



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

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## Committee against Torture Forty-seventh session

### Summary record of the 1025th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 2 November 2011, at 3 p.m.

*Chairperson:* Mr. Grossman

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*The meeting was called to order at 3 p.m.*

**Consideration of reports submitted by States parties under article 19 of the Convention** (*continued*)

*Fourth periodic report of Morocco* (continued) (CAT/C/MAR/4; CAT/C/MAR/Q/4 and Add.1; HRI/CORE/1/Add.23/Rev.1 and Corr.1)

1. *At the invitation of the Chairperson, the delegation of Morocco took places at the Committee table.*
2. **Mr. El Haiba** (Morocco), returning to the question of transitional justice, said that the Equity and Reconciliation Commission had been a quasi-judicial mechanism. Its mandate, which had expired in November 2005, had been to shed light on human rights violations committed in the past and determine the liability attributable to the State and its institutions. Establishing individual responsibilities fell outside its mandate. In cases that were outside its jurisdiction, the victims and their relatives or beneficiaries could seek recourse through the courts. The Equity and Reconciliation Commission's mandate had encompassed a whole spectrum of serious, systematic and widespread violations, including enforced disappearances, arbitrary detention, torture and rape, and had lasted over 40 years, the longest period ever covered by a transitional justice mechanism. Responsibility for implementing the Commission's recommendation had been conferred upon the Consultative Council on Human Rights.
3. The issues invoked in the Equity and Reconciliation Commission's decisions concerning victim compensation had been deprivation of liberty, enforced disappearance as a violation of all human rights, conditions of detention and false imprisonment, acts of torture and ill-treatment, physical and psychological abuse, and loss of means of subsistence. In all its decisions, the Commission had endeavoured to give due consideration to the victim's sex and the specific nature of the abuses suffered by women. A total of 17,461 persons had been awarded compensation between 2006 and 2011. All beneficiaries had received the amount due to them, except for a few persons who had either lacked the necessary documents or had been living abroad. Since financial measures alone were insufficient to repair the injury caused, the Equity and Reconciliation Commission had also established other forms of reparation. Those additional forms of compensation had included State-funded medical care (12,217 beneficiaries), reintegration assistance (1,205 beneficiaries), administrative settlements (540 beneficiaries) and collective reparation, the last aimed at restoring trust between local communities and Government authorities, converting secret places of detention into official detention facilities, maintaining collective memory, strengthening the capacity of NGOs and involving them in efforts to achieve good local governance. Collective reparation programmes had been launched in 12 regions.
4. In its efforts to uncover the truth, the Equity and Reconciliation Commission had succeeded in shedding light on 929 cases of human rights violations committed in the past, principally by holding public hearings and consulting archives. It had been impossible to establish the truth in nine cases. The Commission's recommendations had been reflected in the text of the Constitution and incorporated into the action plan for democracy and human rights. A public debate had been organized and a reform of the judicial system undertaken. A national anti-impunity strategy had also been developed and a citizens' platform for the promotion of human rights had been established. In March 2011 the United Nations Human Rights Council had adopted a draft resolution submitted on Morocco's initiative which provided for the appointment of a Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence (A/HRC/RES/18/7).
5. With regard to the place of international human rights law in the domestic legal order, the Kingdom of Morocco had reaffirmed its commitment to universally recognized

fundamental rights in the preambular paragraphs of its new Constitution and in the title dealing with fundamental rights and freedoms. The international instruments ratified by Morocco were directly applicable in national courts. The authorities had also begun the work necessary to prepare for accession to the Optional Protocol to the Convention against Torture. In 2008, the Consultative Council for Human Rights had organized an international conference on torture prevention in conjunction with the Association for the Prevention of Torture in which the Chairperson of the Subcommittee on Prevention of Torture had taken part. In September 2011 the national human rights institutions of a number of African countries had met in Rabat to consider, among other issues, the question of their accession to the Optional Protocol and the implementation of national preventive mechanisms. The Dahir establishing the National Human Rights Council had been adopted on 1 March 2011 and, in accordance with articles 10 and 11 of that instrument, conferring powers directly related to the application of the Optional Protocol, the National Human Rights Council, working in close cooperation with NGOs, Government bodies and other national organizations, had begun the process of creating a national preventive mechanism.

