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Совет по правам человека

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**Поощрение и защита всех прав человека,
гражданских, политических, экономических,
социальных и культурных прав, включая
право на развитие**

Доклад Специального докладчика по вопросу о пытках и других жестоких, бесчеловечных или унижающих достоинство видах обращения и наказания Хуана Э. Мендеса

Добавление

Миссия в Марокко* ** ***

Резюме

Специальный докладчик по вопросу о пытках и других жестоких, бесчеловечных или унижающих достоинство видах обращения и наказания совершил поездку в Марокко в период с 15 по 22 сентября 2012 года.

Специальный докладчик выражает признательность правительству за направление приглашения посетить страну, что свидетельствует о его готовности открыть Марокко для проведения независимого и объективного изучения существующего положения в области прав человека.

- * 17–18 сентября 2012 года Специальный докладчик также посетил Лааюн, Западная Сахара. Его визит как независимого мандатария не следует толковать как выражение какого-либо политического мнения в отношении несамоуправляющейся территории Западной Сахары. Эта территория пользуется правом на самоопределение в соответствии с принципами, содержащимися в резолюциях 1514 (XV) и 1541 (XV) Генеральной Ассамблеи.
- ** Резюме настоящего доклада распространяется на всех официальных языках. Сам доклад, содержащийся в приложении к резюме, распространяется только на том языке, на котором он был представлен, и на арабском и французском языках.
- *** Представляется с опозданием.

Специальный докладчик приветствует усилия, предпринятые властями с целью устранения последствий злоупотреблений, допущенных в "годы правления", с помощью Комиссии по восстановлению справедливости и примирению, и в целом развитие новой культуры прав человека в Марокко. Однако он отмечает, что все еще имеют место случаи пыток и жестокого обращения. Он отмечает, что практика жестокого обращения отмечается в обычных уголовных делах и что в особо критических ситуациях, таких как возникновение осязаемой угрозы для национальной безопасности, террористические действия или проведение крупных демонстраций, наблюдается соответствующее увеличение актов пыток и жестокого обращения в процессе арестов и содержания под стражей. И хотя жестокое обращение с заключенными, как представляется, в основном допускается в начальный период содержания под стражей, были также отмечены случаи жестокого обращения и в последующий период лишения свободы.

Специальный докладчик также обращает внимание на то, что, судя по всему, в стране не проводятся оперативные и тщательные расследования всех случаев применения пыток и жестокого обращения, виновные не привлекаются к ответственности и не предоставляются эффективные средства правовой защиты и компенсация, включая реабилитационные услуги, всем жертвам пыток и жестокого обращения. В этом контексте он подчеркивает необходимость срочного пересмотра и изменения марокканской системы судебно-медицинской экспертизы, поскольку нынешняя система не гарантирует обнаружения, документирования и корректной санитарно-медицинской оценки любых предполагаемых случаев применения пыток и жестокого обращения; по словам Специального докладчика, подобное положение может быть одной из причин неприменения нормы о недопустимости использования показаний, полученных под пыткой.

Специальный докладчик отмечает, что условия содержания заключенных в большинстве тюрем по-прежнему вызывают беспокойство в результате наличия таких факторов, как их переполненность, встречающиеся случаи жестокого обращения и применение жестких дисциплинарных мер, антисанитарные условия, неадекватное питание и ограниченный доступ к медицинским услугам. Он приветствует усилия, предпринятые правительством, в частности Национальным советом по правам человека, с целью предоставления более широких возможностей для посещения мест заключения.

Специальный докладчик призывает международное сообщество оказать Марокко помощь в его борьбе против пыток и жестокого обращения путем предоставления финансовой и технической поддержки.

Annex

[Arabic, English and French only]

Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Morocco (15 to 22 September 2012)

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I. Introduction

1. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, conducted a visit to Morocco from 15 to 22 September 2012, at the invitation of the Government. He also visited Laâyoune, Western Sahara, on 17 and 18 September 2012.

2. The Special Rapporteur met with the Ministers of Foreign Affairs, Justice, the Interior and Health; the General Delegation for Prison Administration and Reintegration and the Office of the Crown Prosecutor-General before the Court of Cassation. He also met with representatives of the Ministry of Youth and Sports, the Department of Criminal Affairs and Pardons, the General Prosecution at the Court of Cassation, and the Supreme Institute of Magistracy; representatives of the General Directorate of National Security; the Ministry in Charge of Relations between Parliament and Civil Society; the Delegate and personnel of the Interministerial Delegation for Human Rights and the President and members of the National Human Rights Council (CNDH), regional offices of CNDH and former members of the Equity and Reconciliation Commission. He also met with representatives of United Nations agencies, non-governmental organizations and victims of torture and their relatives.

3. In Laâyoune, Western Sahara, the Special Rapporteur met with the region's "Wali" and representatives of the Ministries of Health, Justice and Liberties, Youth and Sports, the General Directorate of National Security, the Royal Gendarmerie, the General Delegation for Prison Administration and Reintegration and the regional commission of CNDH. In addition he met with representatives of the Sahrawi population, representatives of civil society organizations and victims of torture and their relatives. He also met with the Special Representative of the Secretary-General, Head of the United Nations Mission for the Referendum in Western Sahara (MINURSO).

4. The Special Rapporteur thanks the Interministerial Delegation for Human Rights for facilitating his visit and expresses his appreciation to the Government for providing him with unimpeded access to all detention facilities in accordance with the terms of reference for fact-finding missions by special rapporteurs (E/CN.4/1998/45, appendix V).

5. The Special Rapporteur shared his preliminary findings with the Government on 22 September 2012, at the conclusion of his visit, and on 23 November the Government provided comments on the end of mission statement. The Special Rapporteur shared an advance version of the report and on 19 February 2013 the Government provided comments, which were taken into consideration before the report was finalized.

II. Legal framework

A. At the international level

6. Morocco is a party to the majority of United Nations human rights treaties prohibiting torture and ill-treatment, including the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention of the Rights of Persons with Disabilities and the Optional Protocol thereto, the Convention on the Elimination of All Forms of Discrimination against

Women and the Convention relating to the Status of Refugees and the Protocol thereto. Morocco has approved a law of accession to the Optional Protocol to the Convention against Torture, but has not yet deposited its instrument of ratification.

7. The State has signed but not ratified the Rome Statute for the International Criminal Court and is party to the Convention on the Prevention and Punishment of the Crime of Genocide.

