



## Human Rights Observation Mission in Fes

**THE SEVEN DETAINEES FROM FES: A REPORT ON  
HUMAN RIGHTS ABUSES DURING THE PRETRIAL  
PROCESS**

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## **PART I: BACKGROUND INFORMATION.**

### **1.1. Introduction.**

The present report is based on an observation mission that took place on 15-17 June 2011 in Fes under the mandate of the NGO Alliance for Freedom and Dignity. We acted as independent international observers, aiming at recounting the facts seen and heard during the mission. The purpose of the mission was observing a new trial of the 7 detainees' case, in order to ensure compliance to international human rights standards, and gathering information about the process.

The seven detainees, members of Morocco's religious-based association, Adl Wal Ihssane, were accused on 1 July 2010 on charges of "belonging to an unauthorized association", "forming a criminal gang" and "abduction and detention of an individual" and "torture". The main accusation was having kidnapped and tortured one of their former members when he intended to leave their organization. After being illegally detained, they were detained incommunicado during three days and suffered torture and other ill-treatment, presumably by agents of the National Brigade of Judicial Police.

Their accusation was primary based on statements that have been obtained under torture and eventually, on December 2th 2010, the defendants were acquitted. However, the Moroccan state has not established any independent investigation into the allegations of torture or other ill-treatment in this case, neither has compensated them for the harm suffered. In addition to that, some of them were removed from their positions by Moroccan authorities; subsequently they find themselves at the present jobless and with no source of revenues.

By this new trial, the seven detainees searched for compensation and the devolution of their job positions. However, the trial, which was to be held on 16 June in Fes, was eventually postponed. Even though, the mission carried on and we conducted group interviews with the seven detainees and their families. The methodology adopted was open semi-directive questions, the interviews being recorded. This report is based on these interviews, regarding the human rights abuses that took place during the arrest and

pre-trial detention. Their claiming has been contrasted with previous reports published by other human rights organizations and with the international and domestic legal frameworks for the interdiction of torture.

Hence, the aim of this report is to contrast the performance of the Moroccan authorities during pre-trial case, as reported by the seven detainees, with the national and international law standards, as set out mainly in the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), treaties to which Morocco is a state party.

## **1.2. Legal framework.**

The legal framework analyzed both at a national and at an international level, is to be found in the following documents:

### **I. Moroccan legal order:**

- Moroccan Constitution.
- Moroccan Criminal Code.

### **II. Human rights treaties to which Morocco is a party:**

- International Covenant on Civil and Political Rights (ICCPR). This landmark Covenant was signed by Morocco in 1977 and became effective in 1979. No reservations were made.
- Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment. This Convention was signed by Morocco in 1986 and came in force in 1993. One reservation was made<sup>1</sup>.

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<sup>1</sup> Article 30 (1): "A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General". Morocco is not bound by this article.

- Convention for the Protection of All Persons from Enforced Disappearance. This Convention was signed by Morocco in 2007. It has not come in force yet.
- UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

### III. Norms of customary international law:

- The prohibition of torture or cruel, inhuman or degrading treatment or punishment is a norm of customary international law that also belongs to the category of *jus cogens* (peremptory norm)<sup>2</sup>.

## **PART II. RIGHTS VIOLATED BEFORE THE TRIAL**

### **2.1. The prohibition on arbitrary arrest and detention.**

Article 9(1) of the ICCPR states that “No one shall be subjected to arbitrary arrest or detention” and “No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law”. Detention is regarded as ‘arbitrary’ when there is no legal basis for detention or there are flagrant rights violations against a fair trial<sup>3</sup>. In the case on the seven detainees, the arrest and detention can be considered “arbitrary” on the grounds of the violations of the right to fair trial, in particular on the violation of the usual safeguards during the process of arrest and the three days incommunicado detention.

