

MOROCCO

CCPR A/37/40 (1982)

134. The Committee considered the initial report of Morocco (CCPR/C/10/Add.2) at its 327th, 328th and 332nd meetings held on 27 and 29 October 1981 (CCPR/C/SR.327, 328, 332). The report was introduced by the representative of the State party who stated that the Constitution of Morocco, which was ratified by the people, provided for a democracy based on the separation of powers and guaranteed all the individual political, economic and social rights, and that, in order to give concrete expression to those rights, a body of texts, which drew both upon the tradition of Islam and upon modern law, had been drawn up.

135. Members of the Committee commended the State party for submitting, on time, a detailed report as far as the Constitution and the legislation giving effect to the provisions of the Covenant were concerned, for indicating the manner in which Islamic law was compatible with human rights, and for including in the report specific information regarding judicial decisions and, particularly, legal texts and references to treaties signed by Morocco. The report, however, was found lacking in information on the difficulties encountered in giving effect to the provisions of the Covenant, and it was pointed out that it would have been useful if, in his statement, the representative of the Government of Morocco had referred to the events of June 1981, which apparently constituted one of the difficulties affecting implementation of the Covenant referred to in article 40 of the Covenant. Noting that individuals should be aware of their rights under the Covenant, members asked whether the Covenant had been given publicity in Morocco in both the Arabic and Berber languages; whether the police, prison and administrative authorities were aware of their obligations under the Covenant; whether the report now before the Committee had been published in Morocco; and whether there were in the country any private organizations, recognized by the State, which were concerned with the promotion and protection of human rights.

136. In connection with article 1 of the Covenant, it was noted that the report contained no information on the self-determination of the territory known as Western Sahara, and it was asked what measures had been taken to enable the population of that territory to freely determine their political status and to freely pursue their economic, social and cultural development.

137. As regards article 2 of the Covenant, attention was drawn to what appeared in the Constitution as a deliberate distinction between nationals and foreigners as far as the enjoyment of a number of rights was concerned, and it was asked whether the principle of equality before the law also applied to persons who were not Moroccan nationals. Noting that, according to the report, the provisions of the Covenant had become an integral part of the internal public order and took precedence over internal law, except for the Constitution, members asked whether it was to be concluded that there was no conflict of law between the Constitution and the Covenant but that if there was, members wondered how Morocco intended to apply those provisions of the Covenant that may be in conflict with the Constitution; whether the Covenant had to be approved in accordance with the procedures laid down in the Constitution for a constitutional amendment in order to confer the same legal force

as a constitutional amendment on the provisions of the Covenant; what the status of the Covenant was in relation to the Constitution; and whether an individual who believed that his rights had been violated by a public authority could invoke the provisions of the Covenant before a competent court. Information was requested regarding cases of violations of human rights which might have occurred in Morocco since it had ratified the Covenant, the remedies available in such cases, the inquiries to which those cases of violation might have given rise and the results of such inquiries. It was also asked whether individuals could invoke available remedies when the violation of their rights resulted not from an act but from an omission and whether there were administrative tribunals to deal with complaints by individuals against the State.

138. In relation to article 3 of the Covenant, it was noted that the report referred to the teachings of Islam concerning the status of women, and it was asked how a distinction between men and women regarding inheritance and access to some professions, such as the judiciary, could be reconciled with the statement in the report that the equal right of both sexes to the enjoyment of all civil and political rights was fully reflected in the Moroccan Constitution; what the present position of women was regarding civil rights and, particularly, in existing labour legislation; whether, in the new draft Labour Code, a distinction would be drawn between women based on marital status; whether women were eligible by law for employment in the armed forces; and what the law was regarding voluntary termination of pregnancy. Information was requested on the role of women in political life in Morocco.

139. In connection with article 4 of the Covenant, members noted that, under the Constitution, the King was empowered, when a state of emergency was declared, to take such measures as might be necessary for the defence of the territorial integrity of the State and that there did not seem to be any limit to that power, contrary to the provisions of this article. Members also asked whether there was, at present in Morocco, a state of emergency or a state of siege and, if so, how it affected the provisions of the Constitution, and whether the Secretary-General of the United Nations had been notified in accordance with the provisions of article 4 of the Covenant. In this connection, information was requested on the number of people arrested or killed in the events of June 1981, on the trial of the persons arrested on that occasion and whether they were tried individually or collectively.

140. Commenting on article 6 of the Covenant, members requested information on the measures adopted in Morocco to reduce the rate of infant mortality and to improve public health and occupational safety. It was asked what the "crimes against the internal and external security of the State" were for which the death penalty could be pronounced, and for which other crimes that penalty could still be imposed; how many sentences of capital punishment the Moroccan courts delivered each year, the number of cases in which the sentence was actually carried out, particularly in cases of violation of internal security, and the number of cases in which the sentence was commuted. In this connection, mention was made of the existence in some states of cases of "disappeared persons" of whom all trace was lost following their arrest by the plain-clothes officers and it was asked whether there were any grounds for believing that there had been cases of "disappeared persons" in Morocco and whether such cases had been brought before the Minister of the Interior and the Minister of Justice. Members expressed their regret that the death penalty could still be imposed on persons below 18 years of age contrary to the provisions of the Covenant, and that a pregnant woman sentenced to death could be executed 40 days after the delivery of her child,

and they asked whether the Moroccan Government had given any consideration to the possibility of abolishing the death penalty, whether there was any private movement or campaign in Morocco for its abolition and what the state of public opinion was in that respect.

141. With regard to articles 7 and 10 of the Covenant, it was asked whether there were any cases in which public officials had been accused by private individuals of torture, cruel, inhuman or degrading treatment and, if so, how many; whether appropriate proceedings had been brought by the competent authorities and what penalties had been imposed in this respect. It was also asked whether the United Nations Standard Minimum Rules for the Treatment of Prisoners had been adopted in Morocco and, if not, whether existing regulations governing the treatment in prisons had been applied in recent years, and whether there had been any cases of sanctions imposed accordingly; what the rules were concerning solitary confinement, for how long a person could be subjected to it, whether there were any provisions for the family to be informed of the state of health of the person in solitary confinement, in what circumstances there was medical supervision of such cases; how did the supervisory committees, established to monitor conditions in prisons and detention centres operate, how often did they visit each prison, whether prisoners and detainees were able to contact the members of supervisory committees and whether the Government considered the possibility of instituting a system of completely independent prison visitors.

142. Commenting on article 9 of the Covenant, members requested clarification of the circumstances in which an arrest could be effected without a warrant and of the statement in the report concerning the possible detention of a person by virtue of a warrant to appear, up to 24 hours without being questioned, since a warrant to appear was different from a warrant to arrest and thus required bringing the person concerned before the examining magistrate immediately. Noting that remand in custody could be extended for a period of four months, members asked for how long it could be extended and whether there had been instances in which it had been extended several times; whether there were any procedures for speeding up trials in Morocco; whether the Moroccan authorities were required to notify the prisoner's family immediately of the place where he was being held in custody; whether the incommunicado régime had been applied to detainees for periods exceeding those permitted by the Code of Criminal Procedure; whether an accused person held in custody could communicate freely with his counsel prior to his appearance in court; whether there were currently any persons, including members of Parliament, detained for political reasons without trial and, if so, on what authority and for how long were they detained and how their detention was justified under the Covenant; whether the legal authorities were empowered to exercise control over detention of the mentally ill, of aliens awaiting deportation, of minors detained for educational reasons or even of drug addicts and, if so, whether the courts could review the merits of the grounds for detention or whether they merely reviewed the formal legality of the detention. It was also asked whether there had been any instances in Morocco of complaints, inquiries, or proceedings for damages in respect of the violations of Covenant rights and whether, in recent years, there had been any cases of disciplinary sanctions and of claims of that kind.