B. At the national level

Constitutional and legislative provisions

8. Article 22 of the new Constitution of July 2011 stipulates that everyone shall have the right to physical and moral integrity which shall not be undermined under any circumstances by any person, private or public; that no one shall inflict upon another, under any pretext whatsoever, any cruel, inhuman or degrading treatment which undermines their dignity; and that the practice of any form of torture, by anyone, is a crime punishable by law. The Special Rapporteur welcomes the introduction of these principles into the Constitution and the demonstrated will of the authorities to accord them primacy.

9. The Criminal Code and the Code of Criminal Procedure criminalized torture before 2011. Act No. 43-04 amending and supplementing the Criminal Code of 1962 was adopted on 14 February 2006. The definition of torture in article 231-1 of the Criminal Code defines torture as follows: “any act, committed intentionally by a public official or someone acting at his behest or with his express or tacit consent, by which acute physical or mental pain is inflicted on a person in order to intimidate him or her, or to pressure that person, or someone else, to obtain information or indications, or confessions; to punish that person for an act that he or she, or a third person has committed or is suspected to have committed, or when such pain or suffering is inflicted for any other reason based on any type of discrimination. This term does not cover the pain or suffering relating only to legal sanctions or caused by such sanctions or that is inherent to such sanctions”. Articles 231-2 to 231-8 of the Criminal Code foresee sanctions for the act of torture, including prison sentences of 5 to 30 years, depending on the gravity of the offence.

10. The Special Rapporteur is of the view that further amendments to the definition of torture are needed to bring the offence into line with international human rights law. He acknowledges that the definition contained in article 231-1 of the Criminal Code encompasses the main elements of article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, but notes that it does not cover complicity or explicit or tacit consent on the part of law enforcement or security personnel or any other person acting in an official capacity. By its terms, this article does not contemplate penalties for officials who consent to or cover up instances of torture. Although such forms of participation may be adequately contemplated elsewhere in Moroccan law, given the gravity of torture it would be preferable for this norm to explicitly contemplate and criminalize the commission of torture by means of other persons.

III. Assessment of the situation

11. The Special Rapporteur perceives the emergence of a culture of human rights and the political will among the various authorities, in particular the Ministry of Foreign Affairs and the Interministerial Delegation for Human Rights, to build up an institutional culture that prohibits and prevents torture and ill-treatment.

12. The Special Rapporteur welcomes the efforts made between 2003 and 2005 by the transitional justice mechanism, the Equity and Reconciliation Commission, to investigate the gross, large-scale and systematic human rights violations that took place in Morocco between 1956 and 1999 (a period that Moroccans call “the years of lead”), including many cases of torture and ill-treatment. However, he notes that not all the victims or families of victims have received compensation and that in some cases the compensation awarded has been neither equitably distributed nor adequate or effective. In addition, as also noted by the Committee against Torture, the Special Rapporteur is concerned that the work of the Commission has not broken the cycle of de facto impunity of the perpetrators of violations of the Convention committed during that period, since to date none of them has been prosecuted.

A. Practice of torture and ill-treatment

13. The situation on the ground regarding the practice of torture has improved since the “years of lead”. However, the Special Rapporteur received credible testimonies of undue physical and mental pressure exerted on detainees in the course of interrogations in ordinary criminal cases and, in particular, cases involving State security. This was largely corroborated by forensic expertise which indicated that the mistreatment inflicted during that phase of detention was normally of short duration, consisting mainly of physical trauma caused by punches, kicks, slapping and, occasionally, blows with objects, and verbal insults and threats. In some cases detainees complained of more severe physical and torture and mistreatment, including *falaga* (beating the soles of the feet with a stick), shocks in the testicles, anal insertion of foreign bodies, waterboarding, etc.

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

14. The Special Rapporteur is deeply concerned about several testimonies of torture and ill-treatment in cases involving allegations of terrorism or threats against national security. In these cases a systematic pattern of acts of torture and ill-treatment during the detention and arrest process can be detected.

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

16. In addition, the Anti-Terrorism Act (No. 03-03) of 2003 extends the time limits on custody to up to 96 hours, renewable twice. This means that detainees may be held for up to 12 days upon written consent from the prosecution before being brought before the investigative judge. In addition, communication with a lawyer is possible only 48 hours after the renewal of custody is granted. Hence suspects may be deprived of all contact with the outside world for six days before being allowed to communicate for half an hour with a lawyer and, even then, under the control of a police officer (art. 66, para. 10, of the Code of Criminal Procedure). The Special Rapporteur notes that these provisions restricting crucial safeguards, such as early contact with counsel, significantly increase the risk of torture.

17. The Special Rapporteur examined numerous cases that occurred in the aftermath of the attacks in Casablanca of 16 May 2003, where thousands of suspects were arrested, often by officials of the National Surveillance General Directorate (DST), and held incommunicado or at unknown places of detention. He also heard testimonies of terrorism suspects recently arrested. It appears that currently torture is widely used to extract

confessions in cases involving national security. These practices include beating with sticks and hoses, hanging for long periods, beating on the soles of the feet (falaqa), slapping the face and particularly the ears, kicking, exposure to extreme temperatures, sexual assault and the threat of sexual assault.

18. The Special Rapporteur notes that, although in May 2011 delegations from Parliament and CNDH reported finding no evidence of a detention facility located at the DST headquarters in Témara, testimonies indicate that persons are detained incommunicado at this and other locations. While article 23 of the Constitution explicitly states that secret or arbitrary detention and forced disappearances are crimes of the utmost seriousness, the Special Rapporteur is deeply concerned about past and present practices of incommunicado detention.

19. The Special Rapporteur found that detainees convicted for terrorism-related offences continue to be subjected to torture and ill-treatment while serving their sentences. Most of these prisoners are held in the Salé 1 and Salé 2 prisons and the Tulal Prison in Meknès. Numerous reports were received of sexual assault and the threat of further reprisals if complaints were filed, in particular after the uprising in the Salé 2 prison on 16 May 2011. In this context it is also reported that solitary confinement is excessively used as a disciplinary measure, for periods ranging from several days to several weeks.

2. Excessive use of force during demonstrations

20. The Special Rapporteur received credible information regarding excessive use of force by law enforcement officials during the protests in Rabat and several other cities in February and March 2011 (referred to as the 20 February Movement) calling for constitutional reform and democracy. Security forces were reported to have attacked protestors on many occasions, leading to at least one death and many injuries.