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<sup>2</sup> “[...] some non-derogable rights, which in any event cannot be reserved because of their status as peremptory norms, are also of this character - the prohibition of torture and arbitrary deprivation of life are examples”. General Comment 24: Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, 04/11/1994, retrieved from:

<http://www.unhchr.ch/tbs/doc.nsf/0/69c55b086f72957ec12563ed004ecf7a?Opendocument>.

<sup>3</sup> “Detention and imprisonment”, Amnesty International, 25 June 2011, retrieved from: <http://www.amnesty.org/en/detention>

First of all, several irregularities have been detected during the process of arrest. When the officers arrived to the detainees' homes, they did not show any warrants, they were dressed in plain-clothes and they had not properly identified themselves, according to their declarations.

*« J'ai osé demander à ces personnes-là quelle était leur identité. Ils m'ont répondu que ces choses là ont lieu dans la télé (les films), mais que dans la pratique c'est ça qui se passe »*

In Morocco, house searches and seizures of property cannot take place without the written consent of the person whose house is to be searched or without a warrant from the public prosecutor, in accordance with Article 62 of the Criminal Procedure Code. None of these conditions were met at the time. Additionally, the detainees reported that the officers arrived and searched their homes around 5 a.m., a clear violation of the Moroccan Code of Criminal Procedure, which prohibits such searches during night time in the absence of a representative of the public prosecutor, as set out by Article 102 of the Criminal Procedure Code. The detainees and their families claimed that officers used excessive force during the arrest:

*« J'ai été enlevé dans ma chambre à coucher. Ses personnes sont rentrées, ils n'ont pas respecté l'intimité de ma femme, ils ont pris leurs pistolets, l'ont dirigé vers ma fille de trois ans. J'ai été mis par terre, menotté, battu, j'ai reçu des gifles sur le visage, j'ai eu un problème de rupture tympaniques à cause des coups de bâton. Après je me suis évanoui, et je ne sais pas ce qu'il s'est passé. J'ai été traîné par terre dans les escaliers, comme une bête morte. »*

*« Avec la barre de fer, ils ont forcé la porte. En entrant, ils m'ont battu sur la figure, et quand je demandais pourquoi, ils ne répondaient pas »*

The officers also insulted and harassed the detainees and their family members. Particularly, the officers treated a relative of one of the detainees, who is physically disabled, in a very humiliating way. According to the declarations:

*« Alors, ils ont bousculé mon fils. J'ai un enfant qui est handicapé, et ils l'ont agressé (...). Lui, dès ce qu'il les a vus, il a eu peur, alors il s'est caché. Ils ont dit : «Regardez, regardez, il y a quelqu'un, un voleur, là-bas ». Je leur ai dit*

*qu'il ne fallait pas le toucher, parce qu'il est handicapé. Alors, ils l'ont tiré par la chemise, ils lui ont déchiré sa chemise, et alors qu'ils ont commencé à lui parler, c'est en ce moment qu'ils ont vu qu'il est handicapé »*

Secondly, the process of detention has not respected the usual safeguards either. The seven detainees were detained incommunicado and without access to lawyers from the time of their arrest on 28th of June until the 1st of July. The Human Rights Committee stated in its General Comment N°20 that “provisions should be made against incommunicado detention”, as effective means of preventing cases of torture and ill-treatment<sup>4</sup>. According to the Convention of Enforced Disappearance (signed by Morocco in 2007), the deprivation of liberty by agents of the State, followed by a refusal to acknowledge the fate or whereabouts of the disappeared persons is considered enforced disappearance<sup>5</sup>. This act is considered one of the gravest crimes in international law<sup>6</sup>.

Another safeguard that has been violated during the detention process was providing information to the families about where the seven detainees were being held. The families and lawyers of the detainees were not informed of their whereabouts<sup>7</sup>, even when some of the family members approached the police station in order to ask for them, in breach of Article 67 the Moroccan Code of Criminal Procedure, which states

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<sup>4</sup> Human Rights Committee, General Comment 20: Article 7, U.N. Doc.HRI\GEN\1\Rev.1 at 30 (1994), par. 11.