6. **Mr. Abdenabaoui** (Morocco) said that, with regard to the incorporation of the definition of torture established in article 1 of the Convention into domestic legislation, a comprehensive reform of the Criminal Code was under way. The Code had already been amended in 2006 to incorporate a definition of torture but article 258 of the new draft established a new definition according to which the term “torture” should be understood to mean any act of barbarity or violence by which severe physical or mental suffering was intentionally inflicted upon a person by or at the instigation or with the express or tacit consent of a public official or private individual. The Moroccan Parliament had also ratified bill No. 35/11 amending the Code of Criminal Procedure, which stipulated, in article 653.1, that there should be no statute of limitations for offences considered imprescriptible in the international instruments to which Morocco was a party.

7. The provisions of article 225 of the Criminal Code, which provided that officers who committed an arbitrary act or offence against individual freedom on the orders of a hierarchical superior could be exonerated from criminal liability, were not applicable in cases of torture. Any officer who was instructed to commit acts of torture by a superior had a duty to refuse, since such acts violated the provisions of the Criminal Code and the Convention.

8. The bill amending the Code of Criminal Procedure, which had been approved in October 2011, authorized lawyers to visit their clients at the end of their first 36 hours in police custody, irrespective of the offence of which they were suspected and even if acts of torture were involved. That new provision marked a considerable advance, since lawyers had previously been permitted to visit their clients only if their custody was prolonged, in other words, once they had been held for more than 48 hours. The bill also introduced a requirement for the judicial police to inform suspects of their right to remain silent, their right to contact a lawyer and members of their family and their right to seek legal aid.

9. With regard to the allegation that minors and persons with disabilities did not have access to a lawyer, the right to be represented by counsel was guaranteed by law to all suspects without exception, irrespective of the offence. Two scenarios were provided for by law. In the first scenario, which applied in cases involving minors, the presence of a lawyer was compulsory throughout the trial, and the courts had an obligation to secure a State-appointed lawyer for any suspects who had been unable to obtain legal counsel themselves. In the second scenario, which applied in criminal cases, the presence of a lawyer during trial was optional. However, all suspects who wished to be defended by counsel but did not have the means to appoint a lawyer themselves could ask a special commission chaired by the Prosecutor-General to assign them a State-appointed lawyer by way of legal aid.

10. The definition of terrorism established in the 2003 Anti-Terrorism Act was based on the definitions contained in the Arab Convention on the Suppression of Terrorism and French legislation on terrorism. The definition contained a list of 13 offences under ordinary law, including attempted murder, rape and damage to property, that were defined as terrorist acts when committed with intent and in connection with an individual or collective campaign to compromise security and disrupt public order through intimidation, terror or violence. Thus, the intent with which the acts concerned were committed was a key determinant of how the offence should be classified.

11. Suspected terrorists could be held in police custody longer than persons suspected of offences under ordinary law because the investigating officers needed more time to gather evidence in such complex and sensitive cases, especially since networks of terrorist groups often had cells operating beyond national boundaries. Suspected terrorists were always detained in official places and the conditions of their detention were monitored by the competent bodies. Suspects in that category benefited from all safeguards protecting the rights of persons deprived of their liberty enjoyed by other suspects.

12. With regard to the issue of marital rape and the fact that men who committed rape and subsequently married their victims could be exonerated from criminal liability, it should be emphasized that rape was criminalized under Moroccan law regardless of any marital relationship that might exist between the perpetrator and the victim. Any woman who suffered sexual or other forms of violence at the hands of her spouse could initiate proceedings against him. Moroccan law contained no provisions that might enable perpetrators of rape who married their victims to escape criminal proceedings. Under article 475 of the Criminal Code criminalizing child abduction and kidnapping, young women under the age of majority who had been abducted but subsequently married their rapists could not initiate proceedings themselves but their legal representatives could do so on their behalf. Female victims of abduction who wished to marry their abductors were not required to seek the consent of their legal representatives, even if they were below the age of majority.

