



# ANNUAL REPORT ON THE SITUATION OF HUMAN RIGHTS IN MOROCCO 2004



The Human Rights Advisory Council

# Annual report on the situation of human rights in Morocco

Assesment of the Council's Work  
and Future Perspective

The Human Rights Advisory Council



## The Advisory Council of Human Rights

Placed under the authority of HM the King, the Advisory Council of Human Rights (CCDH) is vested with an advisory mission which consists of proposing and giving impetus to issues referring to the promotion of human rights culture in our country.

In accordance with the missions and attributions conferred to the CCDH, this Council is entitled to :

- an advisory opinion about general or specific issues relating to the defense, the protection, the respect and the promotion of human rights (...);
- bring before HM the King any proposal or report susceptible to ensure a better protection and a more widespread promotion of human rights ;
- submit to His Majesty an annual report on the state of human rights, as well as on the assessment and the prospects regarding the Council's activities ;
- study the harmonization of national legislative and legal texts with International human rights charters and Conventions, which the Kingdom of Morocco has ratified or to which it adhered, and which are duly published; and to formulate, as well, relevant recommendations ;
- encourage the ratification or adhesion of the Kingdom to international conventions and treaties on human rights, and to study draft conventions and draft legislative and legal texts relating to human rights which are submitted to the appreciation of the Council ;
- examine, on its own initiative or upon request of the concerned party, cases of human rights violations submitted to the Council, and make recommendations to the proper authority to comply by ;
- facilitate cooperation between the Authorities, on the one hand, and representatives of both national and international associations, as well as experts operating in the field of human rights, on the other hand ;
- contribute, by all available means, to disseminating and implanting the culture of human rights ;
- contribute effectively to the protection of the rights and liberties of Moroccan nationals resident abroad, in cooperation with similar institutions.

In order to fulfill its mission successfully, the Advisory Council of Human Rights is composed of a President, a Secretary General and 44 members who have the power to deliberate and are selected from people well known in the field of human rights for their impartiality and integrity

Members of the Advisory Council of Human Rights are nominated for 4 years according to the following terms and conditions :

- 14 members are put forward by associations operating in the field of human rights , recognized for their unrelenting commitment to the promotion of these rights ;
- 9 members are put forward by political parties and trade-unions ;
- 6 members are put forward who represent, respectively, the League of Morocco's Oulemas, the Hassanian Association of Magistrates, Morocco's Bar Association, the National Medical Association, the Teaching Staff Associations and the Hassan II Foundation of Moroccan Nationals Living Abroad.
- Wali Al Madhalim (the Ombudsmen) ;
- members are nominated by His Majesty the King.

The Advisory Council of Human Rights also includes, as advisory members, those ministers affected by human rights

Work within the Advisory Council of Human Rights is organized in terms of working groups, specialized committees and ad hoc committees.

There are 5 working groups. Each group deals with the following topics :

- Promoting human rights culture ;
- Protecting human rights and looking into violations of human rights ;
- Human rights and the evolution of society ;
- The study of legislations and public policies ;
- relations.

The specialized committees deal with :

- The annual report ;
- The Mohammed VI Human Rights Prize.

Ad hoc committees deal with the following files :

- Moroccans imprisoned in Tindouf ;
- Moroccan nationals living abroad.

Finally, the administrative structure of the Advisory Council of Human Rights is such that all its units are grouped together around the Presidency and the Secretariat.

# Introduction

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**1** The Human Rights Advisory Council, following its restructuring into a national institution for the protection and promotion of human rights by virtue of Royal Decree No 1.00.350 of 10 April 2002, is issuing its second annual report on Human Rights in Morocco for the year 2004.

**2** The goal behind issuing an annual report speaks for itself. It is meant, at the end of the day, to contribute to the promotion of human rights in our country, make them become a living reality and ensure their sustainability. This goal can only be achieved through several methodological approaches, provided the following elements are taken into consideration :

- the fundamentals of the Council and the norms which govern it as an institution that considers its independence an essential element of its advisory function ;
- the means and resources which enable it to remain committed to these fundamentals and to translate them at the communication level ;
- the added value of the Council with regard to the contributions of the other human rights governmental and non-governmental actors in report writing.

**3** The 2003 report was the first experience in its kind at a time of institutionalization and at the preliminary stages of various tracks of work at all levels. As a matter of fact, the assessment process engaged by the Council's organs represented the starting point for mature thinking on ways and means of developing this experience both in terms of its content and methodology, so as to get the closest possible to a 'text form' that is most consistent with the nature of an institution like the Human Rights Advisory Council. This process led to the adoption of an approach in writing annual reports which maintains a certain continuity while remaining open to innovation.

**4** Continuity consists in continuing to monitor and analyse the situation of human rights in the light of the grid which had been used in the previous report and which is based on the universally observed human rights classification, reaffirming the indivisibility of human rights and reasserting the universal direction of the Council.

As to innovation, it is reflected in the following :

- changing the approach used in the report on the situation of human rights and redirecting towards significant issues ;
- incorporating two constant components consisting in monitoring human rights violations and following up the international commitments of Morocco during the year ;
- merging the two parts of the report into a single volume.

**5** The first innovation in the approach adopted in handling the situation of human rights consists in giving preference to specific issues, instead of engaging in a comprehensive coverage of the situation of human rights, provided that these issues are chosen on the basis that they reflect :

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Significant positive mutations which carry along with them structural change with a short, medium and long-term impact ;	Significant negative mutations which carry along with them setbacks with a deep impact on human rights in one or more specific areas ;	Stagnation in some specific area, contrary to what was expected and required, which hinders progress or weakens the impact of efforts made.

**6** The choice of issues to be handled stands out, periodically, as one of the most difficult steps in the report writing process, for it requires defining the appropriate criteria for selecting these issues, as well as an accurate follow-up of the process used for short-listing the issues to choose from. As to the processing methodology, it is based on an argumentation designed to explain why the Council considered an issue as being positively or negatively significant, which consequences such an issue brings about from the point of view of human rights, and which tracks are likely to lead to consolidation or redress of the consequences thereof, following the process of their monitoring and assessment, in accordance with a logic aimed at drawing lessons, rather than issuing judgements.

**7** The new approach presents several advantages, among which :

- The existence of a clear goal which guides the report with the purpose of confining it to certain specific, but meaningful and significant, issues, without however breaching the general rule of indivisibility of human rights;
- The choice of issues in connection with the extent of their vitality and insofar as they fall within the dynamics and course of structural change in favour of human rights;
- Avoiding judgments that do not rely on sources of information, investigations and monitoring channels specific to the Council;
- Placing special emphasis on accuracy, conciseness and improving the communication aspect.

**8** The second level, a constant component within the report, consists in monitoring violations affecting one area of human rights or another, based on the analysis of the complaints received at the Council during the year covered by the report. These complaints, which are received in thousands, are then processed by focusing on a significant sample reflecting the nature of cases and issues of deep concern for citizens in the areas subject to these claims.

**9** The third level consists in devoting a constant part of the report to the international commitments of Morocco in the fields of human rights during the concerned year, regarding the question of ratification of international conventions, drafting of periodic reports or their discussion within specialized relevant commissions, disseminating the conclusions submitted by these commissions to the Moroccan Government, in addition to the issues raised in reports by national and international non-governmental organizations.

**10** The fourth level consists in merging, within a single report, the part pertaining to the situation of human rights in accordance with the approach adopted, and the part bearing on the activities of the Council and its prospects for future action, in view of their inter-related nature. It was also decided to draft a concise version of the report on the activities of the Council with a special focus on the major concerns which have guided its work and on the general directions it has followed, in view of the fact that the Council also has other communication channels for disseminating its activities, including its website on the internet.

**11** Based on this comprehensive approach, the report plan for this year is centred on two parts :

**Part One :**

**The situation of human rights in Morocco for the year 2004**

This part includes three sections :

**Section I :** Significant developments in the area of respect for human rights.

**Section II :** The protection of the rights of individuals to security and the exercise of their rights and liberties.

**Section III :** The conventional commitments of Morocco and international reports on human rights.

**Part Two :**

**Activities of the Council and prospects for future action**

This part includes two sections :

**Section I :** The council's internal activities.

**Section II :** The outcome of the Council's activities.





## Part One

The situation of human rights  
in Morocco for the year 2004



## Section I

# Significant developments in the area of respect for human rights

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**12** Based on the new approach for preparing the Council's annual report, it was decided to choose three positive significant issues in the area of respect for human rights which are indicative of a notable evolution towards the consolidation of the rule of law, without losing sight of the ensuing challenges in view of implementing it at the practical level and sustaining its impact. These three issues are the following: :

- the promulgation of the Family Code as one of the most prominent developments within the framework of the efforts deployed toward developing anti-discriminatory legislation in our country ;
- the establishment of the Justice and Reconciliation Commission (Instance Équité et Réconciliation) with the purpose of settling the files of the gross human rights violations perpetrated in the past and laying down the necessary guarantees for preventing resumption of such violations ;
- the upholding of general guidelines in the area of penal policy during this year, by harmonizing the incrimination and sentencing policy with international standards.

**13** The choice of these three issues, in accordance with the new adopted approach, is governed by a fundamental logic whereby the new approach has contributed to creating a new dynamic in the area of consolidating the rule of law, in spite of the fact that some of these issues still have to cope with the challenge of enforcement (Family Code), upgrading the follow-up mechanisms (Justice and Reconciliation Commission), or effectively engaging in preparing or reviewing the relevant legislative enactments (penal policy).

**14** These choices do not mean that the Council has not concerned itself with other matters on the human rights agenda of our country, among which and in particular the social and economic rights (unemployment, poverty, etc.). But in view of the complex and complicated nature of this issue, the Council has, since the middle of 2004, engaged in an attempt to clarify its own vision of the problem, in the light of the classification of these rights through due observance of the relevant universal reference and consideration of the problems still lying ahead in the world in this regard. Based on the outcome of these efforts, it will be possible to incorporate this issue into one of the future annual or thematic reports.



## **First : Developing anti-discriminatory legislation : the Family Code**

**15** In 2004, Morocco made a quantum leap in bringing its legislation into harmony with universal human rights standards, and particularly with the International Covenant on Civil and Political Rights, the Convention on the Elimination of all Forms of Discrimination Against Women, the Convention on the Rights of the Child, when the two Houses of Parliament approved the new Family Code which was published in the Official Gazette (Bulletin Officiel)<sup>(1)</sup>.

**16** The new Family Code came as the result of a conjunction between the will of His Majesty King Mohammed VI, May God bless Him, and the will of the Moroccan people. It is worthwhile mentioning here that, for the first time in the history of Morocco, a draft bill on this issue was put before the Parliament, once all sections of society and various intellectual and political currents in the country have taken part in examining and discussing it. For this reason, it is considered as a keystone to the process of building the democratic and modern society into which our country is engaged.

**17** While the Family Code has constituted a significant development in Moroccan legislation, in terms of its innovations basically in the areas of equality between men and women and the consolidation of the rights of the child, it nevertheless raised a number of challenges of societal nature or with respect to the practical implementation of its provisions.

### **1. New developments and signification of the Family Code**

#### **1.1. The Family Code and the principles of equality, justice and equity**

**18** The Family Code has constituted a significant development from the point of view of its founding principles, as reflected in a number of provisions concerning the rights of women, men and children as individuals and parties within the family structure.

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<sup>(1)</sup> Law No. 03.70 promulgating the Family Code enforced by Cherifian Dahir (Royal Decree) No. 1-04-22 dated 12 Du-Al-Hijja 1424 H (3 February 2004) in B.O. No. 5184 on 14 Du-Al-Hijja 1424 H (5 Mars 2004).

## • Civil rights and the relationships between men and women

**19** The new Family Code addressed the issue of the relationship between men and women on the basis of the principles of equality, justice and equity, be it when engaging in marriage, during married life and at dissolution of the marriage bond. It is not necessary to report all relevant provisions here, but it is worth to recall the following :

- Equality of age at marriage for men and women alike (18 years) and equality of legal capacity to conclude marriage ;
- Placing the family under the joint responsibility of the two spouses ;
- Equality of mutual rights and obligations between the two spouses ;
- -Placing divorce under the control of the judges, while establishing two additional procedures concerning divorce by consent and divorce as a result of discord between the two spouses.

**20** The human rights significance of these provisions has made them consistent with two fundamental international covenants :

- The International Covenant on Civil and political Rights<sup>(2)</sup> which provides in its article 23 that “no marriage shall be entered into without the free and full consent of the intending spouses”, and that “the States parties to the present Covenant shall take “appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution”.
- The Convention on the Elimination of All Forms of Discrimination Against Women<sup>(3)</sup> which provides in its article 15 that “States Parties shall accord to women, in civil matters, a legal capacity identical to that of men”, and in its article 16 that “States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations”.

## • The rights of the Child

**21** The Family Code set aside a number of provisions on the rights of the child, in application of the relevant international convention. It notably provided that :

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<sup>(2)</sup> Morocco ratified the two international covenants on 6 Jumada II 1399 (3 May 1979), which were both published in B.O. No 3525 (p. 334) pursuant to Dahir No 1.79.186 dated 17 Du-Al-Hijja 1399 (8 November 1979).

<sup>(3)</sup> Morocco ratified the Convention on the Elimination of All Forms of Discrimination Against Women on 14 June 1993, which was published in B.O. No 4866 on 18 January 2001, in application of Dahir No 1.93.361 dated 26 December 2000 providing for the publishing of the convention.

- the child shall enjoy the joint protection and care of his or her parents, the right for survival, development and protection from his or her parents, and the responsibility of the state for guaranteeing such rights ;
- stringent measures shall be taken to protect the right of the child to a name, guarantee all of his or her rights in case of separation of the two parents, while providing for his or her physical and psychological safety ;
- equality between boys and girls in various fields, such the age of marriage, the age of choosing the legal guardian among the two parents, and the entitlement to inherit from the grandfather (mandatory inheritance).

**22** These provisions are founded on two essential principles of the Convention on the Rights of the Child<sup>(4)</sup>: the principle of the 'best interests' (article 3) and the principle of non-discrimination (article 2). While the principle of non-discrimination has come to establish a link between the Convention on the Rights of the Child and the previous convention concerning women by stipulating non-discrimination between children in enjoying their rights on whatever grounds, including sex difference, the principle of the best interests, for its part, places the interests of the child above any consideration and is a primary consideration in every circumstance and however legitimate the interests of the other parties may be.

### **1.2. The Family Code and the issue of specificity and universality**

**23** The elaboration process of the new Family Code, and especially the unprecedented debate in which every section of society has taken part, and the august Royal speech delivered before Parliament on 10 October 2003, wherein the draft amendment was submitted to the legislative institution, have constituted fundamental steps which contributed in answering the vital question running through the Islamic world concerning the problem of specificity and universality.