21. The Special Rapporteur received similar testimonies of excessive use of force during demonstrations that referred to the events on 15 May 2012 in Rabat, Fez, Tangiers and Témara, where demonstrators demanded the closure of the alleged secret detention centre in Témara. Furthermore, he received information that on 29 May 2012, a demonstration organized in the town of Safi was violently dispersed by the security forces. One protester was severely beaten by police officers and died from his injuries on 2 June 2011.

22. The Government explained that most of the above-mentioned demonstrations had not been authorized and so had been legitimately dispersed, but the Special Rapporteur reiterates that excessive use of force is prohibited under international law and that law enforcement officials, in carrying out their duties, are to apply non-violent means before resorting to the use of force and firearms. Depending on the seriousness of the pain and suffering inflicted, excessive use of force may constitute cruel, inhuman or degrading treatment or even torture.

23. In addition, the Special Rapporteur examined cases of violence against protestors after arrest, including beatings carried out during transfer to police stations and during interrogation and the coercion into confessions which later had been used before the courts to secure a conviction and prison sentence.

3. Migrants, refugees and asylum seekers

24. The Special Rapporteur received information about severe beating and acts of sexual violence against sub-Saharan migrants who attempt to transit through northern Morocco by sea or through Ceuta and Melilla en route to Europe every year. The Special Rapporteur received evidence that suggested a pattern of systematic abuse of sub-Saharan migrants, involving beatings with sticks, stones or other implements, sexual assault or the threat of sexual assault and other forms of ill-treatment, such as being tied with ropes, burned with

cigarette lighters and urinated upon. In addition he heard that afterwards victims are dumped in forest areas or ravines or they escape to those places, far from assistance.

25. The Special Rapporteur is also concerned about information received regarding illegal and collective expulsions of hundreds of migrants to Algeria and Mauritania, where they are allegedly subjected to torture and ill-treatment, including by being abandoned in no-man's land without further assistance, most frequently near Oujda. Other testimonies suggested that the principle of non-refoulement of persons at risk of torture has not been respected by the Moroccan authorities.

B. Safeguards and prevention

1. Access to lawyers

26. Article 23 of the new Constitution provides that a person in custody must benefit, as soon as possible, from legal assistance and the possibility to communicate with relatives, in conformity with the law. The Code of Criminal Procedure allows access to a lawyer after the arrest, upon the authorization of the Prosecutor's Office, during the first 24 hours for 30 minutes and in the presence of an investigator. Upon request of the investigator the Prosecutor's Office can delay contact with a lawyer for another 12 hours after the first 24 hours in custody. Testimonies from lawyers indicate that, in practice, they are often denied access beyond the legal time frame. It appears that in the majority of cases, lawyers meet their clients only at the first hearing before the judge. In the procedure provided for under the Anti-Terrorism Act (No. 03-03), police custody can last for three consecutive periods of 96 hours and during that time there is no meaningful right to a lawyer except for the monitored half-hour interview that can occur, at the earliest, at the halfway point of those 12 days. In addition, there is an evident risk that even those terms can easily be violated simply by delaying the registration of the arrest.

2. Evidence obtained under torture, and lack of ex officio investigations

27. Article 293 of the Code of Criminal Procedure states that a confession, like any other evidence, is subject to the discretion of the judge and that any confession obtained by torture is inadmissible. However, the Special Rapporteur learned that courts and prosecutors do not comply with their obligation to initiate an ex officio investigation whenever there are reasonable grounds to believe that a confession has been obtained through the use of torture and ill-treatment, or to order an immediate and independent medical examination (see arts. 74 (8) and 135 (5) of the Code of Criminal Procedure) if they suspect that the detainee has been subjected to ill-treatment. It appears that judges are willing to admit confessions without attempting to corroborate the confession with other evidence, even if the person recants before the judge and claims to have been tortured. In addition, testimonies received indicate that many cases that are submitted to the courts are based solely on confessions by the accused, in the absence of any material evidence. This creates conditions that encourage torture and ill-treatment of suspects.

3. Lack of effective investigation of torture allegations

28. The Special Rapporteur was informed that, often, when defendants try to prove their injuries in court, the judge reacts to these allegations by questioning the credibility of defendants who did not raise the matter at the earliest opportunity—emerging from police custody and appearing for the first time before the prosecutor or the investigating judge. Upon request, the Government provided statistics on the number of investigations against law enforcement officials, including members of the Royal Gendarmerie, judicial police and customs during the period 2009 to 2012. The numbers provided by the Government

indicate that in those four years 220 law enforcement officials were investigated for acts of violence, including other forms of abuse of power. Although the statistics do not allow for further assessment due to lack of information, the Special Rapporteur notes with concern that it appears that no persons have been prosecuted or convicted under article 231-1 of the Criminal Code. Officials who were prosecuted were charged with battery or assault, but not torture. Most of the 220 officials are still under investigation or have been found not guilty. Those convicted received minor sentences, such as a fine or suspension, and only a few received a sentence.

29. The Special Rapporteur notes that there is an apparent absence of convictions under article 231-1 of the Criminal Code. He concludes that given the failure to impose genuine disciplinary measures or to bring any significant number of cases against State officials accused of torture, an atmosphere of impunity seems to exist with regard to recent years as well as with regard to the gross, large-scale human rights violations that took place between 1956 and 1999.

30. In addition, it is imperative for Morocco to prosecute public officials who order, condone or cover up torture in flagrant abuse of their superior authority, including situations where they knew or ought to have known that the crime of torture was about to be, was being or had been committed.

4. Burden of proof and independent medical examinations

31. When the offence on trial involves a crime that carries a penalty of five or more years in prison, the Code of Criminal Procedure provides no special instructions on how the court is to treat police statements: it is presumed that such statements are evidence like any other, to be considered on their merits. However, in the case of infractions that occasion a sentence of less than five years, the rules of evidence are different. Under article 290 of the Code of Criminal Procedure, the court is to deem a statement prepared by the judicial police as trustworthy unless the defendant can demonstrate that it is not. This presumption places an unfair burden of proof on the defendant to disprove the truthfulness of a statement that the police have written up and attributed to him with no other witnesses present, and gives the court a basis for not going beyond a perfunctory inquiry into the defendant's claim of torture or ill-treatment, unless he has clear signs of torture on his body.

