



International Covenant on Civil and Political Rights

Human Rights Committee

Concluding observations on the sixth periodic report of Morocco *

1. The Committee considered the sixth periodic report of Morocco (CCPR/C/MAR/6) at its 3319th and 3320th meetings (CCPR/C/SR.3319 and 3320), held on 24 and 25 October 2016. At its 3333rd meeting, held on 2 November 2016, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the sixth periodic report of Morocco, albeit seven years late, and the information contained therein. It expresses appreciation for the opportunity to engage in constructive dialogue with the State party's high-level delegation on the measures taken by the State party to implement the provisions of the Covenant. It thanks the State party for its written replies (CCPR/C/MAR/Q/6/Add.1) to the list of issues (CCPR/C/MAR/Q/6), which were supplemented by the delegation's oral replies during the dialogue and the additional information provided in writing.

B. Positive aspects

3. The Committee welcomes the legislative and institutional measures taken by the State party, notably:

(a) Adoption of a new Constitution in 2011, which strengthens democratic institutions and the status of human rights in the domestic legal system;

(b) Process of reform of the judiciary begun in 2011;

(c) Adoption of Act No. 108-13 in 2014 limiting the jurisdiction of military courts to military offences and offences committed in time of war;

(d) Adoption in June 2016 of the law on domestic workers, which prohibits domestic work for persons under 16 years of age;

(e) Adoption of framework law No. 97.13 on the protection and promotion of the rights of persons with disabilities in May 2016;

(f) Amendment of the Nationality Code in 2007, which now allows Moroccan women in most cases to transmit their nationality to their children regardless of the nationality of the father;

(g) New migration policy, adopted in September 2013, and one-off regularization process for migrants in an irregular situation that followed and the efforts made to improve their living conditions and facilitate their integration.

4. The Committee welcomes the State party's ratification of or accession to the following international human rights instruments:

(a) International Convention for the Protection of all Persons from Enforced Disappearance, in 2013;

(b) Convention on the Rights of Persons with Disabilities and its Optional Protocol, in 2009;

(c) Optional Protocol to the Convention against Torture, in 2014.

C. Principal areas of concern and recommendations

Constitutional and legislative framework

5. The Committee welcomes the commitment of Morocco to harmonize its national legislation with ratified international treaties and to accede to the first Optional Protocol to the Covenant. It notes that the provisions of the Covenant can be invoked before the courts and regrets that they have only rarely been invoked or applied by the courts (art. 2).

6. The State party should continue its efforts to raise awareness among judges, lawyers, prosecutors and other persons involved in the administration of justice about the provisions of the Covenant so that these can be taken into account before and by the national courts. The State party should also expedite the process of legislative reform to ensure full compliance of domestic laws with duly ratified international treaties and complete, as soon as possible, the process of accession to the first Optional Protocol to the Covenant, which provides for the consideration of individual communications.

State of emergency

7. The Committee welcomes the inclusion in article 59 of the Constitution of the principle of non-derogation of basic rights and freedoms in a state of emergency. However, it notes with concern that this provision does not establish specific substantive and procedural guarantees as set out in article 4 (1 and 3) of the Covenant and does not guarantee a clear prohibition against the suspension during this time of all the rights set out in article 4 (2).

8. The Committee recalls its general comment No. 29 (2001) on derogations from the Covenant during a state of emergency and requests the State party to develop legislation containing clear provisions on states of emergency so that the rights protected under article 4 (2) of the Covenant may not be suspended under any circumstances and to ensure that the requirements of a derogation are consistent with the Covenant.

Right to self-determination

9. The Committee takes note of the Moroccan initiative for engaging in negotiations on autonomy for the Western Sahara region and the additional information provided by the State party but remains concerned about: (a) the limited progress made in dealing with the issue of the self-determination of the people of Western Sahara; (b) reports that the State party is not taking all necessary measures to consult the people of Western Sahara about the development of the natural resources of the Western Sahara; and (c) the presence of the sand wall, also known as the “berm”, which limits the freedom of movement of the people of Western Sahara given the very few crossing points that are open to civilians and the presence of landmines and other explosive remnants of war along the berm that endanger the lives and safety of the communities located in the vicinity (arts. 1, 6 and 12).

