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Morocco – Western Sahara: Exclude “confessions” obtained under torture in trial of Sahrawi activist

The Moroccan authorities must investigate the torture allegations of Sahrawi activist Mohamed Dihani, and ensure that “confessions” obtained under torture and duress are excluded as evidence in his appeal trial scheduled to start on Monday 15 April. Mohamed Dihani had been charged and sentenced to ten years in prison by the Court of First Instance in Rabat on 27 October 2011 on the basis of such “confessions”, for allegedly conspiring to commit acts of terrorism under Morocco’s anti-terrorism law.

Moroccan authorities must also investigate allegations that Mohamed Dihani was detained incommunicado by Morocco’s domestic intelligence body, the Directorate for Surveillance of the Territory (Direction de la surveillance du territoire, DST), between 28 April and 28 October 2010.

Enforced disappearance and incommunicado detention

Mohamed Dihani, a 26 year old Moroccan national from Laayoune in Western Sahara, had last been seen by his cousin and brother late on 28 April 2010 talking to a man believed to be a DST official. The DST had previously questioned Mohamed Dihani in November 2009 about his pro-Western Sahara independence activities.

Mohamed Dihani’s family feared he was arrested by the DST. They were unable to confirm his whereabouts or his detention despite approaching Moroccan security forces and lodging several complaints with the Crown Prosecutor in Laayoune, none of which are known to have given rise to an investigation. Amnesty International wrote to the Minister of Justice at the time, enquiring about Mohamed Dihani’s whereabouts and voicing the organization’s concerns that he was being held incommunicado by the DST.

On 29 October 2010, the Interior Ministry announced that they had dismantled a terrorist cell including a Sahrawi who fitted Mohamed Dihani’s description. At this point, six months after Mohamed Dihani forcibly disappeared, his family received confirmation from the Moroccan authorities that their son was being detained on terrorism-related charges.

Meanwhile, the multiple complaints regarding Mohamed Dihani’s incommunicado detention lodged by his parents and his lawyer with the Crown Prosecutor in Laayoune from 5 May 2010 onwards, as well as repeated requests to open investigations addressed to the Minister of Interior, the Minister of Justice the president of the Consultative Council for Human Rights (a body now replaced by the National Council of Human Rights, CNDH) and the CNDH, remain either unanswered to this day, or were met with refusals to investigate the matter.

Amnesty International continues to be concerned that Mohamed Dihani may have been held the DST between 28 April and 28 October 2010 in conditions amounting to enforced disappearance, and

urges the Moroccan authorities to open an investigation in this regard. Enforced disappearance and incommunicado detention are serious human rights violations. They also constitute breaches of Article 67 of the Moroccan Code of Criminal Procedure which requires security forces to notify the families of detainees as soon as a decision is made to take them into custody. Incommunicado detention is a breach of the International Covenant on Civil and Political Rights (ICCPR) to which Morocco is party, as well as Principle 16(1) of the Body of Principles for the Protection of all Persons Under Any Form of Detention or Imprisonment adopted by the UN General Assembly in 1988.

“Confessions” under torture

Mohamed Dihani has consistently denied the charges against him, and repeatedly declared that his “confession” used to incriminate him did not reflect the truth and had been obtained under torture.

Mohamed Dihani alleges he has also been regularly tortured and otherwise ill-treated in prison, as well as in Maarif police station where he was reportedly transferred for three days in March 2013. Mohamed Dihani told his lawyer and family that further attempts were made to extract statements from him under torture. Despite detailed complaints for torture and ill-treatment lodged on Mohamed Dihani’s behalf by his family with the relevant authorities, no investigation is known to have been opened to date. The CNDH was also approached, and visited Mohamed Dihani in prison for the first time on 11 April 2013.

Mohamed Dihani was reportedly hung by his wrists for hours, and sometimes overnight, on several occasions. Attempts appear to have been made to coerce him into signing hand-written documents of which he ignored the content. He can no longer raise his arms as a result of his torture and other ill-treatment, his lawyer told Amnesty International.

Amnesty International is concerned that Mohamed Dihani was repeatedly subjected to torture in detention, and that the “confessions” used to incriminate him were obtained under torture, in breach of the absolute prohibition of torture and the right of a defendant not to be compelled to testify against himself or to confess guilt.

Amnesty International urges the Moroccan authorities to promptly open thorough and impartial investigations into these allegations, and to exclude “confessions” obtained under torture or duress from the judicial proceedings Mohamed Dihani is facing. The use of “confessions” obtained under torture or duress is in breach of Moroccan law as well as international human rights standards. Article 293 of Morocco’s Code of Criminal Procedure states that confessions obtained under violence or coercion are legally void, and explicitly refers to Article 5 of the Universal Declaration of Human Rights, and Article 7 of the ICCPR which ban torture.

The Moroccan authorities must also ensure that detainees are treated in accordance with international law and standards, as set out in the ICCPR, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), treaties to which Morocco is a state party, and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Counter-terrorism legislation eroding human rights

Mohamed Dihani was charged and sentenced under Law No. 03-03 on Combating Terrorism for allegedly conspiring to commit a terrorist act under Article 218-1, paragraph 9. Law No. 03-03 fails to provide adequate safeguards for terrorism suspects. It extends the pre-arraignment detention (*garde à vue*) allowed for by the Moroccan Code of Criminal Procedure to 12 days, making detainees vulnerable to torture and ill-treatment. Law No. 03-03 also extends the period in which detainees are denied contact with their lawyers to six days, affecting their right to an adequate defence.

Amnesty International is concerned that despite Morocco's new constitution, human rights violations are still being perpetrated in the name of countering terrorism in Morocco. Incommunicado detention, torture and other ill-treatment and flawed legal proceedings in national security cases have been recurrent over the past decade since Law No. 03-03 was promulgated in 2003. These concerns are echoed in UN Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment Juan Méndez's report on his visit to Morocco in September 2012.

Repression of pro-independence activists in Western Sahara

In recent years, Sahrawi human rights defenders and pro-independence activists have faced restrictions on their work, including harassment, surveillance by the security forces, limitations to their freedom of movement, and in some cases prosecution on grounds of threatening Morocco's "internal" and "external" security. They have also been unable to obtain legal registration for their organizations, apparently due to politically-motivated administrative obstacles. Sahrawi pro-independence activists have been imprisoned following demonstrations calling for the right to self-determination for the people of Western Sahara, and some have reportedly been tortured or otherwise ill-treated during questioning by Moroccan law enforcement officials, allegations which have not been properly investigated.

The United Nations Mission for the Referendum in Western Sahara (MINURSO) is one of the few missions established under the authority of the Security Council that does not include a human rights component. Neither is this vital role played by the Office of the High Commissioner for Human Rights (OHCHR), which does not have a presence in the area. A United Nations human rights monitoring mechanism, with the power to look at both Western Sahara and the Tindouf camps, would provide independent and impartial reporting on the current human rights situation including on suspected enforced disappearances such as Mohamed Dihani's between 28 April and 28 October 2010. It would play a key role in documenting human rights violations that would otherwise go unreported, and prevent unfounded accusations in other cases.