<sup>5</sup>Article 2 of the Convention of Enforced Disappearance "enforced disappearance is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

<sup>6</sup>This act is considered for the International Criminal Court a crime against humanity. The definition of the Rome Statute of the International Criminal Court differs from the Convention of Enforced Disappearance, stating the first one that the enforced disappearance has to have “the intention of removing them from the protection of the law for a prolonged period of time”. *Rome Statute of the International Criminal Court*, A/CONF.183/9, 17/07/1998, Art. 7.1.

<sup>7</sup> “Urgent action: seven detainees allege torture in Morocco”, Amnesty International, MDE 29/015/2010 Morocco, 21 July 2010.

that the authorities must immediately inform the family of decisions to place suspects in custody. According to the detainees' declarations:

*« Quand ils nous ont enlevés, nos familles sont parties vers la police pour demander, mais la police disait que non, qu'ils ne s'étaient pas déplacés. »*

## **2.2. The right to know the reasons for arrest.**

As Article 9(2) of the ICCPR states, "anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him". However, and in accordance with a report published by Amnesty International, the seven men were arrested after the General Crown Prosecutor of the Fes appeal court ordered the BNJP (Brigade Nationale de la Police Judiciaire) to investigate allegations made against them.

Although there was a reason for arrest, the BNJP officers who arrested them did not produce warrants for their arrest, as required under Moroccan law, and searched their homes of the men at around 5am in breach of the Code of Criminal Procedure, which states that such searches should be conducted during the daytime. The detainees and their families declare that BNJP officers assaulted and insulted them during the house searches and at the time of arrest.<sup>8</sup>

*« Jamais durant l'arrestation on ne m'a dit pourquoi ils m'arrêtaient. »*

In this regard and following their declarations, the Moroccan authorities did not respect one of the fundamental rights of the detainee, meaning the obligation to ensure that detainees are treated in accordance with international law and standards, as set out in the International Covenant on Civil and Political Rights (ICCPR), and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), treaties to which Morocco is a state party, as well as the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

In that sense, the detention has been lived by the seven men as a kidnapping, as no formal reasons were given to them. Actually, they alleged that the first time they heard

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<sup>8</sup> <http://www.amnesty.org/en/library/asset/MDE29/015/2010/en/86dc54ef-9e9f-4068-a640-02a8b1d1fc7f/mde290152010en.html>



about the reasons of their detention was at the public prosecutor, meaning three days after their detention.

*« Notre affaire commence par un enlèvement, on ne s'y attendait pas. Chacun de nous a été enlevé de sa maison vers 5h30 avec l'heure d'été, c'était très tôt. On ne connaissait pas l'identité des personnes qui nous ont enlevées, c'était des personnes en civil, des voitures en général. En général, c'était trois voitures qui sont venues kidnappées les personnes, on était pris en otage, menottés, ils ont bandé les yeux et ensuite on a pris une destination qu'on ne connaissait pas. »*

*« Le 4e jour, le matin, ils nous ont embarqués, avec d'autres gens, qui disaient qu'ils vont pas faire comme les autres, mais vont les ramener à Fès pour passer auprès du procureur. Pour la 1ère fois on sait qu'on est accusés. »*

While they were arrested the 28 June, some of the detainees publicly asked the BNPJ officers for the reasons of their arrest, and the authorization, in both cases they were answered that, that was under Moroccan authorities. Therefore and following their declarations, the right to know the reason of the arrest, at the time of arrest, as stipulated by Article 9(2) of the ICCPR was not respected. This is how they presented it to us:

*« La première fois qu'on a su la raison du procès, c'était après trois jours lorsqu'on s'est présenté au ministère public. On nous a demandé si on savait de quoi on nous accusait, et on ne savait rien. Après j'ai demandé pour l'autorisation de m'arrêter, l'investigation dans la maison. Ils ont dit « nous sommes les autorités, le gouvernement, tu dois te taire, et tu verras pendant cette nuit ».*

*« Ils ont dit « nous sommes les autorités, le gouvernement, tu dois te taire, et tu verras pendant cette nuit ».*

### **2.3. The right to legal counsel.**

Article 14 (3) of the ICCPR proclaims that “in the determination of any criminal charge against him, everyone shall be entitled to (...) have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing”. This right known as “the right to legal counsel” includes having access and communicating

to a lawyer. This right has to be respected by the competent authorities during the entire process of detention<sup>9</sup>.

