



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

Distr.: General
9 November 2011

Original: English

Committee against Torture
Forty-seventh session

Summary record of the first part (public)* of the 1022nd meeting

Held at the Palais Wilson, Geneva, on Tuesday, 1 November 2011, at 10 a.m.

Chairperson: Mr. Grossman

Contents

Consideration of reports submitted by States parties under article 19 of the Convention

Fourth periodic report of Morocco

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.1022/Add.1.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of this document* to the Editing Unit, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 19 of the Convention

Fourth periodic report of Morocco (CAT/C/MAR/4; CAT/C/MAR/Q/4 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Morocco took places at the Committee table.*

2. **Mr. El Haiba** (Morocco) said that Morocco had voluntarily developed and implemented constitutional, legislative and institutional reforms to adhere to human rights-related international instruments, and, in light of the progress made in that regard, Morocco was now able to lift its prior reservations to certain articles from a number of international instruments. The progress achieved had also made it possible for Morocco to establish the Equity and Reconciliation Commission to investigate and make reparations for violations of human rights, and develop recommendations for reform in order to ensure that similar actions did not occur again. As a result of those recommendations, and in addition to the draft Criminal Code, Act No. 43-04, which criminalized torture, had entered into force in 2004.

3. The key reforms that had been implemented as a result of the recommendations of the Equity and Reconciliation Commission included the adoption of a national plan for democracy and human rights to ensure coordination between, and participation of, all sectors; the development of an action plan known as the citizens' platform for the promotion of human rights designed to coordinate efforts to promote human rights through education, training and awareness-raising activities; and the development of a framework for the protection and promotion of human rights through the establishment of two national institutions, namely the National Human Rights Council and the Mediator Institute. The mandate of the National Human Rights Council, which was active at both national and regional level, was to investigate all cases of violations of human rights. As part of its investigations, it was also authorized to visit places of detention and prisons, institutions for persons suffering from mental disabilities and holding centres for illegal aliens. The Inter-Ministerial Delegation on Human Rights had also been established in order to coordinate the development and implementation of policies for the defence, protection and promotion of human rights and international humanitarian law.

4. In addition, a new Constitution had been adopted, incorporating human rights and freedoms at the heart of the document. The key characteristics included the constitutionalization of all universally recognized human rights, including mechanisms to ensure their protection; the affirmation of equality between men and women, particularly with regard to their political, economic, social, cultural and environmental rights; and the criminalization of severe and systematic violations of human rights, such as torture, enforced disappearance, arbitrary detention, and all forms of discrimination.

5. The criminalization of all severe and systematic human rights violations, including torture and ill-treatment, in the new Constitution was an important step forward for Morocco, but continued efforts were required to harmonize national legislation to reflect both that constitutional provision and the provisions of international human rights instruments, and he wished to reiterate his Government's strong commitment to the fight against torture and ill-treatment and to a constructive, interactive and ongoing dialogue with the Committee.

6. **Mr. Gaye** (First Country Rapporteur) welcomed the efforts made by Morocco to implement the provisions of the Convention and to consolidate the rule of law, in particular with regard to the presumption of innocence, improvements to the approaches to custody and medical examination of detainees and the increased control exercised over the police

and places of detention. He also welcomed the lifting of reservations to article 22 of the Convention. Although significant progress had been made by Morocco, the key issues that remained were the practical implementation and enforcement of the provisions of the Convention and a number of conceptual issues.

7. With regard to the scope of application of the notion of torture contained in article 1 of the Convention, although the definition allowed for a broad application, certain distortions had been noted in its application at the domestic level. According to the written replies provided by the State party to the Committee's list of issues, the draft Criminal Code would bring the definition of torture used by Morocco into line with that contained in the Convention. However, article 258 of the draft Criminal Code was unclear, as it referred both to the victim of torture and to persons who instigated torture or did not prevent it. Further clarification was needed from the delegation on that point.

8. Although the Committee had requested specific examples of cases where the provisions of article 231, paragraphs 1 and 8, of the Criminal Code had been applied, the response from Morocco had not included any cases where the act had been referred to as torture, rather than recourse to violence or assault and battery. There appeared to be no cases where the word torture was used for criminalization and prosecution purposes.

9. With regard to the statute of limitations for torture, he wished to receive an update on the status of the draft Criminal Code, particularly with regard to the need to remove the statute of limitations for crimes of torture, as stated in the Convention.