32. In this context, the Special Rapporteur notes with satisfaction the public statement made by the Minister of Justice and Liberties on 27 September 2012, after the Special Rapporteur's visit, declaring his will to launch a new project to video record all statements made to the police during the investigation and interrogation period. However, the Special Rapporteur notes that this measure is not sufficient to prevent torture or mistreatment. He reiterates the fact that one of the fundamental safeguards against torture remains the right of access by lawyers at all stages of the investigation process and particularly from the moment of actual apprehension.

33. Government statistics indicate that in 2011 only 33 medical examinations have been ordered (20 by the General Prosecutor's Office and 13 by investigative judges), and in 2010 the General Prosecutor's Office and the investigative judges ordered 21 and 16 medical examinations, respectively. It is not clear, however, if this small number of medical examinations were all related to torture allegations.

34. Furthermore there is no systematic approach or randomly undertaken forensic assessment at the time of detention and release. There is an urgent need to establish mechanisms that can guarantee qualified, impartial and independent forensic examination of detainees that does not depend only on the request of the police or legal authority.

35. The Special Rapporteur reviewed a sample of medical certificates, and notes with concern that the majority of medical assessments that are made for forensic purposes are

performed not by forensic medical experts but by medical clinicians included in the court lists of “experts”. These individuals do not have any specific training or competence in forensic medicine. The medical reports produced after allegations of torture and ill-treatment are of very poor quality, not in accordance with the minimum international standards for clinical forensic assessment of victims and not acceptable as forensic evidence. Neither prison health-care staff nor the clinicians who act as court “experts” have specific training in assessing, interpreting and documenting torture and ill-treatment.

36. The Special Rapporteur notes that this may be one of the reasons for the non-application of the exclusionary rule with regard to evidence obtained under torture. Even in cases where a prosecutor or a judge orders a medical examination, the poor quality of medical and forensic reports currently provide little assistance to the prosecutors and judges in their decision-making process. The confession or declaration thus remains on the record and no serious effort is made to investigate, prosecute and punish perpetrators.

5. Monitoring and inspection of places of detention

37. Police stations are placed by law under the effective control of the General Prosecutor’s Office. The officers in charge of the police stations visited by the Special Rapporteur confirmed regular visits from the General Prosecutor’s Office. However, no statistics on the frequency of such visits were received.

38. Article 249 of the Code of Criminal Procedure stipulates that the President of the Criminal Chamber or his representative must visit penal institutions at least once every three months to take stock of the situation of prisoners in preventive detention and the justification for their detention, giving him the possibility to make direct recommendations to the examining judge in this regard. However, as noted in the CNDH report of October 2012, most facilities were not visited by the President of the Criminal Chamber in 2011. Also, the visits by the commissions set forth in articles 620 and 621 of the Code of Criminal Procedure take place only on an irregular basis.

39. Nevertheless, there is an increase in visits to places of detention. The founding law of CNDH specifically mandates it to visit places of detention and other places of deprivation of liberty to help improve conditions of detention. The access of CNDH to places of detention and the post-visit report, as well as the work to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, are important steps towards establishing an effective monitoring mechanism in Morocco. However, under article 10 of the implementing decree for Act No. 23/98, non-governmental organizations have only a very limited scope of activities conditioned by the approval of the General Delegation of Prison Administration and Reintegration. This minimizes the ability of these associations to play a role in promoting a culture of human rights within the penal institutions and have their observations and recommendations considered regarding improvements to the prisoners’ regime, physical environment and reintegration.

6. Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

40. When Morocco publicly announced its intention to ratify the Optional Protocol to the Convention against Torture as a priority in March 2007, this was supported by CNDH and the national human rights organizations. On 1 and 12 November 2012 the Government Council and the Council of Ministers, respectively, approved the bill on accession to the Optional Protocol. The Special Rapporteur welcomes the Government’s assurances of speedy ratification of the Optional Protocol, but notes that the instrument of accession has not been deposited.

41. During the visit, CNDH indicated that it would be ready to act as the national preventive mechanism foreseen in article 17 of the Optional Protocol, but would support a comprehensive process of consultation with other actors prior to any decision.

C. Conditions of detention

42. Since 2008, the overall responsibility for correctional facilities in Morocco, the implementation of judicial decisions and the execution of sentences lies with the General Delegation for Prison Administration and Reintegration, a governmental body reporting directly to the Head of Government. The main national legal instrument regulating prison conditions and treatment of prisoners is the Prisons Act (No. 23/98) of 1999. Morocco has 73 detention facilities, including 3 central prisons for long-term imprisonment and life sentences, and 58 local prisons for pretrial and short-term detainees.

43. The Special Rapporteur visited a number of facilities of deprivation of liberty and detention centres in Rabat, Kenitra, Skhirat-Témara and Casablanca, including police and Royal Gendarmerie stations; pretrial detention facilities; prisons, including a death-row section, and sections for juveniles and for women; one temporary detention facility for irregular migrants and asylum seekers; one juvenile correctional facility; and one psychiatric institution. He notes that there was obvious readiness and preparation for his visit, including the relocation of certain prisoners. While this may have detracted from his ability to see these places more spontaneously, he appreciates the impressive effort undertaken to invest in the upgrading and renovation of these facilities, which will hopefully have longer term positive benefits.

44. The Special Rapporteur observed that there were a high number of doctors and nurses present during his inspections of detention facilities, but independent medical care is not provided. The facilities visited suffer from a shortage of infirmary equipment, particularly in relation to dental care, which was insufficient or non-existent. Psychiatric medical care was also insufficient or even non-existent. However, the Special Rapporteur did not detect situations of detainees with infectious contagious diseases, namely tuberculosis, living side by side with all the others.

45. The Government informed the Special Rapporteur that the budget for nutrition service in detention facilities was 331 million dirhams (DH) in 2012. He notes that this represents a three-fold increase of the budget from 2008 (DH 108 million). In this context, the Government explained that the control lies with the local office of hygiene. However, no independent control exists over the quantity and quality of the food. It appears that inmates rely heavily on their families in order to avoid malnutrition. The kitchen facilities visited were clean but poorly equipped and not sufficiently maintained to provide inmates with balanced and healthy meals.