143. Commenting on article 13 of the Covenant, members asked which authority was competent to decide on the expulsion of aliens; whether an alien who had applied for review of his case to the Directorate-General of the Sûreté Nationale was granted a stay of execution while his case was being decided; whether the appeal mentioned in the report could be considered a formal and standardized remedy which would enable an alien to put forward the reasons against his expulsion; whether any

alien had been expelled within 24 hours in recent years and, if so, on what grounds and whether this was done in conformity with the relevant provisions of the Covenant.

144. With regard to article 14 of the Covenant, information was requested on the power accorded to the Supreme Court to take over a case, irrespective of its nature on grounds of public interest, as well as some examples of how that power was exercised; on whether, in the case of a minor or of a political offender, the accused could be brought directly before the competent court in the absence of a preliminary investigation; on the crimes and offences which were removed from the jurisdiction of the ordinary courts and transferred to that of military tribunals; on whether there were special courts to deal with labour disputes and special courts for juvenile delinquents; on whether there were any special rules for exceptional procedures, for example, where proceedings were instituted against a large number of persons or whether the judges considered each person as a separate case. It was also asked whether interpretation was provided when the accused claimed that he did not understand the language of the judges or the witnesses, whether, in certain trials, there had been cases of accused persons who had not had the time to prepare their defence or to obtain the attendance of witnesses of their choice and, if so, whether there had been any inquiries into allegations of that nature and what the results had been; which cases were expressly excluded by the law as not being subject to appeal; and whether the right to compensation in the event of a miscarriage of justice had been applied and, if so, whether there were any examples of recent judgements in this respect.

145. In relation to article 16 of the Covenant, it was asked whether the recognition of every individual as a person before the law began at birth or at conception; why Moroccans who were neither Moslems nor Jews were subject to the Moroccan Personal Status Code and whether an attempt was being made to evolve a standardized personal status régime by unifying those three systems through a corpus of modern law.

146. Commenting on article 18 of the Covenant, members asked whether, in Morocco, religions other than Islam were merely tolerated or whether they were placed on an equal footing by law; to what extent everyone was authorized to observe and practice the religion or belief of his choice; how an individual's beliefs could be subject to restriction on the ground of public safety; how Islam guaranteed freedom of worship to all; and what the role of parents and guardians was in ensuring the religious and moral education of children.

147. In connection with article 19 of the Covenant, members noted that whereas the Covenant permitted restrictions on the freedoms provided for in this article subject to certain circumstances specified in it, the Moroccan Constitution stated that those freedoms could be limited by law, and it was asked which laws defined precisely the restrictions of freedom of expression and whether they were in keeping with the permitted restrictions defined in the Covenant; whether individuals had the right to engage in public discussion of public matters, including criticism of public bodies, and to call for Morocco to become a republic; whether there had recently been any acts or statements displaying opposition to the Government which had given rise to arrests and legal proceedings and, if so, what the charges had been, who and what category of people had been found guilty, for what offences and pursuant to which law; whether the publication by an organ or political party of a statement criticizing certain aspects of government policy was an offence punishable by law; and whether the crime of lèse-majesté existed in Morocco. It was also asked whether Moroccan law made a substantive distinction between citizens and non-citizens regarding the restrictions on the

exercise of freedoms which were necessary to protect national security, public order, or public health or morals and, if so, how such distinctions were justified in the light of the Covenant.

148. As regards article 20 of the Covenant, more information was requested on the implementation of this article, particularly regarding the prohibition of any advocacy of national, racial or religious hatred.

149. Commenting on article 22 of the Covenant, members requested explanations on the “illicit cause” and “illicit objective” contrary to the law and morality which could render an association null and void, and asked how the declaration as null and void of an association seeking a change of the monarchical form of the State could be reconciled with the provisions of this article; what the current status of trade unions was and what freedoms did they enjoy, and whether they played a political as well as an economic role; whether Moroccan law contained provisions for the dissolution of political parties and trade unions and, if so, in what circumstances they could be dissolved and what remedies were available to them to contest the lawfulness of their dissolution; what restrictions were placed on the exercise of the right of trade unions to strike and what the current status was of trade unions which did not seem to agree with the Government; and whether any difficulties had arisen lately between the Moroccan Government and the International Labour Organization regarding the implementation of certain conventions relating to trade union rights.

150. In connection with articles 23 and 24 of the Covenant, it was asked whether the family was protected by fiscal and social legislation and how the problem of working mothers was being tackled in Morocco. Reference was made to the provision of the Moroccan Code of Personal Status which guaranteed the right of intending spouses to contract marriage with their free and full consent and it was asked how that guarantee was enforced and what assurance there was that young girls from families bound by traditional customs were in fact consulted; whether a marriage arranged by a magistrate “as a measure of social protection” for “a woman who might otherwise be exposed to the risk of moral downfall” was not an infringement of the freedom of the woman; whether it was possible for a Moroccan woman facing an arranged marriage to request and obtain an annulment of the magistrate’s decision by invoking this article of the Covenant; and whether the marriage, with the consent of the legal guardian, of persons who had not reached marriageable age within the meaning of the Covenant could be reconciled with the provisions of this article. It was also asked whether parental authority was exercised by the father, the mother, or both, and whether such authority could be restricted when it was exercised improperly; whether the Moroccan Nationality Law placed women on equal footing with men as far as the nationality of the child was concerned; and what the status of illegitimate children was under Moroccan legislation. With reference to the statement in the report that “in all circumstances, women retain the custody of their minor children,” it was asked what became of the children in the event of divorce when the mother was not morally fit, because of misconduct, to bring them up. More information was requested on the family and child protection associations mentioned in the report.

151. Regarding article 27 of the Covenant, information was requested on the ethnic, religious or linguistic minorities that might exist, particularly in the southern and western regions of Morocco, on the precise legal position of those minorities and on whether Moroccan law recognized that the persons belonging to them had the rights provided for in this article.

152. Replying to the questions raised by members of the Committee, the representative of the State party pointed out that the report had not made reference to difficulties in applying the Covenant because, since its ratification, the Moroccan authorities had not observed any such difficulties and that, Morocco's ratification of the Covenant had been followed by the adoption, on 8 November 1979, of Dahir No. 1-79-186 concerning publication of the Covenant.

153. In connection with article 1 of the Covenant, he pointed out that the requirements of this article concerning self-determination were fully met within Morocco by the constitutional provisions referred to in the report and informed the Committee of the role played by his Government in the international application of that principle, particularly in the Arab world and on the African continent.

154. As regards article 2 of the Covenant, the representative stated that Morocco had developed rules of law largely based on Moslem law which had proclaimed respect for human life, human rights, equality of individuals without distinction based on race or colour, and on freedom of worship; that treaties which might effect constitutional provisions were approved by means of a referendum, in accordance with the procedure laid down for amendment of the Constitution and that the fact that the Covenant had been ratified without a referendum demonstrated that it did not affect the provisions of the Constitution.

155. Replying to questions raised under article 3 of the Covenant, he reiterated that the equality of men and women in Morocco was ensured by the Constitution which provided that all Moroccan men and women were equal before the law, and stated that that general rule was confirmed by the solemn proclamation of equality in the field of political rights. As to the civil rights of Moroccan women, he referred the members to what had already been mentioned in the report in this respect.

156. With regard to article 4 of the Covenant, the representative informed the Committee that, since Morocco had ratified the Covenant, neither a state of siege nor a state of emergency had been declared in the country and that, in any event, such declaration would not affect the provisions of this article since neither a state of siege nor a state of emergency would involve a discrimination based on colour, race, language, etc.

157. Commenting on questions raised under article 6 of the Covenant, he stated that several persons facing the death sentence had recently been pardoned by the King, that there were currently two such persons in prison who had asked to be pardoned, that no capital punishment could be carried out unless preceded by a petition for reprieve which has been refused, and that there were no women facing the death penalty in Morocco.