10. The State party should: (a) continue and increase the efforts undertaken within the framework of negotiations concerning the status of the Western Sahara under the auspices of the Secretary-General of the United Nations so that the people of the Western Sahara may enjoy their right to self-determination; (b) enhance meaningful consultations with the people of Western Sahara with a view to securing their prior, free and informed consent for development projects and resource extraction operations; and (c) take the necessary steps to permit the people of Western Sahara to move about freely and safely on both sides of the berm, continue implementation of the demining programme along the berm and compensate victims.

Discrimination and violence based on sexual orientation and gender identity

11. The Committee is concerned at the criminalization of homosexuality, the fact that it is punishable by a term of imprisonment of up to 3 years and the arrests that have been made on that basis. It is also concerned by reports of the advocacy of hatred, discrimination and violence against people because of their sexual orientation or gender identity (arts. 2, 9 and 26).

12. The State party should take steps to: (a) abrogate article 489 of the Criminal Code in order to decriminalize homosexuality and sexual relations between consenting adults of the same sex; (b) free anyone who is in detention solely for having had consensual sexual relations with a member of the same sex; and (c) put an end to the social stigmatization of homosexuality, incitement to hate, discrimination and violence directed at persons because of their sexual orientation or actual or presumed gender identity.

Equality between men and women and practices that are harmful to women

13. The Committee welcomes the recognition of the principle of equality in the Constitution of 2011 but is still concerned, however, about: (a) the continued existence of legislative provisions that discriminate against women, particularly as regards a matrimonial regime that continues to permit polygamy, divorce, child custody, legal guardianship of children, inheritance and the transmission of nationality to a foreign spouse; (b) the high number of polygamous marriages; and (c) the increase in early marriages (arts. 2, 3, 23, 24 and 26).

14. The State party should: (a) repeal or amend all provisions that discriminate against women in order to give full effect to the principle of equality enshrined in the Constitution; (b) take adequate measures to reduce the incidence of polygamy with a view to bringing about its abolition; and (c) amend the legal provisions that allow for exceptions to the minimum age for marriage.

Violence against women

15. The Committee welcomes the fact that, in 2014, the State party abrogated article 475 (2) of the Criminal Code, which had allowed rape charges to be dropped when the victim was a minor if the perpetrator married the victim. It remains concerned, however, about: (a) the prevalence of violence against women; (b) the fact that violent attacks often go unreported and the perpetrators of violence often are not prosecuted owing, inter alia, to the absence of protection measures and support facilities and to the fact that victims of rape who report the crime may themselves be prosecuted because of the criminalization of sexual relations outside marriage between consenting adults; (c) the limited scope of the law under which sexual harassment is a criminal offence; and (d) the fact that the legislative reforms now under way leave a number of discriminatory provisions in place, such as the one that sets out mitigating circumstances for “honour crimes” (arts. 3, 6, 7 and 17).

16. The State party should: (a) promptly amend its laws so as to afford adequate protection for women against violence and sexual harassment; (b) encourage people to report crimes of violence by ensuring that cases involving violence against women are thoroughly investigated, that the offenders are prosecuted and sentenced, and that victims have access to effective remedies and are not prosecuted for having engaged in sexual relations outside marriage; and (c) ensure that victims of domestic or sexual violence receive proper legal, medical and psychological assistance and

improve victim support facilities and mechanisms.

Counter-terrorism

17. The Committee remains concerned about the broad and unclear wording of the provisions in the Criminal Code that define what acts constitute acts of terrorism and the introduction of new, vaguely defined offences in 2015. It is also concerned by reports that charges have been brought under these provisions without proper cause against journalists who were fulfilling their duty to inform the public and that the fact that these provisions are so vaguely worded discourages the exercise of other Covenant rights, including the right to freedom of expression. The Committee is also disturbed by the excessive length of time that persons may be held in police custody in connection with terrorism-related offences (12 days) and by the fact that such persons are allowed to consult a lawyer only after 6 days have elapsed (arts. 9, 14 and 19).

18. The State party should revise the provisions in its Criminal Code on terrorism and define terrorism-related offences on the basis of their objective but should also define the nature of such acts precisely and ensure that this legislation does not unjustifiably restrict the exercise of Covenant rights. The State party should also reduce the initial maximum allowable duration of police custody to 48 hours for terrorism-related as well as other offences and provide access to a lawyer from the time that a person is taken into custody.