1. Overcrowding

46. The authorities openly acknowledged that overcrowding was an issue that needed to be addressed. The Government informed the Special Rapporteur that, as of August 2012, there was a prison population of 69,054 detainees (comprising both convicted and pretrial detainees, who are not always kept separate, and including 1,613 female prisoners). There have been conflicting figures as to the total capacity in the prison system. The General Delegation informed the Special Rapporteur that it was 48,000-50,000, indicating an overcrowding rate of about 38 per cent, while CNDH estimates it to be 37,000, which would put the overcrowding rate at closer to 86 per cent. These figures may even underestimate the real rate of overcrowding because the rates are based on the number of beds available in relation to the actual population. In some of the prisons, the beds

themselves were so close together that, even at full capacity or somewhat below capacity, living conditions would still be overcrowded. The Special Rapporteur finds that a better indication of overcrowding would be to divide total inhabitable capacity by the size of the population (69,054). He understands that figure would be between 1.5 and 3 cubic metres per inmate, not counting common areas and toilets and showers.

47. The high rate of overcrowding was confirmed by the Special Rapporteur. In the facilities he visited, the universally accepted standards were not met. Inmates live in highly overcrowded cells and in some cases without beds due to the high number of inmates per cell and with mostly poor ventilation. Overcrowding inevitably leads to serious violations, such as denial of or insufficient access to medical care, nutrition, sanitation, security and rehabilitation services.

2. Torture and ill-treatment in prisons

48. The majority of the victims examined in the prisons visited denied ever being subjected to any kind of torture or degrading treatment inside prison establishments. Also, the allegations received usually pointed to a small number of staff committing these violations—the majority of the penitentiary staff is not involved in such violations.

49. In several of the forensic medical examinations conducted, physical sequelae of traumatic injuries were visible and compatible with the allegations made, but not, in the majority of the situations, diagnostic of torture or ill-treatment. However, the consistency and coherence of the histories and descriptions given by numerous victims, and the coherence of the physical consequences suffered post-trauma give credibility to the allegations of torture or ill-treatment. The most frequent and consistent testimonies concerned prisoners serving sentences relating to terrorism and members of Islamist groups, all of whom are particularly targeted for such abuse. These cases are also characterized by failure to investigate the prisoner's complaints.

50. Upon request, some of the prison authorities provided information about the application of and procedures for disciplinary measures. However, the oversight of such measures, in particular the use of solitary confinement as punishment, and the applicable complaint mechanisms remain unclear. Testimonies indicate that solitary confinement is widely used as a disciplinary measure, and lasts from three days up to several weeks (detainees usually referred to the "black hole"). Inquiries revealed that isolation is the primary, and often only, disciplinary measure applied, without resort to less harmful and more progressive disciplinary steps of an incremental nature, such as temporary denial of some benefits.

3. Inmates serving life imprisonment/death row inmates

51. The Special Rapporteur takes note that since 1993 there has been a de facto moratorium on the enforcement of the death penalty. He welcomes the Government's decision to impose a moratorium on executions and its announced intention to abolish the death penalty. The Government reported that as of August 2012 there were 110 prisoners sentenced to death (including two women) and 662 inmates serving life imprisonment. Most of these inmates are detained in Kenitra Central Prison, which the Special Rapporteur visited.

52. The prison regime and physical conditions are especially harsh for those on death row or serving life sentences compared to those of the general prison population. The Special Rapporteur observed that inmates generally depended heavily on their families to provide food and medication, which is an economic hardship that particularly affects families of individuals serving indefinite or lengthy sentences. Also, family visits are, in practice, limited due to the distance many families live from those serving lengthy

sentences. The Special Rapporteur is also concerned about harsh conditions imposed on death row inmates due to an event several years ago that led to the death of a prison guard in Kenitra Central Prison. In particular, he observed the denial of access to books, newspapers, exercise, education, employment or any other type of prison activities. The Special Rapporteur considers such long-term collective punishment of all inmates serving life sentences excessive and amounting to collective ill-treatment. Furthermore, during the interviews of those on death row, the indefinite detention and the uncertainty about possible execution made it clear to the Special Rapporteur that the “death row phenomenon” is indeed a serious threat to the mental health of these detainees.

4. Juveniles in conflict with the law and child protection

53. The Moroccan criminal legislation regarding juveniles provides for a juvenile system which operates with specially trained prosecutors and judges. However, in practice the Special Rapporteur heard that any public prosecutor may be responsible for a juvenile case.

54. Article 460 of the Code of Criminal Procedure provides that the judicial police officer in charge of juveniles may detain the juvenile in a dedicated place. In a police station visited, there were neither special places dedicated to juveniles nor specialized police officers assigned to such cases. However, during these inspections the Special Rapporteur did not receive any complaints regarding the treatment of juveniles.

55. Reports indicate that the General Prosecutor’s Office rarely requests alternative measures of detention, as provided for in articles 501 to 504 of the Code of Criminal Procedure. Reports also indicate that juveniles often remain in custody for a long period before being admitted to a child protection centre.

56. During his visit to a child protection centre, the Special Rapporteur observed decent living conditions and, in general, good treatment of the juveniles, aged between 12 and 17. However, he heard credible reports about corporal punishment (beating with sticks and electric cords) committed by one specific member of the staff. He has no further information as to whether the reported use of corporal punishment is an isolated case or if such treatment is generally used in juvenile protection centres. The medical examination of one juvenile detainee resulted in findings consistent with such abuse. However, the Ministry of Youth and Sports indicated that no such treatment would be tolerated and that complaints would be investigated without undue delay.

5. Women serving prison sentences

57. Reports indicate that women suffer a high incidence of humiliating and degrading treatment during their detention at the police station and during their time spent in the correctional system. However, the reported rate of torture or ill-treatment is significantly lower than for male detainees.

58. The Special Rapporteur visited the women’s section of two prisons, which revealed the same or even a higher rate of overcrowding as in other parts of the prison, and in particular an apparent lack of space for women with children and well-equipped recreation areas for children. However, during the visits no complaints about the treatment and behaviour of the prison staff were received. It appears that women are provided with their basic needs regarding their own hygiene and general health as well as that of the children living with them, which is permitted up to the age of 3 years, but may be extended to the age of 5 years.

6. Psychiatric institutions

59. The Special Rapporteur welcomes the efforts made by the Government to prevent ill-treatment of patients in psychiatric hospitals. He welcomes the strategic plan of the Ministry of Health and the draft law (2012) amending Royal Decree No. 1-58-295 with respect to the protection of persons in mental health institutions, explicitly prohibiting all forms of cruel, inhuman and degrading treatment in health-care institutions.

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

7. Laâyoune, Western Sahara

61. The Special Rapporteur received numerous submissions and testimonies relating to the legal and political status of the territory as well as complaints concerning a vast array of human rights violations other than torture and ill-treatment. He also received multiple requests for interviews and written submissions on matters within his mandate. Consistent with the terms of reference of the mandate, the present report will not deal with allegations of human rights violations other than torture or cruel, inhuman or degrading treatment, nor will it address issues relating to the status of Western Sahara as a Non-Self-Governing Territory.