**24** The Family Code has, within the framework of the rights it has entrenched, set an excellent example of concordance between the finalities of Islam and the universal human rights standards, for both are founded on the dignity of the human being and on the values of equality and justice among the human kind in general, and between

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<sup>(4)</sup> Morocco ratified the Convention on the Rights of the Child on 21 June, 1993, which was published, pursuant to Royal Decree No 1.93.363 dated 21 November, 1996, in the Official Gazette No. 4440 on 19 December, 1996.

men and women in particular. In His directives to the consultative committee in charge of reviewing the personal status code (Moudawana), His Majesty invited its members to put into effect the Ijtihad (interpretative judgement) within the framework of the finalities of Islamic law (Sharia) and respect for human rights. The civil society, for its part, made constructive contributions to this approach, based on the fact that it is dictated by the historical circumstances currently experienced by Morocco.

**25** From this standpoint, it can be construed that the philosophy of the new Family Code has been founded on the "establishing of legal precepts on the basis of an thorough exercise of Ijtihad while fully observing the lofty principles and finalities of the Sharia, and based also on the spirit of openness and effective commitment to the human rights principles which have become part and parcel of the human values system and the common human heritage<sup>(5)</sup>".

**26** Thus, the new Family Code has, with its new spirit and language, and with its provisions in favour of the family as individuals and as an entity, put forward a strong message both at the political and intellectual levels. This message has, directly or indirectly, got through several countries and regions, which gave this 'Moroccan' event a dimension beyond the national borderlines.

## **2. The challenge of successfully implementing the provisions of the Family Code**

### **2.1. Societal challenges**

**27** The Family Code is not only a women's issue, nor is it a mere law that has been harmonized with the human rights standards. It is in fact a distinct societal and cultural project :

- on one hand, the Family Code addresses the deep differences between the family in the fifties at the time of codification and today's family as a result of the socio-demographic transformations which have impacted it, including the position and role of women ;
- on the other hand, and in connection with the above, the new Family Code has triggered off a new dynamic towards changing people's attitudes and making them more receptive to a relationship based

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<sup>(5)</sup> 5 Extracted from a presentation by Professor Mohammed Moatassim, Advisor to His Majesty and Member of the Human Rights Advisory Council, at the special session held by the Council on 13 October 2003, on His Majesty's order.



on gender equality within the family, society and more generally in life, in consideration of the fact that it is one of the determinants of the rule of law and a pillar of democratic construction.

**28** In this respect, and in view of the special position of the Family Code within the juridical paraphernalia of the country, the innovations of this code have strongly consolidated the human rights-related legislative reforms that Morocco has recently witnessed. Thus, the principle of non-discrimination between men and women has been reaffirmed in both the Labour Code and the amendments introduced in some of the provisions of the Penal Code<sup>(6)</sup>, which included in particular significant provisions in favour of the protection of women and children from violence.

**29** The new Family Code also contributes in expanding the scope of structural reforms which seek to achieve gender equality and speed up its pace. In this context, efforts are now being made at the level of the government and the civil society to develop preventive and protective plans and programmes of action to fight violence and discrimination. This is, for instance, reflected through the ongoing reform of the state budgeting process by mainstreaming the gender approach, and through the adoption of an action plan for the realization of the national strategy designed to fight violence against women.

**30** The new Family Code has also created an appropriate and enabling environment for disseminating the culture of equality through mass education and culture institutions. The involvement of the Ministry of Education in this enterprise, through a series of supportive initiatives<sup>(7)</sup> which aim to incorporate the founding principles of the Family Code within school curricula and activities, stands out as an example which highlights the educational dimension of the Family Code and its role in paving the road to educating the new generations, males and females, to become filled with human rights values, including equality, and to learn how to cohabit as partners in school, in the family and in life.

## 2.2. Challenges in terms of practical implementation

**31** While the Family Code has come, as a law, to meet expectations which have lasted for decades, the purport of its innovations has created new expectations in connection with the need to implement its provisions. This was indeed the concern of large sectors of governmental

<sup>(6)</sup> Cf. Law No 24.03 implemented by Cherifian Dahir No 1.03.207 promulgated on 16 Ramadan 1424 (11 November 2003), published in B.O. No. 5175 on 12 Du-Al-Kida 1424 (5 January 2004) p. 121.

<sup>(7)</sup> A memo and a guidebook on the integration of the founding principles (equity, justice, equality) of the Family Code into the contents of school curricula.

branches<sup>(8)</sup>, Parliament<sup>(9)</sup>, women's and human rights associations<sup>(10)</sup>, academic institutions<sup>(11)</sup> and the media<sup>(12)</sup> in the last few months.

The period of time during which the new Family Code has become effective is not sufficient to undertake an objective assessment of the conditions and circumstances of implementation of its provisions. Yet, and in the meanwhile, focus can be placed, within the framework of the objectives of this report, on the tracks that are likely to enable the current reform to become a vital step within the human rights and democratization process.

### • Implementing the Family Code in itself

**32** The Family code is of direct concern for two basic parties: the party which will benefit from it and the party in charge of implementing it. On that basis, two central tasks are to be stressed with respect to the enforcement of the provisions of the new law.

**33** The first task consists in informing about the Family Code on a large scale, in view of the fact that it is one of the legislative enactments which directly concerns all male and female citizens. In this context, it is necessary:

- To mobilize the broadcast media within the scope of a short and medium-term strategy ;
- To support efforts exerted by civil society associations which represent effective intermediaries/channels for raising awareness and communicating with large sections of citizens ;
- To rely on the contribution of schools, at all levels of education, through various aspects and components of educational action, in disseminating the culture of human rights, including the culture of equality.

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<sup>(8)</sup> By order of His Majesty, a practical guidebook was prepared by a specialized commission with the view of explaining and clarifying the substance of the provisions of the new Family Code, and published by the Ministry of Justice under the title: The Practical Guidebook of the Family Code, among the publications of the association specializing in publishing legal and judicial information, No. 1, 2004. The Ministry of National Education also organized study days to inform about the innovations in the Family Code.

<sup>(9)</sup> A Parliamentary standing committee conducted a fact-finding visit in Casablanca and Benslimane to examine the question of implementation of the Family Code in the field.

<sup>(10)</sup> Women's associations, in particular, organized a number of activities to inform about the Family Code and to stress the challenges relating to its implementation.

<sup>(11)</sup> Several universities in Rabat, Casablanca, Meknès and elsewhere, held several conferences and roundtables on the subject.

<sup>(12)</sup> Many newspapers and magazines devoted a number of files and articles to the subject throughout the year, while the two radio and television channels engaged in an information campaign on the content of the Family Code.

**34** As to the second task, it consists in training and preparing those entrusted with implementing the provisions of the Family Code, at all levels, and notably:

- **First level** : to help them understand the content of the Family Code and its procedures, through training programmes, by producing practical guidebooks and by publishing implementation rules to help clarify the relevant attributions and procedures ;
- **Second level** : to basically consolidate family courts by providing them with the adequate and qualified human and necessary material resources, to enable them to achieve the expected goals ;
- **Third level** : to back up the efforts carried on by the judicial community to grasp the spirit and philosophy of the new Family Code and its connotations in connection with the culture of human rights.

### ● Supportive measures

**35** The effectiveness and sustainability of any measure, whatever its nature (legal, political, administrative, educational, etc.), is contingent upon the capacity of interaction with the general framework in which it is taken. From this standpoint, the new Family Code is to be approached as a part of a whole, which means in particular :

- to enable it to contribute in consolidating progress achieved in the area of human rights, women's rights and the rights of the child, within a comprehensive vision which seeks to build on accumulated vested gains ;
- to enable it to pave the way for future gains in these very areas, including completion of the harmonization of national legislations, and particularly the Nationality Code, with the provisions of international conventions, reviewing the reservations made by Morocco on some of their articles, and working towards accession of Morocco to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women ;
- to use it as a basis for laying down a comprehensive national strategy for redressing the situation of women in every field and empowering them.

**36** To this end, it is necessary to develop the institutional mechanisms to enhance women's rights at the governmental level, and to consolidate consultations with civil society stakeholders, in order to reinforce the enabling factors which accompanied the Family Code, and namely the political will and the dynamic of all sections of society, for the purpose of continuing the ongoing reform process to ensure human dignity for men, women and children.

## **Second : The settlement process of the past serious human rights violations : Instance Equité et Réconciliation – IER (Justice and Reconciliation Commission)**

**37** In order to complete the settlement process of the serious human rights violations perpetrated in the past, the “Instance Equité et Réconciliation” (Justice and Reconciliation Commission) was set up, following the Royal approval of a recommendation by the Human Rights Advisory Council issued on 6 November 2003, in accordance with Article 7 of the Dahir providing for the restructuring of the Council.

**38** Until the IER completes its mission in the course of 2005 and publishes its final report, it would be useful to focus, within the Council’s annual report, on the significant developments brought about by the creation of this commission within the context of settling the past gross human rights violations, in the light of the mission it has been assigned, its methodology and action mechanisms, and the major activities it has organized so far.

**39** As to the challenges raised by the creation of the IER, they can be summarized in the efforts deployed by this commission in order to complete its mission which consists in unveiling the truth, through the use of law, achieving reconciliation and reparation of damage, and in laying down the mechanisms necessary for following up the implementation of recommendations and suggestions which it is expected to put forward.

### **1. Innovations brought about by the inception of the IER**

**40** The inception of the IER constituted a positive significant event in view of the nature of the mission entrusted to it as part of the extra-judicial settlement process of the serious human rights violations which have been perpetrated in the past. In this capacity, it is considered as a constant action in support of the rule of law, not only by disclosing the truth concerning the violations in question and providing compensation to the victims, but also by laying down the foundations and guarantees necessary for preventing their recurrence, by basically promoting and fostering the practice of dialogue and establishing the ingredients of reconciliation with a view to backing up democratic transformation in our country and disseminating civic and human rights values and culture.

**41** The establishment of the IER falls within the Moroccan settlement process of the serious human rights violations perpetrated in the past which had been inaugurated since the early nineties of the last century. One of the main features of this process consists in breaking off with these violations, and paving the road for a new phase marked by the adoption of a gradual approach in consolidating democracy, establishing the rule of law and institutional building, for the furtherance of human rights values and culture, within the continuation of the constants of the Moroccan state, while developing a specific pattern of democratic transition firmly supported by the higher authorities of the country.

**42** While this process had, prior to the launching of this new dynamic in 2004, witnessed the establishment of the Independent Arbitration Board designed to provide compensation against material and moral injuries sustained by victims and eligible parties who had been coerced to forced disappearance and detention<sup>(13)</sup>, the inception of the IER, for its part, brought with it notable innovations within this process. This is attested by the scope and nature of the mission which it was assigned, as well as by its action methodology and mechanisms and lastly by the dynamic it has initiated in the field of human rights thanks to the activities it has organized.

### **1.1. Scope and nature of the mission entrusted to the IER**

**43** The IER is considered as a "Truth, Justice and Reconciliation Commission" and can be classified as one of the commissions set up in different parts of the world with a view to settling the gross human rights violations of the past, within the framework of what is known as "transitional justice". In his report to the Security Council in August 2004 on "the rule of law and transitional justice in conflict and post-conflict societies", the UN Secretary General reaffirmed the importance of the truth and reconciliation commissions, referring to Morocco's experience as one of the five leading ones from among over 40 experiences.

**44** The tasks entrusted to the IER can be summarized in disclosing the truth concerning the serious human rights violations perpetrated in the past, reconciliation, reparation of damage, and in putting forward recommendations and suggestions designed to guarantee prevention and ensure that what happened in the past will not occur again.

**45** The basic goal of the IER, as an "extra-judicial institution" designed to handle the serious human rights violations of the past, lies in healing wounds, rehabilitation, reintegration, learning from the lessons of the

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<sup>(13)</sup> The Independent Arbitration Board was established pursuant to a royal order issued on 16 August 1999.

past, with the purpose of reconciling Moroccans with their history and themselves, and further releasing their energies, as part of a comprehensive approach which seeks to establish truth, provide the necessary guarantees for preventing such violations from occurring again, and build a stable democratization process.

### 1.2. Action methodology and mechanisms used by the IER

**46** Since it started its work, the IER has utilized both national and international approaches and experiences in the field of transitional justice. It structured its action in such a way as to fulfil its mission, by setting up working groups and commissions in the following areas :

Investigations	Reparation of injuries	Research and studies
Inquiring and investigating all forms of violations which fall within the specific sphere of the IER, and namely investigating into cases of forced disappearance and the whereabouts of disappeared persons.	Continuing and improving the work of the previous body on compensation for physical and moral injuries sustained by victims and eligible parties, within a new and comprehensive approach of reparation.	Preparing the research work and studies necessary for fulfilling IER's tasks in different areas; analyzing data collected within the perspective of preparing the final report.

### 1.3. Activities of the IER and the dynamic it has subsequently initiated in the field of human rights

**47** The activities carried out by the IER, throughout this period of its work, may be summarized into nine strategic fields of action in application of its attributions as they are defined in its by-laws<sup>(14)</sup> and rules of procedure, thus creating a new dynamic in the fulfilment of human rights. All of these various activities have been accounted for in the three reports presented by the IER President at the 21<sup>st</sup>, 22<sup>nd</sup> and 23<sup>rd</sup> meetings of the Human Rights Advisory Council to inform the Council members about the IER action.

**48** First field of action : **receiving and handling claims.** The IER received about 20,000 claims or complaints and undertook to register, scrutinize and prepare them for final decision. In order to facilitate this task, the IER established an advanced database based on the above. It

<sup>(14)</sup> See Cherifian Dahir No. 1-04-42 issued on 19 Safar 1425 (10 April 2004) relating to the approval of the by-laws of the Instance Équité et Réconciliation (IER) published in B.O. No. 5203 of 21 Safar 1425 (12 April 2004)

mobilized more than 100 assistant researchers for the preliminary review and handling of these claims, which led to extracting and setting up 14,000 files related to these claims. The IER then went on with the classification of the claims according to the nature and category of the violations, and a general statistical analysis of the claims. This process is of great significance in the preliminary phase of the IER's action, especially in relation with the sessions held to hear the victims and the preparation of the final report. The IER has also had to come to a final decision on the methodology used in preparing the files and establishing the criteria for reparations as well as the necessary appropriate procedures to this end.

**49** Second field of action : **receiving and guiding claimants and field visits.** In this respect, the IER engaged in an outreach policy with the purpose of hearing the claimants and indeed received hundreds of visitors to this end. Several groups of its members and senior staff also organized field visits which have so far concerned 40 sites from the north to the south of the country. These visits were designed to hear the victims, complete the task of gathering data and documents which pertain to their files, and conduct consultations with local associations on different subjects among which examining the destination of the former unofficial detention centres and places of burial of the dead, as well as ways and means for collective rehabilitation of the aggrieved areas.

**50** Third field of action : **enquiring into the whereabouts of the disappeared and those whose fate is unknown.** On this question, the IER has completed its reviewing, comparing and cleaning up of the various lists of the disappeared and those whose whereabouts are still unknown based on different sources, including the list of the UN working group on forced and involuntary disappearance. The IER also undertook appropriate investigations in this respect through hearing the witnesses and the families of the victims, conducting field visits with the aim of inspecting and enquiring about burial sites, seeking to obtain information from all significant sources in order to disclose the truth about this matter.