In the case on the seven detainees, they were provided legal counsel during most of the detention period. However, they were not allowed to have access and communicate with their lawyers during the first 3 days of detention. As stated by Article 7 of the United Nations Basic Principles on the role of Lawyers, governments shall ensure that all persons arrested or detained should have access to a lawyer within 48 hours from arrest or detention<sup>10</sup>. As stated by the detainees', this access was denied:

*« Des avocats ont reçu une autorisation pour nous voir et ils ont été empêchés de nous voir pendant les trois jours »*

Access to legal counsel was not given until Friday, 4 days after the moment of the arrest. According to the detainees' declarations:

*« On a été arrêtés lundi et le vendredi a été la première fois qu'on a vu notre famille. Non, en fait, a c'est le lundi d'après qu'on vu nos familles ; le vendredi c'était l'avocat, le groupe des avocats »*

During the rest of the detention, the detainees were visited by their lawyers and were as well able to communicate with them.

#### **2.4. The right to a prompt appearance before a judge to challenge the lawfulness of arrest and detention**

Article 9(3) of the ICCPR states that “everyone who is arrested or detained on a criminal charge “shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release”. Promptness has been interpreted by the Human Rights Committee (HRC) to

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<sup>9</sup> *What Is A Fair Trial? A Basic Guide to Legal Standards and Practice*, Lawyers Committee for Human Rights, 2000, p. 6, retrieved from: [http://www.humanrightsfirst.org/wpcontent/uploads/pdf/fair\\_trial.pdf](http://www.humanrightsfirst.org/wpcontent/uploads/pdf/fair_trial.pdf).

<sup>10</sup> The *Basic Principles on the Role of Lawyers* were adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, retrieved from: <http://www2.ohchr.org/english/law/lawyers.htm>

mean that the period of custody, before an individual is brought before a judge or other officer, may not exceed “a few days”<sup>11</sup>.

The Office of the High Commissioner for Human Rights (OHCHR) in its report concerning human rights and arrest, and specifically in its chapter about arrest, pre-trial detention and administrative detention, has a special mention on the notions of lawfulness and arbitrariness that could be helpful to understand if the right to a prompt appearance before a judge to challenge the lawfulness of arrest and detention was violated, as declared by the interviewees.

What is stated is the meaning of those notions:

“To be lawful under international human rights law, arrests and detentions must:

- Be carried out in accordance with both formal and substantive rules of domestic and international law, including the principle of non-discrimination;
- Be free from arbitrariness, in that the laws and their application must
- Be appropriate, just, foreseeable/predictable and comply with due process of law.”<sup>12</sup>

Regarding the Article 9(3) of the ICCPR that states that anyone arrested should be promptly brought before a judge is very hard to assess, as “promptly” is defined by the HRC as not exceeding “few days”. In the case of the seven detainees of Fes, it took them 3 days, meaning at the fourth day after their arrest to be brought to the procurator. On another hand, the OHCHR states that remaining in custody does not only have to be lawful, but also reasonable and necessary. In this regard, it can be wondered if the

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<sup>11</sup> *General Comment No. 08: Right to liberty and security of persons* (Art. 9), Human Rights Committee, 30/06/1982, par. 2, retrieved from: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/a4f543b9dadd08a7c12563ed00487ed8?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/a4f543b9dadd08a7c12563ed00487ed8?Opendocument).