13. Steps had been taken to protect victims and witnesses of violations committed by public officials. The recently adopted Act amending the Code of Criminal Procedure contained provisions designed to protect the victims and witnesses of such offences, including crimes of torture and any act of intimidation, defamation or reprisal. The next of kin of victims of acts of torture were also entitled to special protection.

14. Article 446 of the Criminal Code established exemptions from professional secrecy requirements in cases of child abuse, which enabled doctors and auxiliary staff to alert the authorities if, in the course of their work, they noted that a child had suffered or appeared to have suffered abuse. In addition, support units for women and child victims of violence that were staffed by specially trained personnel had been established in courts and hospitals. The role of those units was to refer the victims to other social service units that would be able to provide the material and psychological assistance required. The units were managed in association with civil society organizations, which were closely involved in the fight against violence against women and children.

15. It was true that the sentence of 40 days' house arrest handed down in the case of Omar Brad, the Commander of the Royal Gendarmerie unit in Settat who had been accused of committing acts of torture against a suspect held in police custody, might appear inadequate punishment, given the nature of the charges against him. However, the sentence was a disciplinary measure only and judicial proceedings had also been initiated. Moroccan legislation stipulated that all complaints of acts of torture or ill-treatment inflicted by police officers must be investigated and prosecuted and that any person convicted of acts of torture faced a prison sentence of between 5 and 10 years and in some cases even longer.

For example, a police officer in Marrakesh found guilty of ill-treatment had recently been sentenced to 10 years' imprisonment, as had two police officers working in Agadir.

16. The Government had resolved to gradually abolish the death penalty and had implemented the recommendations formulated to that end by the Equity and Reconciliation Commission. At the present time, a death penalty could be served for 10 offences only, compared with 30 previously, and with the unanimous agreement of all judges hearing the case. In addition, the system of royal pardon, from which 23 prisoners on death row had benefited in 2011, allowed death sentences to be commuted to life imprisonment. The adoption of the Act on respect of the right to life in July 2011 had marked a further advance towards the total abolition of the death penalty in Morocco.

17. Pretrial detention was used only as a last resort and Moroccan legislation encouraged the use of bail, fines and suspended sentences. Despite those measures, the number of remand prisoners had increased in recent years and currently accounted for 48 per cent of the 65,000 persons held in Moroccan prisons. That situation reflected the length of the legal process. It should be noted that between 10 and 15 per cent of pretrial detainees were acquitted.

18. Moroccan legislation included a number of laws aimed at combating violence against women. Foremost among them was a 2003 law dealing with spousal abuse and sexual harassment. There were also laws that protected women against violence, including any form of sexual assault. The Government was currently exploring the possibility of collating the various instruments into a single law that would provide heightened protection of women's rights.

19. **Ms. Sekkate** (Morocco) said that Act No. 43-04 criminalizing torture was applied in practice and that its effective enforcement was confirmed by the examples of disciplinary action taken against police officers provided in the written replies to the list of issues (CAT/C/MAR/Q/4/Add.1). She also wished to refute the allegation made by Amnesty International, among other organizations, that persons arrested without warrants by plain-clothes police officers for alleged terrorist offences had been detained for periods exceeding the 12 days authorized under the 2003 Act. The regulations governing arrest and police custody had been fully respected in the case in question. The extension of the detainees' custody, on two occasions, had been duly authorized by the Crown Prosecutor-General, as required under article 66 of the Code of Criminal Procedure. Furthermore, the suspects had been held in duty stations of the judicial police or in detention centres supervised by the Royal Gendarmerie. Their right to speak to a lawyer immediately upon the extension of their custody had also been respected — although some had declined the offer — as had their right to contact their next of kin. The fact that the persons in question had been arrested by plain-clothes police officers was in no way unlawful. The allegations that they had been tortured were also without substance. That possibility had never been raised by the suspects and neither the Crown Prosecutor-General nor the investigating judge had noted any injuries that might have suggested the need for a medical examination.