**51** Fourth field of action : **cooperation with the public authorities.** On this particular point, and in order to uncover the truth, the IER consulted and communicated with the competent governmental authorities. Contacts were established with the concerned services of the Ministry of the Interior to undertake investigations on cases of disappearance and places of burial of those dead in former detention centres, with a view to formulating appropriate solutions concerning them. The IER also proposed similar initiatives to the concerned services of the Royal Armed Forces and Royal Gendarmerie. Also, a

partnership agreement has been concluded with the Ministry of Health to cooperate in handling some of the serious or urgent medical cases and attempting to reach an adequate assessment of the medical and psychological sequels and injuries sustained by the complainants.

**52** Fifth field of action : **interaction with the civil and political society.**

The IER organized meetings, consultations and entered into partnerships with several national and regional associations, concerned and interested universities, as well as interested social and political organizations, and took part in intellectual and scientific events in relation with its mission. In addition, a first consultative meeting was held with different parliamentary groups within the House of Representatives.

**53** Sixth field of action : **intellectual and scientific conferences,**

organised by the IER. Three of them have been held by the IER in Rabat, Marrakech and Tangier so far. These conferences respectively examined political detention literature and literary criticism, the issue of state violence from theoretical, political and historical angles, and finally the concept of truth in its philosophical, human and legal dimensions. A group of prominent intellectuals, academics and practitioners have taken part in the works of these conferences which encountered an encouraging appreciation and a positive echo in the media. The IER is planning to hold other conferences, one national meeting which will in particular address the concept of reconciliation and another international conference on comparing different international experiences in the field of truth and reconciliation. The IER also hosted the Fifth Conference of truth commission experts and executives from different parts of the world, in cooperation with the International Centre for Transitional Justice, to discuss three major subjects: public hearing sessions, preparing and drafting the final report and the communications strategy.

**54** Seventh field of action : **communication and public relations.**

Since its inception, the IER has organized a number of contact meetings with the national and international press to inform them about its structures and its action methodology and mechanisms. It also entered into consultations with the two national television channels with a view to broadcasting programmes designed to clarify its mission and to highlight the conclusions and lessons learnt from the settlement process concerning the past serious human rights violations and instil them into the collective memory. The IER has also done its best to be as much as possible present at national and international meetings with a view to providing information on the Moroccan experience in this field.

**55** Eighth field of action : **research on the historical and political contexts and preparation of the final report.**

In this connection, the IER explored the conditions and circumstances surrounding the events



relating to the past human rights violations, by means of academic research, field observation and reports from the victims and witnesses. The IER is now in the process of developing an approach towards these events, with a view to designing an open and well-balanced historical approach which would seek to achieve the pursued reconciliation. The IER has now finished laying down a comprehensive vision for its final report, as well as for its methodology, plan and style, and has started preparing the different descriptive and analytical materials and relevant suggestions which will be incorporated in this report.

**56** Ninth field of action : **this field of action concerns organizing public hearing sessions.** The IER has also prepared a methodology and a programme for the organisation of the public hearing sessions which are devoted to a selected sample of victims of the past serious human rights violations. The principal goal of these sessions lies first and foremost in rehabilitating the victims, secondly in airing an educational message through raising awareness about the different forms of these violations and ensuing sufferings, and lastly bringing everybody to pool their efforts to ensure that this will never happen again. After having laid down a code of conduct for these sessions and securing the material and technical conditions for holding them, in cooperation with media professionals from the two television channels, the IER organized the first two sessions of a series of planned sessions which constituted a quantum leap in the settlement process of the serious human rights violations of the past in our country.

**57** On 21-22 December 2004, the IER indeed inaugurated the organization of the public hearing sessions in the presence of different sections and components of society and large media coverage by the national and international media, bearing in mind that the first two sessions have been broadcast live on the public radio and television channels and local radio stations. These two sessions represented a highly significant opportunity for talking publicly and live, for the first time in the history of Morocco, on the different forms and generations of serious human rights violations witnessed by our country between 1956 and 1999.

**58** In addition to the wide national and international interest with which they were met, the two public sessions also constituted a strong indication and a decisive quantum leap in the contemporary history of Morocco at least at two levels:

- the openness of the public broadcast media and their involvement in the process of reconciliation, modernization of society and democratic building by effectively accompanying and participating in the dynamic initiated by the public hearing sessions within society at large ;

- a strong message in favour of the process of reconciliation within society and into which the public authorities and the different national political circles are engaged ; and prosecution by the whole society of the past years of abuse of authority and arbitrary power, and an outright commitment not to allow this to happen again in a new Morocco founded on respect of the rule of law and the institutions.

## **2. Challenges raised by the efforts aimed at settling once and for all the file of the past serious human rights violations**

**59** Until the IER completes its mission and presents its final report, it is however noteworthy to highlight, within the framework of the IER's action, some of the challenges stemming from the definitive settlement of the file of the past human rights violations, some of which are related to the tasks currently entrusted to the IER in terms of developing an approach for reparation and reconciliation. Other challenges are yet to be addressed within the perspective of following up the implementation of the expected conclusions of the IER, and in particular, the mechanisms which will be assigned to this task.

### **2.1. Challenges relating to the reparation and reconciliation approach**

**60** One of the challenges encountering the IER during this phase of its work lies in the need to develop an appropriate approach for reparation of injuries in accordance with the aforementioned recommendation of the Council and the provisions of the IER's bye-laws. The IER is now in the process of assessing the past experience of the Independent Arbitration Board with respect to material compensation; yet it would also be necessary to examine the impact of the indemnities granted to those victims who had benefited from them within the framework of the former board. While it is certain that these indemnities have actually contributed to provide reparation at least from the material point of view, their impact on individuals and groups needs however to be thoroughly evaluated within the perspective of a comprehensive approach on the subject.

**61** It is clear, from the literature so far accumulated by the IER on the subject, that reparation of injuries does not concern individuals alone, but also specific communities and regions. In addition, its broad concept requires in the first instance that the state admit and recognize its responsibility for the serious human rights violations it

has effectively perpetrated in the past, by recognizing the deep effects these violations had had on individuals and communities, and by taking the necessary measures for the rehabilitation of the victims and society. This should not be limited to bringing comfort and consolation to the victims; efforts should also be made to convey a clear and outright message unto society at large to secure its confidence and conviction that the state has resolutely left the wrongs of the past behind, engaged in a new era and adopted new methods whereby the rule of law is the basis for remedy.

**62** Another challenge which has to be addressed within the Moroccan experience lies certainly and clearly in the need to adopt a gender approach in connection with the reparation issue. This concerns more specifically those women who have suffered as victims of both their conditions of inferiority in society and the aggravation of such a situation when they come to be direct or indirect victims of a serious human rights abuse. Therefore, it is absolutely necessary that the approach to the question of reparation for women strongly consider rehabilitating them and restoring their dignity, not only in terms of material compensation, but also by reaching an agreement on some form of honouring and recognition for their role in the victims' movement, by first and foremost engaging in the process of reparation of prejudices and healing of injuries sustained by the victims in a specific way and manner, requesting that the situation of the disappeared be cleared up, preserving the aggrieved families and bearing the torch of memory.

**63** As to the challenges relating to reconciliation, they lie in considering the latter as an objective and a desired goal, more than just a measure or a mechanism for implementing the terms of reference of the IER. Reconciliation should rather be considered as a strategic challenge, for it is not possible to dissociate the work of the IER in this regard from the action carried on by other bodies, institutions and initiatives conducted by state institutions or civil society organizations with the view to initiating the necessary institutional and legislative reforms, in order to guarantee and support the full citizenship of individuals and communities, and help them recover confidence in the institutions. The major challenge which needs to be addressed in this context is to ensure that all the activities of the IER pertaining to the disclosure of the truth, reparation of injuries and rehabilitation, and all the recommendations and suggestions which the IER is expected to issue, will contribute in creating a climate for trust and reconciliation between the state and citizens, and between individuals and the institutions.

## **2.2. Challenges relating to the mechanisms for following up the implementation of the conclusions of the IER**

**64** One of the basic goals of the IER is to submit recommendations for reforming state institutions or to contribute in presenting recommendations which are to a large extent derived from the reality of the violations, their evolution and causes, as well as from the general international standards as they are universally recognized in the areas of democracy, the establishment of the rule of law, the respect for human rights, and the enshrinement of the recourse to law in resolving political and other problems. This goal poses major challenges to all political components of society, human rights and civil society groups and organizations, which are expected to engage in supporting and following up the implementation of the conclusions reached by the IER, each within its scope of intervention in the process of democratic transition.

**65** Until the IER presents its recommendations and suggestions regarding the mechanisms for following up the implementation of its conclusions, it should be kept in mind that the final and definitive settlement of the past serious human rights violations file is a process which is supported by both the Royal will and the "aspirations of a people who does not elude its past and does not remain prisoner of its wrongs, but rather strives to turn it into a source of strength and vitality so as to build a democratic society in which all citizens, men and women, exercise their rights in freedom and fulfil their obligations with conscience and commitment within the framework of the rule of law"<sup>(15)</sup>. This is why meeting the conditions and circumstances that enable the mobilization of everyone represents the basic guarantee for implementing the recommendations and suggestions of the IER.

**66** In addition to the required institutional and legislative reforms, the role of education and training is vital in securing the appropriate mechanisms for implementing the conclusions of the IER and ensuring that what happened in the past will never occur again.

**67** The Human Rights Advisory Council from which the Justice and Reconciliation Commission (IER) has emanated is requested to develop its structures, programmes and action plans to be able to follow up the implementation of the recommendations and suggestions issued by the IER and falling within its competence.

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<sup>(15)</sup> Cf. the Royal speech delivered on the occasion of the installation of the President and members of the IER on 7 January 2004.

### **Third : Penal Policy Perspectives : Towards harmonizing the criminalization and punishment policy**

**68** Moroccan Penal law has undergone many amendments during the four decades of its existence. With a view to harmonizing it with the provisions of the international commitments of the country in the field of human rights, some of its provisions concerning aspects relating to women and children have been amended. Although the Moroccan penal law has been in force for a relatively short period, its foundations have become obsolete - even in the French environment that produced them<sup>(16)</sup>; not to mention the development of the Moroccan society and all the changes which occurred in the frequency and nature of crimes and all other forms of delinquency, with the concomitant preventive measures and guarantees of fair trials to individuals and groups.

**69** The year 2004 was marked by the inauguration of a new process in this field, its most significant stage consisting in the advisory opinion that was submitted by the Council, at the end of its twenty-second meeting, to the enlightened consideration of His Majesty, concerning the harmonization of the Moroccan Penal Law in combating hatred, discrimination and violence. The said advisory opinion included many proposals for reinforcing and modernizing the Moroccan Penal Law, and launching an in-depth action of communication and education with a view to making the country immune from various forms of racism, discrimination, hatred and violence.

**70** The fact that the Council was entrusted with this mission by the King, in addition to its purely legal dimension, takes on a highly political and civilizational significance. It is indeed an initiative that reflects a strong will and care for preserving Morocco as a land of human fraternity, tolerant openness, self-respect and respect of others, and a land of ethnic, cultural and spiritual harmony. Such an initiative has come in an international atmosphere characterized, in fact, by rapid development, yet disturbed by the rise of hatred, violence, racism, fanaticism and terrorism.

**71** In its above-mentioned advisory opinion, the Council pointed out that the Moroccan penal law had recently been amended and completed by provisions that criminalize all forms of discrimination, hatred, violence,

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<sup>(16)</sup> The Napoleon codification in the nineteenth century

instigation of violence and advocacy of terrorism<sup>(17)</sup>. But, it suggested a standardization of penal definitions and descriptions while upgrading them to the provisions of all international relevant treaties, including the eradication of all forms and manifestations of discrimination, ill-treatment, exploitation, hatred and violence against any social category. The Council also proposed, in a more comprehensive way, the revision and modernization of all the Moroccan penal legislation in the light of those treaties, the social mutations, trends of contemporary penal thought and new legislative developments, especially the advanced Code of Penal Procedure that has recently been adopted. Aware that appropriate legislative enactments alone are insufficient, the Council proposed procedural measures to raise awareness among, and train, all the components of the judicial and para-judicial system towards the implementation of the legislative provisions in force in the field of combating discrimination, hatred and violence. The pressing need for this task stems from the fact that the majority of those provisions are of recent date, numerous and scattered in different legislative enactments. In order to ensure protection in this field, the Council also proposed to use all communication, educational and counselling channels to help disseminate civic and human rights culture together with the values of openness, tolerance and acceptance of difference, while informing people of the dangers and consequences of all forms of racism, discrimination, hatred and violence.

**72** The Council further records the involvement of the Government in setting forth a penal policy, which was mainly reflected through the organization of a national colloquium on the subject<sup>(18)</sup>, with the view to learning lessons from a 42 year-long experience of application of the Moroccan Penal Code, and drafting a comprehensive penal policy that is compatible with the present needs of the country.

**73** Thus, the reform of the Penal Code has been integrated into the process of establishing a penal policy in tune with the necessity of security and peace, on the one hand, and the exigencies for the respect and protection of the rights and freedoms of individuals and communities, on the other hand, in accordance with the international commitments of Morocco and the social and legal mutations taking place in the country.

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<sup>(17)</sup> By virtue of Law No 24.03 (enforced by Cherifian Dahir No 1.03.207 issued on 16 Ramadan 1424 (11/11/2003), and Law No 03.03 on combating terrorism enforced by Cherifian Dahir No 1.03.140 issued on 26 Rabii I 1424 (28 May 2003), as well as Law No 77.00 modifying and completing the Press Code (enforced by Cherifian Dahir No 1.02.207 issued on 25 Rajab 1423 (3 October 2003)).

<sup>(18)</sup> The national Colloquium organized by the Ministry of Justice under the theme "Penal Policy in Morocco: Reality and Perspectives" in Meknès on 9-11 December, 2004

**74** The term “Penal Policy” was first used in the Moroccan law by virtue of Article 51 of the Code of Penal Procedure<sup>(19)</sup>. Though it is difficult, for the time being, to accurately define the content and components of such a policy, as long as the planned orientations have not yet being materialized within a governmental plan, the very preoccupation about this subject is in itself highly significant, in view of the paramount importance of harmonizing the penal policy with the human rights standards and goals.

## **1. Penal policy orientations**

**75** The new initiatives for the amendment of some provisions of the penal code have covered a number of aspects relating to the protection of women and children, on the one hand, and to strengthening the guarantees for a fair trial through the abolition of the Special Court of Justice, and through preparing a bill on the criminalization of torture, on the other hand.

### **1.1. Harmonization with the Convention on the Rights of the Child**

**76** The amendments to some provisions of the penal code have concerned the increase of the victim’s age, in offences and crimes of molestation and rape, from 15 to 18 years, so as to make the Penal Code consistent with the provisions contained in the third chapter of the Code of Penal Procedure on juvenile delinquents<sup>(20)</sup>.

### **1.2. Harmonization with the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)**

**77** The same amendments included measures aimed at eliminating discrimination against women and ensuring greater protection from marital violence. The Penal Code stipulates severe penalties in this regard, and also incriminates sexual harassment<sup>(21)</sup>. Equality of spouses has been established in the enjoyment of mitigating circumstances in cases of beating or murder when one of the spouses is caught in the act of adultery. Within the framework of the revision of the Code of Penal Procedure, authorization by the judge to a woman to bring a civil suit against her husband has also been cancelled.