<sup>12</sup> <http://www.ohchr.org/Documents/Publications/training9chapter5en.pdf>

reasons to let stay three days in jail, and under torture, fits to the category of “reasonable and necessary” reasons.

*“Quand est ce que vous avez pu voir un juge ? Au quatrième jour, on a vu le procureur. Le quatrième jour, le matin, ils nous ont embarqués, avec d’autres gens, qui disaient qu’ils vont pas faire comme les autres, mais vont les ramener à Fès pour passer auprès du procureur. Pour la première fois on sait qu’on est accusés. »*

## **2.5. The prohibition of torture and the right to humane conditions during pretrial detention**

### **2.5.1. Legal framework for the prohibition of torture and ill-treatment**

- *Framework for the definition of torture and ill-treatment in international law*

Morocco’s international obligations regarding the prohibition of torture or cruel, inhuman or degrading treatment or punishment are to be found in the International Covenant on Civil and Political Rights (ICCPR) and in the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, both signed and ratified by the country.

The ICCPR was signed by Morocco in 1977 and came into force in 1979. Article 7 of the ICCPR prohibits torture or cruel, inhuman or degrading treatment or punishment.

The Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment was adopted and open for signature in 1985 in order to give a more consistent legal coverage to the prohibition of torture. The Convention was signed by Morocco in 1986 and came into force in 1993. The country has recently signed the Optional Protocols of the Convention, which foresee the creation of a Sub-Committee Against Torture and aims to build a preventive system based on regular visits by independent international and national bodies to assess the commitment of the country to the prohibition of torture and cruel, inhuman or degrading treatment or punishment.

Furthermore, the prohibition against torture has the status of customary international law and is also considered as a peremptory norm (also known as *jus cogens*), that is to

say, a general principle accepted by the International community as a norm from which no derogation is ever permitted.

- *Framework for the definition of torture and ill-treatment in Moroccan law*

Morocco was the first country in North Africa to typify torture as a specific crime in its penal code, with the adoption of Law n.43-04 modifying and completing the penal code, published on 23 February 2006. The definition of torture in international law is provided by Article 1(1) of the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment<sup>13</sup>, whereas in the Moroccan legal order, torture is defined by Article 231(1) of the penal code<sup>14</sup>. It is necessary to analyse the Moroccan legal framework for the definition of torture in light of the international standards fixed by the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, in order to assess the conformity of Moroccan law to the international legal framework.

In the first place, the notion of “act” by which pain or suffering is inflicted as set out in the Convention, leaves place to “any fact that causes” pain or suffering in the Moroccan penal code, enlarging the scope of the definition of torture, which can be understood as a positive point.

Secondly, the Convention establishes that in order to be considered torture, the pain or suffering must be inflicted “by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”, whereas the Moroccan definition reduces the scope of the responsibility to public officials. Even

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13 For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

14 Article 231(1) of the Moroccan penal code: Au sens de la présente section, le terme torture désigne tout fait qui cause une douleur ou une souffrance aiguë physique ou mentale, commis intentionnellement par un fonctionnaire public ou à son instigation ou avec son consentement exprès ou tacite, infligé à une personne aux fins de l'intimider ou de faire pression sur elle ou de faire pression sur une tierce personne, pour obtenir des renseignements ou des indications ou des aveux, pour la punir pour un acte qu'elle ou une tierce personne a commis ou est soupçonnée d'avoir commis, ou lorsqu'une telle douleur ou souffrance est infligée pour tout autre motif fondé sur une forme de discrimination quelle qu'elle soit. Ce terme ne s'étend pas à la douleur ou aux souffrances résultant uniquement de sanctions légales, ou occasionnées par ces sanctions ou qui leur sont inhérentes.

if Article 224 of the Moroccan penal code defines public officials as a wide category, the definition is in any case more restrictive than the one provided by the Convention.

Thirdly, most of the purposes of torture defined by the Convention are also contained in the Moroccan penal code. The only purpose of torture omitted by the Moroccan code is the intimidation of a third person. This omission is not compatible with the dispositions of the Convention.