20. With regard to the acts of torture reportedly suffered by students at Qadi Ayad University who had been involved in protests calling for an increase in their student grants, it should be noted that the persons concerned had set fire to halls of residence in Marrakesh and had launched violent attacks on the security forces, wounding a number of police officers. In the wake of those events, 11 suspects had been arrested and brought before an investigating judge. All of the suspects had undergone medical examinations at their own request and those examinations had shown no causal link between the security forces' efforts to break up the protests and the injuries evident on their person.

21. With regard to the allegation that 35 persons found guilty of terrorist activity in 2008 had been refused a medical examination after claiming that their confessions had been

extracted through torture, it should be pointed out that they had had a fair trial, that they had had the right to legal counsel, that the truth of their confessions had been duly verified and that they had been convicted on the basis of solid evidence gathered during the inquiry. It should also be added that one of the persons had been caught in flagrante delicto. Lastly, it was important to emphasize that the right to a defence enjoyed by civilians tried in military courts had been fully respected.

22. **Mr. Halmi** (Morocco) said that the 1994 decision to repeal the law concerning demonstrations that violated public order and the respect due to authority had had the effect of reinforcing civil liberties including freedom of expression. The Equity and Reconciliation Commission's work had also afforded greater protection and promotion of human rights in general. Protests held in that climate of freedom were generally peaceful in nature. Nonetheless, protest movements could generate tension, as had been seen in Sefrou, Sidi Ifni and El-Ayoune. On those occasions the tensions had acquired such magnitude that they had obstructed the exercise of freedom of movement and had led some to commit offences. That was why, while the rule was not to ban protests provided that they remained peaceful, the authorities responsible for maintaining public order had been forced to intervene without delay in order to clear public thoroughfares, while at the same time endeavouring to minimize friction. National human rights institutions and civil society organizations played an important role in monitoring such situations. Some of them had accumulated considerable expertise in investigating the serious human rights violations that could occur during protests. The House of Representatives had appointed commissions to investigate the aforementioned events, so fulfilling a recommendation in which the Equity and Reconciliation Commission had called for intensification of the work of the parliamentary commissions of inquiry.

23. The Directorate-General of National Security was an intelligence service comparable to those operating in other countries. Its mandate was to prevent any activities encouraged, undertaken or supported by subversive or terrorist movements. It was headquartered in an office building with no public access. Following allegations that its offices were being used as a secret place of detention, the Crown Prosecutor-General at Rabat Appeal Court had made an inspection visit in 2004. At the subsequent press conference, he had reported that there were no places of detention concealed within the offices and that he had seen no premises that could be considered secret places of detention. The Crown Prosecutor-General had reaffirmed those findings following a second visit on 18 May 2011. The Chairperson and the Secretary General of the National Human Rights Council had spent some three hours in the Directorate's offices on the same day and had found nothing to indicate that they were being used for the purpose of illegal detention. Furthermore, the representatives of the national institutions had commended the Directorate's considerable contribution to the fight against various forms of criminal activity, including illegal immigration networks, drug trafficking and money laundering, as well as its work in the fight against terrorism, which had foiled a number of planned terrorist attacks to compromise the country's stability and security.

24. With regard to the right of asylum and immigration-related questions, it was important to highlight that the Kingdom of Morocco had always been a country of asylum and that the first office of the United Nations High Commissioner for Refugees (UNHCR) in Africa had been established in Casablanca in 1965. The tragic events of Ceuta and Melilla in 2005 had highlighted the need to modernize the national asylum system. A comprehensive overhaul of asylum procedures had therefore been initiated and was predicated on three considerations: respect for the commitments assumed by the Kingdom of Morocco under the Geneva Conventions; respect for national sovereignty; and the need for closer partnership with UNHCR, particularly its regional office in Rabat. An interministerial commission had been established and its members had visited several countries in Europe and Africa to learn from their respective systems. Technical assistance

from UNHCR had also been requested. That determined approach had resulted in a constitutional amendment to incorporate general provisions safeguarding the right to asylum. Article 30 of the new Constitution clearly provided that foreign nationals should enjoy the fundamental freedoms recognized for Moroccan citizens, in accordance with the law. It also defined the criteria that should guide decisions on whether or not to grant the right to asylum.