<sup>(19)</sup> “The Ministry of Justice supervises the implementation of the penal policy and communicates it to the King’s Public Prosecutors who are in charge of its enforcement”.

<sup>(20)</sup> Law No 24.03 modifying and completing the Penal Code, B.O. No 5175 of 5 January 2004.

<sup>(21)</sup> Law No 24.03, mentioned above

### **1.3. Harmonization with the International Convention on the Elimination of All Forms of Racial Discrimination**

**78** This harmonization consists in criminalizing discrimination, were it emanating from a physical person or a body corporate. This issue was the core subject of the Council's advisory opinion on the harmonization of the Moroccan Penal Code with a view to combating hatred, discrimination and violence as mentioned above.

### **1.4. Harmonization with the International Covenant on Civil and Political Rights**

**79** It basically relates to the reinforcement of the procedural guarantees to secure a fair trial, through abrogating the Special Court of Justice, consecrating the principle of equality of all before the law and putting an end to the application of exceptional measures incompatible with the ordinary standards of justice, so as to bring the relevant provisions of the Penal Code into conformity with Article 14 of the International Covenant on Civil and Political Rights<sup>(22)</sup>.

### **1.5. Harmonization with the Convention against Torture**

**80** The Bill incriminating the practice of torture<sup>(23)</sup> is globally in conformity with the provisions of Articles 1 and 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

**81** Regarding the definition, it fulfils the three essential elements determined by Article 1 of the said convention, that is :

- Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person.
- Torture by a public official That the purpose thereof be specific, such as intimidating or coercing a person to obtain from him information or confessions.

The Bill also provided for appropriate penalties that take into consideration the grave nature of the torturous acts in accordance with paragraph 2, Article 4 of the Convention.

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<sup>(22)</sup> Article 7 of Law No 79.03 modifying and completing the Penal Code and relating to the abrogation of the Special Court of Justice, B.O. No 5248 of 16 September 2004.

<sup>(23)</sup> The Bill has not attempted to circumvent the term torture by using the word violence, which is rejected by the Committee against Torture. The use of the term torture is also found in the amendments which have modified and completed the Penal Code among which Article 438.



**82** The importance of these orientations is that they have considerably paved the way for a comprehensive reform of the Penal Law system on the basis of an approach which seeks to secure a larger participation of the civil society and human rights groups. Yet, their contents need to be further highlighted and accompanied with educational, awareness-raising, information and communication measures.

## 2. Penal policy challenges

**83** To develop a comprehensive penal policy that plays its role as a mechanism for the protection and promotion of human rights, the process into which the Government has engaged this year, needs to be completed by laying down the necessary governmental plans and programs in order to strike a balance between the requirements of individual and collective freedoms and the exigencies of securing protection for society. But before this, it is necessary to undertake a full revision of the penal law system in a manner that would guarantee a protective and preventive policy at the same time, while focusing on the eradication of excessive imprisonment sentences.

**84** Such a comprehensive revision of the said penal code system should seek to bring it into conformity with, in particular, the different social evolutions, the relevant international treaties, modern penal thought and the new legal developments; while giving a special attention to the standardization of the terminology used in the incriminated forms of discrimination, on the basis of advanced international definitions and coherence between the Penal Code and the other legislative enactments providing for penal provisions that need to be reviewed in this sense<sup>(24)</sup>.

**85** In the same context, the evolution, variety and complexity of the different forms of crime, as well as the necessity to curb them by rationalized and adequate tools, should be taken into account, subject to the full observance of the requirements of a fair trial.

Some gaps contained in the Bill on the incrimination of torture should also be filled, mainly by incorporating the second part of the first paragraph of Article 4 of the Convention which prohibits the attempt to commit torture or any act which constitutes complicity or participation in torture.

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<sup>(24)</sup> Cf. the Council's advisory opinion on combating different forms of racism, hatred and violence submitted to His Majesty upon the closing of the 22nd meeting of the Council on 2 Joumada II 1425 (20 July 2004).

**86** Ratification of the above-mentioned bill shall reinforce all the provisions related to torture, whether those that consider it an aggravating circumstance, or the modifications made to the penal code in the last two years in order to bring it into conformity with the commitments of Morocco, or the consolidation of the principles contained in the Code of Penal Procedure that discard confessions made under torture.

**87** However, setting up a comprehensive penal policy cannot be envisioned without the adoption of a referential framework of incrimination and punishment based on an accurate scientific approach that takes account of the principles of comparative criminology, with the contribution of the different actors in the realm of justice, with the aim of :

- determining the present and future needs of the penal policy in the light of the deep mutations taking place in our environment, the commitments of Morocco towards combating organized crime, and the application of the relevant international human rights conventions ;
- laying down the legal foundations and standards necessary for addressing the current challenges and establishing the appropriate infrastructure necessary for implementing the relevant legal provisions ;
- considering the need to bring the choices into line with the needs.

**88** In this regard, penal intervention methods should be varied by focusing on prevention of crime and other forms of delinquency, and by adopting alternative penalties to avoid the problems generated by excessive imprisonment penalties.

**89** At the institutional level, coordination should be based on a clear and realistic view of the different actors in the penal policy that starts from investigating into a criminal offence to the aftermaths of the enforcement of the respective penalty, so as to give force and consistency to judicial penal decisions.

**90** In order to ensure the sustainability and accuracy of the penal policy implementation follow-up mechanisms, it is necessary to work towards :

- establishing a mechanism for the continuous follow-up of the extent to which the legal provisions are appropriate with the domains which they regulate, and for securing the efficacy of the laws in force ;
- preparing an annual report on the implementation of the penal policy, the enforcement of which is entrusted to Public Prosecutors ;

- preparing reports, surveys and research papers by officials of the Ministry of Justice; or encouraging researchers in this field to do so, in addition to thematic and sectoral reports, where necessary (on domestic violence, juvenile justice, feasibility of alternative penalties...);
- establishing a structure for the assessment and analysis of penal policy practice, in order to complete its functions and coordinate its execution in the light of the defined objectives and procedures.

**91** The success of any penal policy is contingent upon the provision of material and human resources to the structures and components of the judiciary, to enable it to enforce it in an efficient manner.

**92** In this first section of Part One, and in the light of the new approach adopted, the report tackled three issues deemed relevant to the present and future of human rights in our country.

**Considering the importance and structural character of these issues, the Council shall follow them up, especially when it comes to addressing the challenges lying ahead. The Council shall carry out this task by using the means available, including the annual report.**

## Section II

# Protection of the safety of individuals, of their rights and freedoms

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**93** This section shall address the violations and transgressions that have affected the physical or psychological integrity of some individuals during their imprisonment or during their detention in centres under the jurisdiction of public authorities, as well as the violations that deprived others from their rights and freedoms as provided for in the laws in force.

**94** This section also includes a specific paragraph on violence against women and children, based on some considerations, among which the precariousness of women's and children's conditions, and the fact that they are the weakest link within the system of human rights protection. Therefore, taking care of and following on this aspect, in accordance with the recommendations of the Council's 2003 annual report on human rights conditions in Morocco, represents another opportunity for drawing the attention of the public authorities and raising awareness among large sectors of society about their role in the protection of the physical and psychological integrity of children and women.

**95** Addressing the above-mentioned issues depends on the analysis of the complaints and grievances received by the Human Rights Advisory Council either from individuals or from their families or from national organizations involved in human rights. It further depends on the analysis of the violations identified through different sources interested in human rights protection.

**96** Therefore, the subjects which will be exposed in this section are related to the cases handled by the Council which received during the year 2004: 3666 complaints, 1445 of which emanated from prisoners or from their relatives. After documenting and studying these complaints, it appeared that 57 cases thereof are related to violations falling under the competence of the Council<sup>(25)</sup>.

**97** This section also recalls the Council's concern regarding the aftermaths of the terrorist events and the present level of their treatment (principles and mechanism).

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<sup>(25)</sup> Full information on all these cases is available at the administrative unit of the Council in charge of protection of, and assistance to the victims of human rights abuses.

## First : Violation of physical and psychological safety

**98** The provisions of many international pacts and covenants on human rights provide for the guarantee of the protection of individuals from torture or severe, inhuman or degrading treatment or ill-treatment of a specific category of individuals. Among these covenants, mention should particularly be made of: the International Covenant on Civil and Political Rights, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of all forms of Discrimination Against Women, and the Convention on the Rights of the Child, in addition to the provisions of the Standard Minimum Rules for the Treatment of Prisoners, the Code of Conduct for Law Enforcement Officials and the Principles of Medical Ethics.

### 1. Violations relating to the application of the provisions governing detention and treatment of prisoners

**99** The cases that have been processed by the Council, either on its own initiative or on request concern complaints related to the guarantees which must be provided during pre-arraignment detention or during the different stages of detention in penitentiaries.

#### 1.1. During pre-arraignment detention

**100** As an example of the cases classified under these violations, the Council has intervened in three cases before the competent public authorities. The proceedings were carried out in accordance with the provisions of the Convention against Torture, by initiating a swift and impartial investigation about torture allegations.

#### A case of condemnation

**101** The Council received a complaint from a citizen, wherein he claims that his son died in a police station in Marrakech as a result of violence. After referral of the case to the competent jurisdiction the public prosecution decided to prosecute a police officer for the offence of violence leading to unintentional death. After completion of the investigatory proceedings (investigations by the Judiciary Police into this case and post-mortem examination), the case was referred to the Criminal Division of the Court of Appeal of Marrakech<sup>(26)</sup>.

<sup>(26)</sup> The said Court had issued, on 25 March 2005, a charging decision against the defendant for the charges imputed to him and sentenced him to a ten-year prison term.

## Prosecutions during investigation

**102** The Council also recorded the intervention of the judicial authorities subsequently to the death of a citizen in the town of Guelmim at a judicial police station. In this respect, the Public Prosecution of the Court of Appeal of Agadir filed two petitions with the examining magistrate. The first concerned investigation with two suspects within the framework of the procedure of jurisdictional privilege for offences involving the use of violence on duty leading to unintentional death and forging of an official document; while the second petition concerned a third suspect in offences of violence on duty leading to unintentional death and forging of an official document.

After interrogation of the accused by the examining judge, the latter decided to arrest them and issued two writs of transfer before the court's criminal division. The first writ was established under Penal file n° 04/56 wherein the first two suspects were prosecuted for participation in acts of violence while on duty leading to unintentional death and for the offence of forging an official document. The second writ was established under Penal file n° 04/962 wherein the third suspect was prosecuted for the same charges.

## Referrals to investigation

**103** The Council submitted before the "Liaison and Communication Cell"<sup>(27)</sup> several cases that were subject to complaints; wherein plaintiffs were complaining about their being victims of torture and ill-treatment while in pre-arraignment detention to extract confessions of charges against them.

**104** The Council took note of the positive reaction within the said unit, which led to taking immediate measures resulting in investigations and inquiries by the Public Prosecution offices, as in the case of the trial record file N° 103/2004 (2nd Chamber), before the Court of Appeal of Tangier. The Public Prosecutor in the said court requested an inquiry against three police officers (one senior police officer, one security officer and one police sergeant) for detention coupled with torture. Within the same framework, the Public Prosecution in Safi prosecuted a judicial police officer following a complaint filed by a lady; wherein she exposed that she had been victim of violence and torture by the said officer for the purpose of waiving a complaint filed against an individual from the police forces who was prosecuted for the offence of indecent assault of an under-aged girl that led to the loss of her virginity, under penal file N° 50/60 at the Court of Appeal of Safi.

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<sup>(27)</sup> Pour plus d'informations sur la dite Cellule, voir paragraphe 189 du présent rapport

## 1.2. Exposure to illegal detention

**105** The Council received three complaints from victims themselves or from associations about individuals who were victims of illegal detention. After reviewing these complaints and initiating the relevant measures in cooperation with the Ministry of Justice, it appeared that :

- an inquiry of facts related to two cases had been initiated, the first case at the Court of Appeal of Tangier where the Public Prosecutor ordered an inquiry against the defendants for detention coupled with torture. The file of the case was opened under N° 103/ 2004 (2<sup>nd</sup> Chamber) ;
- the other case was introduced before the Public Prosecution office at the Court of Appeal of Oujda which ordered an inquiry that culminated in a writ rendered by the examining judge who ordered the arrest of the defendant ;
- from the investigations carried out by the Public Prosecutor of the Court of Appeal on the allegation of illegal detention of an individual in Tetouan, it transpired that this individual had neither been arrested nor interrogated, and that he was free during the investigations.

## 1.3. In prisons

**106** The Council continues its follow up of prison conditions in order to determine the extent to which the recommendations contained in its thematic report about prison conditions<sup>(28)</sup> are implemented, through field visits to penitentiaries or through processing of the complaints, received from detainees or from their kin, which amounted to 1443 in 2004. These complaints have been processed on the basis of their specificities in collaboration with the competent authorities.

**107** The Council also triggered off an immediate and urgent procedure on the basis of the complaints it received from the families of some detainees held in the prison of Outita 2 ; wherein they were complaining about the situation of their relatives inside the prison and their exposure to torture and ill-treatment.

**108** A committee made up of members from the working group in charge of protection and coping with violations undertook a visit to the said prison and investigated into the above-mentioned allegations on 29 December 2004. For this purpose, the visiting group stayed 12 hours inside the prison and accomplished the following :

- it held a meeting with the prison director and the assistant director in the presence of representatives from the Directorate of Prisons Administration and Rehabilitation ;

<sup>(28)</sup> Advisory Human Rights Council: Special report on prison conditions – April 2004.

- it visited the principal facilities in the prison, the visiting room, the clinic, the bakery and the kitchen ;
- it visited all the cells in the ward of the concerned detainees.

**109** Since it was impossible for the visiting team to meet all 300 detainees, it limited itself to listening to :

- prisoners whose relatives have visited the Council and filed complaints for ill-treatment of their detained relatives and for their harsh living conditions in prison ;
- one prisoner from each cell representing the other detainees ;
- detainees representing a committee of dialogue to speak on behalf of the remaining detainees.

**110** Immediately after taking note of some prisoners' complaints about allegations of torture and ill-treatment, the committee that visited the prison facilities recorded the cases that were exposed to it in accordance with the standard principles on efficiently investigating and documenting acts of torture and other forms of cruel, inhuman or degrading treatment or punishment<sup>(29)</sup>.

**111** Following the fact-finding mission, the report :

- recalled the circumstances in which the visit took place, mentioning the names of the individuals encountered, the persons present at the meetings, the date and time of the meetings ;
- recorded the statements and declarations of the interviewed individuals regarding the practice of torture and its forms or ill-treatment, and the time when such acts were committed as well as the different physical and psychological traumas subsequent thereto.

**112** Once this mission ended, the Council – pursuant to the provisions of paragraph 7 of article two of the Cherifian Dahir stipulating its reorganization – prepared a report on the subject which was submitted to the Ministry of Justice with the request to take the appropriate legal measures against anyone found guilty of torture and ill-treatment.