10. On article 2 of the Convention, in particular with regard to the information that Moroccan law expressly stated that neither exceptional circumstances nor the order of a superior could be invoked to justify acts of torture, he requested the State party to provide the text of that provision as it appeared in the relevant legislation.

11. With regard to access to a lawyer while in custody, he understood that the lawyers involved were obliged to obtain permission from the Prosecutor General in order to communicate with their client and he requested the State party to explain why. In addition, he understood that court-appointed lawyers were available only for cases involving minors or where the possible sentence for the crime exceeded 5 years, and he questioned why that provision was not applicable in all cases. He also requested further information on the mechanism in place in Morocco to designate a lawyer without consultation for persons who could not afford legal fees.

12. In respect of custody for persons accused of acts of terrorism, he understood that the current period allowed was 12 days. However, the State party had not provided a response to the question contained in the list of issues prepared by the Committee regarding limiting the period of custody and access to a lawyer for such persons. In addition, he expressed concern at the broad wording of the definition of terrorism contained in the written replies of the State party, as it made it possible to charge people with committing acts of terrorism for a wide variety of crimes, which did not necessarily fall within the scope of terrorism. Moreover, the Committee had received information from a number of NGOs on the torture of persons accused of acts of terrorism. Although the written replies of the State party provided information on the sentences given to those persons, it had not been explained whether there had been any investigation into the alleged torture. There had also been reports that persons who supported the independence of the Western Sahara region had been subjected to arbitrary arrest and subsequently tortured. The written replies of the State party did not contain any response in that regard.

13. With regard to the State party's response to the Committee's question on marital rape, he expressed concern that persons who married the victim were exonerated of the crime of marital rape, and he stressed that marital rape was a broader concept. A reply was still required from Morocco on that issue.

14. With regard to article 3 of the Convention, in particular concerning Morocco's response on the containment of migration to Europe, he acknowledged that irregular migration and human trafficking were important issues that needed to be addressed, but expressed concern that a number of cases of migration involved asylum-seekers, who might have been in need of international protection, but ended up being involved in irregular migration. The lack of a legal framework to assist asylum-seekers and refugees could lead to confusion regarding the status of different migrants. The State party should be in a position to identify asylum-seekers, who should be separated from those involved in forms of irregular migration. In addition, the Committee had received many reports of poor treatment experienced by migrants and asylum-seekers, particularly those from Sub-Saharan Africa, but Morocco had not responded to those allegations. Moreover, no response had been received to the request by the Committee for information on any investigation into the reports of excessive force being used against migrants in Ceuta and Melilla in 2005.

15. He also requested further information on whether appeals against decisions to expel migrants from the State party's territory were permitted and, if so, whether the decision was postponed during the appeal process. Examples of specific cases of such appeals would be useful, whether the decision concerned had been overturned or upheld.

16. It appeared that the State party put the burden of proof onto illegal aliens to demonstrate that their life or liberty would be at risk or that they would be subjected to inhuman, cruel or degrading treatment if they were deported to a given country. It was, rather, incumbent on the State party to make the appropriate enquiries as to whether deportation to the destination country exposed the alien to the risk of such treatment. In that context, he wished to know whether article 29 of Act No. 02-03 on the entry of aliens into and their residence in Morocco, and on illegal migration, had been applied in practice.

17. Turning to the cases of three terrorism suspects allegedly held in secret places of detention and subsequently extradited illegally to third countries, in flagrant violation of the principles of non-refoulement, he noted that the State party had claimed that internal investigations had failed to find any proof of their detention or extradition. He asked for more information on the nature of the investigations and who had carried them out.

18. He deplored the decision by the State party to deport Alexey Kalinichenko to the Russian Federation despite a request from the Committee for interim measures of protection. Claims by the State party that the Committee had been late in making the request could be disproved by examining the dates of the correspondence between the State party and the Committee. In the case of Djamel Ktiti, who had lodged a complaint before the Committee with regard to his possible extradition to Algeria, the Committee had also requested that the process of extradition be suspended until it had reached a conclusion on the case. He would like to know whether Mr. Ktiti had in fact been extradited, as there were conflicting reports on the matter.

19. **The Chairperson**, speaking as Alternate Country Rapporteur, welcomed decisions by the State party to lift its reservations to articles 20 and 22 of the Convention, and to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He said that the Committee took note of several positive developments, including the adoption of a new Constitution, in which equality between men and women was affirmed and violations of human rights were criminalized.