To conclude, whereas the Convention excludes the “sufferings resulting from legitimate sanctions” from the definition of torture, the Moroccan law offers a wider framework for exceptions regarding the definition of torture, excluding the sufferings resulting from legal actions. The Committee against Torture defends that only sanctions established in accordance with international law can be considered as legitimate.

### ***2.5.2. The case of the seven detainees***

Following their illegal arrest on 28 June, the seven detainees were lead to the BNPJ’s detention centre in Casablanca, where they were kept in incommunicado detention during 72 hours. During this period all seven are reported to have undergone torture and ill-treatment.

- *Psychological torture*

The seven detainees maintain that they were psychologically tortured and that they received continuous threats from BNPJ officers. For instance, some detainees were told that their mother was dying as a result of the detention and that their family had blamed them for her death. BNPJ officers told some others that they would bring their respective wives to the detention centre and rape them in front of them.

*« En plus, il y a la torture psychique, ils nous disent « tu ne sais pas où tu es, si tu le sais, tu vas mourir. Des ministres, généraux qui sont venus ici, personne n’a résisté. »*

*« Pendant les séances de la torture, ils nous disaient « c’est la première étape, après viendront les suivantes, et tu ne pourras pas résister ».*

- *Physical torture*

In addition to the psychological torture, BNPJ officers are reported to have physically tortured the detainees during the 72 hours following their arrest, by using the same torture practices.

*« Durant trois jours, on a eu tous types de tortures : des coups, des électrochocs, on a été frappés sur les pieds, et on a été abusés sexuellement, avec des stylos, et avec des menaces disant qu'après ils utiliseraient autre chose. A la fin, ils ne nous posaient plus de questions, ils nous disaient seulement : « vous, vous êtes dans un mouvement d'opposition, voilà ce que vous allez recevoir ».*

In the first place, the seven detainees are reported to have been tortured with the *chiffon* method, in which the victim is forced to swallow liquids through a cloth placed in the mouth, in order to produce a drowning sensation.

*« Ils prenaient un chiffon sale des égouts qu'ils nous mettaient dans la bouche dans la position de l'avion. Puis, ils nous versent de l'eau sur le chiffon, ce qui donne l'impression de se noyer, quand l'eau entre dans les narines avec le chiffon, on a la sensation de ne plus respirer. »*

Secondly, BNPJ's officers allegedly tortured all seven detainees with the *tayara* method, by tying them by their legs to a metal stick upside down and letting them hang down.

*« Ils nous mettaient dans la position de l'avion : tête en bas, pieds en haut avec les mains menottées derrière. Cette position donne la sensation d'avoir une luxation au niveau de l'épaule à cause du poids du corps. Ca crée une douleur atroce. »*

Thirdly, they are reported to have been applied electric shocks in their genitals and other sensitive parts of their body.

*« L'étape la plus dure c'est celle des coups d'électricité. Ils m'ont déshabillé entièrement, ils mettaient les électrodes et commençaient par les pieds, au niveau des gros orteils et avec une baguette électrique, ils parcouraient tout le corps, et surtout au niveau des organes génitaux externes. »*

In the fourth place, the detainees were subject to *falaqa*, by being beaten on the soles of their feet with sticks.

*« L'étape suivante est celle des coups sur la plante des pieds. A la fin de chaque séance, ils mettaient des pommades sur les blessures pour ne pas laisser de traces des frappes. »*

To conclude, at least five of the detainees were raped with sticks and other objects being inserted in their anuses.

- *Statements obtained under torture*

The detainees report that they were forced to sign statements that they were not allowed to read as a result of torture, which goes against the Convention against Torture. Article 15 of the Convention states that “each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made”<sup>15</sup>.