158. In connection with articles 7 and 10 of the Covenant, the representative stated that torture and ill-treatment of persons under detention were prohibited; that the law provided for the punishment of any public officer, including prison officers, for committing, in the exercise of their duties, acts of violence against detained persons; and that prison conditions were monitored by Prison Supervisory Committees which were composed of private and independent individuals and civil servants and were under the chairmanship of the governor, who was in the best position to find ways of reintegrating prisoners into society after their release.

159. As regards article 9 of the Covenant, the representative stated that the criminal police could hold, for the purpose of an investigation, one or more persons whose identity it was necessary to determine or verify; that it was not possible to detain them for more than 92 hours, which could be extended for a single additional period of 48 hours upon the approval of the King's prosecutor; that if the case involved an attack against the security of the State, the period was doubled; that such provisions were applicable in cases of flagrante delicto in respect of which the law provided for imprisonment; that administrative arrest was prohibited by law and that only the judicial authority was competent to order arrest under the law. He also stated that detention pending trial, which generally followed the period of police custody, was an extremely serious measure which was ordered by the examining magistrate only in certain circumstances; that if the penalty for the offence alleged was higher than two years' imprisonment, the period of time in detention could not exceed four months, which could be extended for further four-month periods only by order of the examining magistrate, accompanied by a statement on the reasons for such a decision. He stressed that at any point in the proceedings, the accused could request conditional release and the examining magistrate must decide upon that request within five days; that, if he did not, the accused could apply directly to the chamber of correctional appeal, which must then hand down a decision within 15 days; that when committal had been ordered by the King's prosecutor in cases of flagrante delicto, the detainee had to be brought before the court within three days and the court must decide either to release him or to confirm his detention; and that the prosecutor was prohibited from ordering the detention of a person who had committed a political offence or an offence under the press laws, or of a minor less than 16 years of age.

160. In relation to questions raised under article 13 of the Covenant, concerning expulsion of aliens, the representative stated that any one harmed by an administrative measure subsequent to the lodging of an appeal with the competent authority could apply to the Administrative Division of the Supreme Court for the act to be annulled.

161. In connection with question raised under article 14 of the Covenant, he stated that there was only one permanent military court which was competent to try members of the armed forces charged with the commission of offences; that in cases where a number of people had been involved in the commission of a particular crime, it was legitimate for them to appear before the same court at the same time; that at all states of the proceedings, the accused had the right to the assistance of a defence counsel and, if need be, an interpreter paid for by the State; and that in all cases where the law provided for prison terms, a prisoner had the right to appeal.

162. With respect to questions raised under article 19 of the Covenant, he pointed out that freedom of the press was regulated by law which imposed restrictions on that freedom only in respect of crimes and offences committed through the press of any other kind of publication, and that the Minister of the Interior could order the administrative seizure of any issue of a newspaper or periodical whose publication was likely to disturb the public order or undermine the political and religious institutions of the Kingdom. In this connection, he pointed out that the King was entrusted with a religious, national and political mission and that his responsibilities and role as arbiter of the nation could be exercised only if his person was secure from any partisan or sectarian attack as stipulated in the Constitution.

163. Replying to questions raised under article 22 of the Covenant, the representative reiterated that

an association was null and void if it was based upon an illicit cause or illicit objective contrary to the law and morality, or designed to impair the integrity of the territory of the nation or the monarchial form of the State.

164. As regards article 23 and 24 of the Covenant, he stated that, in Moslem law, a woman could contract marriage freely, that forced marriages were prohibited and subject to annulment pronounced by a magistrate, that no marriage was valid without the consent of the woman and that a woman retained her legal personality even after marriage. He also informed the Committee that, according to Moroccan law, the child of a Moroccan mother and an unknown or stateless father was given Moroccan nationality.

165. Replying to questions raised under article 27 of the Covenant, the representative stated that there were no ethnic minorities in Morocco; that the religious minority of persons of the Jewish faith enjoyed full rights recognized in the Constitution as well as in the Hebraic Code of Personal Status and that in all other fields the principle of the equality of all religions before the law, embodied in the Constitution, constituted the rule.

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229. The Committee considered the second periodic report of Morocco (CCPR/C/42/Add.10) at its 1032nd to 1035th meetings, held on 7 and 8 November 1990 (see CCPR/C/SR.1032-1035). It was not possible during the time available at the fortieth session to complete the consideration of the report and, with the agreement of the Government of Morocco, the Committee decided to continue with its consideration at the forty-second session. At that session, however, owing to the request of the Moroccan delegation, the Committee decided to defer the consideration of the report to its forty-third session. The discussion of the report at the Committee's fortieth session is reflected in paragraphs 229 to 256 below.

230. The report was introduced by the representative of the State party, who drew attention to the founding in 1989 of the Union of the Arab Maghreb, consisting of Mauritania, Morocco, Algeria, Tunisia and the Libyan Arab Jamahiriya, which was a major regional event expected to bring progress and prosperity to a vast population with close historical, religious and cultural ties. The founders of the Union attached great importance to the cause of human rights, and the declaration proclaiming the Union reiterated the determination of the five heads of State concerned to work with the international community to establish an international order in which justice, dignity, freedom and human rights prevailed.

231. The representative noted that, at the national level, two important decisions had been taken recently to strengthen the rule of law and to enable citizens to defend their rights *vis-à-vis* the Administration, the authorities and the State itself. One of these had been the decision by King Hassan II to establish a Consultative Council for Human Rights under article 19 of the Constitution; the other related to the introduction of a bill, on 8 May 1990, to establish a system of administrative tribunals that would help to ensure administrative justice and to make available remedies to victims of abuses of power or prejudice on the part of administrative authorities. Measures had also been adopted to enhance the participation of Morocco's 860 local communities or communes in the conduct of public affairs and economic and social development. A group of non-governmental organizations and political parties was also currently working on a draft National Charter of Human Rights.

Constitutional and legal framework within which the Covenant is implemented

232. With reference to that issue, members of the Committee wished to know what the status of the Covenant was in relation to the Moroccan Constitution; whether the provisions of the Covenant were directly enforceable; whether the Covenant had become an integral part of Morocco's domestic legislation that could be invoked in the courts; whether Morocco accepted the principle of the precedence of international law over domestic law in the event of a conflict between the two; whether recourse could be had to the Moroccan courts in respect of violations of rights not recognized in domestic law but guaranteed by the Covenant; whether the authorities were giving any thought to amending the Constitution to take account of such rights; whether the courts had the power to abrogate legislation not in conformity with the Constitution or the Covenant; whether there had been actual cases where court decisions had been based on the Covenant; whether a law had ever been disregarded by a court on the ground that it was contrary to the Covenant; what were the

composition and functions of the Moroccan league for the Defence of Human Rights, the Moroccan Human Rights Association and the Moroccan Human Rights Organization; what factors and difficulties, if any, had affected the implementation of the Covenant; and what activities were undertaken relating to the promotion of greater public awareness of the provisions of the Covenant.

233. In addition, members of the Committee wished to know whether judges could be dismissed from office; whether everyone had access to the courts; what had been the purpose of establishing communal or district courts; what facilities were provided by the Government to help human rights organizations discharge their tasks; what were the composition and powers of the Royal Consultative Council, what were the results of its fact-finding operations, and whether citizens and other persons under Moroccan jurisdiction could have recourse to the Council; and whether the Moroccan Government intended to ratify the Optional Protocol. Regarding the constitutional position of the King, members of the Committee asked whether the King was accountable for his acts to any State body and whether the constitutionality of the laws promulgated by the King could be challenged. They also wondered how the independence of the judiciary was guaranteed when, according to article 33 of the Constitution, the King presided over the Supreme Council of the Judiciary and appointed the members of the judiciary by decree.

234. Members also wished to know what was the precise competence of the constitutional chamber of the Supreme Court; why discrimination on the grounds of political opinion had not been mentioned in the Constitution; what were the rights of aliens compared to those of citizens; and what control the judicial authority exerted over the actions of the police and local authorities. Finally, in view of the statements in paragraphs 36 and 37 of the report regarding the applicability of the Covenant, they requested the delegation to comment on the statement in the National Charter on Human Rights that was signed by various human rights and jurists' organizations indicating that there was an absence of effective protection of human rights in Morocco and that their implementation was still limited.