Death penalty

19. The Committee welcomes the de facto moratorium on executions since 1993, the reduction in 2014 in the number of offences punishable by the death penalty under the Code of Military Justice and the reduction envisaged under the draft Criminal Code. However, it regrets that three new categories of crimes punishable by death are contained in the draft Criminal Code (art. 6).

20. The State party should continue the current national debate on the abolition of the death penalty and consider formalizing the de facto moratorium currently observed. It should also consider acceding to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty.

Voluntary termination of pregnancy

21. The Committee notes that a disturbingly high number of clandestine abortions are performed in the State party which endanger the lives and health of the women concerned. It remains concerned about the extremely restrictive nature of the conditions under which a woman may legally have her pregnancy terminated in the State party and about the heavy penalties that are imposed in cases of clandestine abortions. The Committee notes that the draft revised Criminal Code provides for more exceptions to the general prohibition of abortion, but it is concerned about the introduction of excessive requirements such as the obligation to submit proof that legal proceedings have been opened in cases of rape or incest (arts. 3, 6, 7 and 17).

22. The State party should expedite its review of its legislation with the aim of introducing other exceptions to the prohibition of abortion, including exceptions to cover cases in which the pregnancy is the result of rape or incest and cases in which the fetus exhibits fatal abnormalities, and ensure that legal restrictions do not impel women to resort to clandestine abortions that endanger their lives and health. The State party should also ensure that women have effective access to legal abortions by eliminating the restrictive conditions provided for in the draft revised Criminal Code. The State party should also promote and guarantee access to contraception and to sexual and reproductive health education and services.

Prohibition of torture and ill-treatment

23. The Committee welcomes the authorities' efforts to combat torture and ill-treatment and notes that there has been a marked reduction in such practices since the time that its last concluding observations (CCPR/CO/82/MAR) were issued. It is nonetheless concerned by continued reports of torture and cruel, inhuman or degrading treatment being perpetrated by agents of the State in Morocco and Western Sahara, particularly in the case of persons suspected of terrorism or of endangering State security or posing a threat to the territorial integrity of the State. The Committee notes with particular concern that: (a) confessions obtained under duress are reportedly sometimes admitted as evidence in court even though, by law, they are inadmissible; (b) in cases of alleged torture or of the extraction of confessions under duress, judges and prosecutors do not always order that medical examinations be performed or that investigations be undertaken; (c) persons who report cases of torture are sometimes the object of intimidation, threats and/or legal proceedings; and (d) the number of cases in which charges have been brought and the number of convictions that have been handed down seem quite low given the number of complaints filed and the extent to which torture and ill-treatment have occurred in the past (arts. 2, 7 and 14).

24. The State party should: (a) adopt robust measures to eradicate torture and cruel, inhuman or degrading treatment, to investigate such acts and to prosecute and punish the perpetrators; (b) ensure that medical examinations are performed without delay whenever torture or ill-treatment is alleged to have occurred; (c) ensure that the prohibition on the extraction of confessions under duress is observed in practice and that evidence obtained under torture is not admitted in court; (d) offer effective remedies to victims and guarantee them reparation; and (e) expedite the process of adopting a law establishing a national preventive mechanism.

Police custody and access to a lawyer

25. The Committee is concerned about the unduly prolonged periods of police custody and that access to a lawyer is permitted only in cases in which the period of police custody is prolonged and for a maximum of 30 minutes (arts. 9 and 14).

26. The State party should ensure that the legislative reform under way sets the normal length of police custody at 48 hours and guarantees all detainees immediate access to a lawyer from the outset of detention.

Enforced disappearances

27. While recognizing the work carried out in cases of enforced disappearance by the Equity and Reconciliation Commission and the National Human Rights Council to gather information and to provide reparation, the Committee remains concerned by the fact that cases of enforced disappearance have still not been solved in Morocco and Western Sahara. The Committee is also concerned about the fact that the persons responsible for those disappearances have still not been identified, judged or punished (arts. 2, 6, 7, 9 and 16).

28. The State party should pursue and step up its efforts to shed light on the circumstances surrounding all unsolved cases of enforced disappearance, including those linked to events in Western Sahara, and proceed without delay to conduct investigations with a view to identifying, judging and punishing the persons responsible for them.

Prison conditions

29. The Committee is concerned about the inadequate conditions of detention in the prisons of Morocco and Western Sahara, particularly in respect of prison overcrowding. The Committee is also concerned that almost half of the inmates are awaiting trial (arts. 9 and 10).