*« A chaque fois, ils me demandaient de signer des papiers avec les yeux bandés, des papiers dont je ne connaissais pas le contenu. Quand je demandais ce que j'étais entrain de signer, ils me disaient de signer sans rien demander. Chaque fois que je refusais, je rentrais dans une séance de torture. Finalement, j'étais obligé de signer. Après quand j'étais devant le procureur, ils m'ont dit que j'avais signé mes aveux. »*

*« Quand on ne voulait pas signer, ils disaient qu'ils allaient lancer un avis de recherche pour fuite et comme ça ils pourraient rester tranquilles avec nous pendant que tout le monde irait nous chercher. C'était le chantage pour signer. »*

- *The right to human treatment*

The right to humane treatment imposes a positive obligation on states. This obligation is intended to ensure the observance of minimum standards with regard to conditions of detention and the exercise of a detainee's rights while deprived of liberty<sup>16</sup>.

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<sup>15</sup> More information in: Thienel, Tobias, “The Admissibility of Evidence Obtained by Torture under International Law”, *European Journal of International Law*, Vol. 17, no.2, retrieved from: <http://www.ejil.org/pdfs/17/2/78.pdf>

<sup>16</sup> *Op. Cit.* p. 9.



According to the UN Human Rights Committee, States cannot invoke a lack of adequate material resources or financial difficulties as justification for inhuman treatment and are obliged to provide detainees and prisoners with services that will satisfy their essential needs<sup>17</sup>. For instance, detainees have a right to food, to clothing, to adequate medical attention and to communicate with their families<sup>18</sup>. In this respect, some of the detainees report that they were kept naked, blindfolded and handcuffed most of the time and that they were denied the access to water during their detention.

*« Ça a été trois jours d'enfer. Chacun de nous a été placé dans une cellule à part, sans électricité, sans rien du tout. Même une fois on a été privés d'eau pour nous pousser à dire des choses qu'on ne connaissait pas. »*

With respect to medical care, Human Rights Committee<sup>19</sup> General Comment N° 20 on the prohibition of torture and cruel treatment states that “the protection of the detainee also requires that prompt and regular access be given to doctors”<sup>20</sup>. Similarly, Article 73 of the Moroccan Criminal Procedure Code states as well that “the public prosecutor must order a medical examination if he or she notices marks of violence on the suspect’s body or is asked by the suspect or the defense attorney for such an examination”.

The seven detainees were not promptly allowed to see a doctor, after all the physical and psychological harm they suffered when they were on hold. A doctor examined the detainees for the first time only on 12 July (two weeks after their arrest). This medical

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<sup>17</sup> General Comment No. 09: Humane treatment of persons deprived of liberty (Art. 10), Human Rights Committee, 30/07/1982.

<sup>18</sup> *Standard Minimum Rules for the Treatment of Prisoners*, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva in 1955, resolutions 663 C (XXIV) and 2076 (LXII) of the Economic and Social Council, retrieved from: <http://www2.ohchr.org/english/law/treatmentprisoners.htm>

<sup>19</sup> The institution responsible for monitoring the compliance of states with the International Covenant on Civil and Political Rights.

<sup>20</sup> General Comment No. 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (Art. 7), Human Rights Committee, 03/10/1992, retrieved from:

[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/6924291970754969c12563ed004c8ae5?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/6924291970754969c12563ed004c8ae5?Opendocument)

examination had been ordered by the judge investigating their case after they appeared before him on 1 July and complained that they had been tortured<sup>21</sup>. However, after the examination they were not provided with any treatment for their wounds.

*« Ils ont vu que notre situation sanitaire était très désavantageuse et ont demandé au parquet de faire une consultation médicale. Mais ils ont refusé et on n'en a pas bénéficié. Après 8-10 jours de notre enlèvement, on a eu une consultation. »*

In addition to that, two of the seven detainees, Mohamed Sleimani and Abdalla Balla were denied their daily medication. As both of them had chronic illnesses (Mohamed Sleimani had a heart condition and Abdalla Balla had diabetes), this lack of access to medical care had put their health at severe risk.

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<sup>21</sup>“Urgent action (...)”, Amnesty International, *Op. Cit.*