**113** As soon as the Minister of Justice received the report, he submitted the cases raised therein to the King's Public Prosecutor at the Court of Appeal of Meknès, for the purpose of inquiring and interrogating plaintiffs and prison officials – including the prison director – at Outita 2 penitentiary, in order to determine responsibilities.

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<sup>(29)</sup> 29 All cases are carefully documented in a report which can only be accessed with permission from the concerned person or by a legal decision, as determined in the international standards on investigating and documenting allegations of torture.



**114** Once he had proof of the possibility that detainees were victims of torture, the King's Public Prosecutor filed a request for an inquiry of six employees in the prison facility for crimes of indecent assault with violence and attempt to commit it by public servants on duty as well as for the offence of ordering the illegal use of torture and participation in the said acts.

## **2. Violence against women and ill-treatment of children**

**115** Based on its monitoring of whatever relates to the protection of women and children from abuse and exploitation<sup>(30)</sup>, as recommended in the 2003 report, the Council continues to monitor torture-related practices, especially after the substantial modifications introduced in the Moroccan legal paraphernalia with the view of bringing its provisions into conformity with the commitments of Morocco, in accordance with the Convention on the Elimination of all forms of Discrimination Against Women, the UN Declaration on the Elimination of Violence Against Women and the Convention on the Rights of the Child.

**116** Violence and ill-treatment of women and children take various forms. These could be summarized in physical and psychological violence and violence resulting from economic and sexual exploitation. It is a social scourge that questions the public authorities who are responsible for protecting the integrity of citizens, men and women, as much as it questions several other parties, individuals and groups, with regard to the degrading practices committed in public and private spaces.

**117** Violence and ill-treatment are, in general, a grave violation of fundamental rights, most important of which are physical integrity, psychological stability and human dignity. Thus, the relevant public authorities and all civil society actors should assume their responsibility of curbing such a phenomenon, especially after the legislative amendments on the protection of women, children and the family.

### **2.1. Violence against women**

**118** From the outset, it is worth pointing out the difficulty to find exhaustive statistics about violence against women that would help get a broad sense of this phenomenon. Still, the available statistics –

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<sup>(30)</sup> Cf. the annual report on human rights conditions in Morocco for the year 2003 – Section 10 of the Part on Civil and Political Rights, pp. 62-64.

although few – are quite significant and may be a point of entry for proposing measures to eradicate violence against women<sup>(31)</sup>.

**119** The fact of breaking the silence surrounding this phenomenon, were it in private space (at home) or in public space (in places of work, for instance), may be considered as a turning point towards an approach that links the phenomenon of violence with the status of women in society. The involvement of the public authorities through legislation and practical support measures, in addition to the contribution of women's associations which have been active in this field for many years now, constitute an indicator of the increasing awareness about the negative effect of violence on women – in that it is a violation of their fundamental rights – and on society as a whole.

**120** Public authorities have intensified their efforts since the adoption of the national strategy for eradicating violence against women in 2002. The most recent of these efforts consisted in the preparation by the State Secretariat in charge of the Family of the executive working plan of the said strategy. The Prime Minister reaffirmed the commitment of the government to support such a plan when launching the national campaign for the eradication of violence against women between 24 and 30 November 2004.

**121** The Ministry of Justice, in an unprecedented initiative, acted towards implementing the plan for the eradication of violence against women beyond the repressive framework. It decided, thus, to work with governmental and non-governmental partners, and namely with hotline centres for battered women to cope with this phenomenon through a preventive and protective strategy involving the provision of legal, psychological, medical and social services<sup>(32)</sup>.

**122** The contribution of the civil society is manifested mainly through hotline centres providing legal counselling and assistance to women victims of violence, which had been pioneers in expressing their concern about this issue since the mid-nineties. There are now 33 such centres

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<sup>(31)</sup> The Advisory Human Rights Council sent letters to every governmental institution and to several associations concerned by this issue and received responses from the State Secretariat in charge of the Family, Children and Handicapped Persons, Union de l'Action Féminine, Association Démocratique des Femmes du Maroc, Ligue Démocratique des Droits des Femmes.

<sup>(32)</sup> The Ministry of Justice has, in this context, decided among other things to establish a cell in each public prosecution office to liaise with the hotline centres on cases of violence against women, cooperate with women's associations to exchange and report relevant information, inform the concerned centres about the measures taken with regard to the reported cases, and order the public prosecution office to allow representatives from these centres to accompany the victims of violence before the court, in addition to coordinating with other parties such as the Ministry of Health, and training the justice department staff. Cf. 'Ministry of Justice : A Paper on the Contribution of the Ministry of Justice to the Elimination of Violence Against Women'

distributed throughout several regions in the country<sup>(33)</sup>. These centres provide many services ranging from legal, medical, psychological, social counselling and assistance to accommodating battered women to the limit of their abilities in the very few shelter centres available. The centres also carry out, either independently or within networks, advocacy action with the public authorities and conduct awareness-raising campaigns towards society at large, with the purpose of adopting preventive and protective measures for women.

**123** Coordination of efforts regarding the issue of violence against women – especially in circumstances characterized by the promulgation of legislation on violence against women – is of paramount importance. In this regard, measures of structural nature should be envisioned at several levels :

- a thorough knowledge of the different forms and manifestations of violence and its quantitative dimension.
- capacity building for various governmental and non-governmental stakeholders through training, qualification and development of working tools, coordination, follow-up and evaluation mechanisms;
- combating violence by additional legislative reforms in this domain, and supporting them with educational measures aimed at disseminating the culture of equality and conflict management with ways and means that preserve dignity, while including such an action into a comprehensive approach that seeks to promote women's human rights.

## 2.2. Violence against children

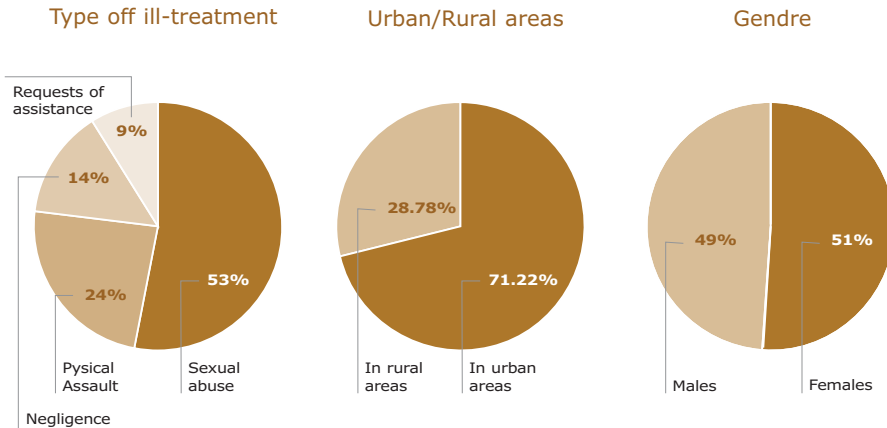
**124** Ill-treatment of children includes many practices, such as physical assault, sexual and economical exploitation and emotional and material negligence. The legislator has been concerned about this issue through the measures provided for in the Family Code, the Labour Code, the Penal Code, the Penal Procedure, the Law on the Adoption (Kafala) of Abandoned Children and the Civil Status Code which have all consolidated the mechanisms and tools for the protection of children and to guarantee their best interests.

**125** Implementation of preventive and protective measures entails the analysis of the phenomenon of child ill-treatment in order to be able to direct public policy in this field, and requires greater effort in field research and surveys.

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<sup>(33)</sup> Cf. the Guidebook on Hotline Centres for Psychological Counselling, Guidance and Legal Assistance to Women Victims of Violence, State Secretariat in charge of the Family, Children and the Handicapped with the support of the UNPFA.

**126** During 2004, for example, the Hotline Centre for the protection of battered children affiliated to the National Observatory for the Rights of the Child received 462 phone calls about cases of effective ill-treatment of children, distributed as follows:



Although these statistics represent only a limited sample<sup>(34)</sup> in terms of numbers, they may be used as an indicator when studying this phenomenon.

**127** The national press has addressed during this year several cases of different forms of violence against children that were submitted before the courts. Yet, greater efforts are required in order to further involve the government and society in child protection.

**128** In this regard, it is necessary :

- to monitor the application of the above laws by the concerned parties, and the implementation of the many other provisions, such as those contained in the National Charter of Education and Training about ill-treatment of children in educational institutions ;
- to adapt the structures charged with hosting ill-treated children, extend their scope of action, and provide them with the necessary qualified human resources,
- to build the individual capacity of children so that they may be able to participate to their own protection from the dangers that threaten them in specific situations, through the education and information system ;

<sup>(34)</sup> Other associations concerned with child maltreatment and call centres for battered women also receive similar cases.

- to incorporate the objective of eliminating violence against children into an integrated policy aimed at the promotion of the right of the child to survival, growth, protection and participation.

**129** Protection of women and children from violence and ill-treatment is contingent upon the way in which implementation of the Family Code will evolve in future, and to what extent the content of the new penal policy will be put into practice, as referred to in Section I of this report. Coping with the challenges in the two above-mentioned fields will certainly help create better conditions for the respect of human rights of both categories.

## Second : Exercise of public freedoms

**130** While monitoring the exercise of public freedoms by individuals pursuant to the Constitutional provisions or relevant laws and regulations, and in accordance with the international commitments of Morocco, the Council noticed the non-observance of the legal provisions in force, especially when it comes to forming associations or organizing peaceful demonstrations, as provided for in the Laws on the rights of association and peaceful assembly ; although they both guarantee the exercise of the said rights and liberties.

**131** From the cases filed before the Council, in this context, it emerges that there are two problems :

- The problem of delivering a receipt against filing an application to set up an association or to organize a public demonstration. The administrative authorities would quite often, in practice or through interpretation, refrain from delivering the receipt or refuse to take due note of the file altogether, which in fact turns the basic rule of freedom provided for in law into a system of authorization / licensing to exercise the concerned freedoms; this amounts to contravening the current Moroccan laws and the provisions of Articles 21 and 22 of the International Covenant on Civil and Political Rights.
- The problem of dealing with peaceful demonstration on the public road. While the observance of juridical norms is undoubtedly necessary for both the applicants for the right of assembly or peaceful demonstration, and for the public authorities, the latter should however, and in the occurrence of whatever requires dispersion of a demonstration or a peaceful gathering on the public road, comply with the relevant legal provisions, in accordance with article 19 of the Law governing the right of public assembly, and ensure that their response measures be proportionate with the act to be countered to avoid any abuse of force.

**132** Certes, le Pacte international relatif aux droits civils et politiques admet des limitations à l'exercice de ces libertés, à la condition cependant que ces limitations soient légales, nécessaires à une société démocratique et justifiées par l'intérêt général.

**133** The International Covenant on Civil and Political Rights authorizes certain restrictions on the exercise of this right, provided these restrictions are prescribed by law and are necessary in a democratic society for the protection of public interests.

133 – As to the freedom of movement, the Human Rights Advisory Council has taken note of the progress achieved in the response reserved to applications for passports and in lifting the restrictions recorded in police security centres at transit points on borders. The Communication Cell of the Ministry of the Interior has indeed handled in a positive way all the applications that have been referred to it concerning complaints lodged for non-delivery of passports and for the settlement of problems relating to the freedom of movement<sup>(35)</sup>.

### **Third : The aftermaths of the May 16 terrorist events**

**134** The 2003 annual report of the Council had dealt with the terrorist events of May 16th and their repercussions. Since the Council had not directly followed up the trials, it recommended in the said report to "study and analyze the judiciary cases before the courts resulting from May 16th events, after the use of all means of redress". Within the framework of its follow up of this issue in 2004, the Council organized field visits to several detainees condemned on the grounds of the said events in order to inspect their detention conditions. It also received complaints about violations committed in the concerned prisons.

**135** Bearing in mind all the criminal aspects of the said events and the sufferings and damages they caused to the direct victims and to the whole Moroccan society, individuals and groups, and after collecting some data and information and listening during the visits to groups of detainees involved in these events, and keeping in mind also the general governmental guidelines to remedy any abuses which might occur in such situations, the Council recommended that the "Liaison and Communication Cell" should undertake to study this file in order to form an accurate view about it and put forward appropriate proposals.

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<sup>(35)</sup> A delegation from the Human Rights Association of Moroccans living abroad was received at the Ministry of the Interior (Cf. the Complaints Table under Section II).

**136** Thus, the Council proposes to examine this file on the basis of the fundamental following principles :

- First : to take the human rights dimension as a basis in studying and handling the said file with the view to correcting the errors and abuses which might be encountered ;
- Second : to be keen on observing the use of all judicial means of redress at every stage of the file review ;
- Third : the need to examine the conditions of the victims of May 16th events, so as to remove the pains and sufferings inflicted upon them ;
- Fourth : to incorporate the review of this file within the perspective of consolidating the reconciliation process in our country, by condemning all forms of violence whatever their justification, while ensuring that the analysis of the aftermaths of the above events be another step towards entrenching the principles of tolerance and consolidating the values of respect for difference and pluralism.

## Section III

# Conventional commitments and international reports on human rights

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**137** The Council has been working all year long, in this section, to evaluate to what extent our country has met its international human rights commitments in the following two areas :

- the first one seeks to assess the consolidation of our country's conventional practice in the field of human rights through our follow up of the efforts made with a view to adhering to the international human rights system, our review and analysis of the observations and recommendations emanating from the relevant human rights commissions upon their examination of the periodic reports submitted by Morocco ;
- the second is related to our follow up of whatever emanates from governmental and non-governmental national and international organizations about human rights conditions in Morocco, as one of the fields of interest of the Human Rights Advisory Council.

## First : International Conventional commitments

### 1. Situation of conventional practice

**138** Morocco has ratified most of the international conventions on human rights. In the context of sustaining the consolidation of its conventional practices in this field, it endeavoured in 2004 to bring into force the ratified pacts by publishing them in the Official Gazette (Bulletin Officiel) :

- Convention 135 concerning the Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking adopted by the ILO General Conference at its session held in Geneva on 23 June 1971, and gazetted in B.O n° 5185 on 9 February 2004 ;
- The UN Convention Against Transnational Organized Crime signed in Palermo on 12 December 2000, and gazetted in B.O. n° 5186 on 12 February 2004 ;
- The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography adopted by the UN General Assembly on 25 May 2000, and signed by Morocco on 8 September 2000, ratified on 2 October 2001, and gazetted in B.O. n° 5192 on 4 March 2004 ;



- The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts adopted by the UN General Assembly on 25 May 2000, and signed by Morocco on 8 September 2000, ratified on 22 May 2002, and gazetted in B.O. n° 5192 on 4 March 2004 ;
- The Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents adopted by the UN General Assembly and signed in New York on 14 December 1973, and gazetted in B.O. n° 5222 on 17 June 2004 ;
- The Comprehensive Test Ban Treaty adopted by the UN General Assembly at its 51st session held in September 1996, and gazetted in B.O. n° 5179 on 19 January 2004.

