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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez

Addendum

**Mission to Morocco: comments by the State on the report of the Special
Rapporteur***

* Reproduced in the annex as received.

Comments and observations of the Moroccan authorities relating to the Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

(Visit to Morocco from the 15 to 22 September 2012)

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Introduction

1. The Moroccan authorities receive with satisfaction the Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, drafted following his visit to Morocco, conducted from the 15th, to the 22nd of September 2012, and thank him for his positive assessments of the cooperation of the Moroccan authorities for the success for his mission in Morocco. They also express their satisfaction with the fact that the Special Rapporteur could measure the will of the authorities to open up to an independent examination of the situation of human rights in Morocco, and note the irreversible and strategic commitment of the Kingdom to the consolidation of human rights, including the eradication of torture.

2. Within the framework of the continuous interaction of the Moroccan authorities with the Special Rapporteur, particularly with regard to the follow-up of the recommendations proposed to the authorities, received in a spirit of co-operation and partnership, the Kingdom of Morocco would like to make some comments and remarks concerning the assessment of the situation of human rights in Morocco put forward by the Special Rapporteur (I), the recommendations made (II), and the follow-up of the implementation of the observations and recommendations of the Special Rapporteur (III).

I. Evaluation of the situation of human rights in Morocco

3. Concerning the evaluation of the situation reported by the Special Rapporteur through his visit to Morocco, the Moroccan authorities have some remarks on the overall assessment as it was stated in the report, then on the understanding of the institutional system and interpretation of the substantive law of our country. It appears then that certain reported allegations are unfounded.

1. The Moroccan authorities' assessment of the overall evaluation of the Special Rapporteur

4. The Moroccan authorities regret the fact that a part of the allegations is directly reported and exposed, without any cross-checking, and especially without taking account of the context and the legal and institutional environment of the country, which has significantly developed since the accomplishment of its transitional justice experience, and its commitment within the framework of the consolidation of the rule of law and democratization, and also, since its effective and continuous opening up to the U.N. human rights mechanisms, particularly within the framework of the periodic reviews conducted by treaty bodies, such as the Committee against Torture (CAT) in November 2011.

5. Brief replies or clarifications, however, were given at various official meetings, particularly at the preparatory meeting for the Special Rapporteur's visit, on the sidelines of the Regional Seminar on the Prevention of Torture, held on the 9th and 10th of June 2012, in which he took part as a transitional justice expert, during the reception meeting at the beginning of the visit, and during the various official thematic meetings with the major officers in charge.

6. The Moroccan authorities noted sometimes an "amalgam" between the situation of human rights during the "years of lead" in which serious, massive and/or systematic violations of human rights were committed, and the current situation, inserting considerations dating back to the first period, whereas the violations made at that time could not be compared with those relating to current allegations.

7. Therefore, the Moroccan transitional justice experience, its success, the new era that it has generated and the concrete implications as regards the protection of human rights brought about were not stated in their real dimension. In fact, this experience strongly impacted even the momentum of legislative and institutional reforms in the mid-1990s, namely the adoption in 2002 of Act n°22-01 on the Criminal Procedure Code, and the adoption in 2006 of Act n° 43-04 on torture amending and supplementing the Criminal Code. At the institutional level, this development was marked by the deep-reaching reorganization to which the Advisory Council for Human Rights ¹ (currently CNDH²) was subjected, the creation of Diwan el-Madhalim³ in 2001, the creation of CNDH, the Mediator Institute and the Interministerial Delegation for Human Rights, in 2011. The new Constitution has consolidated this process of reforms, including the issues relating to the mandate of the Special Rapporteur, especially the adoption of Act n°35-11 dated October 17th, 2011 supplementing the Criminal Procedure Code, aiming at reinforcing the conditions of fair trial and other rights established by the new Constitution.

8. Concerning the claim that not all the victims or families of victims have received compensation⁴, the Special Rapporteur seems to reduce the Moroccan experience to compensation. The Moroccan authorities wish to recall that the overall process underwent two phases. The first phase is marked by the institution, as of 1999, of an independent arbitration body in charge of compensating the victims of forced disappearance and arbitrary detention, whose mandate was limited to the financial compensation for victims. 7780 individuals benefited from compensation within this framework⁵. Also, in so far as compensation alone cannot ensure a true remedy for the damages suffered, and to meet the expectations of the associations of victims and their families, as well as human rights NGOs, a truth commission, namely the Equity and Reconciliation Commission⁶ (IER), was established in 2004, upon a recommendation of CCDH in this regard; and this is the second phase of the process.

9. It was appointed to elucidate the cases of serious violations of human rights in Morocco during the period extending from 1956 to 1999,. Its mandate covered a large range of serious, massive and/or systematic violations: forced disappearance, arbitrary detention, infringement of the right to life, torture, forced exile, disproportionate use of police force during social protest movements.

10. With regard to the 22.000 applications received, IER opened individual files which were all examined. The cases falling within IER material and temporal scope of competence were the subject of arbitral compensation decisions as well as recommendations on other methods of remedy, namely medical and psychological rehabilitation, social reintegration and the settlement of the administrative and financial situation of victims. Also, within the framework of financial compensation, IER established criteria⁷ and accounting units, on the basis of the type of violations suffered, the principle of equality and solidarity between the victims having suffered the same violations, as well as the gender approach.

¹ Conseil Consultatif des Droits de l'Homme (CCDH)

² National Council for Human Rights

³ Ombudsman's Office

⁴ Para. 12 of the Special Rapporteur on Torture (SRT) Report

⁵ Total amount of compensation allocated: 960.000.000,00 MAD (113.760.000,00\$ US)

⁶ Instance Équité et Réconciliation

⁷ The first criterion relates to the deprivation of liberty; the other criteria refer to the duration of violations suffered, detention conditions, "related" violations (torture, ill treatment), sequelae, and even the loss of revenue or opportunities.

11. As of February 15th, 2013, 18.032 people benefited from compensation, insofar as they met the specified criteria⁸. To date, 188 files on cases in which IER and the follow-up committee established death in detention have not been compensated yet, either because the relevant beneficiaries did not provide the required documents for the examination of their file, or because the beneficiaries condition the acceptance of compensation by handing-over the remains of their relatives.

12. Hence, IER attempted to do justice to the maximum number of victims and remedy the damages they suffered. The program of individual remedy was carried out⁹. As for the community remedy program, it lies within the more general scope of empowerment of the populations of the areas concerned and the safeguard of remembrance, according to a participative and inclusive approach. This program is still underway although it has been largely implemented. Indeed, reparation was designed and developed within the framework of a comprehensive approach whose major dimensions are the recognition of victims, liability of State bodies, the establishment of truth and the duty of remembrance. The Moroccan experience cannot be reduced to financial compensation, which is only one aspect of (individual) remedy.

13. The Moroccan authorities would like also to recall that IER was designed as an extra-judicial transitional justice mechanism. It was appointed to determine the liability for the State and its bodies, and not individual liability, in a spirit of consolidation of reforms and reconciliation. This process, however, by no means excluded the right of victims, their families or beneficiaries to take legal action. It should be noted that adopting amnesty laws likely to support the impunity of public agents involved in this period was never considered.

14. Also, concerning the issue raised by the Special Rapporteur about the fact that the work of IER did not break the cycle of the *de facto* impunity of the perpetrators of the violations committed during the 1956-1999 period, the Moroccan authorities wish to recall that, within the framework of the implementation of the relevant IER recommendations, Morocco engaged in the development of an integrated national strategy for the fight against impunity, considering that the eradication of impunity requires, in addition to legal reforms, the development and installation of public policies in the sectors of justice, security and law enforcement, education and life-long training, as well as active involvement of the society as a whole. This strategy should be founded on the international law of human rights, conducting first the alignment of the penal legislation with the international commitments of the country.

15. In this respect, it should be recalled that a new policy of security forces governance has been conducted since 2006¹⁰, through the upgrading, clarification and publication of the statutory texts on the attributions, organization, decision-making processes, procedures and systems of supervision and evaluation of the entire set of law enforcement and security

⁸ Amount of compensation allocated : 813.345.215,00 MAD (96.300.000,00\$ US)

⁹ Within the framework of the follow-up of the implementation of ERC recommendations, relating to individual and community remedies, for 2012, the financial compensation for the victims of serious violations of human rights committed in the past, amounted to 26.214.822 MAD for the benefit of 358 beneficiaries, divided into three sections (1st section amounts to 11.774.324 MAD for the benefit of 131 beneficiaries, 2nd section amounts to 13.372.785 MAD for the benefit of 181 beneficiaries and one 3rd section in the course of payment of an amount of 1.067.713 MAD for the benefit of 46 beneficiaries). The medical coverage of the victims of serious violations of the human rights resulted in the allowance of a budget of 4.000.000 MAD, an amount annually allocated to CNOPS.