235. In his reply, the representative stated that civil and political rights guaranteed in the Covenant were granted under the Constitution to all Moroccan citizens without distinction as to membership of any race, ethnic, linguistic, religious or political group, or sex. In every subject area there was a code or special law, and remedies were available in cases of abuse of authority or infringement of personal integrity or of property rights. A Consultative Council for Human Rights had been created on 8 May 1990 to monitor the activities of local authorities and assure citizens of direct recourse to the King. The courts had an obligation in all cases to apply the provisions of the law, and since such provisions were identical to those of the Covenant, the provisions of the latter were implicitly applied by the courts. Parties and their lawyers frequently invoked the principles enshrined in the Covenant, which in turn ensured that judges had to base themselves on those principles in formulating their views. The Moroccan League for the Defence of Human Rights and the Moroccan Human Rights Association had been set up by two political parties represented in Parliament. The Moroccan Human Rights Organization consisted of independent persons, lawyers, jurists, academicians and academics. The three organizations pursued their activities at the administrative, judicial, parliamentary and public level.

236. Concerning difficulties in implementing the Covenant, the representative said that Morocco had never encountered any obstacles affecting the public freedoms or civil and political rights of its

inhabitants. The covenant had been published in the official bulletin, and the press took every opportunity to mark the anniversary of the founding of the United Nations by reproducing the text of the Universal Declaration of Human Rights and the covenant. Most international human rights instruments were also publicized by the press, and the second periodic report had been published by the national press in August 1990. The key principles of the Covenant had also been the subject of studies by universities, the Royal Academy and the National Institute for Judicial Studies. Replying to other questions, the representative said that the compatibility of treaties signed by Morocco with the constitution had been ascertained by various ministerial commissions prior to their ratification. Morocco recognized the precedence of international law over domestic law. The courts had never ruled on the direct applicability of treaties, but lawyers often invoked treaty provisions before judges. The Moroccan Criminal code and Code of Criminal Procedure guaranteed any person a fair trial. Laws could be amended by decree; the courts had no right to cancel laws altogether. The Supreme council of the Judiciary was empowered to take disciplinary action against judges who committed administrative or criminal offences, but did not intervene in judicial matters. Judges were appointed on the recommendation of the Council. Human rights organizations were entitled to apply for financial assistance, which was granted to organizations serving the public interest.

237. The Royal Consultative Council, which was a purely advisory body serving the supreme administrative authorities of the country, including the King himself, was composed of advisers to the King, Ministry of Justice officials, judges and representatives of political parties and was headed by a senior supreme court judge. Individuals were free to address their complaints to the council, which then drew up a report for submission to the King. An enormous number of individual complaints had already been brought before the Council. The fact that the reports of the consultative council to the King on cases before it had reflected dissenting opinions among its members constituted proof of its independence. In the final instance, the decision on those cases rested with the King. Individuals had the right to appeal against abuses by the police or public officials, and investigations and prosecutions by the courts or the Ministry of Justice received press coverage. Referring to the monarchy, the representative noted that 90 per cent of the population had voted in favour of the present Constitution in a referendum. Under Islamic law, Muslims pledged allegiance to their leader in return for his protection and guidance in achieving political, economic and social progress. No political party in Morocco had ever sought the abolition of Islam and the monarchy. The National Charter of Human Rights was not yet an official document but merely a draft text under nationwide debate with a view to establishing future guidelines. It had been brought to the attention of the Government but was binding only on the political parties that had drafted it. The Charter would be taken into account by the authorities in so far as it was considered justified. The possibility of acceding to the Optional Protocol was currently under consideration.

Self-determination

238. In connection with that issue, members of the Committee asked the representative to comment on the problems relating to self-determination in Western Sahara in the context of the obligations assumed by the Kingdom of Morocco under article 1, paragraph 3, of the Covenant. They also wished to know whether human rights and freedoms in Western Sahara were suspended or made subject to restrictions; whether there had been any displacement of population; what was the current demographic composition in the region; what was the legal status accorded to the population of

Western Sahara pending the outcome of the referendum and whether any distinction was drawn between population groups opposed to joining Morocco and those in favour of it; whether there were any plans to grant amnesty to persons sentenced to life imprisonment in the 1970s for having declared themselves to be in favour of a referendum; what measures had been taken with regard to the reported disappearance of a very large number of Saharans; whether Saharans had exactly the same identity documents as other Moroccans; and how the prohibition of statements expressing opinions different from those of the authorities relating to the status of Western Sahara could be reconciled with article 19 of the Covenant.

239. In his response, the representative reiterated the importance attached by Morocco to the right of peoples, in particular African peoples, to self-determination. With regard to Western Sahara, an outline of a settlement was taking shape. The Secretary-General of the United Nations was to draw up a timetable, in consultation with the parties, for the proclamation of a cease-fire and the holding of a self-determination referendum. The Saharan population was not treated differently from the rest of the Moroccan population since the Saharans formed an integral part of the Moroccan people. Saharans elected their own municipal councils and held positions of responsibility in the civil service. The Kingdom had not proclaimed a state of exception since 1976, even though the prevailing situation was tantamount to a state of war. The conflict had had no harmful effect on the economy or on the free movement of individuals. Individuals had been sentenced for having rejected the idea that Western Sahara formed part of Moroccan territory, but it was possible that the King might exercise his right of pardon.

240. With regard to the question of disappearances, the representative stated that an inquiry was being conducted, but that the allegations, while admittedly disturbing, did not seem to be very credible. The Government would provide all the necessary clarifications to the Working Group on Enforced or Involuntary Disappearances of the United Nations Commission on Human Rights. The Saharan population's identity documents were absolutely identical to those of other Moroccans. With regard to individuals' responsibility for dissenting opinions, the representative explained that in Morocco there were only three major principles that were not open to challenge of any kind: the monarchic system, the fact that Islam was the State religion, and territorial integrity; if an individual deliberately challenged those principles he placed himself beyond the pale of his own society and had to assume responsibility for his declarations or acts.

State of emergency

241. With reference to that issue, members of the Committee wished to know what legal provisions existed, in addition to article 35 of the Constitution, in respect of the introduction and administration of a state of emergency, and to what extent such provisions, as well as article 35 of the Constitution itself, were deemed to be compatible with article 4, paragraph 2, of the Covenant; under what circumstances the state of siege could be proclaimed; whether in an emergency the King could assume both legislative and executive powers by decree and, if so, what procedures would apply; whether there was any way in which the judiciary or legislature could counterbalance the King's decision; and whether there were any provisions of law governing the duration of a state of emergency.

242. In reply, the representative noted that Morocco had no legal provisions governing states of

exception beyond article 35 of the Constitution, which provided that “when the integrity of the national territory is threatened or events occur which are likely to imperil the functioning of constitutional institutions, the King may, after consulting the President of the Chamber of Representatives and addressing a message to the nation, issue a dahir proclaiming a state of exception.” A state of siege was proclaimed with the consent of the Legislative Assembly. Initially, it could not last longer than 30 days and, if circumstances and the situation in the country so required, it could then be extended only by an act of Parliament. The administrative authorities were not authorized to take provisional measures restricting individual freedoms. Civil powers could not be transferred to the military authorities and no special courts could be set up. No internal conflict calling for the imposition of a state of emergency or state of siege had arisen in Morocco.

Non-discrimination and equality of the sexes

243. In connection with that issue, members of the Committee asked whether an alien husband of a Moroccan woman was eligible for Moroccan citizenship on the same basis as a foreign woman married to a Moroccan husband; what was the basis for the different treatment under Moroccan law of men and women in respect of their capacity to transmit Moroccan nationality automatically to children born outside the country; what distinctions existed between men and women under the inheritance laws; and in which respect were the rights of aliens restricted as compared with those of citizens.