## 2. Situation of periodic reports

**139** The Moroccan Government presented during 2004 two periodic reports :

- The third periodic report related to the International Covenant on Economic, Social and Cultural Rights;
- The first report on the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Within the framework of its undertakings emanating from the United Nations Convention against Torture, the Government has, at the request of the Committee against Torture, submitted a report containing additional information during the discussion of the third periodic report on the said convention.

**140** It also presented two other reports which were discussed during the same year :

- The third periodic report on the Convention on the Eradication of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 5 February 2004 ;
- The fifth periodic report on the International Covenant on the Civil and Political Rights on 5 November 2004.

Thus, the government has met its commitments regarding submission of the periodic reports to the relevant commissions within the required deadlines.

**141** Considering that periodic reports constitute one of the mechanisms for monitoring the implementation of the provisions of the international human rights conventions and the recommendations related thereto, so as to enhance the credibility of Morocco's conventional practices in this

field, the Council examined the recommendations and observations<sup>(36)</sup> relating to the international conventions put forward by the relevant human rights commissions during their discussion of the periodic reports submitted to them by the Moroccan Government. It appeared to the Council that our country still has to take further measures to guarantee the implementation of the provisions of international conventions that it committed itself to in the field of human rights, as follows :

## **2.1. At the legislative and institutional levels**

### **2.1.1. The position of conventions within the Moroccan legal system**

**142** Despite efforts deployed by Morocco to reform its legal paraphernalia and harmonize it with the provisions of international conventions on human rights which it has ratified or adhered thereto, further efforts are still required to develop the necessary mechanisms and methods for implementing the provisions of these conventions.

**143** In this context, the concerned review commissions have requested the Moroccan Government:

- to continue its adherence to the system of the International Conventions on Human Rights, either by acceding to or ratifying treaties or by withdrawing the reservations it has made on some provisions in the conventions which it has committed itself to ;
- to incorporate the provisions of the international conventions into the domestic law by :
  - updating the domestic legislation in the field of human rights ;
  - consolidating the harmonization of provisions of domestic law with the international human rights standards ;
  - bringing into force and implementing the provisions of the international conventions through fulfilment by the public authorities of its international obligations, and providing due process guarantees in case of abuse of the rights and freedoms provided for in the conventions entered into by the Kingdom.

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<sup>(36)</sup> Recommendations and observations emanating from the commissions in charge of monitoring the extent to which states comply with the provisions of the following conventions :

- The International Covenant on Economic, Social and Cultural Rights ;
- The International Covenant on Civil and Political Rights ;
- The Convention on the Eradication of Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment ;
- The UN Convention on the Elimination of All Forms of Racial Discrimination ;
- The UN Convention on the Elimination of All Forms of Discrimination Against Women ;
- The UN Convention on the Rights of the Child.

### **2.1.2. At the level of eliminating all forms of discrimination**

**144** The provisions of the international conventions on human rights provide for guarantees for the protection and exercise of the stipulated rights and freedoms without discrimination for whatever reason, on the basis of equality of all in the political, economical, social or cultural fields or in any field of public life.

**145** Measures to be taken to guarantee the above include the prevention of all forms of discrimination and the guarantee of equality between all individuals, especially in the case of women and children, in addition to the elimination of discrimination resulting from regional disparities. The recommendations of the relevant human rights commissions also provide for the necessity to guarantee due process means to victims of discrimination.

### **2.1.3. At the level of the legal guarantees during detention**

**146** These are the guarantees that should be made available during pre-arraignment detention in order to secure the physical and mental safety and integrity of individuals. The UN Commission on Human Rights and the Committee against Torture call upon the Moroccan Government to consider the necessity of reviewing the excessive duration of pre-arraignment detention, and of providing legal and medical services to the arrested individuals as well as the possibility to inform their families from the very moment of its application.

**147** In order to protect the safety of individuals and guarantee their dignity, it is requested to prohibit torture and criminalize its use, whoever the instigating party may be and in whatever circumstances it is perpetrated. It is also requested to investigate and inquire into every complaint about torture, to apply penal and administrative penalties proportionate to the acts perpetrated, and give the possibility of rehabilitation and compensation to victims.

**148** Emphasis is also put on the need to secure the conditions and guarantees for a fair trial, and primarily to discard all confessions coerced by torture. The Moroccan Government is also often called upon to exert further efforts to improve prison conditions and to put an end to violence and torture inside these establishments and envision alternative penalties in order to alleviate their overcrowding.

### **2.1.4. At the level of the freedom of expression**

**149** The concerned commissions recommend taking measures that call for two commitments by the Government. The first is a positive one

and is related to the guarantee of the rights of expression and peaceful assembly and the right to form associations without any obstacles. The second is a negative one and aims at non-intervening for restricting these rights beyond the limits set forth by the Conventions, which means that the protection of the freedom of expression remains the general rule, while its restriction should only constitute an exception and should be subject to the law.

#### **2.1.5. At the level of the welfare of the individual**

**150** These are rights guaranteed by some human rights and ILO conventions. They all aim at providing the individual with the basic necessities of a dignified life, including his/her openness and enjoyment of all the other rights. These conventions focus on the basic needs of education, training, physical and mental health, employment, housing and participation in cultural life.

**151** In sum, the human rights commissions recommend that greater efforts be made to solve the problems resulting from the above-mentioned domains and to eradicate the various forms of discrimination due to gender or to regional, provincial or sectoral differences.

#### **2.2. At the educational level**

**152** Here, the question concerns human rights education, awareness-raising and promotion through the publishing of the relevant international conventions, discussions and recommendations issued by the concerned commissions.

While educational action which aims at integrating and entrenching human rights values within society is a must for the promotion and protection of human rights, in general, it is particularly a priority with respect to women and children, due to the existence of stereotyped practices which lay the foundations for discrimination and cannot be changed by laws alone.

## Second : Human rights conditions from the perspective of NGOs reports

**153** One of the indicators adopted by the Council in assessing the situation of human rights is the follow up of NGOs' reports on this subject, through a clear and objective approach which seeks to :

- corroborate the observations on which the Council has deliberated ;
- monitor the cases on which the Council has no data and endeavour to clarify them ;
- set aside untrue information.

**154** From the analysis of the following reports published by non-governmental organizations during 2004 :

- Report by Amnesty International: "Morocco/Western Sahara: the Practice of Torture During the "Anti-Terrorism" Campaign : the Case of the Temara Detention Centre, 24 June 2004 ;
- Report by Human Rights Watch : "Human Rights in Morocco at a Crossroads", October 2004 ;
- Report by the US State Department : "The Situation of Human Rights in Morocco in 2004", 28 February 2005 ;
- Moroccan Human Rights Association : "The Yearly Report on Human Rights in 2003", April 2004.

It emerges that these reports have examined the situation of human rights after the terrorist events which occurred in Casablanca on 16 May 2003, by focusing on the subsequent arrests and trials. The observations of the reports addressed the following :

- The practice of torture by security forces during detention of the suspects or during the procedures of investigation provided for by the law ;
- Pre-arraignment detention conditions and the guarantees that must be granted to the detainees ;
- Guarantees of a fair trial ;
- Trial of some journalists.

**155** These matters had already been addressed by the Human Rights Advisory Council in its 2003 report under Sections II, VI and IX of Chapter I, and under the chapter on the most controversial subjects and on the flaws and violations in the field of human rights during 2003.

**156** The report of the Moroccan Human Rights Association has also tackled some cases related to economic, social, cultural and group-specific rights during 2003, while the Council had already examined this subject in its yearly report on human rights in Morocco during 2003 in its second and third chapters.

## Part Two

Activities of the Council and prospects  
for future action



**157** For a sound assessment of the proceedings of the Human Rights Advisory Council during 2004, it is necessary to take three main factors into consideration:

- the fact that the year 2004 came shortly after the restructuring of the Council into its new form and composition ;
- the fact that the Council focused its efforts on designing and laying down its action plans and programs on the medium and long-term basis ;
- the fact that the year 2004 witnessed the installation of the Justice and Reconciliation Commission (IER), nine members of which are also members of the Council, which led the latter to give priority to IER's work ; bearing in mind the historical mission it was assigned.

**158** This part of the report includes two main components :

- The aggregates of the Council's internal activities with a succinct overview of the activities of its different organs,
- The outcome of the annual activities undertaken in the scope of its missions and the implementation of the programs laid down.

## **1. The sum total of the Council's internal activities**

**159** The Council's internal activities for 2004 were marked by the works of its different organs at all levels with the purpose of fulfilling the tasks with which it has been entrusted and monitoring the implementation of the programs it had initially set.

### **1.1. The Council sessions**

During the year, the Council held three ordinary sessions to deliberate on a number of issues which are summed up in the following table:



Session	Theme	Date
21 <sup>st</sup>	<ul style="list-style-type: none"> <li>• A first report on the activities of the Justice and Reconciliation Commission (IER) ;</li> <li>• An initial discussion of the advisory opinion on the "necessary proposals to fill the legislative lacunae in the field of eliminating all forms of racism, hatred and violence" ;</li> <li>• Examination and adoption of the 2003 annual report on human rights conditions ;</li> <li>• Examination and adoption of a thematic report on the conditions in prisons.</li> </ul>	23 April
22 <sup>nd</sup>	<ul style="list-style-type: none"> <li>• A second report on the activities of the Justice and Reconciliation Commission (IER) ;</li> <li>• Drawing the initial conclusions from the Council's 2003 annual report on human rights conditions ;</li> <li>• Hearing the Government's answers relating to issues brought up in the Council's reports ;</li> <li>• Adoption of the advisory opinion concerning "the elaboration of the necessary proposals to fill the legislative gaps in the field of eliminating all forms of racism, hatred and violence" ;</li> <li>• Discussion of a draft recommendation relating to the promotion of the rights of the disabled persons ;</li> <li>• Attaching the "Centre for Documentation, Information and Training in the area of Human Rights" to the Council ;</li> <li>• Following up the activities of the working groups.</li> </ul>	20 July
23 <sup>rd</sup>	<ul style="list-style-type: none"> <li>• A third report on the activities of the Justice and Reconciliation Commission (IER) ;</li> <li>• Discussion and adoption of a new approach for the 2004 annual report ;</li> <li>• Discussion and adoption of a draft National Plan for the Promotion of Human Rights Culture ;</li> <li>• Bringing up the issue of economic, social and cultural rights with a view to developing a new approach thereof ;</li> <li>• Following up the activities of the working groups.</li> </ul>	29 October

**160** As stipulated by the Council's constituent documents, a memorandum including all the items tackled in every session was referred to His Majesty, annexed by recommendations that were approved by His Majesty.

### 1.2. Meetings of the working groups and the Coordination Committee

Group / Committee	Number of meetings held during 2004
The working group on the promotion of human rights culture	9
The working group on the protection of human rights and addressing violations	9
The working group on human rights and societal development	12
The working group on the study of legislation and public policies	6
The working group on foreign relations	4
The Coordination Committee	11

**161** The Annual Report Committee, the Special Committee in charge of Moroccan Residents Abroad, and the Special Committee on Moroccan Detainees in Tindouf, all held several meetings in accordance with their respective missions.

**162** In their proceedings, the working groups, which are considered as the working mechanism and dynamic of the Council, focused on two interrelated axes

- self-structuring with all the capacity required for the best fulfilment of their missions ;
- scheduling, implementing and following up of the activities that are part and parcel of their competence and concerns.

As for the Coordination Committee, it concerned itself with following up the Council's proceedings and harmonizing its initiatives in between two sessions, in addition to formulating proposals of concern to the Council's orientations in accordance with an integrated approach.



### 1.3. Reflecting about the development of communication mechanisms

**163** The idea here is to set up – at the Council level – a communication strategy<sup>(37)</sup> based on the Council’s position within the human rights perspective on one hand, and on the added value it can contribute for the protection and promotion of human rights on the other hand. In this respect, the Council’s website on the Internet was reshuffled, and new diversified communication instruments were produced.

## 2. The outcome of the Council’s activities

**164** During the year 2004, the Council continued to implement the programs which had been launched the year before. It also carried out new activities in the scope of the programs adopted by the working groups and approved by the Council at its 19th meeting.<sup>(38)</sup> These activities can be summed up in the following:

### 2.1. Advisory opinions

**165** In compliance with the Royal instructions contained in the Royal address of 30 July 2003, on the occasion of His Majesty’s accession to the Throne, and in view of “attending to the elaboration of the necessary proposals to fill the legislative gaps in the field of eliminating all forms of racism, hatred, and violence”, the Council proceeded with preparing and discussing a legal study on the issue, ended up drafting a number of proposals aiming at consolidating and updating the Moroccan penal code, and launched an in-depth action of communication and education to help fortify the country against all forms of racism, segregation, hatred and violence. These proposals were included in the advisory opinion submitted by the Council to His Majesty and were preceded by the presentation of its main purports while addressing the general penal policy guidelines<sup>(39)</sup>.

**166** Concerning the “Citizenship Charter”, which is a second assignment from His Majesty to the Council, the latter had in fact already constituted, by the end of 2003, a commission that started its proceedings with an internal brainstorming workshop to which the

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<sup>(37)</sup> In relation to this issue, a project was submitted to the Coordination Committee on 7 October 2004.

<sup>(38)</sup> Cf. Part II of the 2003 annual report on the outcome and prospects of the Human Rights Advisory Council’s activities (Internal Newsletter) P. 103 and following.

<sup>(39)</sup> Cf. Part I of the report, Section I, Second – and see the full text of the advisory opinion under the Annexes to this report.

Council members contributed with working papers on this issue. The Council shall continue the study of this issue, starting from the preparatory works that have been achieved so far on the subject.

## **2.2. Activities in the area of human rights promotion**

### **2.2.1. The annual report on human rights conditions**

**167** One of the priorities that the Council assigned to itself during 2004<sup>(40)</sup> was the drafting of the Council's 2003 Annual Report with its two parts, the first of which relates to human rights conditions in our country and the second to the Council's activities and future prospects. Through the report and the reactions it elicited, whether from the government, society or the mass media, and in view of the conclusions it reached concerning human rights conditions, it appears that :

Sur la base du contenu du rapport et de ses conclusions sur la situation des droits de l'Homme, ainsi que des réactions qu'il a suscitées de la part du Gouvernement, de la société civile et des médias, il apparaît ce qui suit :

- in view of its importance, the report is in itself a tool in the hands of the Council to objectively exercise its advisory functions in assessing human right conditions and issuing recommendations aiming at the protection and promotion of these rights ;
- there is a necessity to refine the approach adopted by the Council in drafting its annual reports, which has been tackled in the general introduction of this report.

### **2.2.2. Harmonizing the national law with international human rights standards**

**168** The Council's competence in the field of harmonization is considered among the latest developments introduced by Dahir of 10 April 2001 which entrusted the Council with the competence to consider harmonizing effective legislative and statutory enactments with international human rights standards. This prerogative includes consideration of these draft bills as well as examination of the human rights related draft conventions.

**169** For considerations related to the working methodology, a distinction was made between two kinds of harmonization, namely : a priori harmonization which concerns draft legislative and statutory enactments, and a posteriori harmonization which concerns legislative and statutory enactments which are already effective.