¹⁰ An cooperation agreement and of partnership was concluded between the CCDH (current CNDH) and the Ministry from the Interior and the opening of the public debate on the sedentary governorship.

forces, without exception, as well as the administrative authorities in charge of the maintenance of law and order, or entitled to resort to police force.

2. Understanding the institutional system and interpretation of substantive law

16. The Moroccan authorities wish to present some clarifications regarding the understanding of the institutional system and interpretation of the substantive law of the country as to both substantive and procedural aspects.

2.1 Institutional system

2.1.1 Reform of justice

17. In the framework of a deep-reaching and comprehensive reform of justice, a High-level body in charge of establishing a national dialogue on this reform was appointed on May 8th, 2012 by His Majesty King Mohammed VI. The objectives of this reform are the reinforcement of judicial independence, from the perspective of the implementation of the new provisions of the Constitution, concurrently with the development of training.

18. Following the appointment of the High-level Body, the National Dialogue was launched on a series of reform lines, initially through a program of regional conferences involving all stakeholders. These regional conferences were an opportunity for the various justice professionals, namely the representatives of magistrates, registry staff and lawyers, to directly contribute in an interactive way to this dialogue through debates open onto all priority issues raised in reform lines. Ten conferences were organized between June 2012 and February 2013. They addressed topics such as the reinforcement of judicial independence, modernization of criminal policy, criminal justice and the reinforcement of the guarantees of fair trial, improvement of access to justice, upgrading the legal and judicial professions, as well as raising the moral standard of justice.

19. In addition, a study day on “Justice and the Media” is scheduled for the 23rd of February 2013 in Rabat. Also, a meeting between the Minister of Justice and Liberties and the officials of the jurisdictions of the Kingdom is planned for the 21st and 22nd of February 2013 in Rabat. The National Dialogue will lead to the adoption of a National Charter with clear objectives, priorities, programs and funding resources, as well as rigorous implementation and evaluation mechanisms.

2.1.2 Innovative role of the National Council of Human Rights

20. The Moroccan authorities would like to underscore the particularly innovative role played by CNDH since its inception in March 2011, within the framework of visiting the entire set of places of deprivation of liberty, as highlighted by the Special Rapporteur. CNDH published two very important reports in a short period of time on the visits it organized and conducted in places of detention of liberty. The first is entitled “The crisis of prisons, a shared responsibility: 100 recommendations for the protection of the rights of prisoners”, published on October 31st, 2012. It deals with the situation of prisons in Morocco¹¹, based on the visit of more than 15 correctional facilities throughout the country between January 31st, and June 19th, 2012. The second report, “Mental health and human rights: the pressing need for a new policy”¹², was published on September 11th, 2012,

¹¹ http://www.ccdh.org.ma/IMG/pdf/exe_Re_sume_A4_exe_cutif_prison-_Vf_30_oct._-.pdf

¹² http://www.ccdh.org.ma/IMG/pdf/Rapport-def_-_VF_-.pdf

taking stock of the current conditions of health care within psychiatric hospitals provided to people suffering from mental diseases.

21. The authorities and bodies concerned showed great receptivity vis-à-vis these reports. The General Delegation for Prison Administration and Reintegration (DGAPR), after the presentation of the conclusions of CNDH on the situation of prisons, thoroughly studied all the recommendations that fall within the scope of its competence. It immediately strove to find the means of solving the problematic points raised by CNDH. In this connection, DGAPR organized two study days for reflection and debate in December 2012, attended by CNDH, the Inter-ministerial Delegate for Human Rights, Mohammed VI Foundation for the Reintegration of Detainees, in the presence of CNDH members, Regional Directors and Directors of Facilities, as well as the medical doctors affiliated to these facilities. The objective of these two study days was to think about ways of implementing the recommendations contained in the first CNDH report and overcoming the difficulties regarding prison management, taking account also of the visit of the Special Rapporteur with regard to the follow-up of his Report. Two publications were prepared for this reason in January 2013 for the entire staff of DGAPR.

22. The publication of CNDH Report on the situation in psychiatric facilities made it possible to give a fresh momentum to the reform process of the legislative framework regulating these facilities, dating back to 1959 and currently outdated. One of the recommendations of CNDH in this regard relates to the need for the preliminary draft law on the matter to be the object of true and broad prior consultations with all stakeholders in order to provide an adequate legal system. In this setting, a national day of dialogue and advocacy, bringing together health professionals, representatives of the sectors, bodies and associations involved in the field of mental health, is planned to be held on the 27th of February 2013 in Rabat.

23. CNDH also paid visits to Child Protection Centers (CSE¹³) and intends to publish a report in order to improve the situation of the children placed in these centers, which will be published in due course. These visits were organized according to a participative approach involving all official actors (at central and local levels), NGOs, children and families, taking into account the gender approach. They aimed at evaluating and analyzing the conformity of the legislative and institutional framework governing the placement of these children in such centers with the international standards and guidelines. (See para. 84 on CSE).

24. CNDH also took up the issue of legal medicine. It entrusted a national expert with the mission of drafting a memorandum on the situation of legal medicine in order to analyze the legislative and regulatory texts governing this profession, identify the challenges related to the practice of this discipline and to recommend solutions conducive to a homogeneous, coherent and scalable institutional framework for the medico-legal activity, in order to meet the requirements of efficiency, safety and equality of citizens before justice. This mission has already held discussions with the Ministry of Justice and Liberties, the Ministry of Health and the Interior Ministry, visited courts, hospitals and municipal hygiene offices in 7 cities, and organized on the 15th of February 2013 a study day with different government departments and NGOs. The final report is being drafted and should be adopted before the end of the month of February 2013.

¹³ Centres de Sauvegarde de l'Enfance

2.2 Substantive law: recent advances and prospects

2.2.1 Ratification of OP-CAT

25. The Bill n° 124-12 on the approval of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (OP-CAT) was presented and adopted, in conformity with Article 55 of the Constitution, at the Council of Ministers' meeting, held on the 12th of November 2012. It was then presented before the House of Representatives, which approved it on the 12th of February 2013 and has just been submitted for approval to the Lower House of Parliament, House of Counselors. The Bill will be subsequently promulgated by the King, in conformity with Article 50 of the Constitution.

Implications of the ratification of OP-CAT

26. Well before initiating the process of OP-CAT ratification, a wide-ranging public debate was organized in Morocco to meet the conditions of effective implementation of this instrument, and focus on the most suitable option concerning the national mechanism for the prevention of torture (NMP), drawing on the experiences and good practices of States having already set up this type of mechanism.

27. Many meetings and events on this topic are held regularly. On the 9th and 10th of June 2012, a regional brainstorming workshop on the prevention of torture in the context of democratic transitions, organized jointly by the Inter-ministerial Delegation for Human Rights, Office of the High Commissioner for Human Rights and the Association for the Prevention of Torture, during which the various experiences and options related to the ratification of OP-CAT were examined by experts from different backgrounds. The African national institutions had met before in Rabat on the 7th and 8th of September 2011 within the framework of the high-level conference on the role of national human rights institutions in the prevention of torture in Africa. A final Declaration had been adopted in which the representatives reiterated their commitment to implementing the program "A continent united against torture", through the reinforcement of the role of the national institutions of human rights as regards the prevention of torture, and encouraging the States to ratify the Optional Protocol. In 2009, an international Seminar organized by CCDH (now CNDH) brought together the entire set of Moroccan stakeholders concerned with this issue, members of the United Nations Sub-committee for the Prevention of Torture, the French Inspector General of Prisons and other representatives of national prevention mechanisms.

28. Currently, CNDH is a de facto and de jure mechanism for the prevention of torture, within the framework of its attributions provided under Articles 10 and 11 of the Dahir on the Act establishing the Council. It is in this capacity that the latter conducted the recent visits to prisons, psychiatric facilities and child protection centers. Nevertheless, in the framework of the concrete implementation of OP-CAT, CNDH is engaged in a process of dialogue and consultations, in close coordination with the relevant authorities, including DIDH, to further reinforce its responsibilities in this field and set up the adequate structures that would enable the Institution to play the role of a true NPM.