20. He asked the delegation of the State party to comment on concerns expressed in Amnesty International's 2010 annual report regarding irregularities in penalties imposed on certain prisoners, particular those considered to be a security threat.

21. Turning to the training of prison staff and other personnel, he said that he would like to know whether such training was provided for all relevant personnel or only certain ranks,

and whether medical staff also received training. He asked whether training included study of the Istanbul Protocol and whether civil society stakeholders were involved. Were the rights of vulnerable groups, such as women and persons with disabilities, specifically dealt with? He would also like to know what measures had been taken to halt corporal punishment of children.

22. Noting the State party's assertions that it had allowed certain local and international NGOs to visit prisons, he asked what criteria were employed to grant or deny NGOs access to prisons and which NGOs had been denied access and why. With regard to prison inspections by the Public Prosecution Service, he reiterated the Committee's request for detailed information on the number of investigations into ill-treatment that had been launched as a result of such inspections and with what results. He asked the delegation to inform the Committee on the outcome of hearings in 2011 involving six police officers charged with torture. He also wished to know whether a commission of inquiry had been established to investigate alleged cases of rape in prisons that had been reported by Amnesty International.

23. With regard to the Consultative Council for Human Rights, he asked whether its guidebook on visits to detention centres contained information on the Istanbul Protocol and whether the council provided training on the use of the guidebook. Noting inspections that had been made of the headquarters of the National Directorate-General of Intelligence in Temara, including one by a parliamentary committee, which had concluded that it had not been used as a place of detention, he asked whether any of the NGOs or lawyers who had made allegations about detentions there had been included in the inspection teams. He also wished to know how the inspections had been organized and who had participated.

24. It would be helpful to know why the State party, which had provided statistics on deaths in prison, was unable to provide information on the causes of death in many instances and reiterated the Committee's request for information on the death of 13 inmates of Salé prison in 2007.

25. With regard to enforced disappearances, he noted that families of disappeared persons continued to complain of not receiving adequate information from the authorities on their fate and asked what the State party was doing to improve compliance with the Convention in that regard. He would also like to know the results of investigations into claims of inhuman treatment meted out to protesters in the wake of the dismantling of the Gadim Izik camp in 2010. The judge concerned, according to reports before the Committee, had failed to refer victims for medical assessment in spite of evidence that they had been ill-treated. Equally, the Committee wished to know if there had been an investigation of allegations of ill-treatment and torture of students arrested during a protest in 2008. In the same context, the Committee would welcome information on the current status of Bill No. 37.10. He repeated the Committee's request for details of criminal investigations into human rights violations that had arisen from testimony received by the Independent Arbitration Committee, and how many complaints had resulted in prosecutions, convictions and compensation.

26. Turning to issues related to article 14 of the Convention, he noted that the absence of claims for compensation and redress lodged with the National Human Rights Council was in itself a cause for concern. With regard to persistent claims of the use of ill-treatment or torture to extract signed confessions, he noted that the State party had confirmed that such confessions could be used as background material but not as evidence. Surely the presentation of such signed confessions should be abolished. Referring to reports by Amnesty International that hundreds of people had been convicted of involvement in the Casablanca bombings of 2003 on the basis of evidence obtained under torture, he asked whether Moroccan courts did indeed accept such confessions as evidence.

27. He welcomed the moratorium on the death penalty and asked whether any further steps had been taken towards its abolition. He would like to know whether claims by lawyers representing more than 100 prisoners that they were denied access to their clients and to the clients' family members were true and what the State party was doing to improve the allegedly inhuman conditions of detention in Moroccan prisons. He also asked what progress had been made on draft measures to introduce alternative methods of punishment, such as community service.

28. Now that the State party had ratified the Optional Protocol, it would be useful to know what progress had been made on its implementation. Would civil society and NGOs be involved in the establishment of a national preventive mechanism?

29. With regard to the case of Alexey Kalinichenko, he observed that States parties generally respected requests by the Committee for interim measures of protection. Moreover, if it was concluded that extradition of a person could constitute a violation of article 3 of the Convention, the provision of diplomatic assurances by the destination country in no way altered that fact. He asked the delegation to provide more information on what had happened in that case.

30. With regard to refugees, he would like to know what steps were being taken to establish a national asylum framework to deal with persons in need of international protection and whether the State party intended to increase cooperation with the United Nations High Commissioner for Refugees with a view to identifying and assisting persons of concern retained at border crossings. Similarly, he asked whether mechanisms were being set up to identify and assist victims of human trafficking. Did the State party intend to accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness?