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

63. The Special Rapporteur received numerous complaints indicating a pattern of excessive use of force in repressing demonstrations and in arresting protestors or persons suspected of participating in demonstrations calling for self-determination of the Sahrawi population. During the transport to or upon arrival at the police station arrestees are beaten, insulted and forced to reveal names of other protestors. The Special Rapporteur expresses concern about the alleged abandonment of the victims in rural areas after the assaults. Reports indicate that these practices are aimed at punishing and intimidating protestors in order to prevent further support for the call for independence. On occasion, protests become violent and the security forces are attacked by demonstrators. Even on those occasions, it is the duty of law enforcement bodies to ensure public order without resorting to excessive violence. During the presence of the mission in Laâyoune, one such demonstration was held. There were some scuffles but, by all accounts, riot police acted with restraint. A few demonstrators went to hospital and, after initially being denied treatment, they were in fact assisted following the intervention of the local branch of CNDH and all were released without serious injury. The Special Rapporteur observes that, if appropriate crowd control methods had been applied while he was in town, it should have been possible for police to behave in the same manner at all other times, not only in Western Sahara but also elsewhere.

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

65. The Special Rapporteur visited the Prison of Laâyoune, the Moulay Hassan Ben El Mehdi Hospital in Laâyoune and the Gendarmerie station in the Port of Laâyoune. He noted that the women's section of the prison and the psychiatric centre at the hospital, which had been recently renovated, were of a high standard compared to the other sections of the prison.

66. The Special Rapporteur received credible testimonies relating to torture and ill-treatment in the Prison of Laâyoune, including rape, severe beating and isolation up to several weeks, particularly of inmates accused of participating in pro-independence activities. He observed extreme overcrowding, which had a negative impact on the level of hygiene, quality of nutrition, access to health care and general health of the inmates. In addition, he received reports about denial of health care. With regard to the events surrounding the closure of the Gdeim Izik camp in November 2010, the Special Rapporteur is concerned that 25 Sahrawi civilians are being tried before a military court for their alleged role in the violent clashes that occurred in Western Sahara. The Special Rapporteur received testimonies of torture and ill-treatment, including rape and deteriorating health conditions of some of the detainees due to the prison conditions. The trial was repeatedly postponed without reasons provided by the court. On 17 February 2013 the military court issued its verdict by rejecting all requests to investigate the allegations of torture and refusing to order medical examinations in relation to the allegations of rape raised by several of the defendants. The military court did not issue a written judgement. The Special Rapporteur expresses concern regarding the fact that the allegations of torture and ill-treatment during the almost two years of pretrial detention have not been investigated. The fact that the case is before a military rather than a civilian court contributes to the lack of transparency and refusal to investigate the allegations of mistreatment.

67. During his visit to the psychiatric hospital in Laâyoune, Western Sahara, the Special Rapporteur noted a lack of equipment and furniture, but decent living conditions for patients. Basic drugs were available and stored according to minimum standards. However, he noted with concern that the facility has only one psychiatrist, who is competent and well-trained but covers a population of several thousand, which exceeds the universally established standards. In addition there is also a shortage of paramedical staff.

IV. Conclusions and recommendations

A. Conclusions

68. **The Special Rapporteur welcomes the adoption of the new Constitution in July 2011, marking an important step towards the reinforcement of human rights.**

69. **The Special Rapporteur commends the strategic plan of the Interministerial Delegation for Human Rights for 2012-2016 and hopes that its implementation will further strengthen the prohibition of torture and ill-treatment.**

70. **The establishment of the National Human Rights Council (CNDH) is a very positive institutional development. It can become an effective monitoring mechanism and mediator between the State and its citizens if its recommendations are implemented in good faith.**

71. **Crucial to the development of an emerging culture of human rights is the effort made by the authorities, through the Equity and Reconciliation Commission, to address the legacy of past abuses during the "years of lead". The Special Rapporteur welcomes the acknowledgment of cases of torture during the "years of lead", but regrets that senior authorities deny that torture still occurs.**

72. In cases involving State security, such as terrorism, membership in Islamist movements, or supporters of independence for Western Sahara, there is a pattern of torture and ill-treatment by police officers during the arrest process and while in detention, in particular, by agents of the National Surveillance Directorate (DST). Many individuals have been coerced to confess and sentenced to prison on the basis of such a confession. The violations often continue while these individuals are serving their sentences.

73. When the police or other authorities respond to incidents that involve protests or assembly, there is a corresponding increase in the use of excessive force. Whether or not the demonstrations are permitted, authorities must comply with international standards based on necessity and proportionality in the use of force and respect for the right to life and physical integrity.

74. The Special Rapporteur also expresses concern about the increase in reported violence by security forces against migrants and asylum seekers, particularly in the north of the country. National protection mechanisms and investigations are insufficient and there is a lack of legal and medical assistance for those subjected to torture or ill-treatment.

75. The Special Rapporteur expresses concern that, despite the legal provision that provides for a lawyer in the first 24 hours upon arrest in ordinary criminal cases, this time period seems not to be fully implemented in practice. He expresses particular concern with regard to the Anti-Terrorism Act (No. 03-03), which provides for police custody for up to three consecutive periods of 96 hours with no right to a lawyer, except for a half-hour, monitored visit at the mid-point of that period.

76. The Special Rapporteur notes that the Moroccan judicial system relies heavily on confessions as the main evidence to support conviction. Article 293 of the Code of Criminal Procedure prohibits the admission of any confession or statement made under duress, in accordance with international law. However, complaints indicate the use of torture by State officials to obtain evidence or confessions during the initial stage of interrogation, in particular in counter-terrorism or internal security cases.

77. The Special Rapporteur was provided with examples of and statistics on persons who have been acquitted despite having confessed to crimes, but he did not see concrete examples in which courts applied the exclusionary rule mandated by international law with regard to torture.

78. The present Moroccan forensic system, whereby detainees are subjected to forensic examinations performed by doctors with no specific forensic training (clinical doctors acting as court “experts”), is not in accordance with international standards.