29. The relevant authorities, in turn, are aware of the importance of the new progress made as regards the visits to detention facilities in the country within the framework of the ratification of OP-CAT. Following the Council of Ministers' adoption of the bill on the approval of OP-CAT, a note issued by DGAPR was addressed to all Directors of Facilities on the 28th of November, 2012 in order to further sensitize prison staff to human rights in general and to the contents of the Protocol in particular.

2.2.2 *Definition of torture*

30. Act n° 43-04 on torture modifying and supplementing the Criminal Code adopted in 2006 came to settle this issue through a definition which includes, as the Special Rapporteur on Torture pointed out, the major elements contained in the first Article of the Convention against Torture, with particularly deterrent sentences. Nevertheless, this issue is still the object of reflection within the framework of the Criminal Code reform in order to consolidate the alignment of the definition adopted by Moroccan law with the provisions of the Convention.

Complicity

31. Concerning the Special Rapporteur's assessment according to which the definition of the Criminal Code does not cover complicity or explicit or tacit consent on the part of law enforcement or security personnel or any other person acting in an official capacity, the Moroccan authorities recall, nevertheless, that the current provisions apply to the public servants in the event that such act is committed by, at the instigation of, or with the express or tacit consent of these servants. Indeed, under Article 224 of the Criminal Code, shall be deemed civil servant, for the application of criminal law, any person who, under any denomination and any level, is entrusted with a position or even temporary mission, remunerated or free, and contributes in this capacity to the service of the State, public administrations, municipalities, public corporations or a public interest service.

32. The Moroccan legislator has also extended the scope of the people likely to be the object of sanction and lawsuits for the crime of torture, insofar as the accomplice is sentenced to the same penalty as the culprit. Thus, whoever intentionally assists or facilitates the perpetration of the crime of torture in any way whatsoever shall be regarded as accomplice and shall be punished as the main perpetrator. It should be noted that the public servant who is informed of torture and does not take action accordingly is himself/herself also considered as the main perpetrator; the multiplicity of accomplices is an aggravating circumstance of the penalty which can reach 20 years. Moroccan law sanctions torture in all circumstances, and does not admit any mitigating circumstances or exonerating discharges (Article 231 of Criminal Code).

33. In order to reinforce the penal provisions in force on torture, it is planned within the framework of the revision of the Penal Code to establish new provisions criminalizing in a separate way the crimes of torture committed by public servants and those committed by other people.

2.2.3 *Issue of confessions*

34. With regard to the allegations raised about the use of force, even torture to force the suspects to sign their statements during investigations conducted by the criminal police¹⁴, the Moroccan authorities recall that in accordance with the provisions of Article 67 of the Criminal Procedure Code, any person remanded in custody has the right to refuse signing the minutes of the hearing; in this case, the judicial police officer is required to note the refusal and to mention the reasons thereof.

35. Moreover, aware of the relative conclusive effect of confessions, since the Constitution introduced in 2011 the right to keep silent, and due to the recent modifications of the Criminal Procedure Code introduced by Act n°35-11 for better guaranteeing the rights of the people suspected of offences, investigators usually focus their investigations on the collection of material evidence, relying on the skills of the forensic police. In

¹⁴ Para. 27 of SRT Report

addition, Article 287 of the Criminal Procedure Code stipulates that “the judge can base his decision only on evidence exposed in the debates and discussed orally after hearing both parties before him”.

36. Finally, the Ministry of Justice and Liberties has undertaken to ensure the video recording of all statements made to the police during investigations and interrogations, within the framework of the National Dialogue’s recommendations on the reform of justice.

2.2.4 *Access to lawyer*

37. With regard to the Special Rapporteur’s assessment that “Testimonies ... indicate that, in practice, they are often denied access beyond the legal time frame” and that “It appears that in the majority of cases, lawyers meet their clients only at the first hearing before the judge.¹⁵”, the Moroccan authorities specify that Act n°35-11 of October 17th, 2011 introduced substantial modifications as to the guarantee of such access.

38. Indeed, concerning the possibility for suspects to communicate as detainees with their lawyers, since the modification introduced to the Code of Criminal Procedure, especially Article 66 thereof, this possibility is stipulated as a general rule before the end of half the initial period of custody, and hence remains quite possible right from the beginning of the arrest.

39. Act n° 35.11 expressly establishes fundamental guarantees such as the immediate notification of suspects of the reasons for their arrest in a language that they understand, the right to keep silence; the right to benefit from legal assistance; and the right to appoint their own lawyers.

40. From now on, immediately after the remand in custody of a person, the criminal police should notify the lawyer of the person arrested and inform the chairman of the bar about the event. And if the person in custody requests the designation of a lawyer in the framework of legal assistance, the chairman of the bar is informed to conduct such designation.

41. Contact with the lawyer is carried out before the end of half the time limit of custody. It may be delayed by the Public Prosecutor’s Office, upon the request of the criminal police officer, but the delay may not exceed 12 hours after half the time limit of custody for ordinary offences. In the event of a terrorist offence, this duration is increased to 48 hours as of the end of the initial duration of custody (96 hours), and may not exceed 48 hours. This exception mechanism is justified by the nature of the offence itself, particularly to prevent information and pieces of evidence from circulating and compromising proper investigation.

3. Evaluation of practices

42. The Moroccan authorities wish to specify the current practices regarding the method of monitoring detention sites, as they exist to date, and as they arise not only from the legal and institutional framework in force, but also from the current dynamics, particularly the visits paid to detention sites, investigations and/or medical examinations.

3.1 Visits to detention places (or facilities)

43. In general, the number of visits to detention facilities is increasing, whatever the nature of the authority or body performing such visits. Their multiplication and regional

¹⁵ Para. 27 of RST Report

ramification (proximity) illustrate the will of the Moroccan authorities to reinforce the mechanisms of protection and control concerning these premises, with a view to eradicating all forms of torture or ill-treatment.

44. The provisions of Article 45 of the Criminal Procedure Code oblige prosecutors at the various courts to conduct periodic visits to detention premises during both the preliminary investigation and the detention pending trial to check the causes of detention and the conditions thereof.

45. It should be recalled that suspects are remanded in custody in police force buildings under the supervision of the General Directorate of National Security (DGSN), or within the territorial brigades under the supervision of the Royal Gendarmerie. These premises are subjected to the monitoring of the Public Prosecutor's Office, particularly by means of the Detention Register, which records the identity of the person in custody, the reason for custody as well as the time of the beginning and end of custody. This information is systematically communicated to the judicial authorities during their visits to detention facilities. The judge in charge of enforcing sentences, within the scope of his responsibilities, can also consult these registers in order to make sure that they are kept properly.

46. With regard to the visits conducted by the judicial authorities, in 2010, 1392 visits were performed; in 2011, 1236 and in 2012, they witnessed a significant increase amounting to 2375 visits.

3.2 Investigations and medical examinations regarding torture allegations

47. Concerning the assessment of the Special Rapporteur that courts and prosecutors do not comply with the obligation to initiate an *ex officio* investigation whenever there are reasonable grounds to believe that confessions have been obtained through the use of torture, or to order an immediate and independent medical examination if they suspect that the detainee has been subjected to ill-treatment¹⁶, the Moroccan authorities recall that the Criminal Procedure Code (Articles 40 and 49) obliges the legal authorities to open an investigation about the complaints and grievances received concerning acts of torture and ill-treatment. In addition, the provisions of Article 134 of the Criminal Procedure Code expressly stipulates that the Public Prosecutor of the Kingdom, the Prosecutor of the Kingdom, the investigating judge or the magistrate in charge of the case shall order a medical examination insofar as a request for this purpose has been submitted to them by the person who claims to have been tortured or subjected to ill-treatment or by their councils, or *ex officio*. If the magistrates do not order such examinations, it is because, generally, detainees raise such ill treatment only several months later, which makes investigations difficult. In 2012, legal authorities ordered 32 medical examinations.

4. Allegations stated in Special Rapporteur's Report

48. The Moroccan authorities noted a certain number of reported allegations, some of which are unfounded; others seem to arise from a biased assessment of the situation.

4.1 Unfounded allegations

49. The points developed hereafter refer to allegations that the Moroccan authorities consider unfounded, and regret the fact that they are reported without taking account of the

¹⁶ Para. 27 of SRT Report

clarifications provided by the various departments and officials in charge, or exposed without any cross-checking.