25. The Moroccan authorities drew a clear distinction between persons in need of international protection and migrants in an irregular situation. Asylum and refugee-related issues were thenceforth covered in the basic training provided to all law enforcement and security officers and all officers working in territorial administration offices. The Moroccan authorities were actively cooperating with UNHCR and had signed a headquarters agreement in July 2007 that had provided for the organization of several training workshops focusing on asylum and refugee rights.

26. The legal framework for the protection of migrants and victims of trafficking was established by Act No. 02-03 concerning the entry and residence of aliens. That Act established special protection measures for certain categories of particularly vulnerable migrants, including pregnant women and children, and stipulated that the conditions in which foreign nationals were held awaiting deportation should be subject to judicial oversight. The penalties envisaged for involvement in trafficking activities ranged from 5 years' imprisonment to life in cases resulting in the victim's death. Morocco had consolidated its international commitments to fight trafficking with its ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. On the ground, a key mechanism for providing assistance to victims had been introduced and all victims who cooperated with the authorities in their inquiries into trafficking networks benefited from special protection measures. More than 2,500 networks had been dismantled since 2004. The Government actively included civil society in its anti-trafficking efforts, especially through partnership agreements.

27. Procedure for the removal of migrants in an irregular situation was governed by Act No. 02-03. Deportation was prescribed for any person who entered Moroccan territory illegally without passing through an official border crossing point. Persons subject to deportation orders had 48 hours to appeal against the ruling. Appeals had the effect of suspending enforcement, and appeal judges were required to issue their rulings within four days.

28. The Moroccan Government deeply regretted the tragic events that had occurred in Ceuta and Melilla in 2005. The hundreds of sub-Saharan migrants who had attempted to break through the parallel barbed wire fences separating northern Morocco from the two Spanish enclaves had clearly been used as pawns in a premeditated operation orchestrated by trafficking networks. The Moroccan authorities had made every effort to assist the victims and facilitate their return to their country of origin, while respecting their rights and dignity. More than 3,675 migrants had been repatriated with the help of their country's diplomatic authorities, the International Organization for Migration (IOM) and UNHCR. Those events had made the countries in the region aware of the challenges posed by migration; it had been against that backdrop that the first Euro-African Conference on migration and development had been held in July 2006.

29. **Mr. Hilale** (Morocco) said that, following the Committee's decision in May 2011 (CAT/C/46/D/419/2010), the Moroccan Government had decided to suspend Mr. Djamel Ktiti's extradition to Algeria. In Mr. Kalinichenko's case, the Moroccan authorities had concluded that there were no valid grounds to believe that he would be at risk of being tortured upon his return to the Russian Federation. They had duly justified their decision and had informed the Committee accordingly. Before the extradition, they had obtained

assurances from the Russian authorities that Mr. Kalinichenko would have the assistance of a lawyer and would not be subjected to torture or inhuman or degrading treatment. The authorities had also requested that the Committee against Torture should be allowed to visit Mr. Kalinichenko at his place of detention and speak with him in private, and the Russian authorities had granted that request. The Russian authorities had also agreed to the appointment of a representative of the Moroccan Ambassador in Moscow to liaise with the Committee and visit Mr. Kalinichenko regularly to monitor his state of health and check that the assurances given were being honoured. The Russian Federation had given similar assurances when another Russian national had been extradited by a European country and those assurances had been honoured. There was therefore no reason to doubt its promises given in Mr. Kalinichenko's case.

30. **Mr. Sghir** (Morocco) said that the allegations of rape made by four detainees in Toulouza prison had been considered by the Crown Prosecutor, who had ordered that the alleged victims should undergo a full medical examination. When conducted for inquiry purposes, medical examinations of detainees who claimed to have been victims of torture or ill-treatment were always performed by doctors from outside the Prison Service. Prisoners on death row had the same rights as other detainees, including the right to receive visits. They also benefited from more extensive medical and psychological monitoring.

31. Solitary confinement was a disciplinary measure and its use was strictly regulated by law. All detainees held in solitary confinement were required to be seen by a doctor twice a week and their confinement had to be terminated as soon as any deterioration in their state of health was detected. Detainees had the right to appeal against their solitary confinement to the prison governor, who was required to rule on any such appeal within five days.