79. The complaint system regarding allegations of torture and ill-treatment, and the investigation, prosecution and punishment of perpetrators, with the exception of a very few cases, seems to be provided for in law but not implemented. The Special Rapporteur concludes that the complaint mechanisms currently available are neither effective nor independent. Allegations of torture and ill-treatment should be admitted at any stage of the trial and courts are obliged to launch *ex officio* investigations whenever there are reasonable grounds to suspect torture or ill-treatment.

80. On the other hand, the Special Rapporteur wishes to acknowledge that CNDH has established an increasingly effective monitoring mechanism for many violations of human rights, including torture and ill-treatment. These mechanisms apply in most areas, including Western Sahara, and were established after the creation of regional branches of CNDH. These monitoring mechanisms should be encouraged and improved upon, and authorities should respect their findings and implement their

recommendations. At the same time, they should not be considered as substitutes for the complaint mechanisms referred to in the above paragraph.

81. The Special Rapporteur thanks the General Delegation for Prison Administration and Reintegration for the comprehensive statistics provided regarding the prison population and administration of prisons, including various projects to improve prison conditions throughout the country. However, the visits conducted to detention facilities raised concerns about the fact that conditions in most prisons are still alarming due to overcrowding, cases of ill-treatment and abusive disciplinary measures, unsanitary conditions, inadequate food and limited access to medical care. The Special Rapporteur also notes with concern that disciplinary measures such as solitary confinement are excessively used and that the procedures and complaints mechanisms are not clear.

82. The Special Rapporteur welcomes the fact that CNDH has unimpeded access to places of detention and that conditions of detention are increasingly documented. However, he expresses concern with regard to the very limited access of non-governmental organizations to places of detention. In addition, the continuing use of incommunicado detention in cases involving perceived threats to national security presents a challenge to monitoring activities that requires urgent attention.

83. The Special Rapporteur is concerned at the conditions under which prisoners are held on death row. These amount to cruel, inhuman or degrading treatment.

84. Regarding Laâyoune, Western Sahara, the Special Rapporteur found that torture and ill-treatment were inflicted during arrest, at police stations and at the prison in Laâyoune. He also found that excessive force was used during demonstrations for the independence of Western Sahara, including kidnappings and abandonments in the desert, in order to intimidate alleged protestors.

85. The Special Rapporteur also heard testimonies alleging violations committed by non-State actors promoting independence of Western Sahara. While expressing sympathy with victims, he notes that such allegations fall outside his mandate. Finally, the Special Rapporteur regrets that meetings with civil society were monitored by authorities and the media and that cameras were awaiting his arrival at every location. In Laâyoune especially this created a climate of intimidation experienced by a number of individuals he interviewed during the visit.

B. Recommendations

86. In a spirit of cooperation and partnership, the Special Rapporteur recommends that the Government, with appropriate assistance from the international community, including the United Nations and other actors, take decisive steps to implement the recommendations below.

87. With regard to legislation, the Special Rapporteur recommends that the Government of Morocco:

(a) Amend article 231-1 of the Criminal Code to ensure that complicity or explicit or tacit consent on the part of law enforcement or security personnel or any other person acting in an official capacity is specifically covered;

(b) Amend article 224 of the Criminal Code to bring the definition of public official into line with the definition of a public servant or other person acting in an official capacity contained in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(c) Ensure that no person convicted of or prosecuted for the crime of torture may benefit from an act of amnesty;

(d) Include in the Criminal Code a specific provision which establishes that the order of a superior officer or of a public authority may not be invoked as a justification for torture, and provide a protection mechanism for subordinates who refuse to obey an order to torture a person who is in their custody;

(e) Amend the Anti-Terrorism Act (No. 03-03) to reduce the period of police custody from 96 hours (renewable twice);

(f) Revise article 290 of the Code of Criminal Procedure to extend to infractions and misdemeanours the evidentiary standard already in effect governing crimes, so that in all penal trials statements prepared by the police shall be treated as one piece of evidence among others, with no presumption as to its truthfulness;

(g) Amend the Code of Criminal Procedure to indicate that where there is an allegation of torture or ill-treatment the burden of proof lies on the prosecution to prove beyond reasonable doubt that any confession made has not been obtained by unlawful means;

(h) Amend article 84 of the Prisons Act (No. 23/98) to empower regional directors to authorize civil society organizations to visit the institution; and amend article 10 of the implementing decree of Act No. 23/98 to enlarge the scope of activities of non-governmental organizations in that regard;

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

88. With regard to safeguards and prevention, the Special Rapporteur recommends that the Government:

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

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

(c) End the practice of incommunicado and secret detention, in accordance with article 23 of the Constitution;

(d) Ensure 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 against that person;

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

(f) Expedite prompt, impartial and thorough investigation into all allegations of torture and cruel, inhuman or degrading treatment or punishment

without the need for a written complaint, in accordance with article 13 of the Convention against Torture; institute procedures for ex officio investigation of any case of torture or ill-treatment raised by any means whatsoever, even when victims do not lodge complaints through the prescribed legal channels;

(g) Establish an effective and independent criminal investigation and prosecution mechanism with no connection to the body investigating or prosecuting the case against the alleged victim; and implement the right to complain and ensure that defendants who first appear before the mechanism have a fair opportunity to raise allegations of torture or ill-treatment they may have experienced;

(h) Invest in the fields of psychiatry and forensic medicine, as well as in specific training for forensic experts on the assessment of ill-treatment and torture, in line with international standards, including the Istanbul Protocol; further develop the forensic capacity of the prosecution and judiciary;

(i) Ensure that medical staff in places of detention are truly independent from law enforcement and trained in the Istanbul Protocol; allow access to independent medical examinations without interference by or the presence of law enforcement agents or prosecutors; and ensure timely access to independent medical check-ups at the time of arrest, upon transfer to another place of detention or upon request;

(j) Open judicial proceedings into all cases revealed by the Equity and Reconciliation Commission of past abuses during the “years of lead” (1956–1999);

(k) Ensure that the principle of non-refoulement contained in article 3 of the Convention against Torture is fully implemented, including in cases involving migrants, refugees and asylum seekers, so that persons are not extradited to any country where they may be at risk of torture;

(l) Provide the Ministry of the Interior with all the logistic and financial support necessary to implement the envisaged project of the Minister of Justice and Liberties to video record all statements made to the police during investigation and interrogation. Such measures should only be seen as complementary to legal representation during all stages of the interrogation process;

(m) Introduce independent, effective and accessible complaint mechanisms in all places of detention by means of the installation of telephone hotlines or confidential complaints boxes, and ensure that every detainee has unimpeded and unsupervised access to the prosecutor upon request and that complainants are not subject to reprisals;

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

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

(p) Increase trust and cooperation between the State and civil society so that all non-governmental organizations are able to work more effectively with national and international mechanisms and conduct advocacy on the basis of well documented cases;

(q) Facilitate access for civil society organizations to penal institutions and enhance partnership with these institutions to ensure the implementation of their role in raising awareness, spreading the culture of human rights and contributing to the upgrading of the training of supervisors and staff in the correctional institutions.