244. In addition, members of the Committee wished to know under what conditions women could join trade unions; whether a woman could obtain a passport without the authorization of her husband or, if she was not married, of her father; how many women held seats in Parliament and had access to the civil service, higher education and the liberal professions; whether the principle of “equal pay for equal work” was applied in both the public and private sectors; why Morocco had not ratified the Convention on the Elimination of All Forms of Discrimination against Women; whether conditions were imposed on foreign associations different from those to be met by national associations; whether men were entitled to the benefits granted to working women; what criteria were used in fixing the minimum wage; whether a marriage between a Muslim woman and a Catholic or Jewish man was valid under Moroccan law and, if so, which inheritance laws applied; whether there were secular laws of inheritance applicable to non-believers; what were the conditions to be fulfilled by women in order to stand for election; whether men also had to have acquired a minimum age of 25 years for that purpose; and whether women could become members of Parliament.

245. In his reply, the representative stated that the spouse of a Moroccan citizen did not automatically acquire Moroccan nationality. A foreign woman marrying a Moroccan could, after two years of marriage, acquire Moroccan nationality simply by an order of the Minister of Justice; foreign husbands must have been married for five years and obtain Moroccan nationality by decree. Moroccan nationality was in principle acquired at birth when the father was Moroccan and any child born in Morocco automatically acquired Moroccan nationality. In connection with the question of inheritance, there were three different systems in Morocco: Islamic law, which applied to citizens of the Muslim religion; Hebraic law, which applied to citizens of the Jewish faith; and the international system, which applied to aliens. However, inheritance laws in Morocco were based directly on the principles of the Koran, and women were in a somewhat less favourable position in

that respect. However, women had never requested the abolition of the Koranic rules applicable to them with regard to personal and inheritance status. Aliens could not participate in local or general elections, be elected to local, municipal, communal or provincial assemblies or sit in the Chamber of Representatives.

246. In reply to other questions, the representative said that Moroccan men and women could join the party or trade union organization of their choice. A husband's consent to the passport application and travel of his wife was required. Equality between men and women applied to the right to participate in elections either as a voter or as a candidate. Women were currently members of communal and provincial assemblies but although a number of them had stood for Parliament none had been elected. Women were employed in public administration, the universities and local authorities, and the 1973 Act on the employment of women and minors stipulated that women must receive the same pay as men for the same work. Women could not serve in the police force or in the auxiliary forces and could not act as a representative of authority but could enlist in the army. They were not liable for military service, but, like men, they were obligated to do two years of civil service. Women working in the public or the private sector enjoyed special advantages linked with their female status. Foreign associations, banks and companies enjoyed the same rights as their Moroccan counterparts. The Ministry of Justice employed a counsellor to advise on matters of personal status and inheritance rights concerning Jews. The Mudawwana stipulated that there could be no right of inheritance between Muslims and non-believers.

Right to life

247. With reference to that issue, members of the Committee wished to know whether any consideration was being given to reducing the number of crimes carrying the death penalty or to the abolition of the death penalty; what the rules and regulations were governing the use of firearms by the police and security forces and whether there had been any violations of such rules and regulations; whether independent and impartial machinery existed to effectively investigate such violations; what disciplinary and other measures had been taken against those found guilty; and what measures had been taken to reduce the rate of infant mortality.

248. In addition, members of the Committee wished to know what crimes were considered as "offences against State security" and how many persons had been sentenced to death for such crimes; whether criminal laws could be applied retroactively, particularly those involving the death penalty; how many detainees were currently under sentence of death and what had been the nature of their crimes; what was meant by "crimes against the well-being of the Nation" and how many persons had been sentenced for such crimes; what measures had been taken by the authorities to investigate the deaths of inmates of Tazmamart prison and deaths during detention or police custody more generally; under what circumstances and what rules were persons charged with offences against the security or well-being of the State held in detention centres; whether persons had been condemned to death in absentia, without legal assistance or the benefit of witnesses; what means were available to families who wished to trace disappeared relatives or arrange for a detained relative to be brought immediately before a judge; whether any government body was empowered to investigate allegations of disappearances and, if so, what had been the results of its investigations; whether any officials suspected of involvement in disappearances had been prosecuted and convicted; whether, in respect of the disappearance of the Oufkir family, those responsible in the

case had been identified and convicted and compensation awarded; whether abortion was permitted in Morocco; and how many victims were claimed by the conflict in Western Sahara.

249. In his reply, the representative said that the death penalty was applied in Morocco to punish only the most odious and abhorrent crimes for which the courts found no mitigating circumstances. It was based on the lex talionis, which had a religious origin. Its abolition was not under consideration, but its application was subject to fundamental guarantees: it could not be carried out before it had been appealed against by the accused or the Prosecutor-General and, if the appeal was rejected, a request for pardon was always submitted. In practice, the death penalty was usually suspended or commuted to life imprisonment. There had been no executions in Morocco in the past decade. The royal armed forces, the police and the auxiliary forces never opened fire on crowds without prior warning, which usually consisted of three shots into the air. When they did fire, it was always at the feet, and they did so only when forced. Anyone violating the regulations was subject to disciplinary action. Educational and vaccination campaigns for mothers and children were being carried out in cooperation with WHO and UNICEF.

250. Responding to other questions, the representatives said that the only crimes carrying the death penalty were those listed in the Criminal Code. The expression “crimes against the well-being of the Nation” in the dahir of 29 October 1959 had to be seen in the context of the circumstances which had given rise to its promulgation. At that time, traders had mixed toxic mineral oils and detergents with vegetable oil and had put the resulting product on the market. As a consequence, 26,000 people had been paralysed and the catastrophe had been considered a national disaster. Since 1959, there had been no prosecutions under that dahir because no similar catastrophe had occurred. An ad hoc committee presided over by the Minister of Justice or his deputy and consisting of a number of senior officials met at least seven times a year to consider pardons, and its comments were submitted to the King. On the question of disappearances in the Sahara, there was considerable confusion over names, and the authorities frequently found themselves working on the basis of incorrect information. The fate of General Oufkir’s family was an internal affair to which an appropriate solution would be found by the King. The question of the Oufkir family was not a matter in which international organizations or the State itself had been concerned; the lawyer in the case, at that time practising at the Paris Bar, had failed to respect the procedure laid down in the dahir which required him to contact a Moroccan lawyer and to submit a request through the Ministry of Justice, and his action had therefore been declared inadmissible. Civil trials in Morocco were conducted in accordance with the Code of Civil Procedure and criminal trials in accordance with the Code of Criminal Procedure. Abortion was prohibited in Morocco and subject to penalties under the Criminal Code. That Code also stated, however, that no penalty would be imposed if the health of the mother was such as to justify abortion. He noted that there were no political crimes in Morocco, although there were offences of opinion under the dahir of 15 November 1958. A crime against the external or internal security of the State was not a political offence but an ordinary offence under the jurisdiction of the ordinary courts.

251. With respect to places of detention, the representative explained that the prison administration was organized along hierarchical lines, with a central prison, several rural open-air prisons and some civil prisons. None of the detention centres to which members of the Committee had referred was known to him. There was no Tazmamart prison in the list of places of detention under the prison administration. With regard to deaths during detention, he said that in some cases of death during

detention, the coroner had found, following a post-mortem examination, that death had resulted from violence leading to complications such as kidney failure. It had not been possible to discover who was responsible for those abuses, but one case of assault and battery involving unintentional homicide was currently before the court in Casablanca. A number of officers had been sentenced to varying periods of imprisonment for offences including rape, forcible entry into the home and arbitrary detention.

Treatment of prisoners and other detainees

252. In connection with that issue, members of the Committee wished to know whether there had been any complaints about torture or other mistreatment of prisoners or other detainees during the reporting period or any prosecutions or convictions under article 231 of the Criminal Code; whether information could be provided regarding prison regimes and conditions of detention in Morocco; and whether the provisions of the dahir of 11 April 1915 and the dahir of 26 June 1930 were compatible with the United Nations Standard Minimum Rules for the Treatment of Prisoners.

