office. He must present the person to the King's prosecutor or the King's public prosecutor before the end of this period.
- (b) "The King's prosecutor or the King's public prosecutor, having examined the person presented to him, may give written permission for one extension of the period of police custody for 24 hours.
- (c) "In cases of offences against the State's internal or external security, the period of police custody is 96 hours, renewable on one occasion with the written permission of the public prosecutor's office.
- (d) "Exceptionally, the above-mentioned permission may be granted pursuant to a reasoned decision issued without the person's being presented to the public prosecutor's office.

- (e) “If an extension of the period of police custody is granted, the person in custody is entitled to ask the police to allow him to contact a lawyer. The designated lawyer has the right to interview the person in police custody.
- (f) “Such interviews are conducted, with the permission of the public prosecutor’s office, beginning from the first hour of the period of the extension of police custody and lasting for up to 30 minutes. Interviews are monitored by the police under conditions which guarantee their confidentiality.
- (g) “However, if a problem of distance makes it difficult to obtain permission from the public prosecutor’s office, the police may, by way of exception, allow the lawyer to interview the person in police custody, provided that they inform the public prosecutor’s office without delay that they have done so.
- (h) “Lawyers shall not disclose any information which they obtain during interviews with their clients, before the end of the period of police custody.
- (i) “If warranted by the exigencies of the investigation, a representative of the public prosecutor’s office may delay an interview between a client and his lawyer, at a police officer’s request, whenever the case relates to one of the offences specified in article 108 of this Act.
- (j) “During the period of extension of police custody, the lawyer authorized to communicate with the person in police custody may submit documents or written comments to the police or the public prosecutor’s office for inclusion in the police report and in exchange for a receipt.”

3. Article 66 furthermore stipulates that: “If, for the purposes of an investigation, a police officer needs to keep one or more of the persons referred to in article 65 above at his disposal, he may hold them in police custody for up to 48 hours, beginning from the time of arrest. The public prosecutor’s office shall be duly notified.

4. “Subject to the exigencies of the investigation, the period of police custody may be extended once, for 24 hours, with the written permission of the public prosecutor’s office.”

5. If, when the accused appears before him, the King’s public prosecutor or the King’s prosecutor detects signs of violence or torture on the person of the accused, he will send the accused to a medical expert for examination.

6. Article 73, paragraph 2, of the new Code of Criminal Procedure establishes the right of a person accused of a flagrante delicto offence for which no investigation is required to have his lawyer present when he appears before the King’s public prosecutor or one of his deputies. The paragraph in question reads as follows: “The chosen or designated lawyer is entitled to attend this examination, to request a medical examination for his client and to have access, on his client’s behalf, to documents or written evidence. He may also offer to provide a monetary or personal guarantee in exchange for his client’s release, if criminal proceedings are pending. In such cases, the conditions of bail set out in article 74 shall apply.”

7. The public prosecutor's office carries out inspections of police stations which have their own cells. Its magistrates talk to inmates, examine them and verify the legality and the conditions of their detention.

8. Investigating judges have the same powers. They can order a medical expert to give the accused a medical examination, either at the request of a third party or if they themselves see signs that warrant such an examination. The accused has his defence lawyer with him whenever he appears before the public prosecutor or the investigating judge.

9. As soon as the public prosecutor's office learns that accused persons have been subjected to violence or arbitrary arrest, it orders an immediate investigation and has the victims examined by a forensic physician in order to determine the nature, cause and the extent of their injuries. The culprits are immediately brought before the judicial authorities as required by law.

(In the annex to this report you will find a table containing information about prosecutions brought against the police for violence or abuse of authority.)

Recommendation (f): Ensure that all allegations of torture or cruel, inhuman or degrading treatment are immediately investigated impartially and thoroughly, especially allegations relating to cases and situations verified by the aforementioned Independent Arbitration Commission and allegations implicating the National Surveillance Directorate in acts of torture, and ensure that appropriate penalties are imposed on those responsible and that equitable compensation is granted to the victims.

10. Reply: Moroccan legislation contains a series of provisions, laws and measures designed to protect the physical integrity and personal liberty of individuals against acts of violence and arbitrary arrests carried out by public officials and public law enforcement officers. Articles 255, 403, 436 and 440 of the Criminal Code prescribe harsh and severe penalties for such offences.

11. As soon as it receives a complaint from an injured party, the public prosecutor's office orders an investigation and implements the proper procedures, referring the case to an investigating judge who will look into the allegations against the accused, if identified, or against a person or persons unknown. In other cases, the prosecutor's office may institute proceedings against the author of the offence and refer the case to a court for adjudication. The Code of Criminal Procedure grants the injured party the right to lodge a complaint, together with a claim for civil damages, directly to the investigating judge or directly before the president of the court. This is an additional guarantee which the legislature offers to all victims, allowing them to file a suit regardless of the position taken by the prosecuting authorities.

12. The courts have furthermore heard numerous cases against public officials for acts of violence against, or arbitrary detention of, persons; the officials in question were convicted and the victims were compensated.