4.1.1 “Unknown places of detention”

50. Within the framework of the evaluation of the situation by the Special Rapporteur, and concerning the repeated use of the expression “unknown places of detention”¹⁷, it should be recalled that the Moroccan authorities clearly explained on several occasions during the visit, that there are no “unknown places of detention” in Morocco anymore. The places that existed in the past were identified and recorded within the framework of the process of transitional justice. Several of these places constitute an integral part of the various programs of rehabilitation in the framework of the implementation of IER recommendations on community remedy and the safeguard of memory.

51. Places of deprivation of liberty are those stipulated and governed by the law, an exhaustive list of which was communicated for the visit of the Special Rapporteur, and for which unimpeded access was guaranteed. All these places are controlled by the magistrates of the Public Prosecutor’s Office.

52. In addition, the Moroccan authorities wish to maintain that the assessment of the Special Rapporteur concerning the existence of “unknown places of detention”, in spite of the conclusions following from the visits of members of Parliament and CNDH, and the Public Prosecutor of Rabat, in May 2011¹⁷ concerning “DGST headquarters” in Témara¹⁷, is unacceptable owing to the fact that it calls into question the credibility of the national mechanisms and institutions of control. It is also a rather paradoxical assessment in the sense that the Special Rapporteur himself notes the importance and increasing credibility of CNDH as a protection mechanism, and hence of control, with regard to detention sites.

53. Moreover, concerning the focus of the Special Rapporteur on the presumed abuses of the security services particularly intelligence services within the framework of terrorism cases or offenses against state security, the Moroccan authorities recall that the security services endowed with the responsibilities of the criminal police force in Morocco are the DGSN (police force), the Royal Gendarmerie (GR), and, since the adoption of Act 35-11 in 2011n the DGST, and that these various services can be required to work together, each within the scope of its competence.

54. Generally, intelligence is under the supervision of the DGST while the exploitation of intelligence is under the supervision of the police officers of the DGSN, including the National Brigade of Judicial Police (BNPJ), within the framework of terrorism cases and offenses against state security. DSGN remains to date mainly in charge of arresting people suspected of infringements.

55. The Moroccan authorities recall, in addition, that the Constitution establishes good “Security Governance” (Article 54), a structuring concept which tends to reconcile the requirements related to the security of the citizens and the respect of human rights. The efforts made by security services in general to mainstream the culture of human rights within their services are significant, particularly in training and continuous training of various professionals, prevention of torture, the fight against impunity, management of social movements and humanization of detention conditions.

¹⁷ Para. 18 of SRT report

4.1.2 *Seriousness of reported treatments*

56. The Moroccan authorities note that many descriptions of ill treatments, even acts of torture are reported with different degrees of seriousness. Certain allegations refer to very serious facts and treatments, including sexual violence in various forms, with regard to the populations in the Southern Provinces as well as irregular migrants. In addition, as regards demonstrations, facts are reported which would have involved the death of a demonstrator.

a. Sexual violence and other serious acts

Regarding terrorism

57. Concerning the allegation relating to “sexual assaults against detainees” or “threat of sexual assaults”¹⁸ raised by prisoners convicted within the framework of terrorism cases, the Moroccan authorities wish to underline the fact that within the framework of the powers of CNDH as regards the visits to detention sites, and with regard to the report published by the Council in September 2012 concerning the situation in prisons in Morocco, an objective description of the situation of prisoners could be established. Indeed, taking into consideration the number of prisons visited, the number of detainees heard, as well as the major allegations, including old ones, that these prisoners raise to the Council, it turns out that the allegations relating in general to sexual violence are unfounded sheer lies. Moreover, these allegations have always been the subject of investigations by the Public Prosecutor’s Office whenever it is informed about the seriousness of such facts, and it turns out that sexual violence is not substantiated. By way of example, a case in point is that of the prisoners of Toulal Prison in Meknès, who claimed to have been “assaulted” and “raped”. Informed by these prisoners’ lawyer about such allegations, CNDH suggested referring the matter to the Prosecutor’s Office, which was done. The latter opened then an investigation and ordered a medical examination which was conducted by three doctors on November 22nd, 2011. The Prosecutor’s Office dismissed the case insofar as the results of the expert examination showed the unfounded character of these allegations.

Regarding the population in the Southern Provinces

58. Concerning the “credible testimonies relating to torture and ill-treatment in the Prison of Laâyoune, including rape, severe beating and isolation up to several weeks”¹⁹, they are sheer unfounded allegations. Whenever this kind of allegations is brought to the attention of the officers in charge of Laayoune Prison, investigations are systematically conducted.

59. In addition, the treatment of the prisoners in this prison does not reveal any discrimination, in accordance with the applicable laws and regulations. Indeed, Article 51 of Act N°23.98 on correctional facilities stipulates that “prisoners should not undergo any discrimination based on considerations relating to race, color, nationality, language, religion, opinion or social status”.

60. The Moroccan authorities maintain also that there is no complaint of rape among the complaints filed at the Regional Commission of Human Rights of Laayoun, regarding the allegations of violations of human rights in prison. Indeed, CNDH has not received any complaint from any prisoner of this facility, complaining about any sexual assault, since the creation of the Commission in December 2012. The same holds the administrative office existing in the city since 2007 in the era of CCDH.

¹⁸ Para. 17 and 19 of SRT Report

¹⁹ Para. 66 of SRT Report

61. As for complaints on ill-treatment filed at the office of the Public Prosecutor of Laayoune, it turns out that none of them refers to sexual violence. In addition, it should be specified that the local prison of Laayoune is the subject of regular visits paid by the judicial authorities and the regional Commission of monitoring prisons in Laayoune, during which the prisoners do not hesitate to express their complaints and grievances directly to such authorities. In 2012, the Prison of Laayoune was the object of 24 visits carried out by judicial authorities, 05 visits carried out by the regional Commission of monitoring prisons and 08 visits carried out by the regional Commission of CNDH.

62. Concerning the other particularly serious allegation reported by the Special Rapporteur on “the alleged abandonment of victims in rural areas after subjecting them to violence”, the Moroccan authorities consider that this is an unfounded allegation, reported without hearing both sides, and that this allegation does not refer to any dated event or specific situation on which the authorities could have presented clarifications. Moroccan authorities and national institutions, including CNDH, national and international NGOs, treaty bodies complaint mechanisms, such as Special Procedures, have never received any allegations, information or testimonies whatsoever concerning “abandonment in rural areas”.

Regarding migration

63. Concerning the allegation that sub-Saharan migrants trying to go to Europe via the Strait of Gibraltar or Ceuta and Melilla would undergo “beating and sexual violence”²⁰, and relating to the allegation that Morocco would proceed to “illegal and collective expulsions of hundreds of migrants to Algeria and Mauritania, where they are allegedly subjected to torture and ill-treatment, including by being abandoned in no man’s land”²¹ the Moroccan authorities regret that these very serious allegations are reported without hearing both sides; the authorities maintain also that it does not refer to any specific or dated event on the subject of which the authorities would have readily presented clarifications.

b. Death of a demonstrator

64. Concerning the allegation that “Security forces were reported to have attacked protestors on many occasions, leading to at least one death and many injuries”²², and that “One protester was severely beaten by police officers and died from his injuries on June 2nd, 2011”²³, the Moroccan authorities maintain that this case was the subject of a judicial investigation ordered by the Public Prosecutor, when he was referred to by the family on the 2nd of June 2011, claiming that the death was caused by an excessive use of force by law enforcement agents in the context of the demonstration which took place in the city of Safi on the 29th of May 2011. The Prosecutor was informed of the death of the person at the hospital on the same day and ordered an autopsy and several investigation actions to determine the causes of such death. CNDH was also referred to in this case and sent an inquiry committee. Considering the fact that justice was referred to, CNDH transmitted its report to the Minister of Justice and Liberties and the Interior Minister. The Minister of Justice and Liberties confirmed the submission of this report to the investigating judge in charge of this file.