30. The State party should redouble its efforts to remedy the problem of prison overcrowding, including by putting in place a genuine policy on the use of alternatives to deprivation of liberty.

Imprisonment for non-performance of a contractual obligation

31. The Committee is concerned about the fact that the circular of 21 October 2015 issued by the Ministry of Justice and Freedoms provides for enforcement by committal of debtors who do not fulfil their contractual obligations if they have not provided a certificate of indigence or a document that certifies that they are not liable to pay taxes (art. 11).

32. The State party should revise its laws in such a way as to ensure that committal may not be used as a method of enforcing contractual obligations.

Right to a fair trial and the independence of the judiciary

33. The Committee is concerned about cases in which irregularities appear to have occurred in court proceedings, including the admission of confessions obtained under duress and refusals to hear witnesses or to consider evidence. It is also concerned about cases in which lawyers and judges have been the target of threats and intimidation and of interference in their work and about the imposition of arbitrary or disproportionate disciplinary measures.

34. In all cases, the State party should: (a) guarantee and uphold the full independence and impartiality of the judiciary and ensure that judges are free of pressure and interference in the performance of their work; and (b) ensure that all court proceedings are conducted in full observance of the due process guarantees set forth in article 14 of the Covenant.

Asylum seekers and refugees

35. The Committee welcomes the State party's efforts to develop a legal framework on migration, asylum and human trafficking. It finds it regrettable that the regularization process pursued in 2014 did not result in the regularization of many refugees, particularly in the case of refugees from the Syrian Arab Republic. The Committee takes note with concern of the continued occurrence of arbitrary arrests of migrants and of allegations concerning the excessive use of force against migrants and the participation of Moroccan security forces in collective expulsions, particularly in the vicinity of the autonomous Spanish cities of Ceuta and Melilla. It also takes note of concerns regarding the detention and treatment of child migrants and regarding the legal barriers to the registration of newborns, the recognition of marriages of asylum seekers and refugees and the transmission of nationality, which may cause children born on Moroccan territory to be stateless (arts. 6, 7, 12, 23 and 24).

36. The State party should: (a) expedite its revision of the legal framework on migration and asylum in order to align it with the Covenant and the adoption of Bill No. 26-14; (b) redouble its efforts to regularize the situation of persons in need of international protection, in particular Syrian refugees, by granting legal status and national refugee cards to them so as to uphold their right to non-discrimination, including non-discrimination in terms of access to the formal labour market; (c) introduce procedures for the determination of refugee status at points of entry into the country, including in airports; (d) put an end to collective arrests and refrain from participating in mass expulsions of migrants, including expulsions conducted in the vicinity of the autonomous Spanish cities of Ceuta and Melilla; (e) put a stop to the excessive use of force by law enforcement officers by, inter alia, providing more training in that connection and introducing oversight mechanisms and means of ensuring greater accountability; and (f) remove legal barriers to the registration of newborns and the recognition of marriages among refugees and asylum seekers, revise the Nationality Code of 2007 so that nationality may be transmitted to all children born in Morocco, consider ratifying the 1954 and 1961 conventions on statelessness and establish a legal framework that will prevent statelessness.

Right to privacy and the interception of private communications

37. The Committee is concerned by reports of illegal infringements of the right to privacy in the course of surveillance operations

conducted by law enforcement and intelligence agencies targeting journalists, human rights defenders and perceived opponents of the Government, particularly those located in Western Sahara. The Committee is also concerned by the lack of clarity with regard to the legal provisions which authorize and govern surveillance activities and the lack of oversight of those activities by an independent authority (art. 17).

38. The State party should take all necessary steps to ensure that its surveillance activities are in keeping with its obligations under the Covenant, including article 17, and ensure that any breach of privacy is in keeping with the principles of legality, proportionality and necessity. The State party should also establish independent oversight mechanisms in order to prevent abuses.

Freedom of thought, conscience and religion

39. The Committee is concerned by reports that restrictions are placed on the practice of religions other than the official religion. It is also concerned about provisions in the Criminal Code that criminalize actions contrary to the Muslim religion and the introduction of new offences to the draft Criminal Code that further extend the limits imposed on freedom of religion and expression (arts. 18 and 19).

40. The State party should eliminate any legislative provision or discriminatory practice that is in violation of the right to freedom of thought, conscience and religion and ensure that the draft revised Criminal Code now under discussion is fully in accordance with article 18 of the Covenant.