253. In addition, members of the Committee wished to know which civil rights could be lost under article 225 of the Criminal Code, and for how long; whether the King's Prosecutor and the examining magistrate could receive complaints from prisoners during visits to detention centres; whether an individual could have recourse to the King's Prosecutor or the supervisory commissions on behalf of a relative who was in prison; which authority controlled the Tazmamart detention centre; what was the general state of health among the prisoners; whether prisoners were always released as soon as their sentences were over; whether the provision in article 399 of the Moroccan Criminal Code laying down the death penalty for anyone guilty of "torture or barbarous acts" also applied to officials; whether the Government intended to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; what the rules were governing interrogation procedures; what steps the Government had taken to investigate allegations of torture; whether it had adopted any measures to prevent torture in the future; whether a suspect's lawyer could be present during interrogation; whether the police in Morocco received any human rights training; whether a confession made by a suspect while in police custody would be sufficient to secure conviction without further proof; what was the maximum period of pre-trial detention; and whether article 231 of the Code of Criminal Procedure implied that the court could admit police reports, and was even required to do so.

254. Replying to the questions on articles 231 and 225 of the Moroccan Criminal Code, the representative said that no examining magistrate in Morocco had ever been known to use violence during the interrogation of an accused person. Moroccan positive law ruled out any form of violence or torture, and any public official, superintendent or officer of the police who resorted to such methods did so on his own responsibility and would have to answer for it in court. Any confessions obtained by such methods were invalid. Torture and inhuman or degrading treatment on a systematic basis were unknown in Moroccan prisons. There were occasional riots or attacks on prison officers but, even then, the prison authorities never used force systematically. Complaints of ill-treatment made by prisoners were submitted to the administrative authorities and, in serious cases, to the Ministry of Justice, and a number of officials had been convicted of such offences. The treatment of prisoners had become much more humane, and ill-treatment as a disciplinary measure had been abandoned. The Ministry of Justice was preparing a new law governing conditions of

detention, which would be fully consistent with the United Nations Standard Minimum Rules for the Treatment of Prisoners. Following the establishment of administrative tribunals, the State itself could now be called to account for its actions, at least under a procedure for financial compensation.

255. The prison population was growing rapidly owing to the rising crime rate, which was partly due to the population explosion and the country's economic problems. The number of prison establishments was inadequate, and their total capacity was only 7,000 for a prison population of 37,000. The insanitary prison at Laalou had now been closed and replaced by a more open and spacious prison. All the jails built by the Protectorate authorities had been closed, together with insanitary establishments. In its present economic circumstances, Morocco was not in a position to set about constructing enough prisons to house the prison population in accordance with the Standard Minimum Rules. With regard to a secret detention centre in Tazmamart, the representative said that since some international human rights organizations had reported the existence of such a centre, his delegation would ask the Government about the matter. Any detained person was released once he had served his sentence. The serving of sentences was monitored by means of a central file at the prison administration headquarters in Rabat and a register kept at each prison. The "barbarous acts" referred to in article 399 of the Criminal Code was a term borrowed from French law that had become obsolete. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment would probably be ratified in due course since it was in no way contrary to the country's Constitution or traditions. Loss of civil rights was very rarely applied as a punishment in Morocco.

256. With regard to judicial inquiries, the representative explained that the Code of Criminal Procedure provided for two phases: the preliminary inquiry, conducted by officers of the judicial police, during which the suspect was held in police custody and not permitted to contact a lawyer, and the pre-trial proceedings, conducted by an examining magistrate, at which time lawyers could be present during questioning. When the accused was questioned on his first appearance, he must be asked whether he was ready to answer questions put to him or not; otherwise the proceedings would be null and void. When the accused person was questioned for the second time the presence of a lawyer was compulsory, and if he did not choose one himself the examining magistrate appointed one on his behalf. A criminal court was required to base its findings on the proceedings at the hearing. Police reports were only a guide, and the courts had to weigh all the evidence in relation to the charges against the accused. Records or reports drawn up by officers of the judicial police and members of the gendarmerie on minor offences were accepted as authentic in the absence of proof to the contrary. Incommunicado detention did not exist in Morocco, but the family of a detained person was not informed since the family might try to get rid of evidence if it knew of his detention. The normal duration of police custody under the Code of Criminal Procedure was 48 hours, the maximum being 72 hours. The King's Prosecutor ensured that those time-limits were observed, and police custody could not be extended to 72 hours without his written agreement. At the police college in Kenitra, which trained officers for the judicial police, the training lasted two to three years and covered public law, private law and criminal law. The subjects taught included the role of international organizations, humanitarian law and human rights. Another college, for police commissioners, provided more thorough instruction in criminal law, and specifically in humanitarian law and human rights.

257. With reference to remand in custody, the representative explained that a distinction was made

between two types of offence, those incurring penalties of less than two years' imprisonment and the rest. In the first case, the person could not be held for more than a month from the time of his first appearance before a magistrate unless he was a previous offender. In other cases, the maximum duration of remand in custody was four months. That period could only be prolonged by an order of the examining magistrate giving the specific reasons for the extension, which could not be for more than an additional four months. The prisoner could appeal against the decision to remand him or keep him in custody. He could in all cases ask to be released on bail and appeal against all adverse decisions.

CCPR A/50/40 (1995)

99. The Committee considered the third periodic report of Morocco (CCPR/C/76/Add.3 and Add.4) at its 1364th to 1366th meetings, on 20 and 21 October 1994, and adopted 11/ the following comments:

1. Introduction

100. The Committee welcomes the opportunity to resume its dialogue with the State party and thanks the Government for its report (CCPR/C/76/Add.3 and Add.4) and core document (HRI/CORE/1/Add.23). The Committee regrets, however, that although the report contained detailed information on laws and regulations giving effect to the Covenant, it did not include sufficient information about the implementation of the Covenant in practice or about factors and difficulties affecting the application of the Covenant.

101. The delegation provided valuable additional information on a number of issues not covered in the report which enabled the Committee to obtain a better understanding of the human rights situation in Morocco. This enhanced the dialogue between the delegation and the Committee.

2. Factors and difficulties affecting the implementation of the Covenant

102. The Committee recognizes that the State party has embarked on a wide-ranging process of amending its domestic legislation to bring it into line with the Covenant. The process has not yet been completed and steps remain to be taken to harmonize the Constitution with the Covenant and develop democratic institutions and human rights machinery for better implementation of the Covenant. The remnants of certain traditions and customs constitute an obstacle to the effective implementation of the Covenant, particularly with regard to equality between men and women.

3. Positive aspects

103. The Committee recognizes that the attitude of the Government has recently changed towards a greater openness in its handling of human rights issues, including its reporting obligations under the Covenant. In the latter regard, some frank oral answers given during the consideration of the report to questions raised by members regarding issues such as disappearances, the existence of the Tazmamart detention centre, the whereabouts of persons previously detained therein and the fate of the Oufkir family were appreciated.

104. The Committee welcomes the numerous measures taken during the period under review to improve democracy and institute a legal environment more favourable to the promotion and protection of human rights. The Committee notes with satisfaction the promulgation in 1992 of an

11/ At its 1383rd meeting (fifty-second session), on 3 November 1994

amended Constitution and the amnesty of a number of political prisoners. Compensation is being paid to certain persons illegally detained. The Committee was also glad to learn of the commutation of death sentences to life imprisonment sentences, the establishment of the Constitutional Council and the Economic and Social Council, the holding on 27 September 1993 of parliamentary elections and the holding of a national symposium on problems affecting the news, information and communication services to recommend modifications in the legislation to, inter alia, bring it into line with international human rights standards, which constitute steps to consolidate the rule of law. Some progress has been made in the promotion of the status of women and women have been elected to Parliament for the first time. The Committee also welcomes the information that measures have been taken to teach the Covenant and other international human rights instruments to members of the judiciary and the police. The freedom now given to non-governmental organizations to be active in the country is also a matter of appreciation.