31. He would like to know what progress had been made on a bill dealing with violence against women, whether it was planned to introduce specific legislation on violence against women, including criminal and civil liability, and whether marital rape had been criminalized.

32. Lastly, he wished to know whether the Convention was directly applicable in Morocco. If so, could the delegation provide examples of cases in which the Convention had been invoked before the courts?

33. **Mr. Mariño Menéndez**, welcoming the State party's progress in the legal and political spheres towards protecting human rights, including the adoption of a new Constitution, repeated the Committee's request for information on the cases of Mr. Kiti, whom he understood had not yet been extradited to Algeria, and Mr. Kalinichenko, who had been extradited to the Russian Federation despite the Committee having imposed interim measures of protection, as both cases presented difficulties with regard to the State party's interpretation and application of the Convention. He recalled that the prohibition of torture under the Convention was absolute, and that no statement made as a result of torture could be invoked as evidence in any legal proceedings, except against a person accused of torture as evidence that the statement had been made.

34. With regard to Sahrawi activists in pretrial detention at Salé prison, some of whom were to be tried in military courts on charges relating to the events of late 2010 at the Gadim Izik protest camp, he asked why the military courts had jurisdiction. Did it depend on the nature of the alleged offence? Some of the individuals concerned had been in pretrial detention for longer than was acceptable under the Moroccan Code of Criminal Procedure, and he requested more information in that respect.

35. He asked whether illegal entry to Morocco was punishable by immediate deportation, even if a person was seeking protection, which could raise problems under not

only the Convention, but also the 1951 Convention Relating to the Status of Refugees and other instruments that the State party had ratified. He enquired whether Morocco had ratified and applied the African Union Convention Governing the Specific Aspects of Refugee Problems in Africa, which gave a wider definition of “refugee” than the 1951 Convention.

36. He sought further information on the practice of submitting individuals in pretrial detention and convicted prisoners to incommunicado detention. Was it used as a punishment for prisoners? If so, in what circumstances, for what length of time, and with what guarantees for human rights? In the case of pretrial detention, who was responsible for deciding to hold a person incommunicado?

37. He asked whether medical staff responsible for examining detainees, including prisoners, belonged to independent medical bodies or were State officials. Were they bound by independent disciplinary and professional standards? Welcoming the State party’s acceptance of article 20 of the Convention and ratification of the Optional Protocol, he asked whether the Consultative Committee for Human Rights would be designated a visiting body under the Protocol, and sought further information about the composition, appointment and independence of the Consultative Committee.

38. **Ms. Gaer**, referring to the information contained in Annex 1 to document CAT/C/MAR/Q/4/Add.1 concerning measures taken against police officers found guilty of acts that presumably violated the Convention, asked whether the delegation considered the sentences handed down to be adequate punishment for aggravated torture, and requested information on the current circumstances of the perpetrators, particularly Lieutenant-Colonel Omar Brad. Were they still serving sentences, or had they retired or returned to active service? She requested updated information on the case of Mohamed Erouataa, which had been pending in 2008. With regard to suicides in custody, which had increased in 2011, she asked whether the same investigation procedures were followed as for other deaths in custody, and how the independence of investigations was ensured. She sought information on the role of independent medical professionals and non-governmental organizations in that regard, and asked whether any claims had been submitted by relatives of the seven people who had so far committed suicide whilst in custody in 2011.

39. Turning to the issue of violence against women, she sought the delegation’s views on the current legal provision under which a man who had committed rape could escape prosecution by marrying his victim, which often occurred at the request of — or even under pressure from — the victim’s family. From the point of view of the victim, such a situation could constitute mental, if not physical, torture. She asked whether the Government planned to abolish the exculpatory provision in question. She also requested clarification on the current status of the bill on violence against women, when it might be promulgated, and whether legal reforms in that sphere would be limited to the amendments described in the State party’s replies to the list of issues.

40. With regard to the right of victims to compensation, as provided for in article 14 of the Convention, she welcomed the work of the Equity and Reconciliation Commission. Reports indicated that the Commission had paid compensation for disappearances and other abuses committed between 1956 and 1999 to 15,000 victims or their families, and that 12,000 victims of serious human rights violations had benefited from a health insurance scheme. She requested confirmation of those figures, and asked the delegation to address criticisms of the Commission’s work, including, unequal payments, lack of objective criteria for payments, and lack of transparency. She asked whether the Commission had sole competence for identifying who should receive compensation and determining the amount paid, and whether acceptance of compensation by victims implied the forfeiture of any further rights, including the right to bring criminal proceedings against those responsible.