Freedom of association and the activities of human rights defenders

41. The Committee welcomes the fact that the procedures for filing a declaration of association have been streamlined but is nonetheless concerned about the fact that many associations are refused the right to register. The Committee is also concerned by reports that the activities of human rights defenders are subject to disproportionate, unjustified restrictions and that human rights defenders' freedom of movement is limited, particularly in Western Sahara (arts. 12, 21 and 22).

42. The State party should, as a matter of urgency, take all necessary steps to put an end to violations of the right to freedom of association and any practices that place restrictions on that right which go beyond the strictly defined limitations set forth in article 22 (2) of the Covenant. It should ensure that it does not exert any undue influence over human rights defenders and that they are free to work without fear of reprisals or unjustified restrictions on their activities.

Freedom of opinion and expression

43. The Committee welcomes the adoption of the new Press Code in 2016, under which press-related offences are no longer subject to custodial penalties. It is concerned, however, about the concurrent introduction of new provisions in the Criminal Code that establish terms of imprisonment as penalties for acts perceived as being offensive to Islam or the monarchy or as posing a threat to the country's territorial integrity. The Committee is deeply concerned by reports that journalists and human rights defenders have been prosecuted on those charges or have been threatened with prosecution (arts. 9, 14 and 19).

44. The State party should revise all provisions in its Criminal Code, as necessary, to align them with article 19 of the Covenant and ensure that any restrictions on the exercise of the right to freedom of expression and association do not exceed the strictly defined limitations set out in article 19 (3).

Right of peaceful assembly

45. The Committee notes with concern that, under Moroccan law, prior authorization must be obtained for gatherings that are to be held in public places and that the issuance of such authorizations is sometimes hindered unjustifiably. It is also concerned about the excessive and disproportionate use of force to disperse unauthorized peaceful gatherings despite the issuance of a circular by the Ministry of Justice and Freedoms in October 2015 which states that police intervention is justified only in the presence of an armed mob and/or when a crowd has gathered that is likely to disturb the peace (arts. 7, 9, 19 and 21).

46. The State party should ensure that the law governing peaceful demonstrations is applied in accordance with the Covenant and that the exercise of that right is not subject to restrictions other than those that are authorized under the Covenant. To this end, the State party should give consideration to the proposals made in November 2015 by the National Human Rights Council concerning public gatherings.

Child labour

47. The Committee remains concerned about the continued economic exploitation of children, particularly as domestic and farm workers (arts. 8 and 24).

48. The State party should rigorously enforce the laws on child labour and child exploitation with a view to putting an end to these practices. It should also pursue its efforts to raise public awareness and strengthen its oversight mechanisms.

The Amazigh

49. The Committee welcomes the fact that the Amazigh language has been recognized as an official language of the country in the Constitution but finds it regrettable that the draft organic law concerning the measures to be taken to give effect to that recognition has

not yet been adopted. It remains concerned about the difficulties encountered by Amazighs seeking to be taught in their language, to use their language in judicial and administrative proceedings and to register the Amazigh first names of their children (arts. 2, 26 and 27).

50. The State party should step up its efforts to adopt an organic law on the Amazigh language in the near future, to provide Amazighs with greater access to schooling in their language, to permit the use of the Amazigh language in judicial and administrative proceedings and to allow persons' Amazigh first names to be registered.

D. Dissemination and follow-up

51. The State party should widely disseminate the Covenant, the sixth periodic report, the written replies to the Committee's list of issues and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and NGOs operating in the country, as well as the public. The State party should ensure that the report and the present concluding observations are translated into the official language of the State party.

52. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party is requested to provide, within one year of the adoption of the present concluding observations, information on the implementation of the recommendations made by the Committee in paragraphs 18 (Counter-terrorism), 24 (Prohibition of torture and ill-treatment) and 42 (Freedom of association and the activities of human rights defenders) above.

53. The Committee requests the State party to submit its next periodic report by 4 November 2020 and to include in that report specific and up-to-date information on the implementation of the recommendations made in the present concluding observations and of the Covenant as a whole. The Committee also requests the State party, in preparing the report, to consult widely with civil society and NGOs operating in the country. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words. The Committee also invites the State party to agree, by 4 November 2017, to use its simplified reporting procedure, whereby the Committee transmits a list of issues to the State party prior to the submission of its periodic report. The State party's replies to this list would constitute its next periodic report due under article 40 of the Covenant.