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<sup>(40)</sup> Cf. Part II of the 2003 Annual Report, p. 169



### **A priori harmonization**

**170** Concerning a priori harmonization, the Council, during its 19th meeting, adopted a special procedure into which it incorporated the recommendations submitted to His Majesty requesting His Majesty to deign giving His august order to forward to the Council the draft international conventions and the legislative as well as statutory enactments pertaining to human rights for consideration, and this during the period in which they are examined at the governmental level<sup>(41)</sup>.

**171** This procedure has not been implemented yet, since it has not been applied to a good number of draft international conventions and legislative and statutory enactments related to human rights, and has been limited to two levels :

- a level of mere notification such as in the case of the draft bill criminalizing the practice of torture and the Bill related to the updating of the Draft Arab Human Rights Charter,
- and a level of consultation by the Ministry of the Interior concerning the Political Parties Bill which the Ministry submitted to the Council.

Presently, and on the basis of the assessment of its experience in this field, the Council is in the process of studying the appropriate methodology with which to exercise its full competences in this field.

### **A posteriori harmonization**

**172** Concerning a posteriori harmonization, it was limited in 2004 to one specific domain, which is the penal code, as part of the advisory opinion submitted to His Majesty as mentioned above. The Council is now endeavouring to extend this scope to comprise other areas.

In this context, the Working Group on Legislative Studies and Public Policies undertook the study of the new provisions relating to public liberties, in connection with the problems posed by the implementation of these provisions, and also in the light of their relations with each other, the main objective being that of harmonizing these new provisions. The Working Group on Human Rights and Societal Development is – on its part – conducting a research on the harmonization of the national law with the rights of the disabled persons. Besides, the harmonization issue is one of the Council's main concerns as far as economic, social and cultural rights are concerned, within the ambit of a comprehensive and multi-dimensional approach which does not content itself only with the legal aspect.

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<sup>(41)</sup> Cf. the full text of the relevant recommendation in Part II of the 2003 Annual Report under the section on Recommendations, Memorandums and Proposals issued by the Council, p. 42.

### 2.2.3. Disseminating the culture of human rights

**173** The Council defines human rights promotion as “an action aiming at raising people’s individual and collective awareness of human rights and fundamental liberties in order to contribute to materializing them in their daily lives at the intellectual, social and political levels”<sup>(42)</sup>. Accordingly, the Council pursued its reflection on the way in which it can contribute to the promotion of human rights culture by basically moving towards designing a medium and long-term approach, rather than engaging in scattered activities with a low impact on reality. A choice of this kind requires sufficient time to develop a program which includes the minimal conditions to secure its effectiveness and sustainability.

**174** The Council considers that progress in the promotion of human rights culture is, at this stage contingent upon two interlinked initiatives :

- The first one consists in understanding the existing situation in order to start from it with the view to building up a prospective conception capable of making use of the experience accumulated on the national scene concerning this issue, and developing it into a structured framework to guarantee its efficiency.
- While the second initiative requires, in the case of such a considerable and strategic objective like the promotion of human rights culture, the multiplication of efforts within the scope of strong partnerships between different governmental and non-governmental actors.

**175** In this context, the Council carried out, throughout 2004, an assessment study to monitor the major trends of the initiatives that our country has witnessed in the promotion of human rights culture in the last decade, especially through three main avenues: school education, training of professionals and sensitization of the public at large, while identifying the main stakeholders and actors from among governmental sectors and active civil society components.

**176** This study highlighted the strengths of all the different current initiatives as well the major challenges that must be faced in order to secure the largest impact and deepest influence generated by the activities which aim at changing tendencies, positions, practices and behaviours in the field of human rights. This assessment work has coincided with the organization of a brainstorming workshop in July 2004 in the light of the initial version of this study which helped improve its final version.

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<sup>(42)</sup> Cf. Part II of the 2003 Annual Report, p. 104

**177** During the 23<sup>rd</sup> session of the Council, consultations took place concerning the launching of the initiative of developing a National Plan for the Promotion of Human Rights Culture, with the contribution of the main actors from governmental and non-governmental sectors within the framework of a strong and effective partnership. The first initiatives in this respect were launched at the end of the year.

#### 2.2.4. Conferences, meetings and brainstorming workshops

**178** During 2004 the Council organized – or participated in the organization of – a number of conferences and meetings which all contributed to a thorough study of a number of issues related to the principles and mechanisms of human rights promotion.

##### Conferences

Dates	Topics
October 2004	The "Paris Principles" Conference held on the occasion of the 10 <sup>th</sup> Anniversary of the National Institutions in charge of human rights.
6 July 2004	A colloquium on "the reality of the promotion of Human Rights Culture" based on an outcome-oriented study on the subject.
15-19 November 2004	A conference on the institutional mechanisms for the promotion of women's rights (in partnership with the Office of the United Nations High Commission on the Status of Women)

##### Brainstorming workshops

**179** On the issue of economic and social rights and in view of their importance, the Council organized a series of workshops, the first of which was held by the end of 2004.

Date	Topic
22 November 2004	Economic and Social Rights and Development

The aim of these workshops was to find answers to a number of concerns, most significant of which are the following :

- To develop a patient and critical approach that should be the outcome of a reasonable agreement, and a collective intellectual and pluralist effort ;
- To propose an appropriate national mechanism of dialogue and consultation about economic, social and cultural rights issues, and raise at the same time the question of their fulfilment in a clear and realistic manner in the context of the progress achieved in the field of law and legislation both at the local and international levels ;
- To develop an integrated and normative approach which may have both a national and a regional dimension.

### Major meetings

**180** During the year 2004, the Council organized many meetings with different governmental sectors and some civil society organizations on a general or thematic/sectoral agenda.

Topics	Parties concerned
Communication Meetings	Public authorities (Ministry of Justice, Ministry of the Interior, Ministry of National Education)
Consultative meeting	Governmental sectors and women's rights associations
Consultative meeting	Governmental sectors and associations working in the field of protection for persons with special needs
Exchange meeting	The Joint Commission of the Ministry of Human Rights and the Ministry of National Education in charge of the National Program of Human Rights Education.

The Council also received several international delegations seeking information about the Moroccan experience within the framework of exchanging experience and expertise in the field of human rights promotion and protection.

**181** These conferences and brainstorming workshops made communication possible with several major actors in the field of human rights, including some governmental sectors, civil society organizations and some experts.





**182** With respect to the promotion of the rights of women, children and persons with special needs, these workshops and meetings made it possible to conduct studies and consultations with the view to diagnosing the status of the rights of these three categories in their different dimensions, and enabled the Working Group on Human Rights and Societal Development to prepare draft recommendations.

### **2.2.5. Attaching the Centre for Documentation, Information and Training on Human Rights to the Council**

**183** The Centre for Documentation, Information and Training on Human Rights was founded in the scope of an international cooperation agreement between the Moroccan Government, the Office of the United Nations High Commissioner for Human Rights and the United Nations Development Programme, and especially the agreement signed in Rabat between the Government of the Kingdom of Morocco and the Office of the United Nations High Commissioner for Human Rights on 28 April 1998, and the cooperation agreement ensuing between the three parties.

**184** It was with great pride that the Council received the Royal decision of 15 July 2004, stipulating the attachment of the Centre for Documentation, Information and Training on Human Rights to the Council, which will secure its autonomy and influence in human rights-related publication and documentation activities. It will also strengthen the Council's working tools within the framework of its competence, especially with respect to the dissemination and promotion of human rights culture.

**185** In application of this Royal decision, the primary concern of the Council was to provide the Centre with the best conditions to enable it to continue to carry out its mission. The second concern was geared to receiving the opinions and impressions of the representatives of the Office of the United Nations High Commissioner for Human Rights, UNDP, and the European Union concerning the attachment of the Centre to the Council and its future prospects.

**186** As to the Council's present concern, it consists in assessing the Centre's past experience and preparing proposals to clarify its legal status and restructure it in order to guarantee its autonomy and expand its influence through specific programs and strategies with the aim of strengthening its organic relationship with the Human Rights Advisory Council.

### 2.3. Activities in the field of human rights protection

**187** The Council carried out its mission of defence and protection of human rights on the basis of the rules which it adopted at its 19<sup>th</sup> meeting, held on 12 and 13 July 2003 on the question of addressing complaints and facing violations, as part of a program and a general framework related to the areas of the Council's competence in this field, including an initial list of rights and liberties subject to violations which must be either addressed on its own initiative or dealt with on request. These rights and liberties are :

- The right to life ;
- The right to physical safety ;
- The right to be safe from arrest on the ground of political or union considerations ;
- The right to join or to found an association ;
- The right to hold meeting and demonstrate.

- The exercise the basic union rights and liberties ;
- Freedom of movement ;
- Protection of privacy ;
- Freedom of expression and freedom of the press ;
- Power abuse in cases that do not run counter the prerogatives of *Diwan Al madhalim* (The ombudsman)<sup>(43)</sup>

**188** The Council's work was consolidated by a series of procedural proposals which were included in the "Annual Report on Human Rights Conditions in Morocco" for 2003, most important of which was the proposal recommending the establishment of a mechanism for direct communication with the Ministries of Justice and the Interior to cope with human rights abuses<sup>(44)</sup>.

#### 2.3.1. Addressing violations

**189** Through the Working Group on Human Rights Protection and with the help of the Administrative Unit, the Council went on exercising its prerogatives by handling the violations on requests and by examining and processing the complaints it received. What should however be taken into consideration in handling these complaints is the conclusions reached after conducting the necessary investigations and studies, regardless of the facts that these conclusions be positive or negative.

<sup>(43)</sup> Cf Part II of the Council's 2003 Annual Report, p. 114.

<sup>(44)</sup> Cf. "Annual Report on Human Rights Conditions in Morocco", Cadra Press, Rabat, pp. 40 and 41. French translation of this report has also been published by Omnia Press, Rabat, on the same date.



### 2.3.2. Developing a specific working methodology for the Council

**190** In line with the above, the Council attended to the development of its working mechanisms and methodology in processing the complaints and coping with the violations through :

- Setting up the Administrative Unit in charge of the protection of human rights and assistance to victims of violations<sup>(45)</sup>, specifying its tasks and providing it with qualified human resources ;
- Defining and organizing the intake and orientation service for the complainants ;
- Establishing an information system and a database for processing the complaints, grievances and violations to enable the Council to minutely analyze and tackle these cases and intervene appropriately.

Appendix 1 shows the volume of efforts deployed for the classification, analysis and processing of the complaints and grievances reported to the Council. It also helps to unveil the violations and abuses of human rights and the manner in which they have been addressed as shown in Part I of this report<sup>(46)</sup>.

### 2.3.3. Setting up a Cell for communication with the Government

**191** The Liaison and Communication Cell in charge of communication between the Council and the Government is made up of representatives from the Ministries of Justice and the Interior and representatives from the Council. The installation of this cell made cooperation possible, which led to the clarification of a good number of cases and also to taking the necessary legal measures concerning a number of cases of human rights violation; this cell was also able to settle other cases. Yet, it still is necessary to refine the cell's working methodology in order to realize more cooperation in coping with urgent cases in particular and settling cases of human rights violations in general.

### 2.3.4. Follow-up activities

**192** In pursuance of the follow-up culture, and following the publication of "the Special Report on Prison Conditions"<sup>(47)</sup> which was approved at the 21st session held on 23 April 2004, the Council proceeded with the follow-up of prison conditions, by addressing on its own initiative the

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<sup>(45)</sup> A project was submitted to the Coordination Committee on the subject on 7 October 2004.

<sup>(46)</sup> See above

<sup>(47)</sup> The report was drafted subsequently to the field visits made to more than fifty prison houses, centres for child protection and administrative detention centres. The report was printed by **Cadra** Press, Rabat in 2004 and comes in 185 pages.

violations perpetrated against some prisoners and processing their complaints concerning their rights which are guaranteed by the law governing prison institutions (see Appendix Two), in collaboration with the Ministry of Justice. The Council also conducts investigations on incidents that might occur in prisons and jeopardize the prisoners' rights through field visits to prisons or to concerned prisoners, (see the section related to violations under Part I).

**193** The proposals reached by this report on prison conditions found a positive echo within the competent governmental authority, as stated by the Minister of Justice at the 22nd meeting of the Council held on 20 July 2004. However, the Council is still concerned about the extent to which the proposals and recommendations contained in the report have been implemented, and will keep following up on this matter.

#### **2.3.5. General conclusions in the field of following up and analysing the complaints**

**194** The system used in processing the complaints received by the Council in 2004 led to taking immediate measures and drawing urgent conclusions which can be summed up as follows :

#### **First : Cases that were urgently processed**

- Cases relating to the right to life,
- Cases relating to physical safety,
- Cases of exposure to torture, ill-treatment and unlawful detention,
- Cases of infringement upon the freedom of movement (see the paragraph dealing with this issue in Section II, Part I)

#### **Second : Interaction with the complainants and communication with the public authorities**

- Preparing answers which were addressed to all complainants to inform them about the whereabouts of their complaints, or referring them to the competent authorities or to the necessary legal proceedings to be followed.
- Preparing the files falling under the competence of Diwan Al Madhalim (the Ombudsman's office) and referring them to this office, and forwarding the complaints falling under the competence of other authorities to these parties.
- Bringing up the question of complaints and grievances and how to address them and cope with them on the occasion of the meetings held by the Working Group in charge of Human Rights Protection and Addressing Violations within the framework of the Liaison and Communication Cell.



## Third : Monitoring and follow up

Referring the files related to prison conditions to the Working Group on Protection which has been following up these cases during the Group's visits to the prison houses (see the thematic report on prisons).

### 2.4. International cooperation

**195** During its first year of existence, the Council established a comprehensive program to follow on its foreign relations at the international level<sup>(48)</sup>. Accordingly, it achieved a number of works that contributed to the consolidation of its position.

#### 2.4.1. The 60<sup>th</sup> Session of the Commission on Human Rights

**196** The Council took part in the proceedings of the 60<sup>th</sup> Session of the Commission on Human Rights, especially on item 18(b). The Council cooperated with the other national institutions affiliated to the above-mentioned Coordination Committee with the purpose of strengthening and consolidating the role of these institutions during the proceedings of the Commission on Human Rights, by helping them to take part in all the proceedings, and not just on item 18(b) which is specifically devoted to national human rights institutions.

#### 2.4.2. Proceedings of the International Coordination Committee for National Institutions of Human Rights Protection

**197** The Council attended the proceedings of the annual meeting of the International Coordination Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) which the Council continued to chair until the end of August 2004.

In its capacity as the Chair of the above-mentioned Committee, the Council succeeded to fulfil many tasks, namely establishing the Committee's operational structures, by laying down the draft final version of the Committee's rules of procedure which was presented to the Seoul Conference held between 14 and 17 September 2004. The Council also participated in the two symposiums held by the Committee to consider the draft International Convention to Promote and Protect the Rights of Persons with Disabilities on one hand, and Human Rights Education on the other hand, in addition to the Committee's 7<sup>th</sup> Conference on Upholding Human Rights during Conflict and While Countering Terrorism (Seoul, September 2004).

<sup>(48)</sup> CF p.156 and following and p. 167 and following under Part II of the 2003 Annual Report.