89. With regard to demonstrations, the Special Rapporteur recommends that the Government act in compliance with international standards, such as the “Basic Principles on the Use of Force and Firearms by Law Enforcement Officials”, that are based on necessity and proportionality with respect for the right to life and physical integrity, and further prevent, investigate and prosecute acts of torture or ill-treatment of protestors.

90. With regard to migrants, refugees and asylum seekers, the Special Rapporteur recommends that the Government work in closer cooperation with the Office of the United Nations High Commissioner for Human Rights; the Special Rapporteur on the human rights of migrants; and other United Nations agencies, such as the Office of the United Nations High Commissioner for Refugees, and:

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

(b) Respect the fundamental human rights of migrants, refugees and asylum seekers, and ensure to them access to health facilities and medical care without fear of arrest.

91. With regard to juveniles, the Special Rapporteur recommends that the Government:

(a) Visit police stations regularly with a specific focus on juvenile delinquents; not hold juveniles in regular prisons but reinforce the structure of child protection centres; investigate all complaints of torture and ill-treatment of juveniles, in particular allegations of corporal punishment;

(b) Amend article 473 of the Code of Criminal Procedure to change the age at which a juvenile delinquent can be imprisoned from 12 to 18 years old, and stress that the imprisonment of juvenile delinquents is an exceptional measure;

(c) Provide specialized prosecutors and specialized judicial police officers for cases of juvenile offenders.

92. With regard to women, the Special Rapporteur recommends that the Government:

(a) Enforce the protection of female prisoners from all gender-based violence;

(b) Reduce the rate of overcrowding by implementing alternative measures, in particular for women with children.

93. With regard to the conditions of detention, the Special Rapporteur recommends that the Government:

(a) Reduce significantly the rate of overcrowding;

(b) Allocate sufficient budgetary resources to provide adequate health care, improve food quality and ensure the separation of minors from adults and pretrial prisoners from convicts; reinforce and improve a system of execution of sentences that aims at rehabilitating and reintegrating offenders; and create educational and work opportunities and recreational activities for inmates;

(c) Move inmates on death row and sentenced to life imprisonment to open or semi-open facilities;

(d) Apply judicial control over penal institutions; strengthen the powers of the enforcement judge in such a way to enable him to effectively control these institutions, monitor penalty enforcement and verify its validity; strengthen the right to appeal for those affected by disciplinary measures;

(e) Facilitate monitoring by regional commissions to improve the situation in prisons and implement prisoners' rights, through regular and effective visits to prisons and presentation of reports on the situation of prisons and prisoners;

(f) Provide adequate dental and psychiatric care, as well as psychological interventions, as a general rule.

94. With regard to psychiatric institutions, the Special Rapporteur recommends that the Government:

(a) Apply the provisions of articles 3 and 4 of the implementing decree for the Prisons Act (No. 23/98), especially with regard to refraining from the use of violence against prisoners, and prohibit solitary confinement;

(b) Implement visits to psychiatric institutions by the General Prosecutor's Office and by CNDH as foreseen by law.

95. With regard to institutional reform, the Special Rapporteur recommends that the Government:

(a) Have the highest authorities, in particular those responsible for law enforcement activities, declare unambiguously that they will not tolerate torture or ill-treatment by their subordinates and that perpetrators will be held to account;

(b) Further raise awareness in all law enforcement personnel of their role in preventing torture and ill-treatment by means of mandatory training on international standards on the prohibition of torture, on provisions governing investigations of torture and ill-treatment and on interrogation techniques, and further develop training programmes to be delivered during professional qualification courses for health and legal professionals on detecting, reporting and preventing torture;

(c) Integrate the prisoner health services into the Ministry of Health, which would contribute to a higher standard of medical service;

(d) Ensure that victims obtain redress and fair and adequate compensation, including the means for the fullest rehabilitation possible; establish mechanisms and programmes, including relevant infrastructures within the Ministry of Health, to provide all victims with rehabilitation, and fund private medical, legal and other facilities, including those administered by non-governmental organizations, that provide medical, psychological and social rehabilitation;

(e) Consider providing bilateral direct funding for civil society organizations assisting victims and their family members, and the establishment of specialized services within the national health system. The United Nations Voluntary Fund for Victims of Torture is invited to consider requests for assistance by non-governmental organizations that work to ensure that persons who have been tortured have access to medical care and legal redress.

96. The Special Rapporteur urges the Government to effectively prevent reprisals, including intimidation, disciplinary measures and ill-treatment, against inmates, victims of torture and their families, activists and others who spoke to the Special

Rapporteur during his visit, and to promptly investigate and punish the perpetrators of acts of reprisal.

97. With regard to Laâyoune, Western Sahara, the Special Rapporteur recommends that the Government:

(a) Investigate promptly all allegations of torture and ill-treatment during and after demonstrations and at the Prison of Laâyoune; hold the perpetrators accountable and provide compensation to the victims;

(b) Reconsider the jurisdiction of the military court over civilians in the case of the 23 Sahrawi men detained at Salé Prison 1 and assure that, as a principle, civilians are not sentenced by military courts; initiate impartial, effective investigations to ascertain exactly what occurred and determine what responsibility should be borne by members of the police or security forces; and investigate all allegations of torture and ill-treatment;

(c) Find ways and means to further strengthen protection for internationally recognized human rights by, inter alia, inviting the United Nations special procedures mechanisms; strengthening engagement with civil society and the national human rights institution; and facilitating the presence of international non-governmental organizations;

(d) The entire region would benefit from a robust regional inter-governmental human rights monitoring mechanism as an important confidence-building measure which can help to improve the situation with respect to human rights observance and particularly with respect to the prohibition on torture and other cruel, inhuman and degrading treatment or punishment.

98. The Special Rapporteur requests the international community to support Morocco in its efforts to implement the above-mentioned recommendations, in particular to reform its legal system, establish a preventive framework against torture and ill-treatment and an effective national preventive mechanism, and provide appropriate training for police and prison personnel.