²⁰ Para. 24 of SRT Report

²¹ Para. 25 of SRT Report

²² Para. 20 of SRT Report

²³ Para. 24 of SRT Report

4.2 Allegations based on a "biased" assessment of the situation

4.2.1 General detention conditions

a. Correctional facilities

65. The Moroccan authorities underscore that DGAPR launched major projects for the construction of modern correctional facilities in conformity with international standards relating to the respect of human rights, and the safeguard of the dignity of prisoners, to replace these decayed prisons and providing educational, cultural, medical, and sport centers, in order to cover the judicial map of the Kingdom. The authorities regret that the entire set of these efforts is occulted by the problem of overpopulation of which the authorities are aware, given that such overpopulation has negative consequences on the space allocated to each prisoner, frequency of showers and walks. The number of prisoners in the last four years increased from 59.212 to 70.758 (December 2012), i.e. an increase of 19.5%.

66. Today, for a capacity of 45.000 places, the number of prisoners is approximately 70.000 prisoners. Also, the rate of overpopulation was of 44%²⁴ in December 2012 (70758 prisoners).

Transfer of prisoners

67. Concerning the transfer of prisoners, and with regard to the Special Rapporteur's assessment that "the officers in charge of the centers [of detention] were obviously ready and prepared for his visit, in particular by moving certain prisoners" (para. 43), the Moroccan authorities state that the transfer of prisoners is conducted frequently, particularly when DGAPR receives the list of the final judgments established by the Ministry of Justice, twice per month. On the basis of this list a commission at the level of the central departments of DGAPR meets to decide the distribution of convicted prisoners, according to gender, age, physical and mental health condition, penal situation, history and family residence. These criteria are rigorously established by the legislator in order to make it possible for the prisoner to benefit from a penitentiary system conducive to his/her reintegration. In addition, it should be noted that the prisoner himself, his family or even through an association, can ask for transfer to a given prison. In this case, his file is examined by the Office of transfers (central administration) which rules on this request.

68. The transfers of prisoners that took place before the visit of the Special Rapporteur were conducted according to these procedures and do not constitute in any case an exception or a particular measure in connection with the visit. Also, in 2012, 27.231 transfers took place; that is a monthly average of 2270 transfers, in September 2012, 2480 transfers were carried out in accordance with the average.

Medical care and food of prisoners

69. Concerning the assessment relating to "the absence of independent medical care", "lack of medical equipment" (particularly with regard to dental care) and "insufficient or

²⁴ Average area per prisoner is calculated so that: Total living area of detention (dormitories)/total population. The total area of dormitories is 118 138.87 m²/Number prisoners (70758); currently average area per prisoner is 1.67 m². The rate of overpopulation is calculated by comparison to the desired area (3 m² pas held): total area 118138.87/3 = 39380 to deduct from the total population, that is 70758-39380=31378, which corresponds to 44% OF OVERPOPULATION (31378x100/70758 = 44)

even non-existent psychiatric medical care”²⁵, the Moroccan authorities regret that the efforts made by DGAPR in this regard are not taken into account. With regard to the independent character of medical care services, the authorities maintain that the care provided within the medical departments of correctional facilities depend inevitably on the prison authorities. All the care is provided by general practitioners or specialists affiliated to DGAPR or officially appointed by DGAPR, who work in all autonomy and independence, in conformity with the ethics of the profession. All the prisoners have access to medical care upon their request, taking appointment with nurses or upon the initiative of the nurse who notes a deterioration of the general condition or any symptom shown by a prisoner or upon the initiative of the doctor according to the initial medical file. Treatment and medical check-up are prescribed if required. According to their examination by the general practitioner, prisoners are referred to specialized doctors licensed by the General Delegation. In the event of an emergency, the patients are referred to the emergency section of the Hospital.

70. The quality of medical equipment depends on the structure and age of the prisons. Indeed, certain prisons dating back to the colonial period cannot be equipped suitably for lack of space, which can affect the quality of medical care, in spite of the good will and the efforts of the officers in charge of these prisons. Since its inception in 2008, the General Delegation strives to improve medical equipment of correctional facilities, and to recruit more doctors and nurses. Since 2008, 21 dentist surgeries were created in correctional facilities, which were added to the 19 existing surgeries which were renovated and re-equipped. Currently, only 6 correctional facilities do not have a dentist surgery for lack of space.

71. As to the assessment of the food provided to prisoners²⁶, the allocation of meals was increased in 2008 from 5 to 14 MAD a day per prisoner, but it remains insufficient because of the increase in prison population. The food brought by the families is authorized in accordance with the law. The equipment of kitchens depends, like medical equipment, on the age of certain prisons. As for the quantitative and qualitative control of food, the food provided to prisoners is subjected to two types of controls, internal and external. Correctional facilities are subjected to unexpected controls and inspection of the services of the National Office of Food Security (ONSSA) which is in charge of the quality control of the meals served in all spaces of collective catering.

Complaints of prisoners

72. In 2012, 140 complaints were received by the Administration, through various organizations. These complaints are transmitted to the Administration either by NGOs (19), CNDH (94), the Ministry of Justice and Liberties (11), the prisoners themselves (6), the families (2) or the judicial authorities (1); the complaints reported by the newspapers are also taken into account (7). At the reception of the complaint, an administrative inquiry is launched at the level of the establishment concerned.

Disciplinary measures

73. With regard to the assessment that the methods of control of disciplinary measures, particularly the resort to isolation as a punishment, and the applicable mechanisms of complaints remain fuzzy, and that solitary confinement would be very frequent and that this isolation would be “the primary, and often only, disciplinary measure applied, without resort to less harmful and more progressive disciplinary steps” (Para 50), the Moroccan

²⁵ Para. 43 of SRT Report

²⁶ Para. 45 of SRT Report

authorities state that it is important to distinguish between placing the detainee in a disciplinary cell and isolation strictly speaking. The first results from a disciplinary action decided by a collegial body of the administration of the concerned establishment, and governed by Act n° 23-98; this sanction may not exceed 45 days. The facts constituting a disciplinary fault as well as measures in question are provided under Articles 53 to 62 of Act n° 23-98. Cell isolation is considered only for security or health-related reasons: it is rather a preventive measure for safety reasons or when the health condition of prisoners constitutes a threat to their lives or that of others. This measure, in turn, is subjected to the entire set of conditions which guarantee the safety and health of the prisoner. The prisoner subjected to prison isolation benefits from the traditional prison regime (right to visits, walks,...).

74. Moreover, disciplinary measures, when considered, are not limited to the placement in a disciplinary cell, but can involve several types of sanctions such as the prohibition of purchases or direct visits, cleaning work, or the obligation to repair the damage which the prisoner would have caused. Also, the placement in disciplinary cell in 2012 accounted for only 37% of disciplinary measures. It should be noted that disciplinary registers are controlled by the judicial authorities within the framework of the visits to prisons, including the judges in charge of sentence enforcement.

75. To date, a reflection initiated by DGAPR focuses on the possibility of modifying the legislative measures governing disciplinary measures, as to the duration of the placement in disciplinary cells, application of regionalization in conflict resolution, and a better adaptation of the disciplinary measure according to the type of infringement and the seriousness of the act in question.

Facilities of death-row inmates

76. Concerning the assessment of the Special Rapporteur of the prison system and the material conditions in prisons, particularly hard for death-row inmates or detainees serving life imprisonment²⁷, the Moroccan authorities maintain that the prisoners sentenced to capital punishment, 115 to date, are the subject of special attention taking into account the nature of the sentence they serve, in the 12 correctional facilities, including the central prison of Kénitra.

77. This category of prisoners benefit from an individual cell, and are entitled to a walk in the morning and afternoon in the courtyard of their district, every day throughout the week. They are also subjected to a particular follow-up by the medical personnel who take care of their physical and psychological well-being²⁸. Showers are located in a special area and are available for them once a week. They benefit from education and literacy programs; some of them received diplomas of primary education, secondary education, and even university degrees²⁹. They take part, according to their wish, in cultural, entertainment and sports activities organized in the facility.

78. They are visited by their families; these visits are for some prisoners less frequent due to the distance separating them from the location of their families or the lengthy sentences they are serving. It seems that the reduced frequency of family visits of these prisoners is especially due to the “despair” of relatives having lost any hope that such prisoners would be released. Local associations and NGOs play here a great role of support

²⁷ Para. 52 of SRT report

²⁸ Since 2008, 4.239 medical examinations were conducted for the benefit of death-row inmates within the facility and/or in public hospitals.

²⁹ 66 death-row inmates benefit from literacy courses, academic training, and professional training since 2008.

and accompaniment. It should be noted, however, that these prisoners may benefit from pardon measures³⁰.