41. The State party made extensive use of pretrial detention — which accounted for 42 per cent of the country's 61,000 detainees — but bail was rarely granted, and she sought the delegation's views in that regard. Did the Government plan to extend the use of bail, or to make prison conditions less onerous for those who had not yet been convicted of an offence?

42. **Ms. Sveaass** enquired about the laws regulating psychiatric and mental health issues in Morocco and whether there were plans to introduce new legislation or update existing laws, as its principal act on the issue dated from 1959 and considerable progress had been made in terms of understanding mental health and the rights of persons deprived of liberty as a result of a psychiatric illness since then. She sought further information on inspection visits carried out to psychiatric units, both within and outside the prison system, to ensure that torture or ill-treatment did not occur, including reporting procedures and findings.

43. Referring to the amendment of article 446 of the Criminal Code described in paragraph 69 of the State party's fourth periodic report, she asked whether doctors and their assistants were obliged to report all acts of violence or mistreatment inflicted on children and women within or outside the family home. Was any distinction drawn between reporting on an adult or a minor, and was consent sought from adults thought to be victims? She enquired about the procedure followed if violence or mistreatment was reported, particularly given that corporal punishment of children was not considered as a criminal offence in Morocco, and whether reports were routinely passed to the police. She also asked about the protection and facilities available for women whose cases were reported, such as shelters, medical treatment, compensation and legal assistance.

44. Lastly, she associated herself with the concerns expressed with regard to the reaction of the authorities to activities and demonstrations at Sahrawi protest camps.

45. **Mr. Bruni** welcomed the information, provided in paragraph 26 of the State party's report, that no orders from a higher authority could be used to justify torture, but asked how the provision was applied in practice and whether any instances had been reported of a subordinate refusing to obey such orders. He requested clarification of the situation regarding the State party's ratification of the Optional Protocol, as he was not aware that any instrument of accession had been deposited with the United Nations secretariat.

46. He enquired whether the training courses and seminars on human rights referred to in paragraphs 87 and 93 of the State party's report had yielded tangible results, such as a reduction in allegations of torture from prisoners. Annexes 2 and 3 to document CAT/C/MAR/Q/4/Add.1 gave figures for many inspection visits to places of detention to monitor conditions. While much had clearly been done in that regard, he asked whether positive results had been achieved from such visits, what the most significant changes had been, and what urgent changes had still to be made. With regard to overcrowding in places of detention, he asked for information on the current situation and a realistic assessment of expected progress as a result of measures being taken.

47. **Ms. Kleopas** echoed the concerns expressed by other Committee members regarding certain deficiencies in the law and practice of the State party that should be corrected in order to ensure compliance with the Convention. Recalling the Committee's view that corporal punishment of children should be prohibited by law as a matter of priority, she drew attention to the fact that the practice seemed to be widespread in Morocco, and urged the Government to take steps to outlaw it, as the Committee on the Rights of the Child had already recommended on two occasions.

48. Turning to the issues of domestic violence and marital rape, she asked whether the proposed new legislation provided for temporary restraining orders or civil protection orders on behalf of victims of domestic violence. She also wished to know whether the authorities would provide shelters for victims. The Committee had been informed that

Moroccan women were reluctant to report cases of rape. When a complaint of rape was filed, the State party was required to ensure that a medical examination was conducted by staff who were trained to detect signs of torture or ill-treatment, in accordance with the procedures laid down in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol). Under the existing legislation, a very high standard of proof was applied. Victims were required to obtain a medical certificate themselves and to provide the names of witnesses to the rape or other ill-treatment.

49. **Mr. Wang Xuexian** said that, according to the Equity and Reconciliation Commission, there had been 89 cases of death in custody, which was a very large number. He asked whether torture or ill-treatment had played a role in any of those deaths and, if so, whether the perpetrators had been punished and the families of the victims duly compensated.

50. **Mr. Hilale** (Morocco) said that his delegation had taken careful note of the Committee's questions. He had been struck by the Committee members' unanimous commendation of the remarkable recent developments in Morocco, including the adoption of a new Constitution, the setting in motion of a series of democratic reforms, and measures to ensure respect for public and private liberties. He assured the Committee of his country's determination to strengthen the rule of law and to abolish torture, which was totally unacceptable under all circumstances.

The public part of the meeting rose at 12.10 p.m.