32. **Ms. Fihri** (Morocco) said that whenever a detainee died in prison, the prison governor immediately informed the Crown Prosecutor and the deceased's family. Immediate inquiries were initiated by the public prosecutor's office and an autopsy was automatically performed. In the majority of cases, the causes of death were found to be natural, with heart and lung disease and cancer being the most frequent causes. Sick prisoners were cared for entirely by the Prison Service, which ensured that they received appropriate treatment. Prisoners whose condition called for hospitalization were transferred to the closest State hospital. No clear trend could be observed in the statistics for prison suicides; there had been six suicides in 2006, eight in 2007, seven in 2008, three in 2009 and 2010 and seven in 2011. Prison suicides were a relatively rare phenomenon when compared to the average frequency of one prison suicide every three days recorded in certain European countries. The victims were mostly persons diagnosed with depression. Furthermore, it had been noted that 50 per cent of the victims were detainees who had been convicted of serious violence against one or more members of their families. Reports indicating that 13 inmates of Salé prison had died in 2007 as a result of a hunger strike were totally false. There were no records of hunger strike-related deaths.

33. Local and international NGOs were permitted to visit places of detention subject to the conditions established in article 84 of Act No. 23-98 regulating the organization and operation of prison facilities, which stipulated that the purpose of such visits must be to provide inmates with educational, spiritual or moral support. A total of 1,077 such visits had been made in 2010. Visits for inspection of prison facilities, on the other hand, were the remit of the provincial prison oversight commissions composed of representatives of the judiciary and local councillors. Members of NGOs might, however, be permitted to take part in those visits.

34. **Mr. Gaye** (Country Rapporteur) said he was pleased that the delegation had recognized the need to revise the wording of article 258 of the draft Criminal Code to align it fully with the definition of torture established in the Convention. The fact that international instruments were now directly applicable in domestic courts and that



legislative work had been initiated with a view to removing the statute of limitations for crimes of torture were also positive developments.

35. Noting that the clarification requested with regard to the legal provision expressly stating that neither exceptional circumstances nor the order of a superior could be invoked to justify acts of torture had not been forthcoming, he would appreciate a copy of the text in question. The delegation had spoken of plans to remove the provision requiring lawyers to seek permission from the Prosecutor-General before making contact with clients who had been taken into police custody; that action would certainly be welcome. Since access to legal aid appeared to vary according to the nature of the offence, it would be useful to know which offences were excluded from the scope of legal aid and why. The delegation had provided reassuring explanations regarding the interpretation of the definition of terrorism established in domestic legislation and its application; it was to be hoped that those reassurances would be confirmed in practice.

36. It would be preferable for allegations of acts of torture committed by members of the security forces to be investigated by an independent body rather than by the police inspectorate. Pursuant to article 12 of the Convention, the competent authorities of States parties were under an obligation to proceed to a prompt investigation whenever there was reasonable ground to believe that an act of torture had been committed. However, the Committee had received information indicating that the Moroccan authorities did not always exercise due diligence in that connection and tended to institute inquiries only when a complaint was made. The State party should take the action necessary to comply fully with its obligations under article 12 of the Convention.

37. The rape of a minor should automatically give rise to legal proceedings, whether or not a complaint had been made, and the State party was urged to amend its legislation accordingly. Because there was no specific law dealing with refugees and asylum seekers, there was a danger that persons in need of international protection would be treated in the same way as immigrants in an irregular situation and might be denied access to the appropriate assistance. The State party should therefore enact a law that clearly defined their status.

38. Clarification was needed as to where the burden of proof lay in relation to the considerations referred to in article 3 of the Convention. The information provided in paragraph 36 of the report suggested that the State party placed on the applicants the burden of proving that they would be at risk of being subjected to torture in the country to which they were returned, whereas it was actually incumbent upon the State party to assess that risk and to do so independently of any evidence that an applicant might present. He welcomed the State party's decision to suspend Mr. Djamel Ktiti's extradition to Algeria. At the same time, it was regrettable that it had ignored the Committee's decision in *Kalinichenko v. Morocco* and had returned Mr. Kalinichenko to the Russian Federation.