79. They can communicate with the outside world through the land telephone provided in the facility, receive books and magazines of the library of the facility or from outside, in addition to the possession of television and radio sets. Like the other prisoners, they receive the mail, supplies, and anything else authorized by the law.

Women serving prison sentences

80. With regard to the assessment that the rate of overpopulation concerning detained women would be higher than that in the districts for men with “an apparent lack of space for women with children”³¹, the Moroccan authorities specify that women account for approximately 2.5% of the prison population. If they are indeed in a situation of overpopulation (in the sense that they outnumber the places initially planned for them), it is primarily within large prisons that these women in general prefer not to leave so as to remain near their families. 55% of these women are in preventive detention, and 24% are in Salé or Casablanca. Since 2012, 2 prisons were exclusively dedicated to women, independent from men’s prison, and are managed by female directors (in Casablanca and Toulal). These facilities do not record any problem of overpopulation. In addition, a block reserved for women with children, with an accommodation capacity of 700 places, meeting modern standards is currently under construction at the Prison of Casablanca.

81. Finally, within the framework of a visit of His Majesty the King in August 2012 to the prison of Casablanca, 100 women benefited from a royal pardon and were released and 92 benefited from a reduced sentence.

NGOs visits

82. As for the assessment relating to the issue of visits conducted by NGOs whose scope of activity remains “very limited” and “conditioned by the approval of DGAPR”³², the Moroccan authorities recall that Article 84 of Act N°23-98 provides that visits can be carried out upon the authorization of the Delegate General. The modification of this Article is currently considered with a view to facilitating the activities of NGOs in this regard. On the other hand, it should be noted that the scope of activity of NGOs which are authorized to pay visits is not restricted, in the sense that any association wishing to support or develop the educational welfare of prisoners or to bring a spiritual or moral comfort or material aid to them is welcome³³. Furthermore, certain members of these NGOs are also members of the Regional Commissions of monitoring prisons, which exist within each *wilaya*, prefecture or province³⁴, and pay visits to prisons without restrictions³⁵. Article 621 of the Criminal Procedure Code stipulates that the monitoring Commission entitled to visit correctional facilities, reports its observations and criticisms to the Ministry of Justice and Liberties, and points out the abuses to be stopped as well as the improvements to accomplish.

³⁰ 73 pardon measures for the benefit of death-row inmates have been recorded since 2000.

³¹ Para. 58 of SRT Report

³² Para. 39 of SRT Report

³³ 114 ONG organized 1405 activities in 2012 within the visited correctional facilities.

³⁴ 298 visits carried out in the last 3 years within this framework.

³⁵ 54 visits during the year 2012.

b. Psychiatric institutions

83. Concerning the assessment of the Special Rapporteur on Torture relating to the fact that the “perpetrators of minor infractions are handed over to the administrative authority if proven to be exempt from criminal liability, which excludes them from medical monitoring and the necessary treatment”, and that there are “situations where persons with mental illnesses remain incarcerated for excessive periods”³⁶, the Moroccan authorities specify that there is currently a project for the construction and equipment of special units with a capacity of 25 beds per unit, which will make it possible soon to increase the capacity of caring for patients suffering from mental disorders, responsible for minor offences, who remain currently detained within the correctional facilities for a long time, due to the lack of psychiatry beds.

c. Child Protection Centers

84. Child protection centers (CSE) are socio-educational facilities affiliated with the Ministry of Youth and Sports, which accommodate children upon court order, pursuant to the Criminal Procedure Code, namely children in conflict with the law (children suspected, indicted or convicted of a criminal offense), and children in difficult situations (children aged 12 to 18 years, placed under detention warrant pursuant to Articles 471 and 481 of Criminal Procedure Code).

85. In the framework of its responsibilities as regards visits of detention places, CNDH (see para. 22) conducted visits to the entire set of CSE in the country. It was the occasion to establish an assessment of the current conditions with regard to children placed in these centers. At the time of the visit, 742 children were placed in 17 visited facilities³⁷.

86. The Moroccan authorities recall that the adoption of the new Criminal Procedure Code in 2003 represents a true step forward as to the protection of children in difficult situations and the children in conflict with the law. Indeed, the new approach of the Code aims at the protection of the child, whether such a child is a victim of an offense, a perpetrator of an offense, or a child in a difficult situation. As regards criminal justice for minors, the reform of the Criminal Procedure Code made it possible to record important headway as regards the protection of the best interests of the child, in conformity with the measures and guarantees stated under Article 3.1 of the Convention on the Rights of the Child, particularly thanks to the increase of the age of criminal responsibility to eighteen years, the establishment of a judge in charge of sentence enforcement specialized in minors, replacement of police custody by the measure of retention of minors, legal assistance, the introduction of the system of release on probation and the reduction of the duration of prison sentences applicable to minors. Moreover, the Criminal Procedure Code contains exclusive provisions for children in conflict with the law, intended to adapt the functioning of justice to children.

87. Concurrently, the Mohammed VI Foundation for the Reintegration of Prisoners, strongly contributed, within the framework of partnerships with the ministries concerned and other public, associative and private actors, to the improvement of the conditions of reception and care for the children placed in CSE, and their family, school and socio-professional reintegration. Several infrastructures were upgraded; the socio-educational programs were improved through the installation of adequate equipment and staff training.

³⁶ Para. 60 of SRT Report

³⁷ 393 children in difficult situation (abandoned children, children on the street, young mothers), and 349 children in conflict with the law (having committed offenses against people, property, security and public life). 110 children are less than 12 years, 216 children from 12 to 14 years, 214 children from 14 to 16 years, and 202 children from 16 to 18 years; 468 boys (63%) and 274 girls (37%)

The centers opened onto their environment: a good number of children attend school courses or trainings in external public or private institutions; spaces for parents were set up in certain centers in order to consolidate family ties.

88. Concerning credible information about corporal punishments which would have been inflicted by a staff member of the CSE visited by the Special Rapporteur, the Moroccan authorities recall, as reported, that an inquiry was indeed opened whose results are under examination by the competent authorities.

89. In addition, the Moroccan authorities recall that the Kingdom of Morocco signed, on the 28th of February 2012, the 3rd Optional Protocol to the Convention on the Rights of the Child, which establishes a procedure of communications. Once ratified, it will allow the children victims of violations of their rights to have access to international recourses.

4.2.2 *Terrorism*

90. Concerning the allegation reported by the SRT according to which ill-treatments would be systematic during the arrest and detention in cases of terrorism and offenses against national security, and that the registration of suspects is delayed before being presented to a judge, the Moroccan authorities consider that this assessment should have been moderate. Act n°35-11 of October 17th, 2011 amending the Criminal Procedure Code came to considerably reinforce the guarantees of people suspected of offenses, including terrorist infringements. Like common law cases, the people arrested in cases of terrorism or offenses against state security are subjected to identical treatment in conformity with the regulations of the Criminal Code and Penal Procedure in force according to the types of offenses and related sentences.

4.2.3 *Migrants*

91. Beyond the very serious allegations reported on migrants (see para. 63), the Moroccan authorities maintain in general that, for the issue of migrants in Morocco, no reference was made in the report to the challenges and constraints facing the Kingdom of Morocco as regards the management of the migration phenomenon, on the one hand, and the efforts made by the authorities in terms of protection, repatriation methods, and voluntary return operations, which were exposed by the authorities during the visit, on the other hand.

92. Measures of expulsion from the national territory for irregular stay in Morocco (Article 21 of Act 02-03) applies only within the framework of the measures of escorting to the border by an individual and justified decision of the administration, as a legal act supported by all the legal and procedural guarantees (Article 23).

93. In the legal sense of the term, the measure of escorting to the border is to be dissociated from the measure of expulsion, which has the character of an exceptional measure, and can be rendered against foreign people whose presence in the national territory constitutes a serious threat to state security, safety or public order (Articles 25 and 27 of Act 02-03). It should be noted that the land borders of Morocco with Algeria are long and constitute the infiltration point of almost all foreign candidates to irregular immigration. The borders with Mauritania are also long, but do not represent a major challenge regarding the issue of migration, taking into account the limited number of attempts at illegally crossing this border.

94. Escorting migrants back to the border, ensuring the respect of dignity and human rights of the migrant subjected to a legal measure of escorting to the border, as well as the rights of defense, particularly with regard to the exhaustion of the possibilities of appeal against the decision of removal, is carried out by the transport of the migrant to the last point of his/her irregular entry to the national territory.