### **2.4.3. Proceedings of the Coordinating Committee of African National Human Rights Institutions**

**198** In the scope of its activities within the Coordinating Committee of African National Human Rights Institutions (CC/ANHRI), the Council was re-elected on 14 April 2003 for a new term of two years as a Committee Member. The Council took an active part in the conference held by the Committee in Johannesburg on 24 and 25 February 2004, and came with proposals for the promotion of economic and social rights, by submitting a new approach to address the subject and inviting the African national institutions to participate in it.

**199** Following this, the Council decided at its 23<sup>rd</sup> meeting held on 29 October 2004 to adopt this approach which aims to organize a series of conferences in Rabat, in which a number of Moroccan and African experts and persons concerned are expected to participate. These conferences shall tackle a number of topics which will try to cover issues of economic, social and cultural rights, their different patterns of exercise, and their relation with the national sustainable development strategy (see the part related to the outcome of activities).

### **2.4.4. Proceedings of the Francophone Association of National Human Rights Institutions (AFCNDH)**

**200** Being a member of the Governing Board of AFCNDH, the Council presented – in its capacity as the Treasurer – a financial report for the year 2003 on the occasion of the Association's meeting in parallel with the 60th session of the Commission on Human Rights in March 2004. At that meeting, the Council presented the experience of Morocco in the field of human rights education.

The Council also attended the proceedings of the first meeting of the Follow-up Committee of the Conference of governmental human rights institutions in the Francophone space which was held in Marrakech on 27-28 February 2004.

### **2.4.5. Organization of activities in Morocco in partnership with international agencies**

**201** In collaboration with the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Council organized in Rabat on 23 June 2004 a round-table meeting on the 10th Anniversary of the Paris Principles. On this occasion, these principles were introduced and explained, as well as the position of the Council as an institution which is independent from the other institutions which are present on the



national institutional arena<sup>(49)</sup>. An international conference was also hosted in Ouarzazate (15-19 November 2004) on the institutional mechanisms for the promotion of women's rights, in partnership with the OHCHR, the Division for the Advancement of Women (DAW) and the national institutions.

#### 2.4.6. Participation in international forums

**202** The Council took part in a number of activities geared to international cooperation and exchange of information and expertise at the bilateral level between the Council and other national institutions. Examples of these contributions are :

- Participation in the International Conference on immigration held in the city of Zacatecas, Mexico ;
- Participation in the World Forum on Human Rights held in Nantes, France ;
- Participation in the Third Meeting on the Dissemination of Human Rights Culture, held in Andalusia ;
- Participation in the Conference on Tolerance and the Fight against Racism, Xenophobia and Discrimination in Brussels ;
- Cooperation with the French Commission for the printing of a common book on national institutions ;
- Contribution to the explanation and clarification of the new provisions of the Family Code to the Moroccan community based in Belgium, the Belgian Parliament and the Parliament of Brussels ;
- Discussion on a cooperation plan with the Human Rights Centre in Denmark.

What characterizes these activities is that there is a growing demand and interest among Arab and non-Arab states for learning about the Moroccan experience. In this connection, a number of delegations from different countries visited the Council.

**203** Advancing its performance is one of the main challenges that the Council should face in the short run, in order to materialize the philosophy of the Dahir which has decided its reorganization, perform the missions assigned to it for the protection and promotion of human rights, and consolidate its position within the Moroccan human rights arena.

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<sup>(49)</sup> The proceedings of this meeting are on the press.

# Annexes







## Annex I

# The advisory opinion submitted to His Majesty on the Harmonization of the Moroccan Penal Code for the eradication of hatred, discrimination and violence

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In His Throne Address for the year 2003, His Majesty, May God assist Him, deigned to entrust the Human Rights Advisory Council with the task of "preparing the necessary proposals to fill in the legislative lacunae in the field of fighting against all forms of racism, hatred and violence."

The Council is honored to express to His Majesty both its pride at the High Royal trust conferred upon it through this assignment, and its appreciation and gratitude for His Majesty's concern to see the Council fulfil its missions to the best of its abilities.

The Council conducted a specialized and detailed study on the provisions of the Moroccan penal legislation pertaining to the eradication of discrimination, hatred and violence in the light of the provisions of the international covenants and the conclusions likely to be drawn from comparative law in this field.

In this respect, it considered that legitimate, fair and effective suppression of all forms of discrimination, hatred and violence is one of the fundamental pillars of the rule of law and democracy. It is also at the core of protection of the human right to live in peace and tranquillity, and in enjoyment of the fundamental freedoms, without any distinction on the grounds of disability, gender, race, religion, culture, social status or any other considerations.

### **The Council,**

After deliberating on the conclusions of these specialized studies, during its session held on 20 July 2004,

- took note of the fact that the Moroccan Penal Code has recently been modified and completed towards criminalizing the different forms of violence, discrimination and hatred leading to them, as well as the instigation of violence and advocacy of terrorist crimes, in pursuance of Law n° 24.03 (for the implementation of which Cherifian Dahir n° 1.03.207 was issued on 16 Ramadan 1424 (11/11/2003) and Law n° 02.03 on the fight against terrorism (for the implementation of which Cherifian Dahir n° 1.03.140 was issued on 26 Rabii I 1424 (28 May 2003), as well as Law n° 77.00, modifying and completing the Press Code (for the implementation of which Cherifian Dahir n° 1.02.207 was issued on 25 Rajab 1423 (03/10/2003).

It also transpired from the discussions on the issue that the penal code, although it now includes some advanced provisions with respect to criminalizing all forms of violence, discrimination and hatred leading to them, in addition to the instigation of violence and advocacy of the most dangerous terrorist crimes, it still needs to be reviewed for the sake of updating it and harmonizing it with the different mutations witnessed by society, the relevant international conventions, contemporary penal thought and the latest legislative developments. At the same time, special attention should be paid to the unification of penal terminology concerning the incriminated forms of discrimination in the light of the advanced definitions used at international level, while ensuring that the penal code is consistent with the other legislations which contain penal provisions that need to be reviewed in this sense.

In this connection, the Council resolved to submit to His Majesty the two following proposals: the first concerns the need to take practical and procedural measures to bring into force the new provisions, while the second relates to the necessity of reviewing the penal code.

### **First proposal : bringing the new provisions into force**

In application of the new provisions brought about by the above-mentioned legislative review, the Council considers that the existence of laws in itself is not sufficient, and that special attention must be paid to crime prevention in the first instance and to enforcement of law in the second instance.

In view of the recent and diversified nature of a large number of the legal provisions relating to the fight against the different forms of hatred, discrimination and violence, and instigation of these crimes, it is necessary :

- 1) to publish a practical guidebook to explain the new provisions and how to bring them into force, and use it as a means for raising awareness and for systematic training of the different constituents of the judiciary and its assistants, especially the civil servants in charge of implementing the laws, and all the other individuals and parties representing justice ;
- 2) to raise awareness about the values of tolerance, equality, acceptance of difference, and the propagation of the culture of modern citizenship through the different channels of education, schooling, training, guidance and public communication, with the aim of protection against crimes of racism, hatred, discrimination, violence and instigation of these crimes.

## **Second proposal :**

### **Reviewing and updating the penal code**

- Recalling the research work and specialized studies which the Advisory Human Rights Council had already conducted during its previous mandate on a number of essential issues of penal code procedures ;
- And based on the specialized study and the discussions on the subject which followed within the Council in its new composition,

The Council proposes to His Majesty's well-advised view to review the law in question, with the intention of attaining the general objectives mentioned above and achieving the expected goals, among which:

- 1) defining the features and essential elements of insult and defamation offences associated with forms of hatred and violence, and criminalizing offences of insult and defamation addressed to categories of people who might be victims of the incriminated forms of discrimination each time it is associated with instigating people to hatred of one category or another ;
- 2) achieving harmony with the principles and fundamentals of the new penal philosophy now entrenched in the rules of the new Criminal Procedure Code which adopted modern and up-to-date orientations concerning the legal and human rights guarantees of a fair trial ;
- 3) consolidating the gains achieved to the benefit of women and children thanks to the Family Code and the Labour Code and also the amendments which have been introduced into the penal code by virtue of Law n° 24.03, to reflect the lofty Royal will and the will of the nation as a whole, altogether with the new definitions and provisions relating to the criminalization of acts of ill-treatment, exploitation and violence, for which the Kingdom of Morocco has committed itself by virtue of the international human rights conventions ratified or adhered to by the country.

The final decision rests with His Majesty's sagacity and well-advised opinion, may God glorify Him.

## Annex II

### Claims and complaints received by the Council

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The number of complaints received by the Human Rights Advisory Council (not including the complaints received from prisoners which appear in Annex III) during 2004 amounted to 2,221 complaints. This increase in the number of complaints shows that the Council will have to continue handling them for still a long time. The administrative unit in charge with protection and assistance to victims of abuses developed a methodology for examining and analysing these complaints, which made it possible to classify them on the basis of their nature, kind and the competent party.

It was also possible to reach an advanced assessment of the sources and directions of these complaints, which led to establishing an information system that will help in facilitating the Council's task of handling and analysing the complaints, and improving the performance of the Council in the area of protection.

It was possible from the classification of complaints carried out in 2004 to learn about the cases received by the Council which can be summarized as follows:

#### **First : Complaints falling under the attributions entrusted to the Council in the field of protection of human rights and handling of violations**

57 such complaints were received and classified as follows :

- abuse of physical integrity : 19 complaints ;
- abuse of power – cases that do not run counter the attributions of Diwan Al-Mathaleem (the office of the Ombudsman) ; these are cases which emanate from citizens who consider themselves as victims of abuses perpetrated by policemen, gendarmes or enforcement authorities : 10 complaints ;
- exposure to illegal custody : 3 complaints ;
- death at a police station : 1 complaint ;
- doubtful case of death : 1 complaint ;
- denial of the right to obtain a passport : 11 complaints;
- prevention from leaving the national territory : 3 complaints ;
- exposure to vexations at the time of leaving or returning to the national territory : 1 complaint ;

- failure to obtain the national identity card : 4 complaints ;
- exposure of associations to harassment affecting their activities : 3 complaints ;
- requesting the right to form a party : 1 complaint.

Cooperation between the Ministries of the Interior and Justice and the Council has been established through a Liaison and Communication Cell to cope with these cases by taking appropriate legal measures as it is explained under Section II, Part I of this report.

## **Second : Complaints relating to cases falling within the attributions of other parties**

### **1. Applications falling within the attributions of the Justice and Reconciliation Commission (IER) :**

These applications which have been referred to the IER emanate from persons who claim to be victims of arbitrary detention, forced disappearance, or eligible parties, and amount to 205 including :

- requests to unveil the whereabouts of disappeared persons ;
- requests for reparation of injuries ;
- requests for integration into society or settlement of an administrative situation ;
- requests to look into files registered with the IER ;
- letters accompanied with documents to complete files registered with the IER ;
- requests for compensation against forcible exile or expropriation of property ;
- requests to reconsider an arbitrary decision issued by the former Arbitration Board.

### **2. Complaints concerning litigations**

There are 891 such complaints divided into two categories :

#### **2.1. 839 complaints relating to cases falling within the competence of justice and including:**

- cases for which a court decision has been issued and which the concerned parties request reconsidering ;

- cases put before the courts of the country;
- cases falling within the competence of justice and for which no proceedings have been initiated so far.

### **2.2. Complaints relating to the execution of court judgements**

They were referred to the Ministry of Justice.

### **3. Complaints falling within the competence of Diwan Al-Mathalim (the office of the Ombudsman).**

412 such complaints were referred to Diwan Al-Mathalim (the office of the Ombudsman), against 617 complaints which had been received in the course of 2003. These cases concern complaints emanating from civil servants regarding administrative litigations, abuse of power, public contracts, administrative contracts or public licensing.

### **4. Complaints emanating from Moroccan expatriates**

Such complaints were referred to the Hassan II Foundation for Moroccan expatriates, relating to:

- applications for obtaining or renewing residence permits in the host country ;
- applications for visas ;
- requests to take action with the authorities of the host country to withdraw a depart decision ;
- requests of indemnity for loss of property in the host country ;
- complaints relating to cases arising in the mother country (execution of court decisions, the whereabouts of files put before the courts of the country, complaints against public institutions or local authorities, etc.).

### **5. Complaints emanating from former Resistance Movement and Liberation Army members**

120 complaints were received, most of which emanate from citizens requesting the competent authorities to settle their files lodged with the High Commission in charge of the former Resistance Movement and

Liberation Army members, in order to be entitled to the status of a Resistance Movement member or to have access to social assistance. All of these complaints were referred to the said High Commission.

## **6. Complaints of social nature**

138 cases.

## **7. Complaints relating to soldiers or civilians sequestered in or freed from the Tindouf camps**

79 cases were received and classified as follows :

- 50 complaints emanating from civilians ;
- 29 complaints emanating from soldiers.

## **8. 799 complaints were subject to a special classification and for which it was not possible to suggest any measure for various reasons, among which :**

- Not relevant ;
- Or all necessary measures have been completed by the parties concerned ;
- Or of unknown origin ;
- Or addressed to the Council for the sake of information.



## Annex III

# Complaints emanating from prisoners or from their families during the year 2004

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### ● First - General aspects

The Human Rights Advisory Council received 1,445 complaints from prisoners or from their families during the year 2004. The Unit in charge of Human Rights Protection and assistance to victims of violations have examined and classified these complaints as follows :

- 1) complaints regarding issues falling within human rights violations;
- 2) complaints relating to issues falling within the rights guaranteed by the Penitentiary Act ;
- 3) complaints regarding grievances against court decisions;
- 4) sentence merging requests ;
- 5) requests to benefit from Royal pardon ;
- 6) requests of reintegration into society after release ;
- 7) miscellaneous requests.

### **1. Complaints regarding pure violations of human rights**

30 such complaints were classified according to their subjects as follows :

- occurrence of deaths in prisons : 3 complaints ;
- cases of torture during pre-arraignment detention: 5 complaints ;
- cases of torture or ill-treatment in prison : 19 complaints.

### **2. Complaints concerning prisoners' rights which are guaranteed by the Penitentiary Act**

There are 154 such cases consisting of complaints or requests concerning the following subjects :

- the right to health care ;
- transfer to other prisons to get closer to the family ;
- the right to a place of privacy with one's spouse ;
- the right to pursue studies or vocational training.

### **3. Complaints regarding grievances against court decisions issued in terrorism-related cases**

The number of these requests is 155.

### **4. Applications for pardon**

270 requests.

### **5. Requests of reintegration into society after release**

10 requests.

### **6. Sentence merging requests**

22 requests.

#### **● Second : Measures taken**

Measures taken by the Council to handle these complaints varied following their categories :

- Human rights violations were addressed within the Council's liaison and communication cell ;
- While cases relating to the prisoners' rights guaranteed by the Penitentiary Act were referred to the Ministry of Justice and the Directorate of the Prisons Administration ;
- Files of complaints regarding grievances against court decisions were either closed or referred to the Ministry of Justice as applicable ;
- Pardon and sentence merging requests were referred to the Ministry of Justice ;
- Lastly, cases in which the persons concerned requested reintegration into society after release were referred to Mohammed VI Foundation for the reintegration of prisoners.

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