39. **The Chairperson**, speaking as Country Rapporteur, said that it was incongruous that the law gave young, underage girls who had been victims of rape the possibility of marrying their rapists but not the possibility of lodging a complaint against them in their own right. The fact that legal proceedings were initiated only if a complaint was lodged was also a problem since families did not necessarily report rapes for fear of gossip, with the result that many rapes went unpunished. It would be interesting to know in how many cases rapists had married their victims, whether there had been any cases in which victims had turned down the marriage and, if so, whether the rapist had been prosecuted.

40. In all countries, public opinion was generally hostile to the idea that governments should use public funds to build prisons and improve conditions of detention. States' international obligations nonetheless included such action, and Morocco must demonstrate

its commitment and adopt the measures needed in that area, especially to reduce the enormous prison overcrowding.

41. The international community was gradually abandoning the radical view that in the fight against terrorism the end justified the means. States were also becoming increasingly aware that methods contrary to human rights standards were not necessarily effective. States had an obligation to ensure that the measures used to combat terrorism were compatible with their obligations under international law. In that regard, the Committee reiterated the importance of incorporating a clear and precise definition of the offence of terrorism in their domestic legislation. The State party appeared to support that principle; it must now reflect it fully in its legislation.

42. Clarification would be appreciated with regard to the execution of the various inspections made of the headquarters of the National Directorate-General of Intelligence in Temara. In particular, it would be useful to know whether the inspections had been unannounced and whether the persons claiming to have been detained and tortured in that building had been invited to attend. Confessions were valid only if they had been obtained through lawful means. Could the delegation indicate whether the legality of confessions was systematically verified and, if so, according to what criteria?

43. Specific data confirming that prisoners on death row had the right to receive visits from their next of kin and lawyers would be welcome, since the Committee had received numerous allegations to the contrary. It was his understanding that the proportion of the current prison population detained without charge was about 50 per cent. If correct, that percentage required explanation as it was very high and could be a sign that the principle of the presumption of innocence was not being observed. The delegation was also invited to comment on allegations that lawyers had been harassed in a number of cases and to provide details of the safeguards available to the students arrested in the May 2009 riots during their detention, particularly with respect to their right to be examined by an independent doctor.

44. In *Kalinichenko v. Morocco*, the Committee had asked for interim protection measures to be applied until a decision had been adopted, but the Kingdom of Morocco had not complied. It was not clear why the letter written to the Committee in June 2010 had not been received until a year later, on 10 June 2011, when in cases of extradition to a country where the person concerned was at risk of being subjected to torture immediate action was sometimes needed. Furthermore, it was inconceivable that the Committee should have itself represented by a State in any part of the world, in the present case in Russia. Lastly, in the case of Mr. Ktiti, the point at issue was not “suspension” of the extradition, but the relinquishment of the entire process in accordance with its decision of May 2011.

45. **Ms. Sveaass** asked whether Morocco intended to adopt new provisions regulating detainees’ access to psychiatric health services and whether psychiatric hospitals and prisons were subject to inspections to check that the rights of persons with mental disorders were respected. Welcoming the State’s offer of free medical cover by way of compensation to victims of severe human rights violations, she would also like to know whether persons who had endured ill-treatment or acts of torture systematically enjoyed the right to mental health care as part of a comprehensive rehabilitation programme.

46. She would also like to know whether the commission of inquiry established following the evacuation, in November 2010, of the Gadim Izik camp set up by Sahrawis near the town of El-Ayoune had investigated the cases of the persons arrested following those events and who had allegedly been subjected to acts of torture.

47. **Mr. Mariño Menéndez** asked whether international observers would be present at the trial of the 140 persons arrested during the dismantling of the Gadim Izik camp, who had been released on bail in April 2011 after 6 months in detention.

48. **Mr. Bruni** asked for information about the criteria used to determine the compensation awarded to victims of human rights violations committed in the past. More specifically, he would like to know whether the severity of the injury suffered was taken into account when deciding whether or not to award compensation and, where applicable, determining the amount. He would also like to know whether any mechanism existed that would enable a subordinate who refused to execute an order from a superior officer that would entail inflicting torture to defend himself against any sanctions for disobedience.