95. The protection of physical integrity, basic rights and dignity of migrants in Morocco, independently of their situation of stay and their nationality, is a central objective of the National Strategy for the Fight against Human Trafficking. Also, for the operational implementation of this strategy, stress is particularly laid on the humanitarian dimension giving consideration to the rights of the people concerned, first as victims of trafficking networks, in accordance with applicable international conventions in this regard, and secondly within the framework of a close cooperation with specialized international agencies, namely the International Organization for Migration (IOM) and the High Commissioner for Refugees (UNHCR) as well as the authorities of the migrants' countries of origin.

96. In general, within the framework of a humanized management of migration problems, the National Strategy for the Fight against Human Trafficking encourages the facilitation and organization of assisted voluntary return of undocumented migrants to their countries of origin, by air, in coordination with the diplomatic and consular services of the countries concerned, and the office of the IOM in Rabat. Thus, since 2004 to date, more than 11.000 migrants extirpated from the networks of human trafficking benefited from this massive program. In other cases, though with an irregular status, the integration of people in the Moroccan society was facilitated, insofar as many people, candidates to irregular immigration intending to reach Europe, now prefer to remain and settle down in Morocco.

97. Local or international NGOs working in the field of the protection of the rights of migrants in Morocco are very active. The organization of Doctors without Borders (MSF) has recently noted the improvement of the situation particularly in terms of access to health care and hospitals, especially in the areas with strong migratory flow (Nador, Oujda...).

4.2.4 *Management of demonstrations*

98. The law enforcement forces of the Kingdom make remarkable and continuous efforts as to the rational management of demonstrations in the context characterized by extended areas of freedom as well as socio-economic constraints and difficulties. In general, the Moroccan authorities point out, concerning the demonstrations organized by the February 20th Movement during the year 2011, that most of them were not authorized by the local authorities which are supposed to deliver a prior authorization in this connection. These demonstrations, nevertheless, were tolerated by the public authorities insofar as they arose in a particular context and they were peaceful demonstrations.

99. The use of force constitutes the exception rather than the rule as regards the management of demonstrations in public space. When these forces intervene, as a general rule, law enforcement action is conducted strictly within the law. In fact, Act N° 72-00 of July 23rd, 2002 on public gatherings, regulates strictly and precisely the resort to force to disperse gatherings in public space. In addition, the Penal Code allows law enforcement agents to intervene whenever the law is not respected (unauthorized demonstrations, damaging public property, infringement of law and order, etc...).

100. Law enforcement agents in these cases issue warnings, and in the event of refusal, they are legally obliged to use force to restore order. In this case, they operate with restraint, in accordance with the principle of proportionality.

101. The follow-up of the situation and the figures regarding the management of demonstrations make it possible to characterize the suitable reaction on the part of the authorities as well as the professionalism of security services: more than 40.000 major manifestations were organized nationwide between 2011 and 2012 mobilizing nearly 2 million and half people. Only less than 1% of the interventions involved restoring order by the use of force, for which strict instructions were each time given to guarantee of proportionate, adequate and restrained use of force. No fire arms were used, contrary to

what is implied in the Special Rapporteur's assessment of the situation, and no human life was lost related to this specific context, in spite of the allegations stated in this regard, nor was there any case of torture proven with respect to demonstrators.

102. Concerning particularly the allegation that the authorities resort to "excessive use of force in repressing demonstrations and in arresting protestors or persons suspected of participating in demonstrations calling for self-determination of the Sahrawi population" and that "during the transport to or upon arrival at the police station arrestees are beaten, insulted and forced to reveal the names of other protestors", the Moroccan authorities recall that unauthorized demonstrations in the southern provinces are managed in the same manner as those which are held in the other regions of Morocco as described above.

4.2.5 *Trial relating to the events of Gdeim Izik*

103. Concerning the trial of persons within the framework of the events relating to the dismantling of the Gdeim Izik camp in November 2010, and to the statement that "the 24 Sahrawi civilians are being tried before a military court for their alleged role in the violent clashes"³⁸, the Moroccan authorities state that these people are not sued "for their alleged role in the violent clashes" but for very precise criminal charges in accordance with the provisions of the Penal Code.

104. The competence of the Military Tribunal for the crimes with which these people are charged is perfectly in conformity with the national legislation in force and international standards in this regard. Indeed, Article 3 of the Military Code of Justice stipulates in its Subparagraph 4 that any person, whatever their status, who commits a crime against the members of the Royal Armed Forces and similar forces shall be tried before the Permanent Court of Armed forces.

105. In addition, the International Covenant on Civil and Political Rights does not prohibit the trial of civilians by military or special tribunals³⁹. For this reason, the Committee of Human Rights strives to make sure that such trials fully comply with the regulations of Article 14 of the Covenant and that the guarantees under this Article are neither limited nor modified by the military or exceptional character of the court in question.

106. In this specific case, the Moroccan authorities maintain that the Permanent Court of Armed Forces is not an exceptional court, but rather a specialized court, chaired by a civil magistrate assisted by a jury of four assessors. As a specialized court, established by the law, it has full jurisdiction. It is integrated in the Moroccan legal system. It is subjected, like other courts of the Kingdom, to the principles and standards of procedure as recognized at the international level, offering all the guarantees of a fair trial with the explicit possibility stipulated under Article 109 of the Code of Military Justice to appeal to the Court of Cassation.

107. Moreover, the proceedings of the trial, which began on February 1st, 2013, confirm the respect of the standards and norms of a fair and impartial trial. Indeed, the hearings were public and were attended by many national and international observers (Defenders of human rights, members of Parliament, CNDH, representatives of foreign diplomatic missions, national and international journalists); the translation of the debates was ensured in various languages by several interpreters. The rights of defense were fully guaranteed, and the witnesses were heard.

³⁸ Para. 66 of SRT Report

³⁹ See on this topic the general Observation of the Committee of the United Nations of Human rights n°32 [CCPR/C/GC/32, para. 22]

108. Concerning the allegations of torture, it should be noted that neither the defendants nor their lawyers, who accompanied them before the investigating judge, have at any time requested to resort to a medical examination to determine the truthfulness of their assertions, knowing that Article 134 of the Criminal Procedure Code requires the investigating judge to take action in the event that he should note indices, or upon the initiative of the defendant himself, or the defense.

II. Recommendations of the Special Rapporteur

109. The Moroccan authorities thank the Special Rapporteur for all the recommendations made, which lie within the scope of the global process of reforms. Nevertheless, certain recommendations call for comments and remarks, which the Moroccan authorities wish to express within the framework of the continuous interactive dialogue with the Special Rapporteur.

110. Concerning the **recommendations which lie within the scope of the overall process of reforms**, most of them are already implemented by the Moroccan authorities, particularly the following:

- consultation of all the stakeholders within the framework of the establishment of a NPM when the ratification of OP-CAT is completed;
- reinforcement of cooperation between the State and civil society;
- taking account of the particular categories of vulnerable people to be protected (women, minors, migrants, people suffering from mental diseases);
- efforts to reduce prison overpopulation and the general improvement of detention conditions, as well as the continuous efforts as regards prison policy;
- reinforcement of judicial or extra-judicial control of various detention sites;
- training and sensitizing law enforcement personnel with regard to the prevention of torture and any form of ill-treatment;
- reinforcement of capacities as regards legal medicine.

111. The recommendations below also lie within the scope of the structuring reforms and strategic projects initiated by the Kingdom of Morocco:

- reform of the penal system on the basis of a new criminal policy as regards incriminations, sanctions, liability and guarantees of fair trial, taking account of the provisions of the new Constitution and the international standards of human rights;
- reinforcement of good Security Governance on the basis of the provisions of the new Constitution relating to fundamental rights and liberties;
- consolidation of responsibilities and reinforcement of resources for all national mechanisms for the promotion and protection of human rights, including in the field of the eradication of torture and any form of ill-treatments.

112. Concerning the recommendations which call for observations from the Moroccan authorities, while remaining within the framework of the overall process of reforms, it is worth mentioning that regarding :

- the recommendation relating to the practice of solitary confinement and secret detention (N°88-c), the Moroccan authorities maintain that the disciplinary measures are not incompatible with Article 23 of the Constitution, as long as these measures guarantee the safety of the person and/or they have an educational objective. However, it is currently planned to modify the legislative measures relating to

disciplinary actions imposed by the prison authorities against detainees, in order to decrease the maximum period of placement in disciplinary cell. In addition, there is no secret detention in Morocco.