4. Main subjects of concern

105. The Committee notes that the Constitution does not contain specific provisions as to the relationship between international treaties and domestic law. Accordingly, there is a need to better define the place of the Covenant within the Moroccan legal system to ensure that domestic law is applied in conformity with the provisions of the Covenant.

106. The Committee is concerned about Morocco's role with regard to the persistent problems regarding self-determination in Western Sahara.

107. The Committee regrets that, although some improvement has been achieved as regards the status of women, the State party has not yet embarked on all the necessary reforms to combat the difficulties still impeding equality between men and women. The Constitution provides for equality only in the area of political rights, and the situation of women in both public and private law continues to be de jure or de facto the object of discrimination as regards the right to leave the country, freedom to pursue commercial activities, personal status, marriage, divorce, inheritance rights, transmission of nationality, education, access to work and participation in the conduct of public affairs.

108. The Committee is concerned that the categories of crimes punishable by the death penalty include crimes in respect of which, by reference to article 6 of the Covenant, the death penalty should not be imposed.

109. Despite the amnesty of political prisoners and the destruction of certain unregistered places of detention, the Committee continues to deplore that a large number of cases of summary and arbitrary executions, enforced or involuntary disappearances, torture and arbitrary or unlawful detention committed by members of the army, including cases concerning persons previously detained in Tazmamart, have not yet been investigated. Furthermore, the perpetrators of such acts were neither brought to justice nor punished. The Committee deplores that measures of clemency adopted during the period under review were generally not extended to Western Sahara.

110. The Committee is concerned that guarantees contained in articles 9, 10 and 14 of the Covenant are not complied with. Despite some efforts to build new prisons, the Committee remains concerned

about conditions of detention, particularly overcrowding of prisons, which frequently lead to malnutrition, diseases and deaths of detainees. Concern is also expressed about the long period of detention without charge under article 154 of the Code of Criminal Procedure, which appears to be incompatible with article 9 of the Covenant. The Committee is also concerned about the obstacles to the independence and impartiality of the judiciary.

111. The Committee is concerned about the full implementation of the right to freedom of movement, including in particular the restrictions still imposed on members of the Oufkir family.

112. The Committee notes with regret the shortcomings in the observance of article 18 of the Covenant, in particular the restrictions affecting the Baha'i right to profess and practise their belief and limitations on inter-religious marriage. Concern is also expressed at the impediment placed upon the freedom to change one's religion.

113. The Committee expresses concern about the extent of the limitations on the freedom of expression, assembly and association under the Dahir of 1973 and especially limitations on the right to criticize the Government. Governmental control of the media as well as the imprisonment of some journalists for having expressed criticisms give rise to serious concern.

114. The Committee is concerned that the electoral system, under which two thirds of members of the House of Representatives are elected by direct universal suffrage and one third by an electoral college, may raise issues as to the requirements, under article 25 (b) of the Covenant, that elections be held by "universal and equal suffrage". The wide scope of executive power in the hands of the King has implications for the effective independence of the judiciary and the democratic processes of Parliament.

5. Suggestions and recommendations

115. The Committee recommends that the State party consolidate the process of constitutional revision in order to ensure that all the requirements of the Covenant are reflected in the Constitution, thereby bringing the Constitution into true compliance with the Covenant and ensuring that the limitations imposed on the exercise of rights and freedoms under national legislation do not go beyond those permitted under the Covenant.

116. The Committee hopes that the Government of Morocco will give serious consideration to becoming a party to the First Optional Protocol.

117. The Committee further recommends that Morocco study measures to limit the categories of crimes punishable by the death penalty to the most serious offences, with a view to its eventual abolition.

118. The Committee emphasizes the need for the Government to prevent and eliminate discriminatory attitudes and prejudices towards women and to revise domestic legislation to bring it into conformity with articles 2, 3 and 23 of the Covenant, taking into account the recommendations contained in the Committee's general comments Nos. 4, 18 and 19. It recalls in that regard that, although several reservations were made by Morocco in acceding to the Convention

on the Elimination of All Forms of Discrimination against Women, Morocco remains bound to the fullest extent by the provisions of articles 2, 3, 23 and 26 of the Covenant.

119. The Committee recommends that the Moroccan authorities ensure that summary and arbitrary executions, enforced or involuntary disappearances, torture, ill-treatment and illegal or secret detention do not occur and that any such cases be investigated in order to bring before the courts those suspected of having committed or participated in such crimes, to punish them if found guilty, and to provide compensation to victims. The Committee expresses the wish that any measures of clemency be granted on a non-discriminatory basis in conformity with articles 2 and 26 of the Covenant. It also recommends that measures of administrative detention and incommunicado detention be restricted to very limited and exceptional cases, and that the guarantees concerning pre-trial detention provided for in article 9, paragraph 3, of the Covenant be fully implemented. Further measures should also be taken to improve detention conditions and, particularly, to ensure that the United Nations Standard Minimum Rules for the Treatment of Prisoners are complied with and the relevant regulations and directives known and accessible to prisoners. Proposed measures to strengthen the presumption of innocence should be implemented as soon as possible.

120. The Committee emphasizes the need to take further measures to guarantee the freedom of religion and to eliminate discrimination on religious grounds. It suggests in this connection that the State party take into account the recommendations contained in the general comment on article 18 of the Covenant.

121. The Committee recommends that restrictions imposed on the rights to freedom of expression, assembly and association under the Dahir of 1973 be modified and brought into line with those permitted under the Covenant to ensure their application in conformity with the Covenant on a non-arbitrary basis.

122. The Committee recommends that the authorities ensure that the third periodic report of Morocco and the comments of the Committee are disseminated as widely as possible in order to encourage the involvement of all sectors concerned in the improvement of human rights.

CCPR A/55/40 (2000)

84. The Committee considered the fourth periodic report of Morocco (CCPR/C/115/Add.1) at its 1788th, 1789th and 1790th meetings (CCPR/C/SR.1788-1790), held on 20 and 21 October 1999, and adopted the following concluding observations at its 1802nd meeting, held on 29 October 1999.

1. Introduction

85. The Committee welcomes the fourth periodic report of Morocco, which was submitted in time. While the Committee appreciates the information provided on the new Constitution and other legislation adopted since the examination of Morocco's third periodic report, it notes that little information was provided on the actual application of these laws through the granting of remedies, or on the reality of the human rights situation.

2. Positive aspects

86. The Committee welcomes the adoption by the State party of the 1996 Constitution, providing, inter alia, for the protection of certain Covenant rights, and the steps taken towards democratization since the examination of Morocco's third report in 1994. It welcomes the recognition by the State party of the need for reforms to implement Covenant rights fully and the recent statements at the highest level to this effect. It encourages Morocco to accelerate the ongoing process of reviewing its legislation and enacting laws to give effect to the provisions of the Covenant.

87. The Committee welcomes the commutation of death sentences which has applied since 1994, and the new autopsy procedures in cases of death in custody. It also welcomes the release of many prisoners, the granting of passports to some government opponents and the return from exile of others, and the provision of medical examinations for detainees.

88. The Committee notes with satisfaction the establishment of a Ministry of Human Rights, a Consultative Council on Human Rights, which has reported on many cases of disappearance, and a Commission of Arbitration to provide compensation to victims of arbitrary detention and to the families of disappeared persons. The establishment of a National Observatory for the Rights of the Child and a National Plan of Action for the Integration of Women is particularly welcome.

89. The Committee welcomes the fact that the State party has entered into an agreement with the Office of the United Nations High Commissioner for Human Rights to establish a centre for documentation and education in human rights to provide for human rights training in Morocco. It also welcomes the action taken by the State party in regard to human rights training for the legal profession and the media.

3. Principal subjects of concern and recommendations

90. The Committee observes that while it is stated that the Covenant is part of domestic law, the effect of this on many laws which appear to be incompatible with the Covenant is unclear. The

Committee is also concerned that there is no agency fully independent of Government with general responsibility for monitoring the implementation of human rights (art. 2).