49. Recalling that administrative facilities and hospital rooms could very easily be used as secret places of detention, he asked for details of the conditions in which the inspection visits to the headquarters of the Directorate-General of National Security had taken place.

50. **Ms. Gaer** asked whether the bill on violence against women would put an end to situations in which a man who had committed rape could escape prosecution by marrying his victim. She would also like to know whether all prison suicides were investigated and what had become of Lieutenant-Colonel Omar Brad. Lastly, noting that almost half of the prison population consisted of pretrial detainees, she asked what measures the State party planned to adopt to ensure that suspects awaiting trial were released on bail with greater frequency.

51. **Mr. Wang Xuexian** asked whether inquiries had been initiated to ascertain the cause of the 89 deaths in custody reported by the Equity and Reconciliation Commission. More specifically, he would like to know whether acts of torture or ill-treatment had been a factor in those deaths and, if so, whether the perpetrators had been prosecuted and the families of the victims duly compensated.

52. **Mr. Hilale** (Morocco) said that in the case of Mr. Ktiti, the Moroccan authorities had suspended the process of extradition to give the Committee time to reach a decision. In contrast, in the case of Mr. Kalinichenko, since the Committee had failed to notify the Moroccan authorities in sufficient time, they had proceeded to extradite Mr. Kalinichenko to the Russian Federation, but only after obtaining diplomatic assurances from the Russian authorities. He appreciated the Committee's concerns and assured its members that Morocco would ask the Russian authorities to ensure that Mr. Kalinichenko's rights were respected.

53. As the decision to establish an interministerial commission to codify the right to asylum had demonstrated, there was a genuine political will within the Government of Morocco to enact a law dealing with asylum issues. Morocco was benefiting from technical assistance in that area from UNHCR as well as support from several sub-Saharan African States with solid experience in managing illegal flows of migrants fleeing regional conflicts as well as adverse weather conditions.

54. **The Chairperson** said that the Committee had already adopted a final decision in the case of Mr. Ktiti, which had been transmitted to the State party. The decision called for the extradition order against Mr. Ktiti to be rescinded, not suspended. Extraditing Mr. Ktiti to Algeria would constitute a violation of the Convention.

55. **Mr. Hilale** (Morocco) said that that information had been duly noted and would be conveyed to the competent authorities. He added for clarification that, although he had referred to the "suspension" of the extradition process on several occasions, he had simply been noting that the process that had been under way had had to be interrupted.

56. **Mr. Abdenabaoui** (Morocco) said that the law prohibited acts of torture and ill-treatment and that a subordinate could therefore refuse to commit acts of torture even if ordered to do so by his or her superior. With regard to the rape of a minor, the legislature had allowed for the possibility of not prosecuting a man who had committed rape and allowing him to marry his victim in order to preserve family harmony. However, that

exoneration applied only if the family did not file a complaint. If the victim had not yet reached marriageable age, she could not agree to the marriage and in all cases minors under the age of 18 could marry only with the permission of the judicial authorities. In contrast, if the family filed a complaint of rape, legal proceedings were initiated.

57. Mr. Omar Brad had been suspended from duty and had been moved to another unit after having been detained and having been subjected to disciplinary action. However, legal proceedings were under way, but he was innocent until proven guilty and a judgement had yet to be handed down.

58. **Mr. Halmi** (Morocco) said that, in accordance with Act No. 23-98 on the organization and operation of prison facilities, prisoners on death row could receive visits from members of their family and their lawyers and could speak with them in private.

59. **Mr. El Haiba** (Morocco) said that his delegation welcomed the frank and constructive dialogue with the Committee. He assured the members of the Committee that, in application of the National Plan for Democracy and Human Rights, the Government of Morocco would very closely monitor implementation of the recommendations made following consideration of the State party's fourth periodic report and that it would establish the structures required to ensure that all individual complaints submitted under article 22 of the Convention received due consideration. All human rights institutions in Morocco, including the National Human Rights Council and the Equity and Reconciliation Commission, would contribute to that national endeavour.

60. **The Chairperson** thanked the Moroccan delegation for its cooperation with the Committee and commended its expertise.

*The meeting rose at 6 p.m.*