13. With regard to the allegations contained in reports issued after the allegations have been investigated or in reports produced by government bodies, the public prosecutor's office at the Court of Appeal always publicizes the conclusions reached by the investigating judge so as to throw light on the facts behind such allegations.

Recommendation (g): Inform the Committee of the outcome of impartial inquiries into all deaths in police custody, detention or prison, in particular deaths alleged to the result of torture.

14. Reply: In accordance with the rules laid down in the Code of Criminal Procedure and special laws and with the terms of ordinances and circulars issued by the Ministry of Justice, the public prosecutor's offices at the various royal courts carry out periodic visits to police stations and royal gendarmerie posts to make sure that the Code of Criminal Procedure is being implemented properly as regards the placement of persons in police custody. A total of 569 visits were made in 2003 and 249 visits had taken place as of August 2004. Whenever evidence of any abuse or arbitrary treatment of a person in police custody is found, an investigation is launched and disciplinary or legal action is taken against the culprit.

15. Where a person in police custody dies as the result of use of violence, a series of measures are taken: the victim's family is notified; a representative of the public prosecutor's office goes to the police station or the royal gendarmerie post where the death occurred and examines the body, looks for any marks, and obtains a detailed description of the place where the death occurred. All his observations are recorded in the preliminary report and the prosecuting authorities order a pathologist, duly licensed by the medical association, to perform an autopsy on the deceased. The police investigate the circumstances surrounding the death and inform the family of the results.

16. If there is any doubt as to the cause of death, the prosecuting authorities order an autopsy or a second autopsy. Depending on the results of the autopsies and the preliminary investigation, the prosecuting authorities will be asked to investigate the author of the offence or, if that person has not been identified, a person or persons unknown. Anyone implicated in acts of torture or violence that lead to a victim's death will be prosecuted in accordance with the law.

Investigation of complaints involving allegations of torture and action taken against perpetrators

17. The Ministry of Justice and all the Kingdom's courts take complaints from persons claiming they were tortured at a police station very seriously. Investigations are launched and complainants are informed of the results. The Criminal Code penalizes any act of violence or wrongdoing that an official may commit against a person during the course of an investigation. In this connection, as soon as the prosecutor's office receives a complaint, it orders an investigation or asks the investigating judge to examine the perpetrators, if known, or to initiate an investigation into persons unknown. (In the annex you will find a list of the names of persons who have died in custody, together with an explanation of the circumstances of their death and of the action taken in each case.)

Question: Prosecution of security officials implicated in acts of torture committed during the Smara events in November 2001

18. Reply: The investigation carried out by the public prosecutor at the Al-Aaiun Court of Appeal established that Mohammed al-Rakibi and Mohammed Fadil Alili had petitioned the investigating judge on behalf of 11 accused persons asking for a medical examination of all those persons in order to look for signs of the torture to which they had been subjected during police questioning.

19. The petition asked for a medical examination to determine whether there were any signs of injuries or bruises on the complainants' bodies and to identify the date on which such injuries, if found, had occurred and the type of instrument that had been used to inflict them. After reviewing the petition, the investigating judge rejected it on the grounds that the complainants' allegations

referred to a separate offence which was a matter for the prosecuting authorities and not an investigating judge, who can only become involved in a case at the request of the prosecuting authorities or a civil party. In its ruling No. 89 of 24 January 2002, the criminal court upheld the investigating judge's decision at appeal. The complainants appealed against the ruling before the Court of Cassation. On 16 October 2002, the Supreme Council issued a decision declaring the petition to be inadmissible. It should be pointed out that there is a huge difference between a request for a medical examination and a complaint against a person suspected of committing acts which, if proven, will lead to that person's prosecution.

20. The complainants did not lodge any complaint about torture with the prosecutor's office which had competence for investigating the case.

Question: The law and powers of the National Surveillance Directorate (DST)

21. Reply: The National Surveillance Directorate coordinates and performs all its functions by collecting and analysing all the information it needs. In terrorism or espionage cases, security officials liaise with the royal gendarmerie to bring in suspects for questioning before referring them to the courts, which have the final say.

22. In certain circumstances, the police ask the DST to provide them with all the additional information which it has at its disposal about particular cases.

23. With the emergence of new phenomena in the international arena, the DST has adopted new procedures and objectives to meet the challenges which the national security and stability of the country now face. These are all in conformity with the laws in force.

24. The Directorate's rules of procedure, methods of work and functions are no different from those of its counterparts elsewhere in the world. Its headquarters are located in Tamarah City, with branch offices under its direct control. It is responsible for investigating and preventing activities that are instigated, carried out or supported by subversive or terrorist groups and for combating espionage and all forms of foreign interference in domestic affairs.

25. In the framework of counter-terrorism or counter-espionage activities, investigators from the DST and the royal gendarmerie launch inquiries and investigations, overseen by the prosecuting authorities, and bring suspects to justice. There are other DST officials who are not police officers and therefore are not permitted to carry out arrests and searches or to detain and question suspects. However, this does not rule out a collaborative relationship between the DST and the police in the intelligence-gathering domain, such as exists elsewhere in the world.