91. The Committee encourages the State party to ratify the Optional Protocol.

92. The Committee remains concerned about the very slow pace of the preparations towards a referendum in Western Sahara on the question of self-determination, and at the lack of information on the implementation of human rights in that region.

93. The State party should move expeditiously and cooperate fully in the completion of the necessary preparations for the referendum (arts. 1 and 2).

94. The Committee reiterates its concern that many cases of disappeared persons in Morocco have not yet been resolved by or referred to the Consultative Council on Human Rights, and that according to the delegation it is not yet opportune to investigate the responsibility for those disappearances.

95. It urges the State party to intensify investigations into the whereabouts of all persons reportedly missing, to release any such persons who may still be held in detention, to provide lists of prisoners of war to independent observers, to inform families about the location of the graves of disappeared persons known to be dead, to prosecute the persons responsible for the disappearances or deaths, and to provide compensation to victims or their families where rights have been violated.

96. The Committee notes that Moroccan law does not specify or limit the derogations on rights which are permitted in time of public emergency and does not ensure compliance with article 4 of the Covenant.

97. The State party should ensure that its law and practice are in full compliance with its obligations under article 4.

98. The Committee regrets the lack of specific information in the report about the de facto situation of women in Morocco and observes that the high rate of female illiteracy reported by the delegation underlines the lack of equal opportunity for women in all aspects of society. It continues to be deeply concerned about the extent of discrimination against Moroccan women in education, in employment, in public life and in criminal and civil laws, including laws dealing with inheritance, marriage, divorce and family relations, including the questions of polygamy, repudiation of marriage, grounds for divorce, age of marriage and restrictions on marriage by Muslim women to non-Muslims. It notes with concern that the constitutional guarantees of women's equality extend only to political rights.

99. The State party is urged to intensify its efforts to overcome illiteracy, lack of education and all forms of discrimination against women, to implement fully the guarantee of equality contained in the Covenant (and in particular articles 2, paragraph 1, 3, 23, 25 and 26) and to ensure the equal enjoyment by women of all rights and freedoms.

100. The Committee notes with concern that the strict prohibition on abortion, even in cases of

rape or incest, and the stigmatization of women who give birth to children outside marriage results in clandestine, unsafe abortions which contribute to a high rate of maternal mortality.

101. The State party should ensure that women have full and equal access to family planning services and to contraception and that criminal sanctions are not applied in such a way as to increase the risk to life and health of women.

102. The Committee notes with concern that there are no special programmes, legal sanctions or protective measures to counter violence and sexual abuse of women, including marital rape, and that there are aspects of the criminal law (such as the crime of honour defence) which fail to provide equal protection of women's rights under articles 7 and 9 of the Covenant.

103. Legal and protective measures should be adopted to guarantee women's rights to personal security.

104. The Committee reiterates its concern at the number of offences which remain subject to the death penalty.

105. The State party should bring its laws into line with its current policy by abolishing the death penalty altogether and, in any event, should limit the application of the death penalty to the most serious offences as required by article 6 of the Covenant. The Committee also urges the State party to fulfil its undertaking to release a list of all persons under sentence of death.

106. The Committee is concerned at the number of allegations of torture and ill-treatment of detainees by police officials, and that these have been dealt with, if at all, only by disciplinary action and not by the imposition of criminal sanctions on those responsible for such violations.

107. In fulfilment of its obligations under article 7 of the Covenant, the State party should adopt firm measures to eradicate the practice of torture and enact legislation to make torture a criminal offence and to exclude the admissibility in evidence of any confession or statement obtained by torture or duress; appropriate mechanisms should be established for independent monitoring of police detention centres and penitentiaries; all reports of torture and ill-treatment must be investigated, the persons responsible should be prosecuted, and victims of torture must be granted compensation.

108. The Committee notes with concern that the maximum length of detention of a suspect before being brought before a judge may in some cases be as long as 96 hours, that the Crown Prosecutor General has power to extend this period, and that persons detained may not have access to counsel during this period. The Committee is also concerned about the length of pre-trial detention.

109. The State party should ensure that its laws and procedures comply with the guarantees of article 9.

110. The Committee is concerned that the fair trial guarantees of article 14, such as the presumption of innocence and the right to appeal in criminal cases, are not fully reflected in the Constitution or in the Code of Criminal Procedure. It is also concerned that there is no review by

higher courts of decisions handed down by special courts like the Permanent Court of the Royal Armed Forces and the Special Court of Justice.

111. The State party should adopt appropriate legislation so as to guarantee the presumption of innocence, as required under article 14, paragraph 2, of the Covenant, and ensure a right of appeal in all criminal cases in keeping with article 14, paragraph 5, of the Covenant.

112. The Committee regrets the continued existence of legislation allowing the court to order imprisonment for debt arising from a contractual obligation, despite a decision by the Administrative Tribunal of Rabat holding that imprisonment may not be imposed in a particular case of this kind because it violates Morocco's obligations under the Covenant.

113. Sections 673 et seq. of the Code of Criminal Procedure should be amended so as to comply with article 11 of the Covenant.

114. The Committee regrets the lack of specific information in the report concerning the law and practice in relation to freedom of movement within the territory and the right to enter and to leave the territory of the State party. In particular, it is not clear under which laws exile may be imposed or withdrawn or how the right to obtain a passport and, where applicable, an exit visa can be enforced by individuals.

115. The State party should ensure that its laws are in full conformity with article 12 of the Covenant, that the laws are transparent and that effective remedies are available to enforce the rights protected by article 12.

116. The Committee is concerned that the impartiality of the judiciary is not fully ensured in accordance with article 14, paragraph 1. The State party should take steps to guarantee the independence and impartiality of the judiciary, and in particular to ensure that there are effective and independent disciplinary mechanisms.

117. The Committee continues to be concerned that freedom of religion and belief is not fully guaranteed. In this regard it observes that the Covenant requires religious freedom to be respected in regard to persons of all religious convictions and not restricted to monotheistic religions, and that the right to change religion should not be restricted, directly or indirectly.

118. The State party should take measures to ensure respect for freedom of religion and belief, and ensure that its laws and policies fully comply with article 18 of the Covenant.

119. The Committee continues to be concerned that the Moroccan Press Code includes provisions (e.g. arts. 42, 64, 77) which severely restrict freedom of expression by authorizing seizure of publications and by imposing penalties for broadly defined offences (such as publishing inaccurate information or undermining the political or religious establishment). It is deeply concerned that 44 persons have been imprisoned for offences under these laws. In addition, the Committee is particularly concerned that persons expressing political views opposing the Government or calling for a republican form of government have been sentenced to imprisonment under article 179 of the Penal Code for the offence of insulting members of the royal family. These laws and their

application appear to exceed the limits permitted by article 19, paragraph 3.

120. The State party should amend or repeal the dahir of 1973 and bring all its criminal and civil laws into full compliance with article 19 of the Covenant and release persons whose conviction and imprisonment are incompatible with those provisions.

121. The Committee is concerned at the breadth of the requirement of notification for assemblies and that the requirement of a receipt of notification of an assembly is often abused, resulting in de facto limits of the right of assembly, ensured in article 21 of the Covenant.

122. The requirement of notification should be restricted to outdoor assemblies and procedures adopted to ensure the issue of a receipt in all cases.

4. Dissemination of information about the Covenant (art. 2)

123. The Committee sets the date for the submission of Morocco's fifth periodic report as 31 October 2003. That report should be prepared in accordance with the Committee's revised guidelines and should give particular attention to the situation of women, the problem of the disappeared and to the other issues raised by the Committee in these concluding observations. The Committee urges the State party to make available to the public as well as to the legislative and administrative authorities the text of these concluding observations in multiple languages. It requests that the next periodic report be widely disseminated among the public, including civil society and non-governmental organisations operating in Morocco.