- the recommendation relating to the prosecution meeting the burden of proof with regard to the report established by the judicial police (N°88-e) and the establishment of an independent mechanism of criminal investigation and lawsuits which would not have any link with the body in charge of investigation or lawsuits (N°88-g), it should be noted that the Moroccan penal system is based on the principles of oral-hearings and adversarial system, and that within this framework, the burden of proof rests with the applicant. In addition, this system hinges on the principle of the appropriateness of lawsuits, whereby the Prosecutor's Office remains the body in charge of following up the investigations and/or lawsuits.
- the recommendation relating to the legal proceedings about all the cases of violations committed in the past (88-j), it should be recalled that the IER was designed as an extra-judicial transitional justice mechanism to determine the liability of the State and its bodies, rather than individual liability, in a spirit of consolidation of reforms and reconciliation. This process by no means excluded the right of victims, their families or beneficiaries to take legal action.

113. Concerning paragraph N°97:

It should be recalled first of all that all the positive developments noted by the Special Rapporteur, as to both the normative framework and public policies as regards human rights in Morocco, relate to the entire set of regions of the Kingdom. Indeed, the reinforcement of institutions in charge of the promotion of human rights and the commitment to building an institutional culture of human rights, which makes it possible to prevent and prohibit torture and ill-treatments are also valid for all the regions of the Kingdom. All the recommendations contained in paragraph 97 refer to actions already started by the Moroccan Government, which the authorities are committed to continuing and consolidating.

- Regarding the recommendation relating to the investigations of torture and ill-treatments allegations, before and after demonstrations and in the prison of Laayoune (97-a), the Moroccan authorities recall that whenever allegations of torture or ill treatments are raised and submitted to the authorities concerned, the latter conduct the necessary investigations systematically, appropriately and as soon as possible. As for the demonstrations organized in the Southern Provinces, they are subjected to the same rules as those organized elsewhere in the country. Also, and for the purpose of preserving law and order, the Moroccan legislator allows the use of force for the dispersion of any demonstration which would constitute a threat to public safety. However, the authorities ensure that any resort to the use of force must be at the same time necessary and proportional to the seriousness of the situation.
- Regarding the recommendation on the jurisdiction of the military tribunal to reconsider over civilians (N°97-b), the Moroccan authorities recall that the Permanent Court of Armed forces is not an exceptional court strictly speaking, but a specialized court, chaired by a civil magistrate assisted by a jury of four assessors. As a specialized court, established by the law, it enjoys full jurisdiction. It is integrated in the Moroccan legal system. It is subjected, like the other courts of the Kingdom, to the principles and standards of procedure as recognized at the international level, ensuring all the guarantees of a fair trial with the explicit possibility under Article 109 of the Code of Military Justice to appeal to the Court of Cassation. Concerning the opening of impartial investigations to establish the facts in this case, it is necessary to point out that a parliamentary inquiry was opened

shortly after the events. In addition, CCDH as well as many national and foreign NGOs carried out missions of investigation into this matter.

- Regarding the recommendation relating to the reinforcement of means for the protection of internationally recognized human rights (N°97-c), the Moroccan authorities recall that the Kingdom of Morocco has already committedly opened up, with no reservations or restrictions, to the Special Procedures of the UN Human Rights Council. This opening-up was confirmed by a letter addressed by the Minister of Foreign Affairs and Cooperation to the High-Commissioner for Human Rights. In this respect, it should be recalled that the Security Council was pleased in its Resolution 2044 of April 24th, 2012 about the measures which Morocco took to honour its commitment of ensuring access without reservation or restrictions for all mandate holders of the UN Human Rights Council the Special Procedures.

Within this framework, three Special Procedures visited Morocco in one year, from September 2011 to September 2012 (the Independent Expert in the Field of Cultural Rights, the Working Group on the issue of discrimination against women in law and in practice, and the Special Rapporteur on Torture), which is a very high average at the international level. Moreover, the Kingdom has just addressed an invitation to the Working Group on Arbitrary Detention and the Special Rapporteur on Trafficking in Persons, Especially in Women and Children, for the year 2013. It also contacted two other Special Procedures (water and suitable housing) who expressed their regrets for not being able to pay a visit to Morocco in 2013, due to their heavy schedule.

In addition, several NGOs visited the Southern Provinces in recent years on different occasions, particularly Human Rights Watch in 2008, Amnesty International in 2011, and 2012, Frontline Defenders, the Kennedy Center for Human Rights and Justice, the Leadership Council for Human Rights, as well as the International Women's Media Foundation. As for the NGOs present in the southern provinces, it should be noted that their number is highly significant. The civil society in this area is very active and takes part in many international activities, especially the sessions of the Human Rights Council in Geneva. CNDH, through its two regional commissions, and the local and national authorities, moreover, are fully engaged with associations in the area through various mechanisms and programs.

- Regarding the recommendation relating to the proposal that the entire area would benefit from the establishment of an intergovernmental regional mechanism (N° 97-d), the Moroccan authorities recall, as the Special Rapporteur recognized it in his report, that the continuous reinforcement of the national mechanisms of the protection and promotion of human rights on the one hand, and the constructive, active and positive interaction with the United Nations Special Procedures on the other hand, represent the unique means to ensure the best guarantee for the respect of human rights in general and the fight against torture in particular over the entire national territory. The resort to any other means is politically unacceptable, legally inappropriate and operationally ineffective. In addition, it should be recalled that Morocco is already engaged in a process of establishing a national mechanism for the prevention of torture under the terms of OP-CAT.

Finally, Morocco remains open, in consultation with the other States of the region, to initiate any reflection aiming at introducing a regional, Arab or Maghrebian, intergovernmental mechanism of human rights protection and promotion, following the example of other experiences of regional, European or inter-American, systems, in the field of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

III. Follow-up

114. The Kingdom of Morocco is committed in a strategic and irreversible way to the respect and promotion of human rights. For this reason, its opening up to the entire set of U.N. mechanisms, including the Special Procedures, determines the approach that authorities intend to adopt in implementing the recommendations. The Moroccan authorities are currently finalizing an Action Plan for the implementation of the recommendations issued by all U.N. human rights mechanisms. In addition, the visit of the Special Rapporteur to Morocco made it possible to give a new momentum to the national efforts concerning the issues relating to the eradication and prevention of torture.

The National Action Plan

115. Following the periodic examination before the Committee Against Torture in November 2011, and the Universal Periodic Review in May 2012, the Inter-ministerial Delegation for Human Rights, in close coordination with all the Government departments and National Institutions concerned, elaborated a National Action Plan for the implementation of the recommendations issued by all U.N. human rights mechanisms, in order to allow for a rational, coherent and comprehensive implementation of these recommendations.

The measures taken since the visit of the Special Rapporteur

116. Aware of the importance of the issues relating to detention and deprivation of liberty conditions in the broad sense, the Moroccan authorities continued the efforts as regards the improvement of detention conditions, knowing that the visit of the Special Rapporteur contributed to reinforcing this momentum.

117. Thus as regards the modernization and renovation of custody places, and taking account of the preliminary observations of the Special Rapporteur during his visit to Morocco, more efforts were deployed in order to sustain and generalize modernization and renovation in order to continue the improvement of detention conditions. In recent months, the generalized program for the development and upgrade of custody places of DGSN was extended and concern today 81% of these buildings; the projects concerning the other buildings are being completed. In addition, out of 133 commands in the country, 101 rooms for lawyer visits have been arranged to date, as well as 110 spaces specifically dedicated to minors.

118. Within the framework of the preparation of the visit of the Special Rapporteur, several awareness and information days on international instruments and mechanisms for the protection of human rights were organized involving the Government departments and national institutions concerned, namely the Interior Ministry, for law enforcement agents, including Royal Gendarmerie, taking into consideration the detention places under the responsibility of judicial police, the Ministry of Youth and Sports, taking into consideration the Centers of child protection, DGAPR taking into consideration prisons, DIDH within the framework of its missions of Inter-ministerial coordination of the Government's policy in the field of human rights, and also CNDH taking into consideration its responsibility as regards visits to the places in question. The interactivity between the various parties continued beyond the visit of the Special Rapporteur and was reinforced by the publication of the reports of CNDH and the results of the visit of the Special Rapporteur.

119. The Moroccan authorities will communicate to the Special Rapporteur a progress report on the implementation of the recommendations within the framework of its positive and constructive interaction with the Special Procedures of the Human Rights Council.